

ASSEMBLY AGRICULTURE AND WASTE MANAGEMENT
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2250

STATE OF NEW JERSEY

DATED: NOVEMBER 7, 1996

The Assembly Agriculture and Waste Management Committee favorably reports an Assembly Committee Substitute for Assembly Bill No. 2250.

The committee substitute would limit the liability for innocent purchasers of contaminated property. First, the committee substitute would clarify existing law concerning the liability of purchasers of contaminated property. In 1993, the Legislature amended the law to provide a defense to liability for any purchase subsequent to the law's effective date, for any person who acquires contaminated property after a discharge occurs, performs all appropriate inquiry, and does not know and has no reason to know that a discharge had occurred. The committee substitute would clarify that for those purchases after the 1993 law's effective date, a purchaser who acquires contaminated property and knew or should have known of the contamination would be liable for the cleanup and removal costs.

The committee substitute would also limit the liability of innocent purchasers of property on which there has been a discharge under certain circumstances. These defenses to liability would be applicable to purchasers of property no matter when it is acquired as long as the enumerated conditions are met. Earlier this year, the Legislature enacted certain provisions of law to limit the liability of an innocent person who acquires land which was once contaminated but is remediated. That limit on liability, however, only applied to properties in qualified municipalities. The committee substitute expands these protections to all properties in the State. Additionally, the committee substitute expands and clarifies the liability protections of purchasers so that if a purchaser unknowingly acquires contaminated property after performing a proper investigation or knowingly acquires contaminated property and performs the required remediation, the purchaser would not be liable to the State or to any other person, under the Spill Compensation and Control Act or under common law, for any additional cleanup or for any other damages even if additional contamination is discovered or if the standards change. Finally, in

order to encourage redevelopment of contaminated properties and lower the costs of remediation, the committee substitute would limit the extent of a remediation that a person buying contaminated property would have to perform. The purchaser would only be liable to perform surface soil remediations, or use engineering or institutional controls, remove sources of contamination that pose imminent threats, and maintain any controls in place. The purchaser would not be liable for groundwater contamination, for changes in remediation standards, or for undiscovered contamination. Once the innocent purchaser performs this limited remediation to make the property safe for its intended use, he would have no further liability under the law.

The committee substitute would limit the liability of any person for any additional remediation costs if the department adopts a more stringent remediation standard. Further, if contamination is subsequently discovered that existed at the time of a remediation, only the discharger, or a person who is liable and who knew of the contamination and failed to disclose it at the time of the remediation would be liable for additional remediation.

The committee substitute would require the DEP to issue a letter of no association to a person who can demonstrate to the DEP that he has a defense to liability under the innocent purchaser defenses of the Spill Compensation and Control Act. The letter will indicate that the person has met the initial burden proving that he is not liable for any contamination on the property. The letter of no association is prima facie evidence that the person is not liable for remediation costs in any contribution action.

Finally, the committee substitute limits the liability of governmental entities under certain circumstances. Although the existing law generally provides that governmental entities are not liable for contamination on land they acquire through actions such as a tax lien or foreclosure, a governmental entity may be liable for knowingly and voluntarily acquiring contaminated property, even if it is acquired for a public purpose such as redevelopment. The committee substitute would amend the law to limit governmental entity liability for contaminated property they acquire by any means if the purpose of the acquisition was redevelopment.