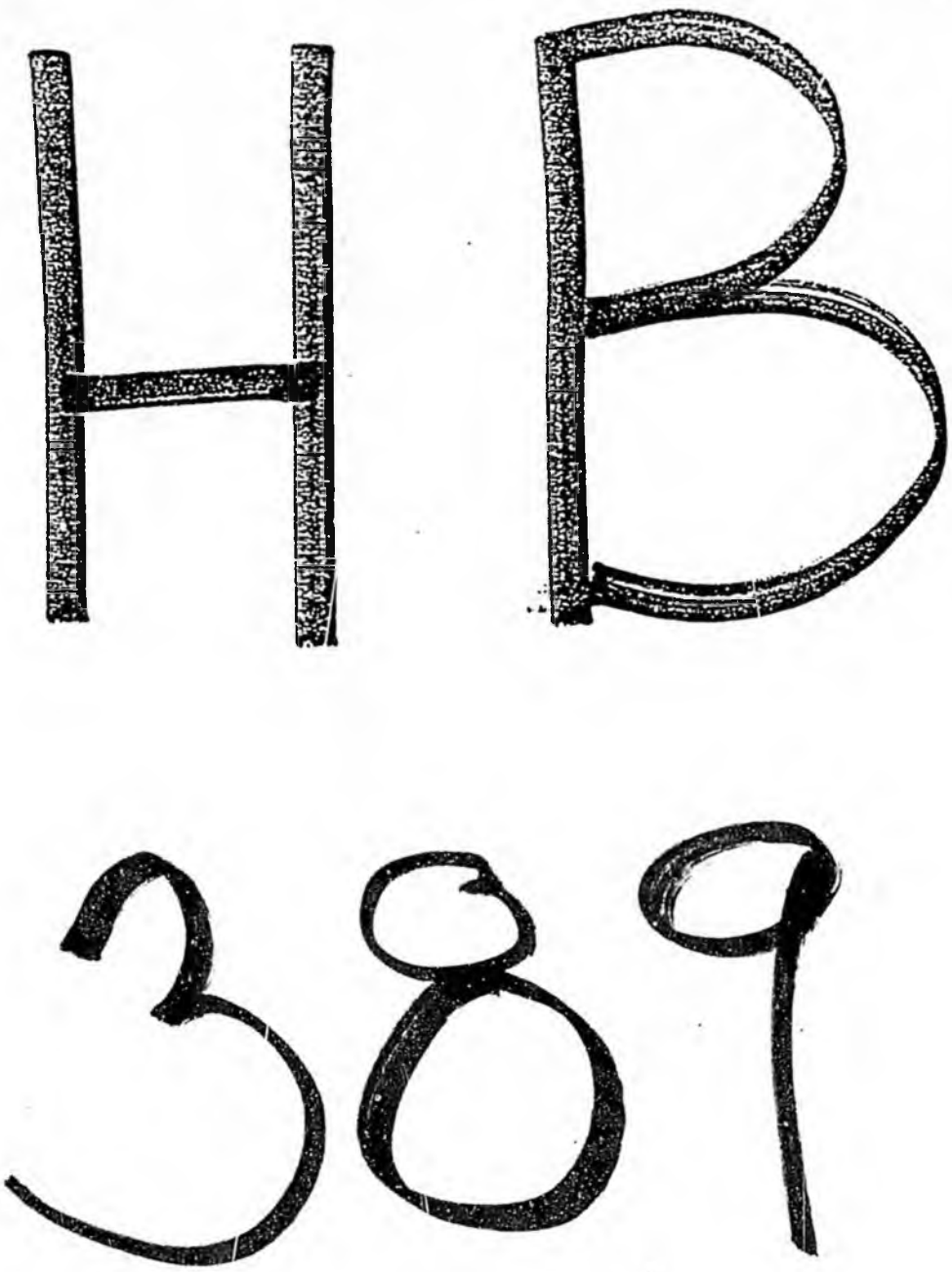
HB
389

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907·465·3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Judiciary:

3-1-88

3-8-88

3-23-88

(7)

HOUSE COMMITTEE REPORT

Date referred: 2/1/88 FURTHER REFERRALS: Finance

DATE: March 23, 1988

The Judiciary Committee has considered HB 389

"An Act relating to recovery of state costs for oil and hazardous substance releases; and providing for an effective date."

RECOMMENDS:

[✓] replace with CS HB 389 (Jud) [ ] the same title

[ ] attached amendment(s) [ ] a new title

- [✓] do pass
- [ ] do not pass
- [ ] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- [ ] fiscal impact
- [ ] zero fiscal note
- [ ] zero with analysis
- [ ] same as previous fiscal note published _____
- [✓] same as previous zero fiscal note published 2/1/88

SIGNING DO PASS:

Mike Navarro

Jim Cates

SIGNING OTHER RECOMMENDATIONS:

Robin L. Taylor (NO Rec.)

Chairman's signature

go0298hB
Hein
3/7/88

Original sponsors: Rules/Governor

Adopted

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 389 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to recovery of state costs for oil and hazardous substance releases; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 46.08 is amended by adding a new section to read:

Sec. 46.08.075. LIENS AGAINST PROPERTY AS SECURITY FOR STATE EXPENDITURES. (a) The state has a lien for expenditures by the state from the oil and hazardous substance release response fund or from any other state fund, for the containment, cleanup, or mitigation of oil or hazardous substance spills, against all property owned by a person who is determined by the commissioner to be liable for the expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the expenditures.

(b) A lien established under this section against real property is not effective unless

(1) a certificate of lien is recorded in the district recorder's office for the district in which the property is located, describing the property and stating the amount of the lien, the name of the owner as grantor, and, if known, the name of the person causing the oil or hazardous substance release; and

(2) the commissioner sends a copy of the certificate by certified mail to the persons described in (1) of this subsection and to all other persons of record holding an interest in the property.

(c) When any amount with respect to which a lien has been recorded under this section has been paid or reduced, the commissioner shall, upon request of the property owner, issue a certificate discharging or partially releasing the lien. That certificate may be recorded in the office where the certificate of lien was recorded.

(d) A person with an ownership interest in property against which a lien is recorded may bring an action in the superior court to require that the lien be released. The lien shall be released if the court finds that the owner of the property is not liable for the costs of the state in connection with containment, cleanup, or mitigation of the oil or hazardous substance release.

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

5-1465B
Hein
3/11/88

Original sponsors: Davis, Koponen, Navarre, et al.

Adopted

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 459 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liability for releases of hazardous substances."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 46.03.822 is repealed and reenacted to read:

Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS SUBSTANCES. (a) The following persons are strictly liable, jointly and severally, for damages to persons or property, public or private, including damage to the natural resources of the state and the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from a release of a hazardous substance or, with respect to response costs, the substantial threat of a release of a hazardous substance:

(1) the owner and the person having control over the hazardous substance at the time of the release or threatened release;

(2) the owner and the operator of the facility or vessel from which the release occurred or was threatened to occur; in the case of an abandoned facility or vessel, the owner, the operator, and any other person who controlled activities at the facility or on the vessel immediately before the abandonment;

(3) a person who owned or operated the facility or vessel from which the release occurred or was threatened to occur at the time the hazardous substance was received by the facility or vessel;

(4) a person who owned the hazardous substance and who arranged for disposal or treatment of the substance by another party

or entity, or arranged with a transporter to transport the substance for disposal or treatment by another party or entity, at a facility or incineration vessel that contained the substance and that was owned or operated by the party or entity; and

(5) a person who transported or accepted the hazardous substance for transport to the facility, vessel, or site from which the release occurred or was threatened to occur, if the person selected the facility, vessel, or site.

(b) In an action to recover damages, a person otherwise liable is relieved from strict liability if the person proves by clear and convincing evidence

(1) that the release or threatened release of the hazardous substance to which the damages relate occurred solely as a result of

(A) an act of war;

(B) an intentional or negligent act of a third party, other than a party or its employees in privity of contract with, or employed by, the person, and that the person

(i) exercised due care with respect to the hazardous substance; and

(ii) took reasonable precautions against the act of the third party and against the consequences of the act; or

(C) an act of God; and

(2) in relation to (1)(B) or (C) of this subsection, that the person, within a reasonable period of time after the act occurred,

(A) discovered the release or threatened release of the hazardous substance; and

(B) began operations to contain and clean up the hazardous substance.

(c) For purposes of (b)(1)(B) of this section, a third party or an employee of a third party is in privity of contract with the person who is otherwise liable if the third party or employee and the person are parties to a land contract, deed, or other instrument transferring title or possession, unless the real property on which the facility in question is located was acquired by the person after the disposal or placement of the hazardous substance on, in, or at the facility, and the person by a preponderance of the evidence establishes that the person has satisfied the requirements of (b)(1)(B) of this section and establishes one or more of the following circumstances:

(1) at the time the person acquired the facility the person did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(2) the person is a government entity that acquired the facility by escheat, or through another involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation;

(3) the person acquired the facility by inheritance or bequest.

(d) To establish that a person had no reason to know that the hazardous substance was disposed of, on, in, or at the facility, as provided in (c)(1) of this section, the person must have undertaken, at the time of acquisition, all appropriate inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this subsection the court shall take into account any specialized knowledge or experience the person has; the relationship of the purchase price to the value of the property if uncontaminated;

commonly known or reasonably ascertainable information about the property; the obviousness of the presence or likely presence of contamination at the property; and the ability to detect contamination by appropriate inspection.

(e) This section does not diminish the liability of a person who previously owned or operated a facility and who would otherwise be liable; however, if the person obtained actual knowledge of the release or threatened release of a hazardous substance at the facility and subsequently transferred ownership to another without disclosing that knowledge, the person is liable under (a)(2) of this section, and a defense under (b)(1)(B) of this section is not available to the person.

(f) This section does not affect the liability of a person who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action relating to the facility.

(g) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer liability under this section from the owner or operator of a vessel or facility or from a person who may be liable for a release or substantial threat of a release under this section. This subsection does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this section. This subsection does not bar a cause of action that an owner or operator or other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against a person.

* Sec. 2. AS 46.03.826 is amended by adding a new paragraph to read:

(8) "facility" includes a

(A) building; structure; installation; equipment; pipe

or pipeline, including a pipe into a sewer or publicly owned treatment works; well; pit; pond; lagoon; impoundment; ditch; landfill; storage container; motor vehicle; rolling stock; or aircraft; or

(B) site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located.

Offered: 3/24/88
Referred: Finance

go0298hB

current bill

bill file

(1)

Original sponsors: Rules/Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 389 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to recovery of state costs for oil and hazardous substance releases; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 46.08 is amended by adding a new section to read:

Sec. 46.08.075. LIENS AGAINST PROPERTY AS SECURITY FOR STATE EXPENDITURES. (a) The state has a lien for expenditures by the state from the oil and hazardous substance release response fund or from any other state fund, for the containment, cleanup, or mitigation of oil or hazardous substance spills, against all property owned by a person who is determined by the commissioner to be liable for the expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the expenditures.

(b) A lien established under this section against real property is not effective unless

(1) a certificate of lien is recorded in the district recorder's office for the district in which the property is located, describing the property and stating the amount of the lien, the name of the owner as grantor, and, if known, the name of the person causing the oil or hazardous substance release; and

(2) the commissioner sends a copy of the certificate by certified mail to the persons described in (1) of this subsection and to all other persons of record holding an interest in the property.

(c) When any amount with respect to which a lien has been recorded under this section has been paid or reduced, the commissioner shall, upon request of the property owner, issue a certificate discharging or partially releasing the lien. That certificate may be recorded in the office where the certificate of lien was recorded.

(d) A person with an ownership interest in property against which a lien is recorded may bring an action in the superior court to require that the lien be released. The lien shall be released if the court finds that the owner of the property is not liable for the costs of the state in connection with containment, cleanup, or mitigation of the oil or hazardous substance release.

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

Introduced: 1/22/88
Referred: Resources, Judiciary and Finance

go00298h

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 389

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to recovery of state costs for oil and hazardous substance releases; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 46.08 is amended by adding a new section to read:

Sec. 46.08.075. LIENS AGAINST PROPERTY AS SECURITY FOR STATE EXPENDITURES. (a) The state has a lien for expenditures by the state from the oil and hazardous substance release response fund (AS 46.08.-010) or from any other state fund, for the containment, cleanup, or mitigation of oil or hazardous substance spills, against all property owned by a person who is determined by the commissioner to be liable for the expenditures under this chapter, AS 46.03, 46.04, or 46.08, 42 U.S.C. sec. 9607, or other state or federal law. The lien includes interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the expenditures.

(b) A lien established under this section against real property is not effective unless (1) a certificate of lien is recorded in the district recorder's office for the district in which the property is located, describing the property and stating the amount of the lien, the name of the owner as grantor, and, if known, th name of the person causing the oil or hazardous substance release; and (2) the commissioner mails a copy of the certificate to the persons described in (1) of this subsection and to all other persons of record holding an interest in the property.

(c) A lien established under this section is superior to a transfer, mortgage, attachment, claim, demand, or other encumbrance established on or after the ~~effective~~ date of this Act, in any manner affecting the property. This subsection does not apply to real property that consists exclusively of residential real property. The commissioner may adopt regulations defining "residential real property" for the purposes of this section.

(d) For property consisting exclusively of residential real property, a lien established under this section is superior to a transfer, mortgage, attachment, claim, demand, or other encumbrance on that property recorded after a certificate of lien is recorded under this section on that property.

(e) When any amount, with respect to which a lien has been recorded under this section, has been paid or reduced, the commissioner shall, upon request of the property owner, issue a certificate discharging or partially releasing the lien. That certificate may be recorded in the office where the certificate of lien was recorded.

(f) A person with an ownership interest in property against which a lien is recorded may bring an action in the superior court to require that the lien be released. The lien must be released if the court finds that the owner of the property is not liable for the costs of the state in connection with containment, cleanup, or mitigation of the oil or hazardous substance release.

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

containment
clean up
mitigation

Introduced: 1/22/88
Referred: Resources, Judiciary and Finance

go00298h

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

IN THE HOUSE

HOUSE BILL NO. 389

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to recovery of state costs for oil and hazardous substance releases; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 46.08 is amended by adding a new section to read:

Sec. 46.08.075. LIENS AGAINST PROPERTY AS SECURITY FOR STATE EXPENDITURES. (a) The state has a lien for expenditures by the state from the oil and hazardous substance release response fund (AS 46.08.-010) or from any other state fund, for the containment, cleanup, or mitigation of oil or hazardous substance spills, against all property owned by a person who is determined by the commissioner to be liable for the expenditures under this chapter, AS 46.03, 46.04, or 46.08, 42 U.S.C. sec. 9607, or other state or federal law. The lien includes interest at the maximum rate allowable under AS 45.45.010(a), from the date of the expenditures.

(b) A lien established under this section against real property is not effective unless (1) a certificate of lien is recorded in the district recorder's office for the district in which the property is located, describing the property and stating the amount of the lien, the name of the owner as grantor, and, if known, the name of the person causing the oil or hazardous substance release; and (2) the commissioner mails a copy of the certificate to the persons described in (1) of this subsection and to all other persons of record holding an interest in the property.

Philosophy:

The battle here is between State and other secured general creditors not between State and "responsible parties"

Initial entry permits??

(c) A lien established under this section is superior to a transfer, mortgage, attachment, claim, demand, or other encumbrance established on or after the effective date of this Act, in any manner affecting the property. This subsection does not apply to real property that consists exclusively of residential real property. The commissioner may adopt regulations defining "residential real property" for the purposes of this section.

??? ???

(d) For property consisting exclusively of residential real property, a lien established under this section is superior to a transfer, mortgage, attachment, claim, demand, or other encumbrance on that property recorded after a certificate of lien is recorded under this section on that property.

(e) When any amount, with respect to which a lien has been recorded under this section, has been paid or reduced, the commissioner shall, upon request of the property owner, issue a certificate discharging or partially releasing the lien. That certificate may be recorded in the office where the certificate of lien was recorded.

release lien

(f) A person with an ownership interest in property against which a lien is recorded may bring an action in the superior court to require that the lien be released. The lien must be released if the court finds that the owner of the property is not liable for the costs of the state in connection with containment, cleanup, or mitigation of the oil or hazardous substance release.

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

- or has acquired the lien.

- what about continuing leakage.

How does this affect purchase of property ⇒ problems with title (exceptions)

should clean up costs come ahead of other secured or general creditors?

Original sponsors: Rules/Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 389 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to recovery of state costs for oil and hazardous substance releases; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 46.08 is amended by adding a new section to read:

Sec. 46.08.075. LIENS AGAINST PROPERTY AS SECURITY FOR STATE EXPENDITURES. (a) The state has a lien for expenditures by the state from the oil and hazardous substance release response fund or from any other state fund, for the containment, cleanup, or mitigation of oil or hazardous substance spills, against all property owned by a person who is determined by the commissioner to be liable for the expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the expenditures.

(b) A lien established under this section against real property is not effective unless

(1) a certificate of lien is recorded in the district recorder's office for the district in which the property is located, describing the property and stating the amount of the lien, the name of the owner as grantor, and, if known, the name of the person causing the oil or hazardous substance release; and

(2) the commissioner sends a copy of the certificate by certified mail to the persons described in (1) of this subsection and to all other persons of record holding an interest in the property.

(c) When any amount with respect to which a lien has been recorded under this section has been paid or reduced, the commissioner shall, upon request of the property owner, issue a certificate discharging or partially releasing the lien. That certificate may be recorded in the office where the certificate of lien was recorded.

(d) A person with an ownership interest in property against which a lien is recorded may bring an action in the superior court to require that the lien be released. The lien shall be released if the court finds that the owner of the property is not liable for the costs of the state in connection with containment, cleanup, or mitigation of the oil or hazardous substance release.

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

Adopted

SUBSTITUTE LANGUAGE AT "A":

(4) a person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances; and

NEW LANGUAGE AT "B":

(5)(1) The term "privity of contract" in (b)(1)(B) of this section includes, but is not limited to, being a party to land contracts, deeds or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:

(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The defendant acquired the facility by inheritance or bequest.

In addition to establishing the foregoing, the defendant must establish that he has satisfied the requirements of subsection ~~107~~(b)(3)(A) and (B).

2(A) (B)

(2)(B) To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

(3)(C) Nothing in this paragraph or in section 107(b)(3) shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this Act. Notwithstanding this paragraph, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such defendant shall be treated as liable under section 107(a)(1) and no defense under section 107(b)(3) shall be available to such defendant.

4(D) Nothing in this paragraph shall affect the liability under this Act of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

water by the department of health and environment or the federal environmental protection agency under the authority of the Safe Drinking Water Act. All such tests shall be paid for by such county. [Acts 1983, ch. 423, § 8.]

Compiler's Notes. Concerning the Safe Drinking Water Act referred to in subsection (b), the federal act by that name is compiled in U.S.C. in various sections throughout titles 5, 21, and 42, and the Tennessee act of the same name is codified in part 7, chapter 13 of this title.

Section to Section References. This section is referred to in § 68-46-210.

68-46-209. Liens on property. — (a) Whenever a hazardous substance site is placed on the list of hazardous substance sites pursuant to § 68-46-206(e), or whenever the commissioner otherwise begins to expend money for investigation, identification, containment or clean up of a particular site under this part, the commissioner may file a notice with the office of the register of deeds of the county in which the property lies.

(b) Within one (1) year after the completion of a project to contain or clean up the hazardous substance at a particular site under this part, the commissioner shall itemize the money so expended and shall file a statement thereof in the office of the register of deeds of the county in which the property lies, together with notarized appraisals by an independent appraiser of the value of the property before and after the clean up work performed at the site, if the money so expended shall result in a significant increase in property values. Such statement shall constitute a lien upon such land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the property as a result of the clean up work.

(c) If the property owner is aggrieved by the amount of the lien filed under subsection (a), the property owner may cause another appraisal to be performed by an independent appraiser and may submit the matter to the chancery court of the county in which the property is located to determine the appropriate amount of the lien. A decision of that court may be appealed according to the Tennessee Rules of Appellate Procedure.

(d) The lien provided in this section shall be entered in the records of the register of deeds of the county in which the property lies. Such statements shall constitute a lien upon such property as of the date the notice is filed pursuant to subsection (a), and shall have priority as a lien second only to tax liens. Such a lien shall be satisfied to the extent of the value of the consideration received at the time of transfer of ownership, and if the lien is not fully satisfied at the time of transfer, it shall remain a lien on the property until it is fully satisfied.

(e) A form of notice substantially as follows is sufficient to comply with subsection (a):

NOTICE OF LIEN UNDER
HAZARDOUS WASTE MANAGEMENT ACT OF 1983

Name of titleholder(s) .....
Property address .....
Description of property subject to possible lien sufficient to identify such property .....

Date, signature, and address of the Commissioner or his authorized designee .....

The register of deeds shall note the date and time of filing, and an appropriate registration number, and shall record the notice in the lien book in the office of the register.

(f) The effective date of all prior liens claimed under this chapter shall be unaffected by the 1986 amendment to this section if a notice is filed in accordance with subsection (a) of this section on or before December 31, 1986, which notice shall set forth, in addition to the information required by subsection (e) hereof, the claimed effective date of the lien if earlier than the date of the filing of the notice. After December 31, 1986, all claimed liens shall be effective as of the date the notice is filed pursuant to subsection (a). [Acts 1983, ch. 423, § 9; 1986, ch. 528, § 1.]

Compiler's Notes. Acts 1986, ch. 528, § 1, added (a), (e), and (f) and amended (d).

68-46-210. Responsible waste disposal incentive fund. — (a) There is created a special agency account in the general fund to be known as the "responsible waste disposal incentive fund."

(b) There is appropriated to the responsible waste disposal incentive fund the sum of five hundred thousand dollars ($500,000) for fiscal year 1983-1984 and there shall be appropriated the sum of one million five hundred thousand dollars ($1,500,000) for fiscal year 1984-1985.

(c) Interest accruing on investments and deposits of such fund shall be returned to it and remain a part of such fund.

(d) Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not revert to the general fund, but shall be carried forward until expended in accordance with the provisions of this section.

(e)(1) The board shall promulgate rules and regulations in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to establish eligibility requirements for a local government to receive the money deposited in the responsible waste disposal incentive fund.

(2) At a minimum, for a local government to be eligible to receive such funds, the commercial facility must be located within the jurisdiction of such local government, such facility must have a permit to operate pursuant to the provisions of § 68-46-108, such facility must be constructed and operational and the following standards must be met:

(A) The facility is multi-purpose with both land disposal capability and facilities for advanced technology, high-temperature thermal treatment;

(B) The facility has a minimum design capacity to operate for twenty (20) years;

(C) The facility is operated pursuant to the provisions of part 1 of this chapter; and

(D) The local government with jurisdiction over the facility does not have any zoning requirement, subdivision regulation, ordinance, regulation or

compel cleanup or containment consistent with regulations and guidelines established by the secretary.

E. (1) When a site has been declared an abandoned hazardous waste site, the secretary is authorized to undertake the physical control, containment and cleanup, or closure of the abandoned hazardous waste site and may retain personnel for these purposes who shall operate under his direction.

(2) In all cases in which the secretary proposes to treat, store, or dispose of hazardous wastes at the abandoned hazardous waste site, he shall prepare a closure plan setting forth how the site will be closed. The secretary shall provide an opportunity for the public to submit comments about the plan. The secretary shall provide adequate notice to the public of any public hearings on the closure plan by placing a notice in the general circulation newspaper of the parish in which the hearing is to be held. If the secretary determines that immediate action is required to secure the site or dispose of any waste in order to protect the health or safety of persons affected by the site or its contents or to protect the environment, he may take such action prior to submission of the plan and may subsequently submit a plan detailing emergency actions taken and those actions which he will be taking in the future.

(3) The secretary shall have authority to implement the closure plan and to take all actions including erecting fences, signs, gates, levees, and monitoring devices as are reasonably necessary to secure the site and prevent unauthorized or inadvertent entry.

F. (1) The secretary, by recording the declaration of abandonment in the mortgage records of the parish where the property is located, may create a lien against property declared to be abandoned to the extent of the expenditures by the state necessary to remedy the problem or to the extent of the appraised value after said expenditures, whichever is less. The secretary may provide in the declaration that the lien is limited to certain portions of property declared to be abandoned and may provide that a lien shall not be recorded against property of a person that the commission finds was in no way responsible for the spill or accident causing the damage requiring the expenditure of money from the fund. The filing of a sworn statement of the amount expended perfects the lien retroactively to the date of the recordation of the declaration.

(2) Subsequent to a declaration of abandonment, a person whose property has been declared to be abandoned and against which a lien has been created thereby may apply to the secretary or file an action in the district court to require that the clerk erase the lien from the records if the secretary or court finds that the spill was in no way caused by any action or negligence on the part of the person who is the owner of the property subject to the lien or may file an action to have the debt reduced to the appraised value of the property.

Added by Acts 1984, No. 674, § 1.

§ 1149.7. Hazardous Waste Assessment Report; requirements; submission

A. The secretary is hereby authorized and mandated to develop a comprehensive evaluation of hazardous waste in Louisiana, and to issue such evaluation in the form of a report as provided for herein. The office of solid and hazardous waste shall assist the secretary in the development and on-going update of the report.

B. Prior to January 31, 1986, the secretary shall present a report as authorized in Subsection A of this Section to the Senate and House Natural Resources Committees. The report shall, at a minimum, provide the following information:

(1) An inventory of the known hazardous waste sites in Louisiana, including:

(a) The types of wastes as determined by the secretary to be present in the waste sites.

(b) An estimate of the amount of each type of waste in a waste site as may be reasonably determined by the secretary.

MASSACHUSETTS

MA

Code of Massachusetts Regulations

Department of environmental quality engineering,

Availability of public records to general public, see 310 CMR 3.10.

When trade secrets may be disclosed by department, see 310 CMR 3.21.

§ 13. Judgment; interest; lien on property persons liable

Any liability to the commonwealth under this chapter shall constitute a debt to the commonwealth. Any such debt, together with interest thereon at the rate of twelve per cent per annum from the date such debt becomes due, shall constitute a lien on all property owned by persons liable under this chapter when a statement of claim naming such persons is recorded or filed. If the site described in such statement comprises real property, the statement shall be recorded in each registry of deeds in the commonwealth and shall also be registered in each registry district in which any person named in such statement of claim holds record title to registered land as shown on the current index of registered land owners in such district. The land court certificate number of each such owner shall be noted on the statement when presented for recording and each assistant recorder, upon receipt of such statement, shall note such statement on the owner's certificate of title. In the case of personal property, whether tangible or intangible, the statement shall be filed in accordance with the provisions of section 9–401 of chapter one hundred and six. Any lien recorded, registered or filed pursuant to this section shall have priority over any encumbrance theretofore recorded, registered or filed with respect to any site, other than real property the greater part of which is devoted to single or multi-family housing, described in such statement of claim, but as to all other real property shall be subject to encumbrances or other interests recorded, registered or filed prior to the record, registration or filing of such statement, and as to all other personal property shall be subject to the priority rules of said chapter one hundred and six. Such lien, other than a lien on real property the greater part of which is devoted to single or multi-family housing, shall continue in force with respect to any particular real or personal property until a release of the lien signed by the commissioner is recorded registered or filed in the place where the statement of claim as to such property affected by the lien was recorded, registered or filed. In addition to discretionary releases of liens, the commissioner shall forthwith issue such a release in any case where the debt for which such lien attached, together with interest and costs thereon, has been paid or legally abated. This section shall not apply to any property, real or personal, tangible or intangible, any money, fees, charges, revenues or otherwise, owned, payable to or by, held in trust by or for, or otherwise owned, operated or managed by the Massachusetts Municipal Wholesale Electric Company established pursuant to chapter seven hundred and seventy-five of the acts of nineteen hundred and seventy-five, Massachusetts municipal light departments organized under chapter one hundred and sixty-four or any other special law, or with respect to any property real or personal whatsoever of municipal light departments administered pursuant to chapters forty-four and one hundred and sixty-four A. Notwithstanding the foregoing, the aforesaid Massachusetts Municipal Wholesale Electric Company and Municipal Light Departments shall use their authority as provided by applicable statutes to assess, contain, or remove any such oil or hazardous material release for which they are responsible under chapter twenty-one E.

Added by St.1983, c. 7, § 5. Amended by St.1983, c. 573, § 3.

1983 Amendment. St.1983, c. 573, § 3, an emergency act, approved Dec. 15, 1983, and by § 4 made effective as of March 24, 1983, in the second sentence, substituted "owned by" for ", and rights to property, real and personal, presently owned or after acquired, of the", substituted "when" for "if" and "naming such persons is recorded or filed" for ", describing the property subject to the lien and signed by the commissioner, is filed within ninety days after the incurrence of costs and expenses"; rewrote the third sentence, which prior thereto read: "In the case of real property, the statement shall be filed in accepted and recorded by the appropriate registry of deeds."; inserted the fourth sentence designated the former first and second sentences of the second paragraph as the sixth and seventh

CONNECTICUT

n (c) of section 22a-56. Any
is section shall be deposited in
r this section and shall be used
issioner pursuant to subsection
or mitigation.

P.A. 76-9, S. 1, 2; P.A. 79-605, S. 5, 17;
1; 84-370, S. 1, 6; P.A. 85-177, S. 1, 2;

to study pesticide pollution of groundwater

, added proviso allowing assessment of treble
water resources commission and its chairman
l that provisions applicable in cases where
, substituted "negligently caused" for "gross
e and one-half times the costs and expenses
bility to cases where damages would exceed
ses to emergencies, to uncontrolled losses of
ites, deleted provision setting forth allocation
mended Subsec. (d) to authorize expenditures
nse, Compensation and Liability Act of 1980,
waste disposal sites, and to specify limits on
cifically subjected hazardous waste owned by
otial threat to health or environment, to the
d by requiring that not more than $80,000 be
.A. 84-81 amended Subsec. (d) by limiting
r costs for short-term provision and capital
uthorization of funds for the hazardous waste
l years involved and by imposing limit on
07 amended Subsec. (d) by deleting language
ble drinking water, requiring the commissioner
stablishing the cap on the amount that can be
the limit on expenditures under Subdiv. (5) to
.5) of Subsec. (d) by authorizing expenditures
orizing double damages if pollution was wilful;
y the Hazardous Waste Management Service in
f potable drinking water and a pesticide study

ne second Wednesday after the
assembly, the commissioner of
joint standing committee of the
g to the environment, which sets
(1) the amount of income to and
tablished by section 22a-451, and
ding the status of said fund for the

bursement for containment or
issions. (a) Any person, firm,
s or otherwise mitigates the effects
or gaseous products or hazardous
olled loss, seepage or filtration of
o reimbursement from any person,
for such containment, removal, or
quids or solid, liquid or gaseous
ation or other emergency resulted
, firm or corporation. When such

pollution or contamination or emergency results from the joint negligence or other actions of two or more persons, firms or corporations, each shall be liable to the others for a pro rata share of the costs of containing, and removing or otherwise mitigating the effects of the same and for all damage caused thereby.

(b) No person, firm or corporation which renders assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous materials or which assists in preventing, cleaning-up or disposing of any such discharge shall be held liable, notwithstanding any other provision of law, for civil damages as a result of any act or omission by him in rendering such assistance or advice, except acts or omissions amounting to gross negligence or wilful or wanton misconduct, unless he is compensated for such assistance or advice for more than actual expenses. For the purpose of this subsection, "discharge" means spillage, uncontrolled loss, seepage or filtration and "hazardous materials" means any material or substance designated as such by any state or federal law or regulation.

(c) The immunity provided in this section shall not apply to (1) any person, firm or corporation responsible for such discharge, or under a duty to mitigate the effects of such discharge, (2) any agency or instrumentality of such person, firm or corporation or (3) negligence in the operation of a motor vehicle.

(1969, P.A. 765, S. 5; 1971, P.A. 872, S. 105; P.A. 79-605, S. 6, 17; P.A. 83-374, S. 1, 2; P.A. 86-239, S. 12, 14.)

History: 1971 act replaced reference to water resources commission in Subsec. (b) with reference to environmental protection commissioner; P.A. 79-605 clarified provisions by adding references to containment or mitigation of pollutants, to "solid, liquid or gaseous" products, to hazardous wastes, etc.; Sec. 25-54ff transferred to Sec. 22a-452 in 1983; P.A. 83-374 replaced existing provisions re liability of persons, firms and corporations assisting in cleaning up or disposing of discharges with new provisions and defined "discharge" and "hazardous material" and added Subsec. (c), excluding from the immunities provided those responsible for the discharge or those who are negligent in the operation of a motor vehicle; P.A. 86-239 amended Subsec. (a) by authorizing municipalities to be reimbursed for clean up expenses.

Sec. 22a-452a. State lien against real estate as security for amounts paid to clean up hazardous waste. (a) On and after June 3, 1985, any amount paid by the commissioner of environmental protection pursuant to subsection (b) of section 22a-451 to contain and remove or mitigate the effects of a spill shall be a lien against the real estate of the person causing such spill in accordance with the provisions of this section.

(b) A lien pursuant to this section shall not be effective unless (1) a certificate of lien is filed in the land records of each town in which the real estate is located, describing the real estate, the amount of the lien, the name of the owner as grantor and the name of the person causing the spill, if known, and (2) the commissioner mails a copy of the certificate to such persons and to all other persons of record holding an interest in such real estate over which the commissioner's lien is entitled to priority.

(c) Such lien shall take precedence over all transfers and encumbrances recorded on or after June 3, 1985, in any manner affecting such interest in such real estate or any part of it on which the spill occurred or from which the spill emanated, or real estate which has been included, within the preceding three years, in the property description of such real estate and is contiguous to such real estate. This subsection shall not apply to real estate which consists exclusively of residential real estate, including but not limited to, residential units in any common interest community, as defined in section 47-202.

(d) In the case of all other real estate, including real estate which consists exclusively of residential real estate, including but not limited to, residential units in any common interest community, as defined in section 47-202, the lien shall take precedence over any transfer or encumbrance recorded after the commissioner files with the town clerk notice of intent to file a lien on the land records in the town in which the real estate is located.

(e) When any amount with respect to which a lien has been recorded under the provisions of this section has been paid or reduced, the commissioner, upon request of any interested party, shall issue a certificate discharging or partially discharging such lien, which certificate may be recorded in the same office in which the lien was recorded. Any action for reduction or discharge of such lien or any appeal therefrom shall be in accordance with the provisions of sections 49-35a to 49-35c, inclusive, except that the forms prescribed in section 49-35a shall be modified as the court deems appropriate. Any action for the foreclosure of such lien shall be brought by the attorney general in the name of the state in the superior court for the judicial district in which the property subject to such lien is situated, or, if such property is located in two or more judicial districts, in the superior court for any one such judicial district, and the court may limit the time for redemption or order the sale of such property or make such other or further decree as it judges equitable.

(P.A. 84-535, S. 2; P.A. 85-443, S. 2, 5.)

History: P.A. 85-443 divided section into Subsecs. and amended Subsec. (a) to apply section to amounts paid after June 3, 1985, instead of October 1, 1984; inserted new provisions as Subsec. (b) to require filing of the lien in the town clerk's office; amended Subsec. (c) to give the lien precedence over transfers and encumbrances to property on which the spill occurred or emanated from three years prior to the spill except residential real estate; inserted new provisions as Subsec. (d) to give the lien precedence over all transfers after filing, and amended Subsec. (e) to authorize the commissioner to issue a certificate partially discharging the lien.

Sec. 22a-452b. Exemption. Notwithstanding any provision of the general statutes, a mortgagee who acquires title to real estate by virtue of a foreclosure or tender of a deed in lieu of foreclosure, shall not be liable for any assessment, fine or other costs imposed by the state for any spill upon such real estate beyond the value of such real estate, provided such spill occurred prior to the date of acquisition of title to such real estate by such mortgagee.

(P.A. 85-443, S. 3, 5.)

Sec. 22a-452c. Definition of spill. For the purposes of sections 22a-452a and 22a-452b, "spill" means the discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous waste.

(P.A. 85-443, S. 1, 5.)

Sec. 22a-453. (Formerly Sec. 25-54gg). Coordination of activities with other agencies. Contracts for services. The commissioner shall represent the state in its relations with the federal government and with any municipality and with any regional or interstate authority in all matters relating to oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous wastes pollution or contamination or emergency resulting from the discharge, spillage, uncontrolled loss, seepage or filtration of such substance or material or waste. Said commissioner may enter into agreements with the federal government, such municipalities or authorities, to coordinate supervisory activities and, subject to adequate appropriations, share reasonable costs. The

STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE DEPUTY COMMISSIONER
JUNEAU

2/23

To Howard Wayne
c/o Rep. Sund's office

Here are the materials we have provided on HB 389 for House Resources: position paper
fiscal note
backup info from the AG's office.

Commissioner Niles and Dave Marty of the Dept. of Law will attend the hearing. We will be meeting with Rep. Sund tomorrow morning and can respond to any advance questions then.
Let me know if you need anything else. Amy

STATE OF ALASKA
DEPT. OF ENVIRONMENTAL CONSERVATION

STEVE COWPER, GOVERNOR

OFFICE OF THE COMMISSIONER
P.O. BOX O, JUNEAU, ALASKA 99811-1800 (907) 465-2600

April 8, 1988

Mr. John Hartle
c/o Rep. John Sund
PO Box V
Juneau, AK 99811

Dear John:

Here is the backup information you requested on CS HB 389 (Judiciary), the Governor's bill establishing a lien for oil and hazardous substances cleanup costs. We would be grateful if Representative Sund would be willing to serve as floor manager. The bill is before Finance today and could be scheduled as early as Tuesday.

The materials are:

1. Copy of the CS. This version gives the state a lien but not a priority lien for cleanup costs. This means that the state gets in line with secured creditors but does not have to first secure a judgement. The bill also strengthened notice requirements and clarified language.

2. Position paper on the CS.

3. Fiscal note.

4. Journal notes on Judiciary Committee action on the bill.

5. Minutes of House Resources Committee action on the bill.

6. Governor's transmittal letter for the bill.

7. Copy of Supreme Court decision recommending adoption of this kind of legislation.

8. Original version of the bill (before CS)

Please let me know if you need anything else. My understanding is that Representative Navarre intends to schedule this bill for floor action on the same day as Representative Davis' bill HB 459.

Sincerely,

Amy D. Kyle
Deputy Commissioner

Attachments

a8hartle

(2)

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

STEVE COWPER, GOVERNOR

POSITION PAPER
CS HB 389 (Judiciary)

CONTACT: AMY D. KYLE
465-2600

April 6, 1988

Title

An act relating to recovery of state costs for oil and hazardous substance releases; and providing for an effective date

Effect of the bill

The bill would enable the state to file a lien against assets of a responsible party to recover its costs for cleanup of oil and hazardous waste sites, in cases where the responsible party declares bankruptcy. At present, the Department must first secure a judgement through the court and then participate in the bankruptcy proceeding.

Department Position

The bill was introduced at the request of the Governor upon the recommendation of the Department of Law. The Department supports the bill. The bill was amended in the Judiciary Committee to provide that the state be allowed to obtain a lien, but not a priority lien. The rationale for the change was that a state claim should not supercede pre-existing secured claims. Even with this change, the bill will still provide the state with an enhanced capacity to recover costs.

The state is seeing increasing numbers of cases where entities that are responsible for improper waste disposal declare bankruptcy. In such cases, the state would have to foot the bill for necessary site cleanup costs. This bill would help the state recover such costs in a bankruptcy proceeding. Similar legislation has been adopted by several other states and recommended by the U.S. Supreme Court.

Fiscal Effect

There will be no additional costs associated with this bill. The legislation should reduce State expenditures for cleanup over the long term. The Department has provided a zero fiscal note.

Dennis D. Kelso, Commissioner

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

STEVE COWPER, GOVERNOR

POSITION PAPER
HB 389

CONTACT: AMY D. KYLE
465-2600

January 29, 1988

Title

An act relating to oil and hazardous substance cleanup costs

Effect of the bill

The bill would give the state a priority in recovering its costs for cleanup of oil and hazardous waste sites in cases where the responsible party declares bankruptcy.

Department Position

The bill was introduced at the request of the Governor upon the recommendation of the Department of Law. The Department supports the bill.

The state is seeing increasing numbers of cases where entities that are responsible for improper waste disposal declare bankruptcy. In such cases, the state would have to foot the bill for necessary site cleanup costs. This bill would give the state priority in recovering such costs in a bankruptcy proceeding.

Similar legislation has been adopted by several other states and recommended by the U.S. Supreme Court.

Fiscal Effect

There will be no additional costs associated with this bill. The legislation should reduce State expenditures for cleanup over the long term. The Department has provided a zero fiscal note.

Amy D Kyle / for
Dennis D. Kelso, Commissioner

What case??

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: ____
PUBLISH DATE: ____

(3)

FISCAL NOTE

REQUEST:

Revision Date: 29 January 1988
e: An Act Relating to Oil and Hazardous Substance Cleanup Costs
Sponsor: Governor
Requestor: House Resources

Agency Affected: DEC, Dept. of Law
BRU: DEC/Environmental Quality

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FE)ERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The bill will not increase state expenditures. Over the long run, it will likely decrease state expeditures for spill cleanup.

Prepared by: Amy D. Kyle
Phone: 465-2600
Division: Commissioner's Office
Date: 29 January 1988

Approved by Commissioner: Amy D. Kyle
Date:
Agency: Department of Environmental Conservation

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

HB 310

No recommendation (2): Frank, Brown

A zero fiscal note was published March 24, 1988.

HB 310 was referred to the Rules Committee for placement on the calendar.

HB 389

The Judiciary Committee has considered:

HOUSE BILL NO. 389
"An Act relating to recovery of state costs for oil and hazardous substance releases; and providing for an effective date."

and recommends it be replaced with the following committee substitute:

CS FOR HOUSE BILL NO. 389 (Judiciary)
(same title)

Recommending do pass (4): Ulmer (Vice-chairman), Gruenberg, Navarre, Cotten

No recommendation (1): Taylor

HB 389 was referred to the Finance Committee.

Judiciary Comm. Action

HB 407

The Health, Education & Social Services Committee has considered:

HOUSE BILL NO. 407
"An Act establishing the school account in the Alaska permanent fund; and providing for an effective date."

and recommends it be replaced with the following committee substitute:

CS FOR HOUSE BILL NO. 407 (HESS)
"An Act relating to the public school account; duties of the Department of Education and school boards; increasing the instructional unit value; providing for an advisory vote; and providing for an effective date."

(4)

Recommending do pass (3): Ellis and Koponen (Co-chairmen), Gruenberg

HB 407

No recommendation (3): Hudson, Hanley, Phillips

A fiscal note was published March 24, 1988.

HB 407 was referred to the Finance Committee.

HB 459

The Judiciary Committee has considered:

HOUSE BILL NO. 459
"An Act relating to liability for releases of hazardous substances."

and recommends it be replaced with the following committee substitute:

CS FOR HOUSE BILL NO. 459 (Resources)
(page 2671)

Recommending do pass (5): Ulmer (Vice-chairman), Cotten, Navarre, Gruenberg, Taylor

HB 459 was referred to the Rules Committee for placement on the calendar.

HB 495

The Finance Committee has considered:

HOUSE BILL NO. 495
"An Act relating to a fisheries education curriculum; and providing for an effective date."

and recommends it be replaced with the following committee substitute:

CS FOR HOUSE BILL NO. 495 (HESS)
(page 2613)

Recommending do pass (6): Adams (Chairman), Larson, Goll, Swackhammer, Boyer, Davis

No recommendation (4): Pourchot, Rieger, Frank, Brown

A zero fiscal note was published March 24, 1988.

HB 495 was referred to the Rules Committee for placement on the calendar.

SUPREME COURT OF THE UNITED STATES

No. 83-1020

OHIO, PETITIONER *v.* WILLIAM LEE KOVACS, DBA B & W ENTERPRISES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[January 9, 1985]

JUSTICE O'CONNOR, concurring.

I join the Court's opinion and agree with its holding that the cleanup order has been reduced to a monetary obligation dischargeable as a "claim" under § 727 of the Bankruptcy Code. I write separately to address the petitioner's concern that the Court's action will impede States in enforcing their environmental laws.

To say that Kovacs' obligation in these circumstances is a claim dischargeable in bankruptcy does not wholly excuse the obligation or leave the State without any recourse against Kovacs' assets to enforce the order. Because "Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law," *Butner* v. *United States*, 440 U. S. 48, 54 (1979), the classification of Ohio's interest as either a lien on the property itself, a perfected security interest, or merely an unsecured claim depends on Ohio law. That classification—a question not before us—generally determines the priority of the State's claim to the assets of the estate relative to other creditors. Cf. 11 U. S. C. § 545 (trustee may avoid statutory liens only in specified circumstances). Thus, a State may protect its interest in the enforcement of its environmental laws by giving cleanup judgments the status of statutory liens or secured claims.

The Court's holding that the cleanup order was a "claim" within the meaning of § 101(4) also avoids potentially adverse

Impact on corporations vs Individual

consequences for a State's enforcement of its order when the debtor is a corporation, rather than an individual. In a Chapter 7 proceeding under the Bankruptcy Code, a corporate debtor transfers its property to a trustee for distribution among the creditors who hold cognizable claims, and then generally dissolves under state law. Because the corporation usually ceases to exist, it has no postbankruptcy earnings that could be utilized by the State to fulfill the cleanup order. The State's only recourse in such a situation may well be its "claim" to the prebankruptcy assets.

For both these reasons, the Court's holding today cannot be viewed as hostile to state enforcement of environmental laws.

Corporations vs.. individuals

partnerships vs sole proprietorship.

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

OHIO *v.* KOVACS, DBA B & W ENTERPRISES ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 83-1020. Argued October 10, 1984—Decided January 9, 1985

Petitioner State of Ohio obtained an injunction in state court ordering respondent and other defendants to clean up a hazardous waste disposal site. When the injunction was not complied with, the State obtained the appointment in state court of a receiver, who was directed to take possession of the defendants' property and other assets and to implement the injunction. The receiver took possession of the site but had not completed his tasks when respondent filed a personal bankruptcy petition. Seeking to require part of respondent's postbankruptcy income to be applied to the receiver's unfinished tasks, the State filed a motion in state court to discover respondent's income and assets. At respondent's request, the Bankruptcy Court stayed these proceedings. The State then filed a complaint in the Bankruptcy Court seeking a declaration that respondent's obligation under the state injunction was not dischargeable in bankruptcy because it was not a "debt" or "liability on a claim" within the meaning of the Bankruptcy Code. For bankruptcy purposes, a debt is a liability on a claim. Section 101(4)(B) of the Bankruptcy Code in pertinent part defines a claim as the "right to an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured." The Bankruptcy Court ruled against the State, as did the District Court. The Court of Appeals affirmed, holding that the State essentially sought from respondent only a monetary payment and that such a required payment was a liability on a claim that was dischargeable under the Bankruptcy Code.

Held:

1. The fact that the Army Corps of Engineers, using funds recovered from those concerns that generated the wastes in question, has removed

Syllabus

the wastes from the site does not render the case moot. The State still has a stake in the outcome of the case based on its claim that the removal of the wastes did not satisfy all of respondent's obligation to clean up the site since the ground remains permeated with toxic materials that must be removed to avoid further pollution. P. 3.

2. Respondent's obligation under the injunction is a "debt" or "liability on a claim" subject to discharge under the Bankruptcy Code. Contrary to the State's contention, there is no indication in the language of § 101(4)(B) that the right to performance cannot be a claim unless it arises from a contractual arrangement. Moreover, it is apparent that Congress desired a broad definition of a "claim" and knew how to limit the application of a provision to contracts when it desired to do so. Where it is clear that what the receiver wanted from respondent after bankruptcy was the money to defray cleanup costs, the Court of Appeals did not err in concluding that the cleanup order had been converted into an obligation to pay money, an obligation that was dischargeable in bankruptcy. Pp. 3–9.

717 F. 2d 984, affirmed.

WHITE, J., delivered the opinion for a unanimous Court. O'CONNOR, J., filed a concurring opinion.

SUPREME COURT OF THE UNITED STATES

No. 83-1020

OHIO *v.* WILLIAM LEE KOVACS, DBA B & W ENTERPRISES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[January 9, 1985]

JUSTICE WHITE delivered the opinion of the Court.

Petitioner State of Ohio obtained an injunction ordering respondent William Kovacs to clean up a hazardous waste site. A receiver was subsequently appointed. Still later, Kovacs filed a petition for bankruptcy. The question before us is whether, in the circumstances present here, Kovacs' obligation under the injunction is a "debt" or "liability on a claim" subject to discharge under the Bankruptcy Code.

I

Kovacs was the chief executive officer and stockholder of Chem-Dyne Corp., which with other business entities operated an industrial and hazardous waste disposal site in Hamilton, Ohio. In 1976, the State sued Kovacs and the business entities in state court for polluting public waters, maintaining a nuisance, and causing fish kills, all in violation of state environmental laws. In 1979, both in his individual capacity and on behalf of Chem-Dyne, Kovacs signed a stipulation and judgment entry settling the lawsuit. Among other things, the stipulation enjoined the defendants from causing further pollution of the air or public waters, forbade bringing additional industrial wastes onto the site, required the defendants to remove specified wastes from the property, and ordered the payment of $75,000 to compensate the State for injury to wildlife.

Kovacs and the other defendants failed to comply with their obligations under the injunction. The State then obtained the appointment in state court of a receiver, who was directed to take possession of all property and other assets of Kovacs and the corporate defendants and to implement the judgment entry by cleaning up the Chem-Dyne site. The receiver took possession of the site but had not completed his tasks when Kovacs filed a personal bankruptcy petition.[1]

Seeking to develop a basis for requiring part of Kovacs' postbankruptcy income to be applied to the unfinished task of the receivership, the State then filed a motion in state court to discover Kovacs' current income and assets. Kovacs requested that the Bankruptcy Court stay those proceedings, which it did.[2] The State also filed a complaint in the Bankruptcy Court seeking a declaration that Kovacs' obligation under the stipulation and judgment order to clean up the Chem-Dyne site was not dischargeable in bankruptcy because it was not a "debt," a liability on a "claim," within the meaning of the Bankruptcy Code. In addition, the complaint sought an injunction against the bankruptcy trustee to re-

---

[1] Kovacs originally filed a reorganization petition under Chapter 11 of the Bankruptcy Code, 11 U. S. C. § 1101 *et seq.*, but converted the petition to a liquidation bankruptcy under Chapter 7. See 11 U. S. C. § 1112.

[2] The Bankruptcy Court held that the requested hearing was an effort to collect money from Kovacs in violation of the automatic stay provision. See 11 U. S. C. § 362. It entered a specific stay as well. The District Court affirmed, ruling that Ohio was trying to enforce a judgment obtained before filing of the bankruptcy petition. The Court of Appeals for the Sixth Circuit also found the hearing barred. *In re Kovacs*, 681 F. 2d 454 (1982). In that court's view, while § 362(b) allowed governmental units to continue to enforce police powers through mandatory injunctions, it denied them the power to collect money in their enforcement efforts. Because of the later filing by Ohio of a complaint to declare that Kovacs' obligations were not claims under bankruptcy, we granted certiorari, vacated the judgment of the Court of Appeals, and remanded to that court to consider whether the dispute over the stay was moot. 459 U. S. 1167 (1983). As far as we are advised, the Court of Appeals has taken no action on the remand.

strain him from pursuing any action to recover assets of Kovacs in the hands of the receiver. The Bankruptcy Court ruled against Ohio, *In re Kovacs*, 29 B. R. 816 (SD Ohio 1982), as did the District Court. The Court of Appeals for the sixth circuit affirmed, holding that Ohio essentially sought from Kovacs only a monetary payment and that such a required payment was a liability on a claim that was dischargeable under the bankruptcy statute. *In re Kovacs*, 717 F. 2d 984 (1983). We granted certiorari to determine the dischargeability of Kovacs' obligation under the affirmative injunction entered against him. 465 U. S. (1983).

II

Kovacs alleges that the Army Corps of Engineers, using funds recovered from those concerns that generated the wastes, has removed all industrial wastes from the site and that if he has an obligation to pay those expenses, the obligation is owed to the United States, not the State. Kovacs urges that the case is therefore moot. The State argues that the case is not moot because the removal of the barrels and wastes from the surface did not satisfy all of Kovacs' obligations to clean up the site; it is said that the ground itself remains permeated with toxic materials that must be removed if further pollution of the public waters is to be avoided. We perceive nothing feigned or frivolous about the State's submission. *Sibron* v. *New York*, 392 U. S. 40, 57 (1968). The State surely has a stake in the outcome of this case, *United States Parole Comm'n* v. *Geraghty*, 445 U. S. 388, 397 (1980), which in our view is not moot. We proceed to the merits.

III

Except for the nine kinds of debts saved from discharge by 11 U. S. C. § 523(a), a discharge in bankruptcy discharges the debtor from all debts that arose before bankruptcy. § 727(b). It is not claimed here that Kovacs' obligation under the injunction fell within any of the categories of debts ex-

cepted from discharge by § 523. Rather, the State submits that the obligation to clean up the Chem-Dyne site is not a debt at all within the meaning of the bankruptcy law.

For bankruptcy purposes, a debt is a liability on a claim. § 101(11). A claim is defined by § 101(4) as follows:

> "(4) 'claim' means—
>
> "(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> "(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured."

The provision at issue here is § 101(4)(B). For the purposes of that section, there is little doubt that the State had the right to an equitable remedy under state law and that the right has been reduced to judgment in the form of an injunction ordering the cleanup. The State argues, however, that the injunction it has secured is not a claim against Kovacs for bankruptcy purposes because (1) Kovacs' default was a breach of the statute, not a breach of an ordinary commercial contract which concededly would give rise to a claim; and (2) Kovacs' breach of his obligation under the injunction did not give rise to a right to payment within the meaning of § 101(4)(B). We are not persuaded by either submission.

There is no indication in the language of the statute that the right to performance cannot be a claim unless it arises from a contractual arrangement. The State resorted to the courts to enforce its environmental laws against Kovacs and secured a negative order to cease polluting, an affirmative order to clean up the site, and an order to pay a sum of money to recompense the State for damage done to the fish population. Each order was one to remedy an alleged breach of

Ohio law; and if Kovacs' obligation to pay $75,000 to the State is a debt dischargeable in bankruptcy, which the State freely concedes, it makes little sense to to assert that because the cleanup order was entered to remedy a statutory violation, it cannot likewise constitute a claim for bankruptcy purposes. Furthermore, it is apparent that Congress desired a broad definition of a "claim"[3] and knew how to limit the application of a provision to contracts when it desired to do so.[4] Other provisions cited by Ohio refute, rather that support, its strained interpretation.[5]

The courts below also found little substance in the submission that the cleanup obligation did not give rise to a right to payment that renders the order dischargeable under § 727. The definition of "claim" in H. R. 8200 as originally drafted would have deemed a right to an equitable remedy for breach of performance a claim even if it did not give rise to a right to payment.[6] The initial Senate definition of claim was narrower,[7] and a compromise version, § 101(4), was finally adopted. In that version, the key phrases "equitable remedy," "breach of performance," and "right to payment" are not defined. See 11 U. S. C. § 101. Nor are the differences between the successive versions explained. The legislative

---

[3] H. R. Rep. No.95–595, p. 309 (1977); S. Rep. No. 95–989, p. 21 (1978). See 2 R. Levin & K. Klee, Collier on Bankruptcy ¶ 101–.04, 101–16.4 (15th ed. 1984).

[4] See 11 U. S. C. § 365 (assumption or rejection of executory contracts and leases).

[5] Congress created exemptions from discharge for claims involving penalties and forfeitures owed to a governmental unit, 11 U. S. C. § 523(a)(7), and for claims involving embezzlement and larceny. § 523(a)(4). If a bankruptcy debtor has committed larceny or embezzlement, giving rise to a remedy of either damages or equitable restitution under state law, the resulting liability for breach of an obligation created by law is clearly a claim which is nondischargeable in bankruptcy.

[6] H. R. 8200, 95th Cong., 1st Sess., 309–310 (House Committee print 1977), as reported September 8, 1977.

[7] See S. 2266, 95th Cong., 1st Sess., 299 (1977), as introduced October 31, 1977.

history offers only a statement by the sponsors of the Bankruptcy Reform Act with respect to the scope of the provision:

> "Section 101(4)(B) . . . is intended to cause the liquidation or estimation of contingent rights of payment for which there may be an alternative equitable remedy with the result that the equitable remedy will be susceptible to being discharged in bankruptcy. For example, in some States, a judgment for specific performance may be satisfied by an alternative right to payment in the event performance is refused; in that event, the creditor entitled to specific performance would have a "claim" for purposes of a proceeding under title 11."[8]

We think the rulings of the courts below were wholly consistent with the statute and its legislative history, sparse as it is. The Bankruptcy Court ruled as follows, *In re Kovacs*, 29 B. R., at 816:

> "There is no suggestion by plaintiff that defendant can render performance under the affirmative obligation other than by the payment of money. We therefore conclude that plaintiff has a claim against defendant within the meaning of 11 U. S. C. § 101(4), and that defendant owes plaintiff a debt within the meaning of 11 U. S. C. § 101(11). Furthermore, we have concluded that that debt is dischargeable."[9]

---

[8] 124 Cong. Rec. 32393 (1978) (remarks of Rep. Edwards); see also *id.*, at 33992 (remarks of Sen. DeConcini).

[9] More fully stated, the Bankruptcy Court's observations were:

"What is at stake in the present motion is whether defendant's bankruptcy will discharge the affirmative obligation imposed upon him by the Judgment Entry, that he remove and dispose of all industrial and/or other wastes at the subject premises. If plaintiff is successful here, it would be able to levy on defendant's wages, the action prevented by our Prior Decision, after defendant's bankruptcy case is closed and/or the stay of 11 U. S. C. § 362 as interpreted by our Prior Decision is no longer in force. The parties have crystallized the issue here in simple fashion, plaintiff stoutly insisting that the just identified affirmative obligation is not a monetary obligation, while defendant says that it is. The problem arises, of

The District Court affirmed, primarily because it was bound by and saw no error in the Court of Appeals' prior opinion holding that the State was seeking no more than a money judgment as an alternative to requiring Kovacs personally to perform the obligations imposed by the injunction. To hold otherwise, the District Court explained, "would subvert Congress' clear intention to give debtors a fresh start." App. JA–16. The Court of Appeals also affirmed, rejecting the State's insistence that it had no right to, and was not attempting to enforce, an alternative right to payment:

> "Ohio does not suggest that Kovacs is capable of personally cleaning up the environmental damage he may have caused. Ohio claims there is no alternative right to payment, but when Kovacs failed to perform, state law gave a state receiver total control over all Kovacs' assets. Ohio later used state law to try and discover Kovacs' post-petition income and employment status in an apparent attempt to levy on his future earnings. In reality, the only type of performance in which Ohio is now interested is a money payment to effectuate the Chem-Dyne cleanup."

---

course, because it is not stated as a monetary obligation. Essentially for this reason plaintiff argues that it is not a monetary obligation. Yet plaintiff in discussing the background for the Judgment Entry says that it expected that defendant would generate sufficient funds in his ongoing business to pay for the clean-up. Moreover, we take judicial notice that plaintiff sought discovery with respect to defendant's earnings, the matter dealt with in our Prior Decision, for the purpose of levying upon his wages, a technique which has no application other than in the enforcement of a money judgment. There is no suggestion by plaintiff that defendant can render performance under the affirmative obligation other than by the payment of money. We therefore conclude that plaintiff has a claim against defendant within the meaning of 11 U. S. C. § 101(4), and that defendant owes plaintiff a debt within the meaning of 11 U. S. C. § 101(11). Furthermore, we have concluded that that debt is dischargeable." 29 B. R., at 818.

> "The impact of its attempt to realize upon Kovacs' income or property cannot be concealed by legerdemain or linguistic gymnastics. Kovacs cannot personally clean up the waste he wrongfully released into Ohio waters. He cannot perform the affirmative obligations properly imposed upon him by the State court except by paying money or transferring over his own financial resources. The State of Ohio has acknowledged this by its steadfast pursuit of payment as an alternative to personal performance." 717 F. 2d, at 987–988.

As we understand it, the Court of Appeals held that, in the circumstances, the cleanup duty had been reduced to a monetary obligation.

We do not disturb this judgment. The injunction surely obliged Kovacs to clean up the site. But when he failed to do so, rather than prosecute Kovacs under the environmental laws or bring civil or criminal contempt proceedings, the State secured the appointment of a receiver, who was ordered to take possession of all of Kovacs' nonexempt assets as well as the assets of the corporate defendants and to comply with the injunction entered against Kovacs. As wise as this course may have been, it dispossessed Kovacs, removed his authority over the site, and divested him of assets that might have been used by him to clean up the property. Furthermore, when the bankruptcy trustee sought to recover Kovacs' assets from the receiver, the latter sought an injunction against such action. Although Kovacs had been ordered to "cooperate" with the receiver, he was disabled by the receivership from personally taking charge of and carrying out the removal of wastes from the property. What the receiver wanted from Kovacs after bankruptcy was the money to defray cleanup costs. At oral argument in this Court, the State's counsel conceded that after the receiver was appointed, the only performance sought from Kovacs was the payment of money. Tr. of Oral Arg. 19–20. Had Kovacs furnished the necessary funds, either before or after bank-

ruptcy, there seems little doubt that the receiver and the State would have been satisfied. On the facts before it, and with the receiver in control of the site,[10] we cannot fault the Court of Appeals for concluding that the cleanup order had been converted into an obligation to pay money, an obligation that was dischargeable in bankruptcy.[11]

IV

It is well to emphasize what we have not decided. First, we do not suggest that Kovacs' discharge will shield him from prosecution for having violated the environmental laws of Ohio or for criminal contempt for not performing his obligations under the injunction prior to bankruptcy. Second, had a fine or monetary penalty for violation of state law been imposed on Kovacs prior to bankruptcy, § 523(a)(7) forecloses any suggestion that his obligation to pay the fine or penalty would be discharged in bankruptcy. Third, we do not address what the legal consequences would have been had Kovacs taken bankruptcy before a receiver had been appointed and a trustee had been designated with the usual

[10] We were advised at oral argument that the receiver at that time was still in possession of the site, although he was contemplating terminating the receivership. Tr. of Oral Arg. 4, 56–57. We were also advised that it was difficult to tell exactly who owned the property at 500 Ford Boulevard and that although the trustee did not formally abandon the property, he did not seek to take possession of it. *Id.*, at 55, 58.

[11] The State relies on *Penn Terra, Ltd.* v. *Department of Environmental Resources*, 733 F. 2d 267 (CA3 1984). There, the Court of Appeals for the Third Circuit held that the automatic stay provision of 11 U. S. C. § 362 did not apply to the State's seeking an injunction against a bankrupt to require compliance with the environmental laws. This was held to be an effort to enforce the police power statutes of the State, not a suit to enforce a money judgment. But in that case, there had been no appointment of a receiver who had the duty to comply with the state law and who was seeking money from the bankrupt. The automatic stay provision does not apply to suits to enforce the regulatory statutes of the State, but the enforcement of such a judgment by seeking money from the bankrupt—what the Court of Appeals for the Sixth Circuit concluded was involved in this case—is another matter.

duties of a bankruptcy trustee.[12] Fourth, we do not hold that the injunction against bringing further toxic wastes on the premises or against any conduct that will contribute to the pollution of the site or the State's waters is dischargeable in bankruptcy; we here address, as did the Court of Appeals, only the affirmative duty to clean up the site and the duty to pay money to that end. Finally, we do not question that anyone in possession of the site—whether it is Kovacs or another in the event the receivership is liquidated and the trustee abandons the property, or a vendee from the receiver or the bankruptcy trustee—must comply with the environmental laws of the State of Ohio. Plainly, that person or

---

[12] The commencement of a case under the Bankruptcy Act creates an estate which, with limited exceptions, consists of all of the debtor's property wherever located. 11 U. S. C. § 541. The trustee, who is to be appointed promptly in Chapter 7 cases, is charged with the duty of collecting and reducing the property of the estate and is to be accountable for all of such property. 11 U. S. C. § 704. A custodian of the debtor's property appointed before commencement of the case is required to deliver the debtor's property in his custody to the trustee, unless the bankruptcy court concludes that the interest of creditors would be better served by permitting the custodian to continue in possession and control of the property. 11 U. S. C. § 543. After notice and hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate. 11 U. S. C. § 554. Such abandonment is to the person having the possessory interest in the property. S. Rep. No. 95–989, p. 92 (1978). Property that is scheduled but not administered is deemed abandoned. 11 U. S. C. § 554(c). Had no receiver been appointed prior to Kovacs' bankruptcy, the trustee would have been charged with the duty of collecting Kovacs' nonexempt property and administering it. If the site at issue were Kovacs' property, the trustee would shortly determine whether it was of value to the estate. If the property was worth more than the costs of bringing it into compliance with state law, the trustee would undoubtedly sell it for its net value, and the buyer would clean up the property, in which event whatever obligation Kovacs might have had to clean up the property would have been satisfied. If the property were worth less than the cost of cleanup, the trustee would likely abandon it to its prior owner, who would have to comply with the state environmental law to the extent of his or its ability.

firm may not maintain a nuisance, pollute the waters of the State, or refuse to remove the source of such conditions. As the case comes to us, however, Kovacs has been dispossessed and the State seeks to enforce his cleanup obligation by a money judgment.

The judgment of the Court of Appeals is

Affirmed.

JOINT AND SEVERAL LIABILITY

ABOLITION OR MODIFICATION AS OF

JULY 1987

ALABAMA

Contributory no changes

ALASKA

1986 - any defendant less than 50 % at fault cannot be held jointly liable for more than two times the percentage of fault.

ARIZONA

1987 - Abolished except for:

1. intentional torts
2. hazardous waste

ARKANSAS

No changes

CALIFORNIA

1986 - Abolished for non-economic damages (Prop. 51).

COLORADO

1986 - Total abolition
1987 - Except in cases in which the defendants:

1. acted in concert
2. conspired to commit a wrongful act.

CONNECTICUT

1986 - Total abolition except where the defendants share of judgment is uncollectable.
1987 - Except for economic damages.

DELAWARE

No changes

KANSAS

1978 - Abolished case law. Brown v. Keill, 580 P.2d 867 (Kan. 1978)

KENTUCKY

No changes

LOUISIANA

1987 - Abolished to the extent that a less than 20 percent defendant would not be responsible for more than 50 percent of the damages awarded.

MAINE

No changes

MARYLAND

Contributory - No changes

MASSACHUSETTS

No changes

MICHIGAN

1986 - The doctrine is fully applicable if the plaintiff is fault free. If a plaintiff is attributed with any degree of fault the doctrine applies as follows:

1. a defendant is severally liable for the degree of fault the court or jury assessed; and
2. there is joint liability for the degree of fault the unpaid portion at the same percentage of fault assessed.

MINNESOTA

No changes

MISSISSIPPI

No changes

MISSOURI

1987 - If the defendant is less at fault than the plaintiff, the defendant is limited to two times the level of fault assessed.

MONTANA

1987 - Abolished except for:

1. defendants more than 50 % at fault

NORTH CAROLINA

Contributory no changes

NORTH DAKOTA

1987 - Abolished except for:

1. intentional torts
2. cases in which defendants acted in concert

OHIO

1980 - Total abolition (Ohio Rev Code)

OKLAHOMA

1978 and 1981 - Case law which limits the rule to cases where damages cannot be apportioned or when plaintiff is not at fault.

✓ OREGON

1987 - Limits the doctrine to defendants who are 15 percent or more responsible. The doctrine applies in full in pollution, hazardous waste and radioactive waste cases.

PENNSYLVANIA

No changes

RHODE ISLAND

No changes

SOUTH CAROLINA

Contributory no changes

SOUTH DAKOTA

1987 - Limited joint for those who are 50 % or less responsible for a wrongful action. Defendants pay no more than twice their percentage of fault.

TENNESSEE

Contributory - No changes

√TEXAS

1987 - In order to be held jointly liable, a defendant's percentage of responsibly must reach certain thresholds:

1. In negligence and malpractice cases:
   a. "Texas Rule" - defendant's percentage of responsibility must be greater than the plaintiff's; and
   b. 21 % threshold - defendant's percentage of responsibility must be greater than 20 %.
2. In products liability cases a defendants must reach the 21 % threshold.
3. Where the plaintiff is fault free the defendant must reach a 11 % threshold.
4. There is no threshold for defendants in pollution injury cases and toxic torts.

UTAH

1986 - Total abolition.

VERMONT

1981 - Abolished the doctrine in favor of several liability. Vt. Stat. Ann. Tit. 12, Sec. 1036.

VIRGINIA

Contributory no changes

√WASHINGTON

1986 - Abolished except for:

1. fault free plaintiff
2. defendants acted in concert
3. hazardous waste
4. business torts
5. manufacturing of generic products

WEST VIRGINIA

1980 - Abolition except in cases were defendants are more than 25 % at fault.

WISCONSIN

No changes

WYOMING

1986 - Total abolition

NEBRASKA

No changes

✓ NEVADA

1987 - Abolished except for:

1. product liability cases
2. toxic wastes
3. intentional torts
4. cases in which defendants acted in concert

NEW HAMPSHIRE

1981 - Abolished the doctrine in favor of several liability. N.H. Rev Stat. Ann. Sec. 507.7-a.

NEW JERSEY

No changes.

NEW MEXICO

1981 - Abolished by case law. Abolition with exceptions.

1987 - Abolished except for:

1. intentional torts
2. situations not found in the main text of the legislation and "having sound basis in public policy"
3. among defendants who have a relationship imposing vicarious liability
4. defendants held strictly liable for the manufacture and sale of a defective product

✓ NEW YORK

1986 - Abolished in non-economic damages cases except for:

1. a defendant who is more than 50 % at fault
2. administrative hearings
3. in workers' compensation cases which implead third parties
4. intentional torts
5. toxic torts
6. product liability cases where the responsibility cannot be joined to the action
7. construction cases
8. contract cases
9. motor vehicle cases

A

✓FLORIDA

1986 - Abolished except for:

1. cases less than $25,000 worth of total damages
2. intentional torts
3. fault free plaintiffs
4. land sale practices
5. pollution control cases
6. security transactions
7. anti-trust
8. RICO Act cases

GEORGIA

1987 - Abolished, however, a jury may specify particular damages and award a jury verdict severally.

✓HAWAII

1986 - Abolished in non-economic damages cases except for:

1. a defendant is more than 25 % at fault
2. intentional torts
3. environmental pollution
4. toxic cases
5. aircraft accidents
6. strict liability cases
7. product liability cases
8. motor vehicle accidents

✓IDAHO

1987 - Abolished except for:

1. intentional torts
2. hazardous wastes

✓ILLINOIS

1986 - Abolished except for:

1. defendants more than 25 % at fault
2. medical expenses
3. medical malpractice cases
4. environmental cases

INDIANA

1984 - Total abolition

IOWA

1984 - Limited the doctrine so it would not apply to defendants found to bear less than 50 percent of total fault assigned to all parties, leaving them liable for their several amount. Iowa 1984 Act, Secs. 668.1-668.3, 619.17.

Introduced: 2/11/88
Referred: Resources and Judiciary

5-1465A

BY DAVIS, KOPONEN, NAVARRE, SWACKHAMMER, GOLL, SUND, DAVIDSON, ULMER AND BROWN

IN THE HOUSE

HOUSE BILL NO. 459

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liability for releases of hazardous substances."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 46.03.822 is repealed and reenacted to read:

Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS SUBSTANCES. (a) Notwithstanding any other provision of law, and to the extent not preempted by federal law, the following persons are strictly liable for damages to persons or property, public or private, including the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from a release of a hazardous substance or, with respect to response costs, the substantial threat of a release of a hazardous substance:

(1) the owner and the person having control over the hazardous substance at the time of the release or threatened release;

(2) the owner and the operator of the facility or vessel from which the release occurred or was threatened to occur; in the case of an abandoned facility or vessel, the owner, the operator, and any other person who controlled activities at the facility or on the vessel immediately before the abandonment;

(3) a person who owned or operated the facility or vessel from which the release occurred or was threatened to occur at the time the hazardous substance was received by the facility or vessel;

(4) a person who owned or controlled the hazardous substance and who, by contract, agreement, or otherwise, arranged for

another party or entity to transport, store, dispose of, or treat the hazardous substance, regardless of whether title to the hazardous substance was transferred to the other party or entity as part of the transaction; and

(5) a person who transported or accepted the hazardous substance for transport to the facility, vessel, or site from which the release occurred or was threatened to occur, if the person selected the facility, vessel, or site.

(b) In an action to recover damages, a person otherwise liable is relieved from strict liability if the person proves by clear and convincing evidence

(1) that the release or threatened release of the hazardous substance to which the damages relate occurred solely as a result of

(A) an act of war;

(B) an intentional or negligent act of a third party, other than a party or its employees in privity of contract with, or employed by, the person, and that the person

(i) exercised due care with respect to the hazardous substance; and

(ii) took reasonable precautions against the act of the third party and against the consequences of the act; or

(C) an act of God; and

(2) in relation to (1)(B) or (C) of this section, that the person, within a reasonable period of time after the act occurred,

(A) discovered the release or threatened release of the hazardous substance; and

(B) began operations to contain and clean up the hazardous substance.

(c) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer liability under this section from the owner or operator of a vessel or facility or from a person who may be liable for a release or substantial threat of a release under this section. This subsection does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this section. This subsection does not bar a cause of action that an owner or operator or other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against a person.

* Sec. 2. AS 46.03.826 is amended by adding a new paragraph to read:

(8) "facility" includes a

(A) building; structure; installation; equipment; pipe or pipeline, including a pipe into a sewer or publicly owned treatment works; well; pit; pond; lagoon; impoundment; ditch; landfill; storage container; motor vehicle; rolling stock; or aircraft; or

(B) site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located.

owner → hazardous waste disposed

↓

arms length purchaser →

↓

arms length purchaser → discovery

DNR lessee:

hazardous waste

development plan as required in lease

Who pays:

generator of product

transfer

[example of type of operators that may be effected.

Bonding → Insurance —

Tail will be unreasonably long

excessive expensive

adequate bonding:

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

STEVE COWPER, GOVERNOR

POSITION PAPER
HB 459 HAZARDOUS SUBSTANCE CLEANUP LIABILITY

FEBRUARY 24, 1988

Effect of the bill

The bill would make the state's requirements for liability for hazardous substance spills explicit. The current statute refers to a "person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state . . ." The bill would explicitly expand the coverage of this liability provision to include other parties that have responsibility for hazardous substances, including those who generate them, those who have control over the site where they are spilled or disposed of, and those who transport them in cases where the transporters select the destination. These parties are currently liable under the common law, but the proposed statute would clarify this liability and reduce the need for litigation.

Department position

The Department supports the bill. We believe that this clarification is appropriate and would be helpful. This will would assist us in carrying out the mandates of HB 470, passed two years ago to establish the Oil and Hazardous Substance Release Response Fund. The bill provides a proper scope of liability. The bill would affect generators and transporters who allow their wastes to be taken to improper or marginal operators who do not provide for proper disposal.

Fiscal effect

The Department has provided a zero fiscal note on this bill. Over time, this bill could reduce litigation costs and probability of recovery of cleanup and related costs.

Dennis D. Kelso, Commissioner

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 459
PUBLISH DATE: 2/11/88

FISCAL NOTE

REQUEST:

Revision Date:
Title: An act relating to liability for releases of hazardous substances
Sponsor: Rep. Davis et al
Requestor: Rep. Cotten

Agency Affected: DEC
BRU: Environmental Quality
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Amy D. Kyle
Phone: 465-2600
Division: Commissioner's Office
Date: 2/23/88

Approved by Commissioner:
Date: 2/23/88
Agency: DEC

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Dept. of Law

Alaska Environmental Lobby, Inc.

907-586-2345

HB 459: Strict Liability for Hazardous Substance Release

The problems and risks associated with hazardous wastes in Alaska have only gradually begun to surface in recent years. Serious human health effects, surface and ground water contamination, and air pollution problems have resulted from improper disposal or abandonment of hazardous substances. In many cases it is difficult to assign liability.

The most recent development in Alaska's long-term strategy for hazardous waste was the introduction of legislation by Representative Mike Davis requiring strict liability for hazardous substance release. The bill would strengthen Alaska statutes in regard to liability, and more clearly define the responsibility for hazardous substance release. Current statutes do not clearly attach liability to anyone except the person who owns or operates the facility at the time of release. This allows the original owner or producer of the waste to escape responsibility, in which case the state or local community may incur the cost of clean-up.

The intent of this bill is to more directly connect the responsible parties, the owner, operator, transporter, or disposer of waste, to the release, in order to encourage proper disposal. The bill is modeled after the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), which is the law that created the federal superfund in 1980. This legislation will allow the same laws used in federal court to be applied to state courts.

Alaska faces unique problems with hazardous wastes and there is still much to be learned about the impacts of hazardous substances in arctic and subarctic environments. The Alaska Environmental Lobby supports the proposed legislation and believes this is an important step toward developing safeguards and regulations necessary for preventive solutions.

Issue paper prepared by Kelly Kavanaugh 2/12/88

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

☒ *P.O. BOX K—STATE CAPITOL*
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

February 23, 1988

The Honorable Mike Davis
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

RE: HB 459 -- liability for release of hazardous substances

Dear Representative Davis:

At your request this office has examined HB 459. The bill would amend the provisions of AS 46.03.822 regarding liability for release of hazardous substances. The bill retains the present law, that persons owning or controlling a hazardous substance that is released are strictly liable for the damages that result. But it amplifies and clarifies who is potentially liable, to include owners and operators of the facilities from which a release occurred; persons who originally received the substances at the facility; persons who owned the substance and contracted with another for its disposal; and persons who transported it to a disposal facility which they themselves chose. These provisions parallel those in §107 of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which was intended to require all persons who handle hazardous materials to bear appropriate responsibility for its safe disposition.

HB 459 appears to be an appropriate clarifying and strengthening amendment to current Alaska law.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: Douglas K. Mertz
Douglas K. Mertz
Assistant Attorney General

DKM/dlm
cc: Hon. Dennis Kelso
Commissioner, ADEC

1-C5LH

Alaska State Legislature

Representative Mike Davis District 19

P.O. Box V
Juneau, Alaska 99811
(907) 456-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708
(907) 456-8161

TO: All members of the press
From: Rep. Mike Davis
Date: February 11, 1988

PRESS RELEASE

FOR IMMEDIATE RELEASE

Today, Rep. Mike Davis (Fairbanks) will introduce HB 459, legislation to strengthen the Alaska statutes and more clearly define the responsibility for hazardous substance releases.

"I'm introducing this bill to assure that producers of hazardous substances handle and dispose of substances properly. If producers are strictly liable it will encourage proper disposal of waste," said Mike Davis the bill's sponsor.

"Last spring the Department of Environmental Conservation discovered solid and hazardous waste on property leased from the state on the North Slope. The contractor had declared bankruptcy and the state had essentially no recourse for recovering the clean up costs of almost a half million dollars. HB 459 would tie the clean up responsibility to the producers of the waste."

In many instances the state and local communities end up paying the cost of clean up because the state statutes in effect do not clearly attach liability to anyone except the person who owns or operates the facility at the time of release.

Under existing law, if the release occurs after the site is abandoned or a contractor improperly handles or disposes the waste, the original owner or producer may escape liability.

HB 459 mirrors the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) which is the law that created the federal superfund in 1980. The bill will allow the same laws to be used in state court as are used in federal court.

####

Alaska State Legislature

Representative Mike Davis District 19

P.O. Box V
Juneau, Alaska 99811
(907) 456-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708
(907) 456-8161

MEMORANDUM

TO: House Resources Committee

FROM: Rep. Mike Davis

RE: Strict liability for hazardous substance releases

DATE: February 24, 1988

Attached is a bill which would strengthen the Alaska statutes in regard to liablility and more clearly define the responsibility for hazardous substance releases.

Many times the state and local communities are paying the cost of clean-up of hazardous substance releases. This is because the state statutes presently in effect do not clearly attach liability to anyone except the person who owns or operates the facility at the time of the release. If the release occurs after the site is abandoned or a contractor improperly handles or disposes the waste, the original owner or producer may escape responsibility.

The intent of this bill is to more directly tie the responsible parties ie: the owner, operator, transporter, or disposer of waste to the release and encourage proper disposal of waste.

The bill is modeled after the Federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) which is the law that created the federal superfund in 1980. This will provide the same laws used in Federal Court to be used in State courts.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 21, 1988

SUBJECT: Sectional analysis of CSHB 459( )
(3/11/88 draft)

TO: Representative Mike Davis

FROM: Edward H. Hein EHA
Legislative Counsel

Section 1 rewrites AS 46.03.822, which establishes strict liability for damages resulting from the release of hazardous substances. Under existing law, only the owner or person having control over the released substance is strictly liable. CSHB 459( ) expands this liability to cover not only the owner or person having control, but also the owner and the operator of a facility, including the disposal site, or vessel from which the substance was released, even if it had been abandoned; a previous owner of the facility or vessel, if the person owned it at the time the substance was delivered to the facility or vessel; the person who owned the hazardous substance, and arranged for someone else to transport, treat, or dispose of the substance at a facility or incineration vessel owned by the other person; and the person who transported or accepted the substance for transport to the place from which it was released, if the transporter was the one who selected the facility, vessel, or site to which it was delivered. Subsection (a) also makes clear that the strict liability is joint and several, and specifically includes damage to the natural resources of the state and costs incurred by the state or a municipality for responding, containing, removing, or taking remedial action for a release, and for responding to a substantial threat of a release of a hazardous substance.

CSHB 459( ) also makes some changes to the defenses available to strict liability. Subsection (b) provides (at page 2, lines 9 - 11) that the standard of proof for proving that a person should be relieved from strict liability is "clear

and convincing evidence." This is a higher (or more burdensome) standard of proof than the usual "preponderance of the evidence" standard of civil cases. The bill removes negligence by the state or the federal government as a defense to strict liability. The bill also requires that for the negligent or intentional act of a third party to relieve a person of strict liability, the person must prove that he or she exercised due care with respect to the substance and that he or she took reasonable precautions against the third party's act and its consequences. In addition, the third party and its employees cannot be in privity of contract with or employed by the person who is seeking to be relieved from strict liability.

Subsection (c) at page 3, lines 1 - 20, spells out the circumstances under which a third party or its employees will be considered in privity of contract. Essentially, the circumstances include being a party to a land contract, deed, or other transfer of the facility from which the hazardous substance release occurred after the substance was placed at the facility. In addition, to establish a lack of privity (and thus avoid strict liability) the defendant must prove by a preponderance of the evidence that (1) the defendant has satisfied the requirements of (b)(1)(B)(i) and (ii) (at page 2, lines 18 - 21) and (2) one or more of the three circumstances listed at page 3, lines 11 - 20, exist.

Subsection (d) provides that in order to establish that the first of these three circumstances exists, the defendant can show that he or she had no reason to know that the hazardous substance was at the facility by proving that at the time the defendant acquired the facility he or she made the appropriate inquiries into the previous ownership and use of the facility. The subsection also specifies particular factors that the court should consider to determine whether the defendant in fact had reason to know that the hazardous substance was at the facility.

Subsection (e) provides that the bill does not diminish the liability of a previous owner or operator of the facility if the person would otherwise be liable. In addition, the bill specifically holds the previous owner strictly liable if he or she knew about a hazardous substance release at the facility and transferred ownership without disclosing that fact. In such a case, the previous owner could not claim the defense under (b)(1)(B).

Subsection (f) states that the bill does not affect the liability of the person who caused or contributed to the release or threatened release of the hazardous substance.

Subsection (g) provides that a person may not avoid strict liability through an agreement with another person to indemnify or hold harmless. It makes clear, however, that such agreements, as well as insurance and subrogation agreements, are not prohibited.

Section 2 adds a definition of "facility", which includes not only the building or structure where a hazardous substance was contained, but also any disposal site.

EHH:bb
wkb4/031