

ASSEMBLY AGRICULTURE AND WASTE MANAGEMENT  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1033**

with committee amendments

**STATE OF NEW JERSEY**

DATED: DECEMBER 5, 1996

The Assembly Agriculture and Waste Management Committee favorably reports Assembly Bill No. 1033 with committee amendments.

As introduced, Assembly Bill No. 1033 would amend the "Spill Compensation and Control Act," (Spill Act) P.L.1976, c.141 (C.58:10-23.11 et seq.) to delete the provision which authorizes the Department of Environmental Protection (DEP) to authorize a person who cleans up or removes a hazardous discharge to seek treble damages from any other person liable for the discharge who is not involved in the cleanup.

As amended, Assembly Bill No. 1033 would eliminate the DEP's discretionary authority to authorize the recovery of treble damages, but would continue to allow contribution plaintiffs to seek treble damages from one or more contribution defendants under terms and conditions set forth in the amendments.

Until 1991, the Spill Act provided that if the DEP ordered a party liable for a hazardous discharge to clean up and remove the discharge, and the party refused, thus requiring the expenditure of moneys from the Spill Fund so that the State could conduct the cleanup and removal, the DEP could seek damages from the responsible party in an amount equal to three times the amount (treble damages) expended by the DEP for the cleanup and removal.

In 1991 the Spill Act was amended to enable private responsible parties performing a cleanup to seek treble damages from other responsible parties. As a result of a 1991 amendment, the Spill Act currently provides that any person seeking treble damages (the contribution plaintiff) from another discharger (the contribution defendant) must be authorized to do so by the DEP, and further provides that one-third of the amount of any treble damages recovered must be paid to the DEP for deposit in the Spill Compensation Fund.

As introduced, Assembly Bill No. 1033 would remove this authorization, thus allowing only DEP the right to seek treble damages under the Spill Act.

As amended, Assembly Bill No. 1033 would continue to allow contribution plaintiffs to seek treble damages from one or more contribution defendants, but would eliminate the DEP's discretionary authority to authorize the recovery of treble damages.

Assembly Committee amendments provide that in any such contribution action, a court may award treble damages to any contribution plaintiffs against one or more contribution defendants only upon a finding by the court that: (1) the contribution defendant is a person who was named on or subject to a directive issued by the DEP, who failed or refused to comply with such a directive, and who is subject to contribution under the Spill Act; and (2) the contribution plaintiff gave 30 days notice to the contribution defendant of the plaintiff's intention to seek treble damages and gave an opportunity to the contribution defendant to participate in the cleanup; (3) the contribution defendant failed or refused to enter into a settlement agreement with the contribution plaintiff; and (4) the contribution plaintiff entered into an agreement with the DEP to remediate the site.

Assembly Committee amendments also provide that any authorization to seek treble damages made by the department prior to the effective date of this bill would remain in effect, provided that either 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.

This bill was pre-filed for introduction in the 1996-1997 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.