

"SPILL BILL"

Sections 260.500 through 260.550, Revised Statutes of Missouri

and

10 CSR 24-1.010 through 24-3.010

(Missouri regulations pertaining to hazardous substance emergencies)

260.500. Definitions - As used in sections 260.500 to 260.550, unless the context clearly indicates otherwise, the following terms mean:

- (1) "Cleanup", all actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance;
- (2) "Cleanup costs", all costs incurred by the state or any of its political subdivisions, or their agents, or by any other person participating with the approval of the department of natural resources in the prevention or mitigation of damages from a hazardous substance emergency or the cleanup of a hazardous substance involved in a hazardous substance emergency;
- (3) "Department", the department of natural resources;
- (4) "Director", the director of the department of natural resources;
- (5) "Hazardous substance", any substance or mixture of substances that presents a danger to the public health or safety or the environment and includes:
 - (a) Any hazardous waste identified or listed by the department under sections 260.350 to 260.430;
 - (b) Any element, compound, mixture, solution, or substance designated pursuant to Sections 101(14) and 102 of the Comprehensive Environment Response, Compensation, and Liability Act of 1980; and
 - (c) Any hazardous material designated by the Secretary of the United States Department of Transportation under the Hazardous Materials Transportation Act;
 - (d) "Hazardous substances" does not include radioactive materials, wastes, emission or discharges that are licensed or regulated by laws of the federal government or of this state. However, such material released due to a transportation accident shall be considered a hazardous substance;
- (6) "Hazardous substance emergency":
 - (a) Any release of hazardous substances in quantities equal to or in excess of those determined pursuant to Section 101(14) or 102 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980;
 - (b) Any release of petroleum including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) in excess of fifty gallons for liquids or three hundred cubic feet for gases;
 - (c) Any release of a hazardous waste which is reportable under sections 260.350 to 260.430;
 - (d) Any release of a hazardous substance which requires immediate notice under Part 171 of Title 49 of the Code of Federal Regulations;
 - (e) The department shall promulgate rules and regulations identifying the substances and the quantities thereof which, if released, constitute a

- hazardous substance emergency. No rule or part of a rule promulgated pursuant to this act* shall become effective until approved by the joint committee on administrative rules;
- (7) "Person", any individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state or federal government, or any other legal entity whatever which is recognized by law as the subject of rights and duties;
 - (8) "Person having control over a hazardous substance", any person producing, handling, storing, transporting, refining, or disposing of a hazardous substance when a hazardous substance emergency occurs, including bailees, carriers, and any other person in control of a hazardous substance when a hazardous substance emergency occurs, whether they own the hazardous substance or are operating under a lease, contract, or other agreement with the legal owner thereof;
 - (9) "Release", any threatened or real emission, discharge, spillage, leakage, pumping, pouring, emptying or dumping of a substance into or onto the land, air or waters of the state unless done in compliance with the conditions of a federal or state permit, unless the substance is confined and is expected to stay confined to property owned, leased or otherwise controlled by the person having control over the substance, or unless, in the case of pesticides, if application is done in accordance with the product label;
 - (10) "State of Missouri basic emergency operations plan", the state plan, its annexes, and appendices as developed or maintained by the state emergency management agency for response to natural and man-made disasters in this state;
 - (11) "Waters of the state", all rivers, streams, lakes and other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common and includes waters of the United States lying within the state.

(L. 1983 H.B. 528)

Effective 6-27-83

*This act, H.B. 528, contained sections 260.035, 260.037, 260.390, 260.395, 260.397 and 260.420 to 260.425 and 260.435 to 260.609 and House Bill 1797 of Appendix B(1), Cum. Supp.1984.

260.505. Hazardous substance emergency response plan to be developed by department director - contents of plan.-

1. The director shall develop a "Hazardous Substance Emergency Response Plan", as an appendix to the annex of the "State of Missouri Basic Emergency Operation Plan" part II, "The Missouri Comprehensive Emergency Preparedness and Disaster Relief Plan". The hazardous substance emergency response plan shall be developed in consultation and cooperation with affected industries, and in cooperation and with the approval of the departments of public safety, social services, agriculture, conservation, highways and transportation, and economic development for their areas of responsibility. The plan shall outline the respective responsibilities of the involved agencies in responding to hazardous substances emergencies. The department may enter into agreements with any state agency or unit of local government, with the federal government and with other persons as necessary to develop and implement the hazardous

- substances emergency response plan and to implement sections 260.005 to 260.550.
2. The hazardous substance emergency response plan shall establish one statewide telephone number to be used to notify the state of Missouri whenever a hazardous substance emergency occurs. Such phone shall be monitored by technical staff capable of advising the person reporting the emergency of the proper immediate actions to take pending the arrival of response personnel or other qualified assistance. The number shall be established by rule by the department in cooperation with the other affected state agencies and in accordance with the hazardous substance emergency response plan.
 3. The person monitoring the statewide emergency telephone shall notify the appropriate agencies as designated in the hazardous substance emergency response plan.
 4. Any person having control over a hazardous substance shall contact the state of Missouri, as specified in subsection 2 of this section, or the National Response Center, at the earliest practical moment upon discovery of an emergency involving the hazardous substance under his control. If requested, a written report of particulars of the incident shall be submitted. Failure to notify as required in this section is a class A misdemeanor. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjuring or for giving a false statement.

(L. 1983 H.B. 528)

Effective 6-27-83

260.510. Hazardous substances, director's powers and duties. - The director:

- (1) Shall provide technical advice and assistance to other state agencies, to political subdivisions of the state and to other persons upon request for the prevention, control and response to hazardous substance emergencies;
- (2) May require the person having control over a hazardous substance involved in a hazardous substance emergency to clean up the hazardous substance and take any reasonable actions necessary to end a hazardous substance emergency;
- (3) May clean up a hazardous substance and take any actions necessary to end a hazardous substance emergency if the person having control over a hazardous substance fails to take reasonable actions required by the director to clean up such hazardous substance or end such hazardous substance emergency;
- (4) Shall take those actions necessary to clean up a hazardous substance or to end a hazardous substance emergency if the person having control over the hazardous substance cannot be contacted within a reasonable amount of time;
- (5) May require a person having control over a hazardous substance involved in a hazardous substance emergency to take such corrective actions as may be reasonably required to prevent a recurrence of hazardous substance emergencies;
- (6) May clean up any release of a substance if such release is a threat to the environment.

(L. 1983 H.B. 528)

Effective 6-27-83

260.515. Actions to abate, control or clean up not construed as admission of liability.-Any action taken by any person to abate, control, or clean up a hazardous

substance involved in a hazardous substance emergency shall not be construed as an admission of liability for a hazardous substance emergency.

(L. 1983 H.B. 528)

Effective 6-27-83

260.520. Rules and regulations--procedure.--The director may adopt, amend, promulgate or repeal, after due notice and hearing, rules and regulations to implement sections 260.500 to 260.550. No rule or part of a rule promulgated pursuant to this act* shall become effective until approved by the joint committee on administrative rules.

(L. 1983 H.B. 528)

Effective 6-27-83

* This act, H.B. 528, contained sections **260.035, 260.037, 260.390, 260.395, 260.397** and **260.420 to 260.425** and **260.435 to 260.609** and House Bill 1797 of Appendix B(1), Cum. Supp. 1984.

260.525. Investigation, no person to refuse entry--search warrant to be issued.--

No person shall refuse entry or access for the purpose of investigating or responding to hazardous substance emergencies of an authorized representative of the department who presents appropriate credentials, nor obstruct or hamper the representative. A suitably restricted search warrant, upon showing of probable cause in writing and upon oath, shall be issued by any judge or associate circuit judge having jurisdiction to any such representative for the purpose of enabling the representative to investigate or respond to hazardous substance emergencies

(L. 1983 H.B. 528)

Effective 6-27-83

260.530. Cleanup costs, liability--failure to comply, damages exceptions--records of expense to be kept.--

1. Any person having control over a hazardous substance shall be strictly liable to the state of Missouri for the reasonable cleanup costs incurred by the state as a result of the failure of such person to clean up a hazardous substance involved in a hazardous substance emergency in accordance with the requirements of sections 260.500 to 260.550 and rules promulgated by the department pursuant thereto. If such failure is willful, the person shall, in addition, be liable for punitive damages not to exceed triple the cleanup costs incurred by the state. Prompt and good faith notification to the director by the person having control over a hazardous substance that such person does not have the resources or managerial capability to begin or continue cleanup activities, or a good faith effort to clean up, relieves the person of liability for punitive damages, but not for actual cleanup costs. The director shall keep a record of all expenses incurred in carrying out any project or activity authorized by sections 260.500 to 260.550.

2. A person otherwise liable under the provisions of section 260.500 to 260.550 is not liable if he demonstrates that the hazardous substance emergency occurred as the result of an act of God, an act of war, an act of the state of Missouri or the United States or solely the act of a third party. For the purposes of sections 260.500 to 260.550, no employee, agent of, or independent contractor employed by a person otherwise liable shall be considered a third party.

(L. 1983 H.B. 528)

Effective 6-27-83

260.535. Fund, deposits to--purpose for use.--Moneys received pursuant to the provisions of sections 260.500 to 260.550 which are not required by article IX, section 7 of the constitution to be distributed to schools shall be deposited in the hazardous waste remedial fund and shall, upon appropriation, be used for control, abatement, analysis, cleanup, investigation and other reasonable costs incurred when responding to hazardous substance emergencies or shall be used to reimburse the federal government for federal funds expended for the purposes named in this section. All other costs of the department necessary to carry out the provisions of sections 260.500 to 260.550 shall be appropriated from general revenue or from available federal funds.

(L. 1983 H.B. 528, A.L. 1988 S.B. 535)

260.540. State employees acting in official capacity, liability.--Persons employed by the state of Missouri shall not be held liable for damages incurred as a result of actions taken by them when acting in their official capacity pursuant to sections 260.500 to 260.550, rules promulgated pursuant thereto and the hazardous substance emergency response plan. However, the state of Missouri may be held liable for any such damages as provided in sections 537.600 and 537.610, RSMo, or as may be covered by liability insurance or a self-insurance plan.

(L. 1983 H.B. 528)

Effective 6-27-83

260.545. Providing assistance at request of department, political subdivision or volunteer fire protection district, liability for actions when.--Any person who provides assistance, including equipment or materials, at the request of the department or a political subdivision or volunteer fire protection district or by previous agreement with the department or political subdivision or volunteer fire protection district in the event of a release of a hazardous substance shall not be held liable in any civil action for damages as a result of that person's acts or omissions in rendering such assistance. Nothing in this section shall relieve any person from civil damages in the following circumstances:

- (1) Where the release referred to is the result of the person's having control of a spilled hazardous substance;
- (2) Where the person rendered assistance for payment beyond reimbursement for out-of-pocket expenses or with the expectation of such payment; or
- (3) For acts or omissions which result from intentional wrongdoing or gross negligence.

(L. 1983 H.B. 528, A.L. 1988 S.B. 535, A.L. 1990 H.B. 1395, H.B. 1448)

260.546. Emergency assistance--cost, how paid--cost statement, costs not to be included--payment, when--amount, appeal procedure--state fund to pay cost but repayment required.--

1. In the event that a hazardous substance release occurs for which a political subdivision or volunteer fire protection association as defined in section 320.300, RSMo, provides emergency services, the person having control over a hazardous substance shall be liable for such reasonable cleanup costs incurred by the political subdivision or volunteer fire protection association. Such liability includes the cost of materials, supplies and contractual services actually used to secure an emergency situation. The liability may also include the cost for contractual services which are not routinely provided by the department or political subdivision or volunteer fire protection association. Such liability shall not include the cost of normal services which otherwise would have

- been provided. Such liability shall not include budgeted administrative costs or the costs for duplicate services if multiple response teams are requested by the department or political subdivision unless, in the opinion of the department or political subdivision, duplication of service was required to protect the public health and environment. Such liability shall be established upon receipt by the person having control of the spilled hazardous substance of an itemized statement of costs provided by the political subdivision.
2. Full payment shall be made within thirty days of receipt of the cost statement unless the person having control over the hazardous substance contests the amount of the costs pursuant to this section. If the person having control over the hazardous substance elects to contest the payment of such costs, he shall file and appeal with the director within thirty days of receipt of the costs statement.
 3. Upon receipt of such an appeal, the director shall notify the parties involved of the appeal and collect such evidence from the parties involved as he deems necessary to make a determination of reasonable cleanup costs. Within thirty days of notification of the appeal, the director shall notify the parties of his decision. The director shall direct the person having control over a hazardous substance to pay those costs he finds to be reasonable and appropriate. The determination of the director shall become final thirty days after receipt of the notice by the parties involved unless prior to such date one of the involved parties files a petition for judicial review pursuant to chapter 536 RSMo.
 4. The political subdivision or volunteer fire protection association may apply to the department for reimbursement from the hazardous waste remedial fund created in section 260.535, for the costs for which the person having control over a hazardous substance shall be liable if the political subdivision or volunteer fire protection association is able to demonstrate a need for immediate relief for such costs and believes it will not receive prompt payment from the person having control over a hazardous substance. When the liability owed to the political subdivision or volunteer fire protection association by the person having control over a hazardous substance is paid, the political subdivision or volunteer fire protection association shall reimburse the department for any payment it has received from the hazardous waste remedial fund. Such reimbursement to a political subdivision or volunteer fire protection association by the department shall be paid back to the department by the political subdivision or volunteer fire protection association within that time limit imposed by the department notwithstanding failure of the person having control over a hazardous substance to reimburse the political subdivision or volunteer fire protection association within that time.

(L. 1990 H.B. 1395 & 1448)

260.550. Information to be available to public, exceptions.--Information obtained under the provisions of sections 260.500 to 260.550 or any rule or regulation, order or condition adopted or issued thereunder, or any investigation authorized thereby, shall be available to the public unless:

- (1) Non-disclosure is requested in writing;
- (2) Such information constitutes trade secrets or information which is entitled to confidential treatment in order to protect any plan, process, tool, mechanism, or compound which is known only to the person claiming confidential treatment and confidential treatment is necessary to protect such person's trade, business or manufacturing process;

- (3) Such Non-disclosure will not result in an unreasonable threat to the health of humans or the environment; and
- (4) Disclosure is not required under any federal act. Any employee of a department or any former employee of a department who, for a period of two years after the termination of such relationship, is convicted of willful disclosure or conspiracy to disclose trade secrets or information which is entitled to such confidential treatment to any person other than one entitled to the information under sections 260.500 to 260.550 is guilty of a class A misdemeanor.

(L. 1983 H.B. 528)

Effective 6-27-83

HAZARDOUS WASTE CLEANUP

260.552. Liability limitation for persons in business of hazardous waste cleanup created by others, exceptions--waste cleanup of environmental hazard defined.--

- 1. No person engaged in the business of waste cleanup of environmental hazards created by others, including asbestos, shall be liable for any damages arising from the release or discharge of a pollutant, resulting from such activity, in an amount greater than one million dollars to any one person or three million dollars to all persons for a single occurrence. The limitation of liability of this section shall not:
 - (1) Affect any right of indemnification which such person has, or may acquire by contract, against any other person who is liable for creating an environmental hazard;
 - (2) Apply to persons who intentionally, wantonly, or willfully violate federal or state regulations respecting the clean-up process.
- 2. For purposes of this* section, the phrase "business of waste cleanup of environmental hazard" shall mean an activity including the investigation, evaluation, planning, design, engineering, removal, construction and ancillary services, which is carried out to abate or clean up a pollutant.

(L. 1987 H.B. 700 § 37)

Effective 7-1-87

***Word "the" appears in original rolls.**