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SYNOPSIS
Clarifies that certain types of sewage and sewage sludge do not constitute hazardous substances under “Spill Compensation and Control Act.”

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.
AN ACT concerning sewage and sewage sludge and amending and supplementing P.L.1976, c.141.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. (New section) The Legislature finds and declares that:
   a. The “Spill Compensation and Control Act,” P.L.1976, c.141 (C.58:10-23.11 et seq.), was first enacted on January 6, 1977 for the purpose of regulating the transfer, storage, and discharge of hazardous substances;
   b. From the time of the original enactment of the “Spill Compensation and Control Act,” the term “hazardous substances” has been defined in section 3 of the act (C.58:10-23.11b), therein providing explicitly and unequivocally that “sewage and sewage sludge” shall not be considered hazardous substances for purposes of the act;
   c. It was the original intent of the Legislature, and remains the intent of the Legislature, that the plain meaning of the phrase “sewage and sewage sludge” includes, but is not necessarily limited to, any domestic, commercial, or industrial wastewater, sewage, or sewage sludge expelled or released from a public sewer system or a public sewage treatment plant;
   d. Notwithstanding the plain meaning of the “Spill Compensation and Control Act,” the Department of Environmental Protection has adopted rules and regulations that could potentially be construed to limit the meaning of “sewage and sewage sludge” in a manner that is inconsistent with the original intent of the Legislature;
   e. In order to clarify the scope of the phrase “sewage and sewage sludge,” the Legislature has enacted this amendatory and supplementary act, P.L. , c. (C. ) (pending before the Legislature as this bill), to explicitly provide that, consistent with the original intent of the Legislature as expressed in the “Spill Compensation and Control Act,” proper construction of the phrase should include, but not necessarily be limited to, any domestic, commercial, or industrial wastewater, sewage, or sewage sludge expelled or released from a public sewer system or a public sewage treatment plant; and
   f. This construction of the phrase “sewage and sewage sludge,” having always been the intended meaning contemplated by the Legislature, and having now been explicitly incorporated into the statutory law through this amendatory and supplementary act, P.L. , c. (C. ) (pending before the Legislature as this bill), should be operative in any application of the “Spill Compensation

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
and Control Act,” notwithstanding whether the expulsion or release at issue has occurred prior to enactment of P.L.  , c.  (C. ) (pending before the Legislature as this bill).

2. Section 3 of P.L.1976, c.141 (C.58:10-23.11b) is amended to read as follows:

3. Unless the context clearly indicates otherwise, the following terms shall have the following meanings:

"Act of God" means an act exclusively occasioned by an unanticipated, grave natural disaster without the interference of any human agency;

"Administrator" means the chief executive of the New Jersey Spill Compensation Fund;

"Barrel" means 42 United States gallons or 159.09 liters or an appropriate equivalent measure set by the director for hazardous substances which are other than fluid or which are not commonly measured by the barrel;

"Board" means a board of arbitration convened by the administrator to settle disputed disbursements from the fund;

"Cleanup and removal costs" means all direct costs associated with a discharge, and those indirect costs that may be imposed by the department pursuant to section 1 of P.L.2002, c.37 associated with a discharge, incurred by the State or its political subdivisions or their agents or any person with written approval from the department in the: (1) removal or attempted removal of hazardous substances, or (2) taking of reasonable measures to prevent or mitigate damage to the public health, safety, or welfare, including, but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property, including wildlife and other natural resources, and shall include costs incurred by the State for the indemnification and legal defense of contractors pursuant to sections 1 through 11 of P.L.1991, c.373 (C.58:10-23.11f8 et seq.);

"Commissioner" means the Commissioner of Environmental Protection;

"Contamination" or "contaminant" means any discharged hazardous substance, hazardous waste as defined pursuant to section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

"Department" means the Department of Environmental Protection;

"Director" means the Director of the Division of Taxation in the Department of the Treasury;

"Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substances into the waters or onto the lands of the State, or into waters outside
the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State;

"Emergency response action" means those activities conducted by a local unit to clean up, remove, prevent, contain, or mitigate a discharge that poses an immediate threat to the environment or to the public health, safety, or welfare;

"Fair market value" means the invoice price of the hazardous substances transferred, including transportation charges; but where no price is so fixed, "fair market value" shall mean the market price as of the close of the nearest day to the transfer, paid for similar hazardous substances, as shall be determined by the taxpayer pursuant to rules of the director;

"Final remediation document" means a no further action letter issued by the department pursuant to P.L.1993, c.139 (C.58:10B-1 et al.), or a response action outcome issued by a licensed site remediation professional pursuant to section 14 of P.L.2009, c.60 (C.58:10C-14);

"Fund" means the New Jersey Spill Compensation Fund;

"Hazardous substances" means the "environmental hazardous substances" on the environmental hazardous substance list adopted by the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4); such elements and compounds, including petroleum products, which are defined as such by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 311 of the Federal Water Pollution Control Act Amendments of 1972, Pub.L.92-500, as amended by the Clean Water Act of 1977, Pub.L.95-217 (33 U.S.C.s.1251 et seq.); the list of toxic pollutants designated by Congress or the EPA pursuant to section 307 of that act; and the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 101 of the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L.96-510 (42 U.S.C.s.9601 et seq.); provided, however, that sewage and sewage sludge, including, but not limited to, any domestic, commercial, or industrial wastewater, sewage, or sewage sludge expelled or released from a public sewer system or a public sewage treatment plant, shall not be considered as hazardous substances for the purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.);

"Licensed site remediation professional" means an individual who is licensed by the Site Remediation Professional Licensing Board pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) or the department pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12);

"Local unit" means any county or municipality, or any agency or other instrumentality thereof, or a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad;
"Major facility" includes, but is not limited to, any refinery, storage or transfer terminal, pipeline, deep-water port, drilling platform or any appurtenance related to any of the preceding that is used or is capable of being used to refine, produce, store, handle, transfer, process or transport hazardous substances. "Major facility" shall include a vessel only when that vessel is engaged in a transfer of hazardous substances between it and another vessel, and in any event shall not include a vessel used solely for activities directly related to recovering, containing, cleaning up or removing discharges of petroleum in the surface waters of the State, including training, research, and other activities directly related to spill response.

A facility shall not be considered a major facility for the purpose of P.L.1976, c.141 unless it has total combined aboveground or buried storage capacity of:

(1) 20,000 gallons or more for hazardous substances which are other than petroleum or petroleum products, or
(2) 200,000 gallons or more for hazardous substances of all kinds.

In determining whether a facility is a major facility for the purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.), any underground storage tank at the facility used solely to store heating oil for on-site consumption shall not be considered when determining the combined storage capacity of the facility.

For the purposes of this definition, "storage capacity" shall mean only that total combined capacity which is dedicated to, used for or intended to be used for storage of hazardous substances of all kinds. Where appropriate to the nature of the facility, storage capacity may be determined by the intended or actual use of open land or unenclosed space as well as by the capacities of tanks or other enclosed storage spaces;

"Natural resources" means all land, fish, shellfish, wildlife, biota, air, waters and other such resources owned, managed, held in trust or otherwise controlled by the State;

"Owner" or "operator" means, with respect to a vessel, any person owning, operating or chartering by demise such vessel; with respect to any major facility, any person owning such facility, or operating it by lease, contract or other form of agreement; with respect to abandoned or derelict major facilities, the person who owned or operated such facility immediately prior to such abandonment, or the owner at the time of discharge;

"Person" means public or private corporations, companies, associations, societies, firms, partnerships, joint stock companies, individuals, the United States, the State of New Jersey and any of its political subdivisions or agents;

"Person responsible for conducting the remediation" means (1) any person who executes or is otherwise subject to an oversight document to remediate a contaminated site, (2) the owner or
operator of an industrial establishment subject to P.L.1983, c.330
(C.13:1K-6 et al.), for the remediation of a discharge, (3) the owner
or operator of an underground storage tank subject to P.L.1986,
c.102 (C.58.10A-21 et seq.), for the remediation of a discharge, (4)
any other person who discharges a hazardous substance or is in any
way responsible for a hazardous substance, pursuant to section 8 of
P.L.1976, c.141 (C.58:10-23.11g), that was discharged at a
contaminated site, or (5) any other person who is remediating a site;
"Petroleum" or "petroleum products" means oil or petroleum of
any kind and in any form, including, but not limited to, oil, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil
mixed with other wastes, crude oils, and substances or additives to
be utilized in the refining or blending of crude petroleum or
petroleum stock in this State; however, any compound designated
by specific chemical name on the list of hazardous substances
adopted by the department pursuant to this section shall not be
considered petroleum or a petroleum product for the purposes of
P.L.1976, c.141, unless such compound is to be utilized in the
refining or blending of crude petroleum or petroleum stock in this
State;
"Preliminary assessment" means the first phase in the process of
identifying areas of concern and determining whether contaminants
are or were present at a site or have migrated or are migrating from
a site, and shall include the initial search for and evaluation of,
existing site specific operational and environmental information,
both current and historic, to determine if further investigation
concerning the documented, alleged, suspected or latent discharge
of any contaminant is required. The evaluation of historic
information shall be conducted from 1932 to the present, except that
the department may require the search for and evaluation of
additional information relating to ownership and use of the site
prior to 1932 if such information is available through diligent
inquiry of the public records;
"Public sewage treatment plant" means any publicly-owned
structure, device, or facility used to treat or process domestic,
commercial, or industrial sewage, sewage sludge, or wastewater;
"Public sewer system" means any publicly-owned network of
pipes, conduits, or other physical facilities used to carry sewage or
wastewater;
"Remedial action" means those actions taken at a site or offsite if
a contaminant has migrated or is migrating therefrom, as may be
required by the department, including the removal, treatment,
containment, transportation, securing, or other engineering or
treatment measures, whether to an unrestricted use or otherwise,
designed to ensure that any discharged contaminant at the site or
that has migrated or is migrating from the site, is remediated in
compliance with the applicable health risk or environmental
standards;
"Remedial investigation" means a process to determine the nature and extent of a discharge of a contaminant at a site or a discharge of a contaminant that has migrated or is migrating from the site and the problems presented by a discharge, and may include data collected, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the evaluation of remedial actions if necessary;

"Remediation" or "remediate" means all necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, provided, however, that "remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources;

"Response action outcome" means a written determination by a licensed site remediation professional that the contaminated site was remediated in accordance with all applicable statutes and regulations, and based upon an evaluation of the historical use of the site, or of any area of concern at that site, as applicable, and any other investigation or action the department deems necessary, there are no contaminants present at the site, or at any area of concern, at any other site to which a discharge originating at the site has migrated, or that any contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation regulations, and all applicable permits and authorizations have been obtained;

"Site investigation" means the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site or have migrated or are migrating from the site at levels in excess of the applicable remediation standards. A site investigation shall be developed based upon the information collected pursuant to the preliminary assessment;

"Taxpayer" means the owner or operator of a major facility subject to the tax provisions of P.L.1976, c.141;

"Tax period" means every calendar month on the basis of which the taxpayer is required to report under P.L.1976, c.141;

"Transfer" means onloading or offloading between major facilities and vessels, or vessels and major facilities, and from vessel to vessel or major facility to major facility, except for fueling or refueling operations and except that with regard to the movement of hazardous substances other than petroleum, it shall also include any onloading of or offloading from a major facility;

"Vessel" means every description of watercraft or other contrivance that is practically capable of being used as a means of commercial transportation of hazardous substances upon the water, whether or not self-propelled;
"Waters" means the ocean and its estuaries to the seaward limit of the State's jurisdiction, all springs, streams and bodies of surface or groundwater, whether natural or artificial, within the boundaries of this State.

(cf: P.L.2009, c.60, s.35)

3. This act shall take effect immediately.

STATEMENT

This bill would clarify that domestic, commercial, or industrial wastewater, sewage, or sewage sludge expelled or released from a public sewer system or a public sewage treatment plant does not constitute a hazardous substance under the “Spill Compensation and Control Act.”

Current law expressly excepts sewage and sewage sludge from the definition of a hazardous substance under the “Spill Compensation and Control Act.” This bill would clarify that this exception for sewage and sewage sludge includes domestic, commercial, or industrial wastewater, sewage, or sewage sludge expelled or released from a public sewer system or a public sewage treatment plant. This construction of the phrase “sewage and sewage sludge” would be operative in any application of the “Spill Compensation and Control Act,” notwithstanding whether the expulsion or release at issue has occurred prior to enactment of this bill into law.