Sponsored by:
Assemblywoman L. GRACE SPENCER
District 29 (Essex)

SYNOPSIS
Prohibits contribution action against local public entity for cleanup and removal costs or any other damages associated with discharge of hazardous substances.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning liability for the discharge of hazardous substances, 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) Notwithstanding any provision of P.L.1976, c.141 (C.58:10-23.11 et seq.), or any other law, including the common law, or any rule or regulation, to the contrary, no person may bring an action for contribution against a local public entity for cleanup and removal costs or any other damages associated with a discharge of a hazardous substance. Nothing in this act shall be construed to preclude the State from bringing an action against a local public entity for cleanup and removal costs pursuant to the provisions of P.L.1976, c.141.

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.);

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.
"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 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;
"Local public entity” means a local unit, an authority as defined pursuant to subsection a. of section 3 of P.L.1983, c.313 (C.40A:5A-3), a sewerage authority established pursuant to P.L.1946, c.138 (C.40:14A-1 et seq.), an authority established pursuant to P.L.1957, c.183 (C.40:14B-1 et seq.), the Passaic Valley Sewerage Commissioners continued pursuant to R.S.58:14-2, or a joint meeting established pursuant to R.S.40:63-68 et seq.
"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;

"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. Section 7 of P.L.1976, c.141 (C.58:10-23.11f) is amended to read as follows:

  7. a. (1) Whenever any hazardous substance is discharged, the department may, in its discretion, act to clean up and remove or arrange for the cleanup and removal of the discharge or may direct the discharger to clean up and remove, or arrange for the cleanup and removal of, the discharge. If the discharge occurs at any hazardous waste facility or solid waste facility, the department may order the hazardous waste facility or solid waste facility closed for the duration of the cleanup and removal operations. The department may monitor the discharger's compliance with any such directive. Any discharger who fails to comply with such a directive shall be liable to the department in an amount equal to three times the cost of such cleanup and removal, and shall be subject to the revocation or suspension of any license issued or permit held authorizing that person to operate a hazardous waste facility or solid waste facility.

  (2) (a) Whenever one or more dischargers or persons cleans up and removes a discharge of a hazardous substance, those dischargers and persons shall have a right of contribution against all other dischargers and persons in any way responsible for a discharged hazardous substance or other persons who are liable for the cost of the cleanup and removal of that discharge of a hazardous substance; provided, however, no discharger or person shall have a right of contribution against a local public entity, notwithstanding any provision of P.L.1976, c.141 (C.58:10-23.11 et seq.), or any other law, including the common law, or any rule or regulation, to the contrary. In an action for contribution, the contribution plaintiffs need prove only that a discharge occurred for which the contribution defendant or defendants are liable pursuant to the provisions of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), and the contribution defendant shall have only the defenses to liability available to parties pursuant to subsection d.
of section 8 of P.L.1976, c.141 (C.58:10-23.11g). In resolving contribution claims, a court may allocate the costs of cleanup and removal among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall affect the right of any party to seek contribution pursuant to any other statute or under common law against a party other than a local public entity.

(b) A person who has discharged a hazardous substance or is in any way responsible for the discharge of a hazardous substance who has resolved his liability to the State for cleanup and removal costs, including the payment of compensation for damage to, or the loss of, natural resources, or for the restoration of natural resources, and (i) has received a final remediation document, or (ii) has entered into an administratively or judicially approved settlement with the State, shall not be liable for claims for contribution regarding matters addressed in the settlement or the final remediation document, as the case may be. The settlement shall not release any other person from liability for cleanup and removal costs who is not a party to the settlement, but shall reduce the potential liability of any other discharger or person in any way responsible for a discharged hazardous substance at the site that is the subject of the final remediation document or the settlement by the amount of the final remediation document or the settlement.

(3) In an action for contribution taken pursuant to this subsection, a contribution plaintiff may file a claim with the court for treble damages. A contribution plaintiff may be granted an award of treble damages by the court from one or more contribution defendants only upon a finding by the court that: (a) the contribution defendant is a person who was named on or subject to a directive issued by the department, who failed or refused to comply with such a directive, and who is subject to contribution pursuant to this subsection; (b) the contribution plaintiff gave 30 days' notice to the contribution defendant of the plaintiff's intention to seek treble damages pursuant to this subsection and gave the contribution defendant an opportunity to participate in the cleanup; (c) the contribution defendant failed or refused to enter into a settlement agreement with the contribution plaintiff; and (d) the contribution plaintiff (i) on or after the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), commenced remediation of the site and provided written notice to the department that the contribution plaintiff is remediating or has remediated the property pursuant to the provisions of section 30 of P.L.2009, c.60 (C.58:10B-1.3), or (ii) entered into an agreement with the department to remediate the site. Notwithstanding the foregoing requirements, any authorization to seek treble damages made by the department prior to the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.) shall remain in effect, provided that the department or the contribution plaintiff gave notice to the contribution defendant of
the plaintiff's request to the department for authorization to seek
treble damages.

A contribution defendant from whom treble damages is sought in
a contribution action shall not be assessed treble damages by any
court where the contribution defendant, for good cause shown,
failed or refused to enter the settlement agreement with the
contribution plaintiff or where principles of fundamental fairness
will be violated. One third of an award of treble damages in a
contribution action pursuant to this paragraph shall be paid to the
department, which sum shall be deposited in the New Jersey Spill
Compensation Fund. The other two thirds of the treble damages
award shall be shared by the contribution plaintiffs in the proportion
of the responsibility for the cost of the cleanup and removal that the
contribution plaintiffs have agreed to with the department or in an
amount as has been agreed to by those parties.

Cleanup and removal of hazardous substances and actions to
minimize damage from discharges shall, to the greatest extent
possible, be in accordance with the National Contingency Plan for
cleanup and removal of oil and hazardous substances established
pursuant to section 311(c)(2) of the Federal Water Pollution Control

Whenever the department acts to clean up and remove a
discharge or contracts to secure prospective cleanup and removal
services, it is authorized to draw upon the money available in the
fund. Such money shall be used to pay promptly for all cleanup and
removal costs incurred by the department in cleaning up, in
removing or in minimizing damage caused by such discharge.
Nothing in this section is intended to preclude removal and cleanup
operations by any person threatened by such discharges, provided
such persons coordinate and obtain approval for such actions with
ongoing State or federal operations. No action taken by any person
to contain or clean up and remove a discharge shall be construed as
an admission of liability for said discharge. No person who renders
assistance in containing or cleaning up and removing a discharge
shall be liable for any civil damages to third parties resulting solely
from acts or omissions of such person in rendering such assistance,
except for acts or omissions of gross negligence or willful
misconduct. In the course of cleanup or removal operations, no
person shall discharge any detergent into the waters of this State
without prior authorization of the commissioner.

b. Notwithstanding any other provisions of P.L.1976, c.141
(C.58:10-23.11 et seq.), the department, subject to the approval of
the administrator with regard to the availability of funds therefor, or
a local unit as a part of an emergency response action and with the
approval of the department, may clean up and remove or arrange for
the cleanup and removal of any hazardous substance which:
(1) Has not been discharged from a grounded or disabled vessel,
if the department determines that such cleanup and removal is
necessary to prevent an imminent discharge of such hazardous
substance; or

(2) Has not been discharged, if the department determines that
such substance is not satisfactorily stored or contained and said
substance possesses any one or more of the following
characteristics:
   (a) Explosiveness;
   (b) High flammability;
   (c) Radioactivity;
   (d) Chemical properties which in combination with any
discharged hazardous substance at the same storage facility would
create a substantial risk of imminent damage to public health or
safety or an imminent and severe damage to the environment;
   (e) Is stored in a container from which its discharge is imminent
as a result of contact with a hazardous substance which has already
been discharged and such additional discharge would create a
substantial risk of imminent damage to public health or safety or
imminent and severe damage to the environment; or
   (f) High toxicity and is stored or being transported in a
container or motor vehicle, truck, rail car or other mechanized
conveyance from which its discharge is imminent as a result of the
significant deterioration or the precarious location of the container,
motor vehicle, truck, rail car or other mechanized conveyance, and
such discharge would create a substantial risk of imminent damage
to public health or safety or imminent and severe damage to the
environment; or

(3) Has been discharged prior to the effective date of P.L.1976,
c.141.

c. If and to the extent that he determines that funds are
available, the administrator shall approve and make payments for
any cleanup and removal costs incurred by the department for the
cleanup and removal of a hazardous substance other than petroleum
as authorized by subsection b. of this section; provided that in
determining the availability of funds, the administrator shall not
include as available funds revenues realized or to be realized from
the tax on the transfer of petroleum, to the extent that such revenues
result from a tax levied at a rate in excess of $0.01 per barrel,
pursuant to subsection b. of section 9 of P.L.1976, c.141 (C.58:10-
23.11h), unless the administrator determines that the sum of claims
paid by the fund on behalf of petroleum discharges or cleanup and
removals plus pending reasonable claims against the fund on behalf
of petroleum discharges or cleanup and removals is greater than
30% of the sum of all claims paid by the fund plus all pending
reasonable claims against the fund.

d. The administrator may only approve and make payments for
any cleanup and removal costs incurred by the department for the
cleanup and removal of a hazardous substance discharged prior to
the effective date of P.L.1976, c.141, pursuant to subsection b. of
this section, if, and to the extent that, he determines that adequate
funds from another source are not or will not be available; and
provided further, with regard to the cleanup and removal costs
incurred for discharges which occurred prior to the effective date of
P.L.1976, c.141, the administrator may not during any one-year
period pay more than $18,000,000 in total or more than $3,000,000
for any discharge or related set or series of discharges.
e. Notwithstanding any other provisions of P.L.1976, c.141, the
administrator, after considering, among any other relevant factors,
the department's priorities for spending funds pursuant to P.L.1976,
c.141, and within the limits of available funds, shall make payments
for the restoration or replacement of, or connection to an alternative
water supply for, any private residential well destroyed,
contaminated, or impaired as a result of a discharge prior to the
effective date of P.L.1976, c.141; provided, however, total
payments for said purpose shall not exceed $500,000 for the period
between the effective date of this subsection e. and January 1, 1983,
and in any calendar year thereafter.
f. Any expenditures of cleanup and removal costs and related
costs made by the State pursuant to this act shall constitute, in each
instance, a debt of the discharger to the fund. The debt shall
constitute a lien on all property owned by the discharger when a
notice of lien, incorporating a description of the property of the
discharger subject to the cleanup and removal and an identification
of the amount of cleanup, removal and related costs expended by
the State, is duly filed with the clerk of the Superior Court. The
clerk shall promptly enter upon the civil judgment or order docket
the name and address of the discharger and the amount of the lien as
set forth in the notice of lien. Upon entry by the clerk, the lien, to
the amount committed by the State for cleanup and removal, shall
attach to the revenues and all real and personal property of the
discharger, whether or not the discharger is insolvent.
The notice of lien filed pursuant to this subsection which affects
the property of a discharger subject to the cleanup and removal of a
discharge shall create a lien with priority over all other claims or
liens which are or have been filed against the property, except if the
property comprises six dwelling units or less and is used
exclusively for residential purposes, this notice of lien shall not
affect any valid lien, right or interest in the property filed in
accordance with established procedure prior to the filing of this
notice of lien. The notice of lien filed pursuant to this subsection
which affects any property of a discharger, other than the property
subject to the cleanup and removal, shall have priority from the day
of the filing of the notice of the lien over all other claims and liens
filed against the property, but shall not affect any valid lien, right,
or interest in the property filed in accordance with established
procedure prior to the filing of a notice of lien pursuant to this
subsection.
g. In the event a vessel discharges a hazardous substance into
the waters of the State, the cleanup and removal and related costs
resulting from that discharge that constitute a maritime lien on the
discharging vessel pursuant to 33 U.S.C. s.1321 or any other law,
may be recovered by the Department of Environmental Protection
in an action in rem brought in the district court of the United States.
An impoundment of a vessel resulting from this action shall
continue until:
   (1) the claim against the owner or operator of the vessel for the
cleanup and removal and related costs of the discharge is satisfied;
   (2) the owner or operator of the vessel, or a representative of the
owner or operator, provides evidence of financial responsibility as
provided in section 2 of P.L.1991, c.58 (C.58:10-23.11g2) and
satisfactorily guarantees that these costs will be paid; or
   (3) the impoundment is otherwise vacated by a court order. The
remedy provided in this subsection is in addition to any other
remedy or enforcement power that the department may have under
any other law.
   Any action brought by the State pursuant to this subsection and
any impoundment of a vessel resulting therefrom shall not subject
the State to be in any way liable for a subsequent or continued
discharge of a hazardous substance from that vessel.
(cf: P.L.2009, c.60, s.37)

4. This act shall take effect immediately.

STATEMENT

This bill would prohibit any person from bringing an action for
contribution against a local public entity for cleanup and removal
costs or any other damages associated with a discharge of a
hazardous substance. The prohibition would bar any such
contribution action against a local public entity, notwithstanding
any provision of the “Spill Compensation and Control Act” or any
other law, including the common law, or any rule or regulation, to
the contrary.

The term “local public entity” is defined in the bill to include
local governments and their agencies, certain local authorities,
including sewerage authorities, joint meetings, and the Passaic
Valley Sewerage Commissioners.