

ASSEMBLY, No. 2250

STATE OF NEW JERSEY

INTRODUCED JULY 18, 1996

By Assemblyman BAGGER

1 AN ACT concerning hazardous substances, amending P.L.1976, c.141
2 and P.L.1993, c.139.

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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 8 of P.L.1976, c.141 (C.58:10-23.11g) is amended to
8 read as follows:

9 8. a. The fund shall be strictly liable, without regard to fault, for
10 all cleanup and removal costs and for all direct and indirect damages
11 no matter by whom sustained, including but not limited to:

12 (1) The cost of restoring, repairing, or replacing any real or
13 personal property damaged or destroyed by a discharge, any income
14 lost from the time such property is damaged to the time such property
15 is restored, repaired or replaced, and any reduction in value of such
16 property caused by such discharge by comparison with its value prior
17 thereto;

18 (2) The cost of restoration and replacement, where possible, of any
19 natural resource damaged or destroyed by a discharge;

20 (3) Loss of income or impairment of earning capacity due to
21 damage to real or personal property, including natural resources
22 destroyed or damaged by a discharge; provided that such loss or
23 impairment exceeds 10% of the amount which claimant derives, based
24 upon income or business records, exclusive of other sources of
25 income, from activities related to the particular real or personal
26 property or natural resources damaged or destroyed by such discharge
27 during the week, month or year for which the claim is filed;

28 (4) Loss of tax revenue by the State or local governments for a
29 period of one year due to damage to real or personal property
30 proximately resulting from a discharge;

31 (5) Interest on loans obtained or other obligations incurred by a
32 claimant for the purpose of ameliorating the adverse effects of a
33 discharge pending the payment of a claim in full as provided by this
34 act.

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 b. The damages which may be recovered by the fund, without
2 regard to fault, subject to the defenses enumerated in subsection d. of
3 this section against the owner or operator of a major facility or vessel,
4 shall not exceed \$50,000,000.00 for each major facility or \$150.00 per
5 gross ton for each vessel, except that such maximum limitation shall
6 not apply and the owner or operator shall be liable, jointly and
7 severally, for the full amount of such damages if it can be shown that
8 such discharge was the result of (1) gross negligence or willful
9 misconduct, within the knowledge and privity of the owner, operator
10 or person in charge, or (2) a gross or willful violation of applicable
11 safety, construction or operating standards or regulations. Damages
12 which may be recovered from, or by, any other person shall be limited
13 to those authorized by common or statutory law.

14 c. (1) Any person who has discharged a hazardous substance, or
15 is in any way responsible for any hazardous substance, shall be strictly
16 liable, jointly and severally, without regard to fault, for all cleanup and
17 removal costs no matter by whom incurred. Such person shall also be
18 strictly liable, jointly and severally, without regard to fault, for all
19 cleanup and removal costs incurred by the department or a local unit
20 pursuant to subsection b. of section 7 of P.L.1976, c.141
21 (C.58:10-23.11f).

22 (2) In addition to the persons liable pursuant to paragraph (1) of
23 this subsection, in the case of a discharge of a hazardous substance
24 from a vessel into the waters of the State, the owner or operator of a
25 refinery, storage, transfer, or pipeline facility to which the vessel was
26 en route to deliver the hazardous substance who, by contract,
27 agreement, or otherwise, was scheduled to assume ownership of the
28 discharged hazardous substance, and any other person who was so
29 scheduled to assume ownership of the discharged hazardous substance,
30 shall be strictly liable, jointly and severally, without regard to fault, for
31 all cleanup and removal costs if the owner or operator of the vessel did
32 not have the evidence of financial responsibility required pursuant to
33 section 2 of P.L.1991, c.58 (C.58:10-23.11g2).

34 Where a person is liable for cleanup and removal costs as provided
35 in this paragraph, any expenditures made by the administrator for that
36 cleanup and removal shall constitute a debt of that person to the fund.
37 The debt shall constitute a lien on all property owned by that person
38 when a notice of lien identifying the nature of the discharge and the
39 amount of the cleanup, removal and related costs expended from the
40 fund is duly filed with the clerk of the Superior Court. The clerk shall
41 promptly enter upon the civil judgment or order docket the name and
42 address of the liable person and the amount of the lien as set forth in
43 the notice of lien. Upon entry by the clerk, the lien, to the amount
44 committed by the administrator for cleanup and removal, shall attach
45 to the revenues and all real and personal property of the liable person,
46 whether or not that person is insolvent.

1 For the purpose of determining priority of this lien over all other
2 claims or liens which are or have been filed against the property of an
3 owner or operator of a refinery, storage, transfer, or pipeline facility,
4 the lien on the facility to which the discharged hazardous substance
5 was en route shall have priority over all other claims or liens which are
6 or have been filed against the property. The notice of lien filed
7 pursuant to this paragraph which affects any property of a person
8 liable pursuant to this paragraph other than the property of an owner
9 or operator of a refinery, storage, transfer, or pipeline facility to which
10 the discharged hazardous substance was en route, shall have priority
11 from the day of the filing of the notice of the lien over all claims and
12 liens filed against the property, but shall not affect any valid lien, right,
13 or interest in the property filed in accordance with established
14 procedure prior to the filing of a notice of lien pursuant to this
15 paragraph.

16 To the extent that a person liable pursuant to this paragraph is not
17 otherwise liable pursuant to paragraph (1) of this subsection, or under
18 any other provision of law or under common law, that person may
19 bring an action for indemnification for costs paid pursuant to this
20 paragraph against any other person who is strictly liable pursuant to
21 paragraph (1) of this subsection.

22 Nothing in this paragraph shall be construed to extend or negate the
23 right of any person to bring an action for contribution that may exist
24 under P.L.1976, c.141, or any other act or under common law.

25 d. (1) In addition to those defenses provided in this subsection, an
26 act or omission caused solely by war, sabotage, or God, or a
27 combination thereof, shall be the only defenses which may be raised by
28 any owner or operator of a major facility or vessel responsible for a
29 discharge in any action arising under the provisions of this act.

30 (2) A person, including an owner or operator of a major facility,
31 who owns real property acquired after the effective date of P.L.1993,
32 c.139 (C.13:1K-9.6 et al.), on which there has been a discharge, shall
33 be considered a person in any way responsible for the discharged
34 hazardous substance pursuant to subsection c. of this section, unless
35 that person can establish by a preponderance of the evidence that all
36 of the following apply:

37 (a) the person acquired the real property after the discharge of that
38 hazardous substance at the real property;

39 (b) (i) at the time the person acquired the real property, the person
40 did not know and had no reason to know that any hazardous substance
41 had been discharged at the real property, or (ii) the person acquired
42 the real property by devise or succession, except that any other funds
43 or property received by that person from the deceased real property
44 owner who discharged a hazardous substance or was in any way
45 responsible for a hazardous substance, shall be made available to
46 satisfy the requirements of P.L.1976, c.141;

1 (c) the person did not discharge the hazardous substance and is not
2 in any way responsible for the hazardous substance; and

3 (d) the person gave notice of the discharge to the department upon
4 actual discovery of that discharge.

5 To establish that a person had no reason to know that any
6 hazardous substance had been discharged for the purposes of this
7 paragraph (2), the person must have undertaken, at the time of
8 acquisition, all appropriate inquiry into the previous ownership and
9 uses of the property. For the purposes of this paragraph (2), all
10 appropriate inquiry shall mean the performance of a preliminary
11 assessment, and site investigation (if the preliminary assessment
12 indicates that a site investigation is necessary), as defined in section 23
13 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with
14 rules and regulations promulgated by the department defining these
15 terms.

16 Nothing in this paragraph (2) shall be construed to alter liability of
17 any person who acquired real property prior to the effective date of
18 P.L.1993, c.139 (C.13:1K-9.6 et al.).

19 (3) Notwithstanding the provisions of paragraph (2) of this
20 subsection to the contrary, if a person who owns real property obtains
21 actual knowledge of a discharge of a hazardous substance at the real
22 property during the period of that person's ownership and
23 subsequently transfers ownership of the property to another person
24 without disclosing that knowledge, the transferor shall be strictly liable
25 for the cleanup and removal costs of the discharge and no defense
26 under this subsection shall be available to that person.

27 (4) Any federal, State, or local governmental entity which acquires
28 ownership of real property through bankruptcy, tax delinquency,
29 abandonment, escheat, eminent domain, condemnation or any
30 circumstance in which the government involuntarily acquires title by
31 virtue of its function as sovereign, shall not be liable for the cleanup
32 and removal costs of any discharge which occurred or began prior to
33 that ownership. This paragraph shall not apply to any federal, State
34 or local governmental entity which has caused or contributed to the
35 discharge of a hazardous substance.

36 e. (1) If the Department of Environmental Protection issues a no
37 further action letter as defined in section 23 of P.L.1993, c.139
38 (C.58:10B-1) for a site at which a discharge occurred prior to a person
39 becoming an owner or operator of the site, and any institutional or
40 engineering controls required by the remedial action workplan are
41 maintained as required by the department, then any person who is not
42 otherwise liable for the discharge at the site which occurred prior to
43 the department's approval of the no further action letter shall not be
44 liable for the cleanup and removal of the discharge or for damages to
45 any person resulting from the discharge based solely on that person
46 becoming an owner or operator of the site of the discharge. For the

1 purposes of this paragraph, a site shall constitute the real property
2 defined in the remedial action workplan or, if no remedial action
3 workplan is required, the no further action letter.

4 (2) The fund established pursuant to the "Spill Compensation and
5 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), shall not be
6 liable for any damages incurred by any person who is relieved from
7 liability pursuant to this subsection.

8 (3) The provisions of this subsection shall apply if the discharge
9 occurred prior to, on, or after the effective date of P.L. c.
10 (C.) (pending in the Legislature as this bill).

11 (cf: P.L.1993, c.139, s.44)

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13 2. Section 36 of P.L.1993, c.139 (C.58:10B-13) is amended to
14 read as follows:

15 36. a. When real property is remediated to a nonresidential soil
16 remediation standard or engineering or institutional controls are used
17 in lieu of remediating a site to meet an established remediation
18 standard for soil, groundwater, or surface water, the department shall,
19 as a condition of the use of that standard or control measure:

20 (1) require the establishment of any engineering or institutional
21 controls the department determines are reasonably necessary to
22 prevent exposure to the contaminants, require maintenance, as
23 necessary, of those controls, and require the restriction of the use of
24 the property in a manner that prevents exposure;

25 (2) require, with the consent of the owner of the real property, the
26 recording with the office of the county recording officer, in the county
27 in which the property is located, a notice to inform prospective holders
28 of an interest in the property that contamination exists on the property
29 at a level that may statutorily restrict certain uses of or access to all or
30 part of that property, a delineation of those restrictions, a description
31 of all specific engineering or institutional controls at the property that
32 exist and that shall be maintained in order to prevent exposure to
33 contaminants remaining on the property, and the written consent to the
34 notice by the owner of the property;

35 (3) require a notice to the governing body of each municipality in
36 which the property is located that contaminants will exist at the
37 property above residential use soil remediation standards or any other
38 remediation standards and specifying the restrictions on the use of or
39 access to all or part of that property and of the specific engineering or
40 institutional controls at the property that exist and that shall be
41 maintained;

42 (4) require, when determined necessary by the department, that
43 signs be posted at any location at the site where access is restricted or
44 in those areas that must be maintained in a prescribed manner, to
45 inform persons on the property that there are restrictions on the use of
46 that property or restrictions on access to any part of the site;

1 (5) require that a list of the restrictions be kept on site for
2 inspection by governmental enforcement officials; and

3 (6) require a person, prior to commencing a remedial action, to
4 notify the governing body of each municipality wherein the property
5 being remediated is located. The notice shall include, but not be
6 limited to, the commencement date for the remedial action; the name,
7 mailing address and business telephone number of the person
8 implementing the remedial action, or his designated representative; and
9 a brief description of the remedial action.

10 b. If the owner of the real property does not consent to the
11 recording of a notice pursuant to paragraph (2) of subsection a. of this
12 section, the department shall require the use of a residential soil
13 remediation standard in the remediation of that real property.

14 c. Whenever engineering or institutional controls on property as
15 provided in subsection a. of this section are no longer required, or
16 whenever the engineering or institutional controls are changed because
17 of the performance of subsequent remedial activities, a change in
18 conditions at the site, or the adoption of revised remediation
19 standards, the department shall require that the owner or operator of
20 that property record with the office of the county recording officer a
21 notice that the use of the property is no longer restricted or delineating
22 the new restrictions. The department shall also require that the owner
23 or operator notify, in writing, the municipality in which the property
24 is located of the removal or change of the restrictive use conditions.

25 d. The owner or lessee of any real property, or any person
26 operating a business on real property, which has been remediated to
27 a nonresidential use soil remediation standard or on which the
28 department has allowed engineering or institutional controls for soil,
29 groundwater, or surface water to protect the public health, safety, or
30 the environment, as applicable, shall maintain the engineering or
31 institutional controls as required by the department. An owner, lessee,
32 or operator who takes any action that results in the improper alteration
33 or removal of engineering or institutional controls or who fails to
34 maintain the engineering or institutional controls as required by the
35 department, shall be subject to the penalties and actions set forth in
36 section 22 of P.L.1976, c.141 (C.58:10-23.11u). The provisions of
37 this subsection shall not apply if a notification received pursuant to
38 subsection b. of this section authorizes all restrictions or controls to
39 be removed from the subject property.

40 e. Notwithstanding the provisions of any other law, or any rule,
41 regulation, or order adopted pursuant thereto to the contrary,
42 whenever contamination at a property is remediated in compliance
43 with [any] the applicable soil, groundwater, or surface water
44 remediation standards adopted by the department pursuant to section
45 35 of P.L.1993, c.139 (C.58:10B-12) that were in effect at the
46 completion of the remediation or until the department adopts such

1 standards, the standards approved by the department for the property
2 at the time of remediation, [the owner or operator of the property or
3 person performing the remediation,] no person except as otherwise
4 provided in this section, shall [not] be liable for the cost of any
5 additional remediation that may be required [by] upon a subsequent
6 adoption by the department of a more stringent remediation standard
7 for a particular contaminant or upon the subsequent discovery of
8 contamination that existed on the property at the time of the
9 remediation. [Upon the adoption of a regulation that amends a
10 remediation standard, only a person who is liable to clean up and
11 remove that contamination pursuant to section 8 of P.L.1976, c.141
12 (C.58:10-23.11g) shall be liable for any additional remediation costs
13 necessary to bring the site into compliance with the new remediation
14 standards except that no person shall be so liable unless the difference
15 between the new remediation standard and the level or concentration
16 of a contaminant at the property differs by an order of magnitude.]

17 Nothing in the provisions of this subsection shall be construed to
18 limit the liability of any person who is liable to remediate the
19 contamination and at the time of the remediation knows of
20 contamination existing on the property and fails to remediate or
21 disclose it.

22 Nothing in the provisions of this subsection shall be construed to
23 affect the authority of the department, pursuant to subsection f. of this
24 section, to require additional remediation on real property where
25 engineering or institutional controls were implemented.

26 Nothing in the provisions of this subsection shall limit the rights of
27 a person, other than the State, or any department or agency thereof,
28 to bring a civil action for damages [, contribution, or indemnification]
29 other than remediation costs as provided by statutory or common law.

30 f. Whenever the department approves or has approved the use of
31 engineering or institutional controls for the remediation of soil,
32 groundwater, or surface water, to protect public health, safety or the
33 environment in lieu of remediating a site to a condition that meets an
34 established residential remediation standard, the department shall not
35 require additional remediation of that site unless the engineering or
36 institutional controls no longer are protective of public health, safety,
37 or the environment.

38 (cf: P.L.1993, c.139, s.36)

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40 3. This act shall take effect immediately.

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STATEMENT

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45 This bill would amend the law concerning the liability for the
46 cleanup and removal of hazardous substances. Section 1 of the bill

1 would amend the "Spill Compensation and Control Act" to limit the
2 liability of certain owners or operators of property that has been
3 remediated. If the Department of Environmental Protection has issued
4 a no further action letter for the property, and any institutional or
5 engineering controls required in the remedial action workplan are
6 maintained, then any person who is not otherwise liable for a discharge
7 that occurred before becoming an owner or operator of the site, shall
8 not be liable for cleanup and removal costs or for any damages to any
9 person resulting from the discharge based solely on that person
10 becoming an owner or operator of the site. This provision would
11 apply if the discharge occurs before, on or after the bill's enactment.
12 Section 2 of the bill would amend P.L.1993, c.139 to limit the liability
13 of any person for remediation costs for any additional remediation that
14 may be required because of the adoption of a more stringent
15 remediation standard than the one in effect at the time of the cleanup,
16 or by the subsequent discovery of contamination that existed at the
17 time of the remediation. The bill would not limit the liability of any
18 person otherwise liable for the subsequent discovery of contamination
19 if at the time of the remediation the person knew of the contamination
20 and failed to remediate or disclose its existence.

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25 Limits liability for hazardous substances in certain circumstances.