

REVISED

1/2614/133

Formatted: Font color: Blue

Formatted: Font color: Blue

Formatted: Font: Bold, Font color: Blue

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO ENVIRONMENTAL LIENS

Formatted: Different first page header

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 9117, Title 7 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§9117. ~~Obligations under bankruptcy.~~ Environmental remediation liens.

Formatted: Not Highlight

~~No obligations imposed by this chapter shall constitute a lien or claim which may be limited or discharged in a bankruptcy proceeding. All obligations imposed by this chapter shall constitute continuing regulatory obligations imposed by the State.~~

(a) Pursuant to the provisions of this section, all costs related to any remedy ~~or remedial action~~ undertaken by the State for which a person is liable under ~~§ 9105 of this chapter or the regulations promulgated pursuant thereto~~ shall constitute a lien in favor of the State upon the real property a facility that is owned in fee simple or by any lesser interest by the person and where that has been the subject of such remedy or remedial action takes place.

~~(a)~~

~~(b) If the Secretary determines that the funds projected to be available upon satisfaction of the lien provided pursuant to subsection (a) of this section will be less than the projected insufficient to protect the interests of the State in recovering its response costs at a facility, the Secretary may file a petition in the Court of Chancery seeking to impose a lien upon other real property of the owner or owners of the facility at which the response costs were incurred.~~

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Not Highlight

~~(1) A petition filed by the Secretary pursuant to this subsection shall describe with particularity the real property to which the lien will attach, and the reason or reasons the lien is necessary.~~

Formatted: Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25"

Formatted: Not Highlight

~~(2) Upon filing of a petition by the Secretary, the Court shall schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the Secretary, the owner of the real property which is the subject of the petition and any person holding a lien or a perfected security interest in the real property.~~

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Not Highlight

(b) (e) A lien created under this section attaches to and is perfected against real property when:

- (1) ~~Response e~~Costs associated with ~~are first incurred by the State with respect to~~ any remedy ~~or remedial action~~at the property are first incurred by the State;
- (2) A notice of lien is sent by the Secretary to the owner or owners of the property by means of certified or registered mail no less than twenty days prior to the date that costs associated with any remedy are first incurred by the State; A notice of lien is filed by the Secretary with the Office of the Recorder of Deeds in the county in which the real property is located; and
- (3) A notice of lien is filed by the Secretary with the Office of the Recorder of Deeds in the county in which the property is locatedA notice of lien is sent by the Secretary to the owner or owners of the real property by means of certified or registered mail.

~~(d) (c)~~ A lien created under this section has priority over all other liens and encumbrances perfected after the date ~~of~~that the lien recorded pursuant to this section is perfected, but is subject to the rights of any other lien holder whose interest is perfected prior thereto.

~~(e)~~(d) A lien created under this section continues until the full discharge and satisfaction of the lien.

~~(f)~~(e) Upon satisfaction of the liability secured by a lien created under this section, the Secretary shall file a notice of release of lien with the Office of Recorder of Deeds in the county in which the real property is located.

~~(g)~~(f) No lien or obligation created under this chapter may be limited or discharged in a bankruptcy proceeding. All obligations imposed by this chapter shall constitute regulatory obligations imposed by the State.

(g) Any person whose interest is substantially affected by any action of the Secretary taken pursuant to subsection (a) of this section may appeal to the Environmental Appeals Board in accordance with § 6008 of this Title.

(h) If the Secretary determines that the funds projected to be available in order to satisfy the lien provided pursuant to subsection (a) of this section will be insufficient to permit the State to recover fully its costs, the Secretary may file a petition in the Court of Chancery seeking to impose an additional lien or

Formatted: Font: Bold, Font color: Blue

Formatted: Font: Bold, Font color: Blue

Formatted: Font color: Blue

Formatted: Font: Bold, Font color: Blue

Formatted: Right

Formatted: Font: Bold, Font color: Blue

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Indent: Left: 1", Hanging: 0.25", No bullets or numbering

Formatted: No underline

Formatted: Not Highlight

liens upon other real property in Delaware owned by the same person or persons as the property where the costs are incurred.

(1) A petition filed by the Secretary pursuant to this subsection shall describe with particularity the real property to which the requested lien will attach.

(2) Upon filing of a petition by the Secretary, the Court shall schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the Secretary, the owner or owners of the real property which is the subject of the petition and any person holding a lien or a perfected security interest in the property.

~~(i) If the encumbered real property is owned in less than fee simple, the lien shall attach to the proportionate of fractional share and to the limit of the liable person's ownership interest.~~

- Formatted: Font: Bold, Font color: Blue
- Formatted: Font: Bold, Font color: Blue
- Formatted: Font color: Blue
- Formatted: Font: Bold, Font color: Blue
- Formatted: Font: Bold, Font color: Blue
- Formatted: Right
- Formatted: No underline
- Formatted: Indent: Left: 1.5", Hanging: 0.25", No bullets or numbering
- Formatted: Indent: Left: 1.5", Hanging: 0.25"
- Formatted: No underline
- Formatted: Indent: Left: 1.5", Hanging: 0.25", No bullets or numbering
- Formatted: Underline

Section 2. Amend § 7419, Title 7 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 7419. ~~Recovery of expenditures.~~ Environmental liens; recovery of expenditures.

~~The Department shall seek recovery of moneys expended from the fund for corrective action under this chapter where the owner or operator has violated substantive regulations pertaining to underground storage tanks which have been promulgated by the Department or has engaged in grossly negligent conduct.~~

(a) Pursuant to the provisions of this section, all costs expended by the State ~~related in order to investigating a release or suspected release of a regulated substance from an underground storage tank system including, but not limited to, performing inspections, release detection monitoring, site assessments, removal of regulated substances, removal or closure in place of any part of the underground storage tank system, actions necessary to abate an emergency situation such as installing water treatment, supplying drinking water, installing wells and venting petroleum vapors, as well as other necessary corrective action~~ stake corrective action to address a release of a regulated substance for which a person is liable under this chapter or the regulations promulgated pursuant thereto shall constitute a lien in favor of

~~the State upon the real property a facility that is owned by the person and where such activities take place that has been the subject of such corrective action.~~

~~(b) If the Secretary determines that the lien provided pursuant to subsection (a) of this section will be insufficient to protect the interests of the State in recovering the costs of its corrective action at a facility, the Secretary may file a petition in the Court of Chancery seeking to impose a lien upon other real property of the owner of the facility at which the costs were incurred.~~

~~(1) A petition filed by the Secretary pursuant to this subsection shall describe with particularity the property to which the lien will attach and the reason or reasons the lien is necessary.~~

~~(2) Upon filing of a petition by the Secretary, the Court shall schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the Secretary, the owner of the property which is the subject of the petition and any person holding a lien or a perfected security interest in the property.~~

~~(eb) A lien created under this section attaches to and is perfected against real property when:~~

~~(1) Response eCosts associated with are first incurred by the State with respect to any of the remedy or remedial actions described in subsection (a) of this section are first incurred expended by the State at the property:~~

~~(2) A notice of lien is sent by the Secretary to the owner or owners of the property by means of certified or registered mail no less than twenty days prior to the date that costs associated with any actions described in subsection (a) of this section are first incurred by the State A notice of lien is filed by the Secretary with the Office of the Recorder of Deeds in the county in which the real property is located; and~~

~~(3) A notice of lien is sent by the Secretary to the owner or owners of the real property by means of certified or registered mail A notice of lien is filed by the Secretary with the Office of the Recorder of Deeds in the county in which the property is located.~~

Formatted: Font: Bold, Font color: Blue

Formatted: Right

Formatted: Font: Bold, Font color: Blue

Formatted: Font color: Blue

Formatted: Font: Bold, Font color: Blue

Formatted: Font: Bold, Font color: Blue

(d)(c) A lien created under this section has priority over all other liens and encumbrances perfected after the date that the lien recorded pursuant to this section is perfected

(e)(d) A lien created under this section continues until the full discharge and satisfaction of the lien.

(f)(e) Upon satisfaction of the liability secured by a lien created under this section, the Secretary shall file a notice of release of lien with the Office of Recorder of Deeds in the county in which the real property is located.

(f) No lien or obligation created under this chapter may be limited or discharged in a bankruptcy proceeding. All obligations imposed by this chapter shall constitute regulatory obligations imposed by the State.

(g) Any person whose interest is substantially affected by any action of the Secretary taken pursuant to subsection (a) of this section may appeal to the Environmental Appeals Board in accordance with § 6008 of this Title.

(h) If the Secretary determines that the funds projected to be available in order to satisfy the lien provided pursuant to subsection (a) of this section will be insufficient to permit the State to recover fully its costs, the Secretary may file a petition in the Court of Chancery seeking to impose an additional lien or liens upon other real property in Delaware owned by the same person or persons as the property where the costs are incurred.

(1) A petition filed by the Secretary pursuant to this subsection shall describe with particularity the real property to which the lien will attach.

(2) Upon filing of a petition by the Secretary, the Court shall schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the Secretary, the owner or owners of the real property which is the subject of the petition and any person holding a lien or a perfected security interest in the property.

(i) The provisions of this section shall not apply to those classes of underground storage tanks set forth in § 7404(1) and (2) of this chapter.

(e).

- Formatted: Font: Bold, Font color: Blue
- Formatted: Right
- Formatted: Font color: Blue
- Formatted: Font: Bold, Font color: Blue
- Formatted: Font: Bold, Font color: Blue
- Formatted: Font: Bold, Font color: Blue
- Formatted: Indent: Left: 1", Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 3 + Alignment: Left + Aligned at: 1.56" + Indent at: 1.81"

- Formatted: No underline
- Formatted: Underline
- Formatted: Indent: Left: 1"

- Formatted: Indent: Left: 1", Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 3 + Alignment: Left + Aligned at: 1.56" + Indent at: 1.81"
- Formatted: Underline
- Formatted: Underline
- Formatted: Underline
- Formatted: Underline
- Formatted: Indent: Left: 1.5", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1.25" + Indent at: 1.5"

- Formatted: Indent: Left: 1", Hanging: 0.25", No bullets or numbering
- Formatted: No underline
- Formatted: Indent: Left: 1.25", No bullets or numbering
- Formatted: Underline

Formatted: Font: Bold, Font color: Blue

Formatted: Right

Formatted: Font: Bold, Font color: Blue

Formatted: Font color: Blue

Formatted: Font: Bold, Font color: Blue

Formatted: Font: Bold, Font color: Blue

Section 3. Amend Chapter 74A., Title 7 of the Delaware Code by re-designating current § 7416A. as “§ 7417A.”, and by inserting a new § 7416A. as shown by underlining as follows:

§ 7416A. Environmental liens; recovery of expenditures.

(a) Pursuant to the provisions of this section, all costs ~~expended as described in § 7406A.(d) of this chapter incurred~~ by the State ~~in~~ related to investigating a release or suspected release of a regulated substance from an aboveground storage tank including, but not limited to, performing inspections, tests and repairs, release detection monitoring, site assessments, removal of regulated substances, removal or closure in place of any part of the aboveground storage tank, actions necessary to abate an emergency situation such as installing water treatment, supplying water, installing wells, and removing contaminated media, and abating hazardous vapors, as well as other necessary corrective actions for which a person is liable ~~order to take corrective action to address a release of a regulated substance for which a person is liable~~ under this chapter or the regulations promulgated pursuant thereto shall constitute a lien in favor of the State upon ~~the real property a facility that is owned by the person and that~~ where such activities take place ~~has been the subject of such corrective action.~~

~~(b) If the Secretary determines that the lien provided pursuant to subsection (a) of this section will be insufficient to protect the interests of the State in recovering the costs of its corrective action at a facility, the Secretary may file a petition in the Court of Chancery seeking to impose a lien upon other real property of the owner of the facility at which the costs were incurred.~~

~~(1) A petition filed by the Secretary pursuant to this subsection shall describe with particularity the property to which the lien will attach and the reason or reasons the lien is necessary.~~

~~(2) Upon filing of a petition by the Secretary, the Court shall schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the Secretary, the owner of the property which is the subject of the petition and any person holding a lien or a perfected security interest in the property.~~

(eb) A lien created under this section attaches to and is perfected against real property when:

(1) Response eCosts associated with are first incurred by the State with respect to any of the actions described in subsection (a) of this section

are first incurred expended by the State at the property remedy or remedial action;

- (2) A notice of lien is sent by the Secretary to the owner or owners of the property by means of certified or registered mail no less than twenty days prior to the date that costs associated with any actions described in subsection (a) of this section are first incurred by the State. A notice of lien is filed by the Secretary with the Office of the Recorder of Deeds in the county in which the real property is located; and
- (3) A notice of lien is sent by the Secretary to the owner or owners of the property by means of certified or registered mail. A notice of lien is filed by the Secretary with the Office of the Recorder of Deeds in the county in which the real property is located.

(d)(c) A lien created under this section has priority over all other liens and encumbrances perfected after the date that the lien recorded pursuant to this section is perfected.

(e)(d) A lien created under this section continues until the full discharge and satisfaction of the lien.

(f)(e) Upon satisfaction of the liability secured by a lien created under this section, the Secretary shall file a notice of release of lien with the Office of Recorder of Deeds in the county in which the property is located.

(f) No lien or obligation created under this chapter may be limited or discharged in a bankruptcy proceeding. All obligations imposed by this chapter shall constitute regulatory obligations imposed by the State.

(g) Any person whose interest is substantially affected by any action of the Secretary taken pursuant to subsection (a) of this section may appeal to the Environmental Appeals Board in accordance with § 6008 of this Title.

(h) If the Secretary determines that the funds projected to be available in order to satisfy the lien provided pursuant to subsection (a) of this section will be insufficient to permit the State to recover fully its costs, the Secretary may file a petition in the Court of Chancery seeking to impose an additional lien or liens upon other real property in Delaware owned by the same person or persons as the property where the costs are incurred.

Formatted: Font: Bold, Font color: Blue

Formatted: Font: Bold, Font color: Blue

Formatted: Font color: Blue

Formatted: Font: Bold, Font color: Blue

Formatted: Right

Formatted: Font: Bold, Font color: Blue

Formatted: Indent: Left: 1", Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 3 + Alignment: Left + Aligned at: 1.56" + Indent at: 1.81"

(1) A petition filed by the Secretary pursuant to this subsection shall describe with particularity the real property to which the lien will attach.

(2) Upon filing of a petition by the Secretary, the Court shall schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the Secretary, the owner or owners of the real property which is the subject of the petition and any person holding a lien or a perfected security interest in the property.

(i) The provisions of this section shall not apply to those classes of aboveground storage tanks set forth in § 7404A.(a)(1), (3) and (4) of this chapter.

~~(g)~~

~~(h) Any person whose interest is substantially affected by any action of the Secretary taken pursuant to subsection (a) of this section may appeal to the Environmental Appeals Board in accordance with § 6008 of this Title.~~

SYNOPSIS

This Act provides the Department of Natural Resources and Environmental Control ~~DNREC~~ with the authority to impose environmental liens on real property in an effort to recover taxpayers' money expended by the State in order to investigate and clean up contaminated properties ~~facilities~~ in circumstances where the property owners who caused the contamination have failed to do so. This bill results from a recommendation made by the Metachem Task Force, chaired by the Honorable William T. Quillen. As the Task Force Report noted, currently at least thirty-four states (including all of our neighboring states) and the federal government have statutory authority to impose environmental liens. ~~Besides This Act~~ bringings Delaware law in line with the vast majority of our sister states and the United States, ~~this Act~~ ~~It~~ provides an important means of protecting the public treasury while holding responsible property owners accountable for the environmental harm they cause.

Section 1 of the Act provides DNREC with authority to impose an environment liens ~~when as a result of a property owner's~~ violation of the Delaware Hazardous Substance Cleanup Act (HSCA) has resulted in the expenditure of State funds to protect human health and the environment. Specifically, if DNREC must perform a remedy ~~remediate~~ at a property ~~pr~~ using public funds, operty at the State's expense, it can impose an environmental lien in order to a attempt to recover the State's ~~its~~ costs related to the cleanup provided it gives prior notice to the property owner whose has failed to perform or pay for the required remedial activities. An

- Formatted: Font: Bold, Font color: Blue
- Formatted: Font: Bold, Font color: Blue
- Formatted: Font color: Blue
- Formatted: Font: Bold, Font color: Blue
- Formatted: Font: Bold, Font color: Blue
- Formatted: Right
- Formatted: Indent: Left: 1.5", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1.81" + Indent at: 2.06"

Formatted: Indent: Left: 1", Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 3 + Alignment: Left + Aligned at: 1.56" + Indent at: 1.81"

Formatted: Indent: Left: 0", First line: 0"

Formatted: No bullets or numbering

Formatted: Centered, No bullets or numbering

Formatted: Indent: Left: 0", First line: 0"

environmental lien when filed will ~~be subordinate to any lien already existing with respect to the property, but it will~~ have priority over subsequently filed liens. ~~Such An~~ environmental lien will be discharged upon full satisfaction by the property owner of the liability for the remediation costs incurred by the State. A property owner who seeks to challenge the filing of an environmental lien can appeal to the Environmental Appeals Board subject to the applicable statutory procedures contained in 7 Del.C. §6008. ~~Additionally, Finally,~~ if DNREC determines that the imposition of an environmental lien ~~on a contaminated facility~~ will be insufficient to enable it to recover its costs of performing a remedy in a particular case ~~remediation~~, it can petition the Delaware Court of Chancery to seek the imposition of an additional lien or liens on any other Delaware real property owned by the same person or persons as the property where the remediation activities occurred ~~located in Delaware that is owned by the responsible party.~~

Section 2 of the Act extends the same provisions applicable to a violation of HSCA to a violation of the Delaware Underground Storage Tank Act (7 Del.C. c.74). As is the case with the other provisions of the Underground Storage Tank Act, ~~however,~~ certain agricultural, residential and non-commercial underground storage tanks are exempted from the provisions of this Act.

Section 3 of the Act extends the same provisions applicable to a violation of HSCA and the Delaware Underground Storage Tank Act to the Jeffrey Davis Aboveground Storage Tank Act (7 Del.C. c.74A.). As is the case with the other provisions of the Aboveground Storage Tank Act, ~~however,~~ certain agricultural, residential and non-commercial aboveground storage tanks are exempted from the provisions of this Act.

KRB11042A.doc

Formatted: Font: Bold, Font color: Blue

Formatted: Font: Bold, Font color: Blue

Formatted: Font color: Blue

Formatted: Font: Bold, Font color: Blue

Formatted: Right

Formatted: Font: Bold, Font color: Blue

Formatted: Underline