Industrial Accountability for Environmental Violations (Statement)

Delaware enacted HB60 in 2003. That Act is designed to deter people from engaging in activity that will pollute the environment. Major provisions include ensuring that all non-confidential information regarding chronic violators is made available to the public and holding corporations and their agents criminally liable not only for intentional and knowing violations of state environmental statutes and regulations, but also reckless submissions of false statements to the state environmental agency and reckless tampering with monitoring equipment. A reckless violation occurs when a person is aware of and consciously disregards a substantial and unjustifiable risk that a false statement or monitoring error exists or will result from the conduct. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. The Act creates felony punishments for intentional or knowing violations of environmental laws and regulations, when those violations cause serious physical harm to a person or serious damage to the environment. It also establishes criminal sanctions, including felony sanctions, for some intentional or knowing violations by corporate officers.

Sections 3 (e) through (m) are key components of HB60:

(e) Any officer of any corporation, manager of any limited liability company, or general partner of any limited partnership conducting business in the State of Delaware who intentionally or knowingly authorizes or directs said business entity or its employees or agents to (i) falsify or conceal any material fact required to be disclosed to the Department, (ii) destroy, conceal or alter any records that the corporation is required by this title, the Department’s regulations, or an order of the Department to maintain, or to (iii) commit any act in violation of this Act or rules promulgated by the Department, shall upon conviction be punished by a fine of not less than $500 nor more than $10,000 or by imprisonment for not more than 6 months, or both. If an act described in this subsection causes serious physical injury to another person or serious harm to the environment as one result of such an act, the officer, manager, or general partner committing the act shall upon conviction be sentenced in compliance with the sentencing guidelines established for Class D felonies in 11 Del.C §. 4205. Nothing in this subsection shall be read to establish any additional elements for conviction of the criminal offenses described in subsections (a) through (d) of this Section.

(f) Each day of violation with respect to acts or omissions described in this Section shall be considered as a separate violation.

(g) The Superior Court shall have exclusive jurisdiction over prosecutions brought pursuant to subsections (a) through (e) of this Section, and concurrent jurisdiction over prosecutions brought pursuant to subsection (h).

(h) Whoever violates this Act, or any rule or regulation promulgated thereunder or any rule or regulation in effect as of July 26, 1974, or any permit condition, or any order of the Secretary, shall be punished by a fine of not less than $50 nor more than $500 for each violation. Each day of violation shall be considered as a separate violation. The courts of the justices of the peace shall have jurisdiction of offenses under this subsection.
(i) Any person prosecuted pursuant to subsection (h) of this Section shall not be prosecuted for the same offense under subsections (a) through (e) of this Section.

(j) The terms "intentionally," "knowingly," "recklessly," "negligently," and "serious physical injury," as used in this Section, shall have the meanings assigned to them by Title 11, Chapter 2 of the Delaware Code.

(k) The term "serious harm to the environment" shall mean damage to the air, water, or soil which has or will, beyond a reasonable doubt, cause serious physical injury to any persons working at the facility in question or people within a 50 mile radius of the facility in question.

(l) It is an affirmative defense to a prosecution that the specific conduct charged was freely and knowingly consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(i) an occupation, a business, or a profession; or
(ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence. The provisions of this subparagraph are subject to the restrictions enumerated at 11 Del.C. § 453.

(m) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses may apply under this Section.