

ASSEMBLY, No. 786

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman FARRAGHER

1 **AN ACT** concerning municipal solid waste, and amending P.L.1976,
2 c.141 (C.58:10-23.11 et seq.).

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

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

9 3. [Unless the context clearly indicates otherwise, the following
10 terms shall have the following meanings] As used in this act:

11 a. "Administrator" means the chief executive of the New Jersey
12 Spill Compensation Fund;

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

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

19 d. "Cleanup and removal costs" means all costs associated with a
20 discharge, incurred by the State or its political subdivisions or their
21 agents or any person with written approval from the department in the:
22 (1) removal or attempted removal of hazardous substances, or (2)
23 taking of reasonable measures to prevent or mitigate damage to the
24 public health, safety, or welfare, including, but not limited to, public
25 and private property, shorelines, beaches, surface waters, water
26 columns and bottom sediments, soils and other affected property,
27 including wildlife and other natural resources, and shall include costs
28 incurred by the department for the indemnification and legal defense
29 of contractors pursuant to subsection a. of section 7 of this act, subject
30 to the appropriation by law of moneys from the General Fund to the
31 fund to defray these costs;

32 e. "Commissioner" means the Commissioner of Environmental

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

Matter underlined thus is new matter.

1 Protection;

2 f. "Department" means the Department of Environmental
3 Protection;

4 g. "Director" means the Director of the Division of Taxation in the
5 Department of the Treasury;

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

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

18 j. "Fund" means the New Jersey Spill Compensation Fund;

19 k. "Hazardous substances" means the "environmental hazardous
20 substances" on the environmental hazardous substance list adopted by
21 the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4);
22 such elements and compounds, including petroleum products, which
23 are defined as such by the department, after public hearing, and which
24 shall be consistent to the maximum extent possible with, and which
25 shall include, the list of hazardous substances adopted by the federal
26 Environmental Protection Agency pursuant to section 311 of the
27 federal Water Pollution Control Act Amendments of 1972, Pub.L.
28 92-500, as amended by the Clean Water Act of 1977, Pub.L. 95-217
29 (33 U.S.C.£1251 et seq.); the list of toxic pollutants designated by
30 Congress or the EPA pursuant to section 307 of that act; and the list
31 of hazardous substances adopted by the federal Environmental
32 Protection Agency pursuant to section 101 of the "Comprehensive
33 Environmental Response, Compensation and Liability Act of 1980,"
34 Pub.L. 96-510 (42 U.S.C.£9601 et seq.); provided, however, that
35 sewage [and], sewage sludge, and municipal solid waste shall not be
36 considered as hazardous substances for the purposes of this act;

37 l. "Major facility" includes, but is not limited to, any refinery,
38 storage or transfer terminal, pipeline, deep-water port, drilling
39 platform or any appurtenance related to any of the preceding that is
40 used or is capable of being used to refine, produce, store, handle,
41 transfer, process or transport hazardous substances. A vessel shall be
42 considered a major facility only when hazardous substances are
43 transferred between vessels.

44 A facility shall not be considered a major facility for the purpose of
45 this act unless it has total combined aboveground or buried storage
46 capacity of:

1 (1) 20,000 gallons or more for hazardous substances which are
2 other than petroleum or petroleum products, or

3 (2) 200,000 gallons or more for hazardous substances of all kinds.

4 For the purposes of this definition, "storage capacity" shall mean
5 only that total combined capacity which is dedicated to, used for or
6 intended to be used for storage of hazardous substances of all kinds.

7 Where appropriate to the nature of the facility, storage capacity may
8 be determined by the intended or actual use of open land or
9 unenclosed space as well as by the capacities of tanks or other
10 enclosed storage spaces;

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

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

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

25 p. "Petroleum" or "petroleum products" means oil or petroleum of
26 any kind and in any form, including, but not limited to, oil, petroleum,
27 gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other
28 wastes, crude oils, and substances or additives to be utilized in the
29 refining or blending of crude petroleum or petroleum stock in this
30 State; however, any compound designated by specific chemical name
31 on the list of hazardous substances adopted by the department
32 pursuant to subsection 3 k. shall not be considered petroleum or a
33 petroleum product for the purposes of this act, unless such compound
34 is to be utilized in the refining or blending of crude petroleum or
35 petroleum stock in this State;

36 q. "Taxpayer" means the owner or operator of a major facility
37 subject to the tax provisions of this act;

38 r. "Tax period" means every calendar month on the basis of which
39 the taxpayer is required to report under this act;

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

46 t. "Vessel" means every description of watercraft or other

1 contrivance that is practically capable of being used as a means of
2 commercial transportation of hazardous substances upon the water,
3 whether or not self-propelled;

4 u. "Waters" means the ocean and its estuaries to the seaward limit
5 of the State's jurisdiction, all springs, streams and bodies of surface or
6 groundwater, whether natural or artificial, within the boundaries of
7 this State;

8 v. "Act of God" means an act exclusively occasioned by an
9 unanticipated, grave natural disaster without the interference of any
10 human agency[.];

11 w. "Household waste" means any waste material, including
12 garbage, trash and sanitary waste from septic tanks, derived from
13 households, including single and multiple residences and hotels and
14 motels;

15 x. "Municipal solid waste" means solid waste generated by
16 households and encompasses "household waste" and solid waste from
17 commercial, institutional and industrial sources where: (1) none of the
18 hazardous substances that may be contained in the waste are derived
19 from a commercial, institutional or industrial process or activity, and
20 (2) the amount of toxicity of the hazardous substances contained in the
21 waste does not exceed that which would normally be found in
22 "household waste."

23 (cf: P.L.1986, c.143, s.1)

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25 2. Section 23 of P.L.1976, c.141 (C.58:10-23.11v) is amended to
26 read as follows:

27 23. Nothing in this act shall be deemed to preclude the pursuit of
28 any other civil or injunctive remedy by any person. The remedies
29 provided in this act are in addition to those provided by existing
30 statutory or common law, but no person who receives compensation
31 for damages or cleanup costs pursuant to any other State or Federal
32 law shall be permitted to receive compensation for the same damages
33 or cleanup costs under this act. Any provisions of the "New Jersey
Tort Claims Act," P.L.1972, c.45 (C.59:1-1 et seq.) to the contrary
notwithstanding, for the purposes of this act, no person, except the
State of New Jersey, may sue or seek contribution from any political
subdivision of the State.

38 (cf: P.L.1976, c.141, s.23)

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40 3. This act shall take effect immediately.

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43 STATEMENT

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45 This bill would exempt municipal solid waste from the definition of
46 hazardous substance in the "Spill Compensation and Control Act."

1 This would eliminate liability for disposing municipal solid waste at a
2 "Spillfund" site. Also, this bill would allow only the State to sue a
3 municipality or seek contributions therefrom pursuant to "Spillfund."
4 No other person could take such actions against a municipality that
5 disposed of hazardous substances at a "Spillfund" site.

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10 Exempts municipal solid waste from "Spillfund" liability and limits
11 actions taken against municipalities.