

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2250

STATE OF NEW JERSEY

ADOPTED NOVEMBER 7, 1996

Sponsored by Assemblyman BAGGER

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

3

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

6

7 1. (New section) Whenever a person has a defense to liability for
8 cleanup and removal costs pursuant to paragraph (2) of subsection d.
9 of section 8 of P.L.1976, c.141 (C.58:10-23.11g), that person may
10 submit to the Department of Environmental Protection evidence
11 sufficient to prove by a preponderance of the evidence that the defense
12 applies. Upon a finding by the department that the defense applies to
13 that person the department shall issue that person a letter of no
14 association. The letter of no association shall state that upon the
15 evidence submitted to the department, the department finds that the
16 person has met the statutory burden of proving a defense to liability
17 under paragraph (2) of subsection d. of section 8 of P.L.1976, c.141
18 (C.58:10-23.11g) and that person, pursuant to that defense, is not
19 liable for any cleanup and removal costs for any discharged hazardous
20 substances that may be on that real property at the time of the issuance
21 of the letter of no association.

22

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

25 7. a. (1) Whenever any hazardous substance is discharged, the
26 department may, in its discretion, act to clean up and remove or
27 arrange for the cleanup and removal of such discharge or may direct
28 the discharger to clean up and remove, or arrange for the cleanup and
29 removal of, such discharge. If the discharge occurs at any hazardous
30 or solid waste disposal facility, the department may order the facility
31 closed for the duration of the cleanup and removal operations. The
32 department may monitor the discharger's compliance with any such

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.

1 directive. Any discharger who fails to comply with such a directive
2 shall be liable to the department in an amount equal to three times the
3 cost of such cleanup and removal, and shall be subject to the
4 revocation or suspension of any license or permit he holds authorizing
5 him to operate a hazardous or solid waste disposal facility.

6 (2) Whenever one or more dischargers or persons cleans up and
7 removes a discharge of a hazardous substance, those dischargers and
8 persons shall have a right of contribution against all other dischargers
9 and persons in any way responsible for a discharged hazardous
10 substance who are liable for the cost of the cleanup and removal of
11 that discharge of a hazardous substance. In an action for contribution,
12 the contribution plaintiffs need prove only that a discharge occurred
13 for which the contribution defendant or defendants are liable pursuant
14 to the provisions of subsection c. of section 8 of P.L.1976, c.141
15 (C.58:10-23.11g), and the contribution defendant shall have only the
16 defenses to liability available to parties pursuant to subsection d. of
17 section 8 of P.L.1976, c.141 (C.58:10-23.11g). A letter of no
18 association received from the department pursuant to section 1 of
19 P.L. , c. (C.)(now before the Legislature as this bill) is prima
20 facie evidence that a person has a defense to a contribution claim
21 pursuant to this section. In resolving contribution claims, a court may
22 allocate the costs of cleanup and removal among liable parties using
23 such equitable factors as the court determines are appropriate.

24 (3) The department may, in its sole discretion, when it will
25 expedite the cleanup and removal of any discharged hazardous
26 substance, and when the department determines that it is in the public
27 interest, authorize parties who have entered into an agreement with the
28 department to clean up and remove or arrange for the cleanup and
29 removal of a hazardous substance and who seek contribution, to
30 collect treble damages from any contribution defendant who has failed
31 or refused to comply with any directive, was named on the directive,
32 and who is subject to contribution pursuant to this subsection. The
33 treble damages shall be based on the amount of contribution owed by
34 a contribution defendant, which share of contribution shall be
35 determined by the court. A contribution defendant from whom treble
36 damages is sought in a contribution action shall not be assessed treble
37 damages by any court where the contribution defendant, for good
38 cause shown, failed or refused to enter the settlement agreement with
39 the department or with the contribution [plaintiffs] plaintiffs or where
40 principles of fundamental fairness will be violated. One third of an
41 award of treble damages in a contribution action pursuant to this
42 paragraph shall be paid to the department, which sum shall be
43 deposited in the New Jersey Spill Compensation Fund. The other two
44 thirds of the treble damages award shall be shared by the contribution
45 plaintiffs in the proportion of the responsibility for the cost of the

1 cleanup and removal that the contribution plaintiffs have agreed to
2 with the department or in an amount as has been agreed to by those
3 parties. Nothing in this subsection affects the rights of any party to
4 seek contribution pursuant to any other statute or under common law.

5 Cleanup and removal of hazardous substances and actions to
6 minimize damage from discharges shall, to the greatest extent possible,
7 be in accordance with the National Contingency Plan for cleanup and
8 removal of oil and hazardous substances established pursuant to
9 section 311(c)(2) of the federal Water Pollution Control Act
10 Amendments of 1972 (Pub.L.92-500, 33 U.S.C. §1251 et seq.).

11 Whenever the department acts to clean up and remove a discharge
12 or contracts to secure prospective cleanup and removal services, it is
13 authorized to draw upon the money available in the fund. Such money
14 shall be used to pay promptly for all cleanup and removal costs
15 incurred by the department in cleaning up, in removing or in
16 minimizing damage caused by such discharge.

17 Nothing in this section is intended to preclude removal and cleanup
18 operations by any person threatened by such discharges, provided such
19 persons coordinate and obtain approval for such actions with ongoing
20 State or federal operations. No action taken by any person to contain
21 or clean up and remove a discharge shall be construed as an admission
22 of liability for said discharge. No person who renders assistance in
23 containing or cleaning up and removing a discharge shall be liable for
24 any civil damages to third parties resulting solely from acts or
25 omissions of such person in rendering such assistance, except for acts
26 or omissions of gross negligence or willful misconduct. In the course
27 of cleanup or removal operations, no person shall discharge any
28 detergent into the waters of this State without prior authorization of
29 the commissioner.

30 b. Notwithstanding any other provisions of P.L.1976, c.141
31 (C.58:10-23.11 et seq.), the department, subject to the approval of the
32 administrator with regard to the availability of funds therefor, or a
33 local unit as a part of an emergency response action and with the
34 approval of the department, may clean up and remove or arrange for
35 the cleanup and removal of any hazardous substance which:

36 (1) Has not been discharged from a grounded or disabled vessel,
37 if the department determines that such cleanup and removal is
38 necessary to prevent an imminent discharge of such hazardous
39 substance; or

40 (2) Has not been discharged, if the department determines that
41 such substance is not satisfactorily stored or contained and said
42 substance possesses any one or more of the following characteristics:

- 43 (a) Explosiveness;
44 (b) High flammability;
45 (c) Radioactivity;

1 (d) Chemical properties which in combination with any
2 discharged hazardous substance at the same storage facility would
3 create a substantial risk of imminent damage to public health or safety
4 or an imminent and severe damage to the environment;

5 (e) Is stored in a container from which its discharge is imminent
6 as a result of contact with a hazardous substance which has already
7 been discharged and such additional discharge would create a
8 substantial risk of imminent damage to public health or safety or
9 imminent and severe damage to the environment; or

10 (f) High toxicity and is stored or being transported in a container
11 or motor vehicle, truck, rail car or other mechanized conveyance from
12 which its discharge is imminent as a result of the significant
13 deterioration or the precarious location of the container, motor
14 vehicle, truck, rail car or other mechanized conveyance, and such
15 discharge would create a substantial risk of imminent damage to public
16 health or safety or imminent and severe damage to the environment;
17 or

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

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

36 d. The administrator may only approve and make payments for
37 any cleanup and removal costs incurred by the department for the
38 cleanup and removal of a hazardous substance discharged prior to the
39 effective date of P.L.1976, c.141, pursuant to subsection b. of this
40 section, if, and to the extent that, he determines that adequate funds
41 from another source are not or will not be available; and provided
42 further, with regard to the cleanup and removal costs incurred for
43 discharges which occurred prior to the effective date of P.L.1976,
44 c.141, the administrator may not during any one-year period pay more
45 than \$18,000,000 in total or more than \$3,000,000 for any discharge

1 or related set or series of discharges.

2 e. Notwithstanding any other provisions of P.L.1976, c.141, the
3 administrator, after considering, among any other relevant factors, the
4 department's priorities for spending funds pursuant to P.L.1976, c.141,
5 and within the limits of available funds, shall make payments for the
6 restoration or replacement of, or connection to an alternative water
7 supply for, any private residential well destroyed, contaminated, or
8 impaired as a result of a discharge prior to the effective date of
9 P.L.1976, c.141; provided, however, total payments for said purpose
10 shall not exceed \$500,000 for the period between the effective date of
11 this subsection e. and January 1, 1983, and in any calendar year
12 thereafter.

13 f. Any expenditures made by the administrator pursuant to this
14 act shall constitute, in each instance, a debt of the discharger to the
15 fund. The debt shall constitute a lien on all property owned by the
16 discharger when a notice of lien, incorporating a description of the
17 property of the discharger subject to the cleanup and removal and an
18 identification of the amount of cleanup, removal and related costs
19 expended from the fund, is duly filed with the clerk of the Superior
20 Court. The clerk shall promptly enter upon the civil judgment or order
21 docket the name and address of the discharger and the amount of the
22 lien as set forth in the notice of lien. Upon entry by the clerk, the lien,
23 to the amount committed by the administrator for cleanup and
24 removal, shall attach to the revenues and all real and personal property
25 of the discharger, whether or not the discharger is insolvent.

26 The notice of lien filed pursuant to this subsection which affects
27 the property of a discharger subject to the cleanup and removal of a
28 discharge shall create a lien with priority over all other claims or liens
29 which are or have been filed against the property, except if the
30 property comprises six dwelling units or less and is used exclusively
31 for residential purposes, this notice of lien shall not affect any valid
32 lien, right or interest in the property filed in accordance with
33 established procedure prior to the filing of this notice of lien. The
34 notice of lien filed pursuant to this subsection which affects any
35 property of a discharger, other than the property subject to the cleanup
36 and removal, shall have priority from the day of the filing of the notice
37 of the lien over all other claims and liens filed against the property, but
38 shall not affect any valid lien, right, or interest in the property filed in
39 accordance with established procedure prior to the filing of a notice of
40 lien pursuant to this subsection.

41 g. In the event a vessel discharges a hazardous substance into
42 the waters of the State, the cleanup and removal and related costs
43 resulting from that discharge that constitute a maritime lien on the
44 discharging vessel pursuant to 33 U.S.C. §1321 or any other law, may
45 be recovered by the Department of Environmental Protection in an

1 action in rem brought in the district court of the United States. An
2 impoundment of a vessel resulting from this action shall continue until:

3 (1) the claim against the owner or operator of the vessel for the
4 cleanup and removal and related costs of the discharge is satisfied;

5 (2) the owner or operator of the vessel, or a representative of the
6 owner or operator, provides evidence of financial responsibility as
7 provided in section 2 of P.L.1991, c.58 (C.58:10-23.11g2) and
8 satisfactorily guarantees that these costs will be paid; or

9 (3) the impoundment is otherwise vacated by a court order. The
10 remedy provided in this subsection is in addition to any other remedy
11 or enforcement power that the department may have under any other
12 law.

13 Any action brought by the State pursuant to this subsection and
14 any impoundment of a vessel resulting therefrom shall not subject the
15 State to be in any way liable for a subsequent or continued discharge
16 of a hazardous substance from that vessel.

17 (cf: P.L.1991, c.373, s.14)

18

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

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

24 (1) The cost of restoring, repairing, or replacing any real or
25 personal property damaged or destroyed by a discharge, any income
26 lost from the time such property is damaged to the time such property
27 is restored, repaired or replaced, and any reduction in value of such
28 property caused by such discharge by comparison with its value prior
29 thereto;

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

32 (3) Loss of income or impairment of earning capacity due to
33 damage to real or personal property, including natural resources
34 destroyed or damaged by a discharge; provided that such loss or
35 impairment exceeds 10% of the amount which claimant derives, based
36 upon income or business records, exclusive of other sources of
37 income, from activities related to the particular real or personal
38 property or natural resources damaged or destroyed by such discharge
39 during the week, month or year for which the claim is filed;

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

43 (5) Interest on loans obtained or other obligations incurred by a
44 claimant for the purpose of ameliorating the adverse effects of a
45 discharge pending the payment of a claim in full as provided by this

1 act.

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

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

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

35 Where a person is liable for cleanup and removal costs as provided
36 in this paragraph, any expenditures made by the administrator for that
37 cleanup and removal shall constitute a debt of that person to the fund.
38 The debt shall constitute a lien on all property owned by that person
39 when a notice of lien identifying the nature of the discharge and the
40 amount of the cleanup, removal and related costs expended from the
41 fund is duly filed with the clerk of the Superior Court. The clerk shall
42 promptly enter upon the civil judgment or order docket the name and
43 address of the liable person and the amount of the lien as set forth in
44 the notice of lien. Upon entry by the clerk, the lien, to the amount
45 committed by the administrator for cleanup and removal, shall attach

1 to the revenues and all real and personal property of the liable person,
2 whether or not that person is insolvent.

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

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

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

27 (3) In addition to the persons liable pursuant to this
28 subsection, any person who owns real property acquired on or after
29 September 14, 1993 on which there has been a discharge prior to the
30 person's acquisition of that property and who knew or should have
31 known that a hazardous substance had been discharged at the real
32 property, shall be strictly liable, jointly and severally, without regard
33 to fault, for all cleanup and removal costs no matter by whom
34 incurred. Such person shall also be strictly liable, jointly and severally,
35 without regard to fault, for all cleanup and removal costs incurred by
36 the department or a local unit pursuant to subsection b. of section 7 of
37 P.L.1976, c.141 (C.58:10-23.11f). Nothing in this paragraph shall be
38 construed to alter liability of any person who acquired real property
39 prior to September 14, 1993.

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

45 (2) A person, including an owner or operator of a major facility,

1 who owns real property acquired [after the effective date of P.L.1993,
2 c.139 (C.13:1K-9.6 et al.)] at any time, on which there has been a
3 discharge, shall not be [considered a person in any way responsible]
4 liable to the State or to any other person for the cleanup and removal
5 of the discharged hazardous substance or for damages resulting from
6 the discharge pursuant to common law or pursuant to subsection c. of
7 this section, [unless] if that person can establish by a preponderance
8 of the evidence that all of the following apply:

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

11 (b) (i) at the time the person acquired the real property, the person
12 did not know and had no reason to know that any hazardous substance
13 had been discharged at the real property, [or] (ii) the person acquired
14 the real property by devise or succession, except that any other funds
15 or property received by that person from the deceased real property
16 owner who discharged a hazardous substance or was in any way
17 responsible for a hazardous substance, shall be made available to
18 satisfy the requirements of P.L.1976, c.141 (iii) the person complies
19 with the provisions of subsection f. of this section, or (iv) the person
20 complies with the provisions of subsection g. of this section;

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

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

25 To establish that a person had no reason to know that any
26 hazardous substance had been discharged for the purposes of this
27 paragraph (2), the person must have undertaken, at the time of
28 acquisition, all appropriate inquiry into the previous ownership and
29 uses of the property. For the purposes of this paragraph (2), all
30 appropriate inquiry shall mean the performance of a preliminary
31 assessment, and site investigation [() , if the preliminary assessment
32 indicates that a site investigation is necessary()], as defined in section
33 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance
34 with rules and regulations promulgated by the department defining
35 these terms.

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

39 (3) Notwithstanding the provisions of paragraph (2) of this
40 subsection to the contrary, if a person who owns real property obtains
41 actual knowledge of a discharge of a hazardous substance at the real
42 property during the period of that person's ownership and
43 subsequently transfers ownership of the property to another person
44 without disclosing that knowledge, the transferor shall be strictly liable
45 for the cleanup and removal costs of the discharge and no defense

1 under this subsection shall be available to that person.

2 (4) Any federal, State, or local governmental entity which acquires
3 ownership of real property through bankruptcy, tax delinquency,
4 abandonment, escheat, eminent domain, condemnation or any
5 circumstance in which the [government] governmental entity
6 involuntarily acquires title by virtue of its function as sovereign, or
7 where the governmental entity acquires the property by any measure
8 for the purpose of promoting the redevelopment of that property,
9 shall not be liable for the cleanup and removal costs of any discharge
10 which occurred or began prior to that ownership. This paragraph shall
11 not apply to any federal, State or local governmental entity which has
12 caused or contributed to the discharge of a hazardous substance.

13 [e. (1) If the Department of Environmental Protection issues a no
14 further action letter or approves a remedial action workplan after the
15 effective date of P.L.1996, c.62 (C.55:19-20 et al.) for a site at which
16 a discharge occurred prior to or after the effective date of P.L.1996,
17 c.62 (C.55:19-20 et al.), then any person who is not otherwise liable
18 for any discharge at the site which occurred prior to the department's
19 approval of the no further action letter or remedial action workplan
20 shall not be liable for the discharge based solely on that person
21 becoming an owner or operator of the site of the discharge after the
22 discharge has occurred. For the purposes of this paragraph, a site
23 shall constitute the real property defined in the remedial action
24 workplan or, if no remedial action workplan is required, the no further
25 action letter. The provisions of this paragraph shall only apply when
26 the site is located in a qualified municipality as defined pursuant to
27 section 3 of P.L.1996, c.62 (C.55:19-22) and there is continued
28 compliance with all of the conditions of the no further action letter, the
29 remedial action workplan and all applicable engineering and
30 institutional controls.

31 (2) The fund established pursuant to the "Spill Compensation and
32 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), shall not be
33 liable for any damages incurred by any person who is relieved from
34 liability pursuant to this subsection.] Deleted by amendment, P.L. __,
35 c. (now in the Legislature as this bill).

36 f. For the purposes of subparagraph (iii) of subparagraph (b)
37 of paragraph (2) of subsection d. of this section, the person must have
38 (1) acquired the property subsequent to a contaminant being
39 discharged on the site and which discharge was known at the time of
40 acquisition as a result of the appropriate inquiry, as defined in
41 paragraph (2) of subsection d. of this section, (2) performed a remedial
42 investigation for all soils, (3) performed a remedial action to prevent
43 or stop any immediate, direct, or imminent threats to the public health
44 or the environment, (4) performed a remedial action, consistent with
45 section 35 of P.L.1993, c.139 (C.58:10B-12), to prevent direct

1 contact with contamination in surface soils consistent with the planned
2 use of the property and under a Memorandum of Agreement or
3 Administrative Consent Order with the Department of Environmental
4 Protection, (5) established all engineering and institutional controls as
5 may be required pursuant sections 35 and 36 of P.L.1993, c.139
6 (C.58:10B-12 and 58:10B-13), and (6) complied with the remedial
7 action workplan approved by the department and any conditions of a
8 no further action letter issued by the department. In order for a person
9 to comply with the provisions of this subsection, the person must
10 begin all necessary parts of a remediation within a reasonable amount
11 of time and complete the remediation within the reasonable time
12 frames established by the department. A person who complies with
13 the provisions of this subsection shall be issued a no further action
14 letter by the department and shall not be liable for any changes in a
15 remediation standard or for the subsequent discovery of a contaminant
16 at the site that was discharged prior to the person acquiring the
17 property. Compliance with the provisions of this subsection shall not
18 relieve the person of any liability for a discharge that occurs at that
19 property after the person acquires the property, for any actions that
20 person negligently takes that aggravates or contributes to a discharge
21 of a contaminant, or if that person fails to maintain the institutional or
22 engineering controls on the property.

23 g. For the purposes of subparagraph (iv) of subparagraph (b)
24 of paragraph (2) of subsection d. of this section, (1) the person must
25 have acquired the property subsequent to a contaminant being
26 discharged on the site, (2) the Department of Environmental
27 Protection had previously issued a no further action letter for all areas
28 of concern on the site, and (3) all institutional and engineering controls
29 are maintained on the property pursuant to the conditions imposed
30 upon the department. A person who complies with the provisions of
31 this subsection shall not be liable for any changes in a remediation
32 standard or for the subsequent discovery of a contaminant at the site
33 that was discharged prior to the person acquiring the property.
34 Compliance with the provisions of this subsection shall not relieve the
35 person of any liability for a discharge that occurs at that property after
36 the person acquires the property, for any actions that person
37 negligently takes that aggravate or contribute to a discharge of a
38 contaminant, or if that person fails to maintain the institutional and
39 engineering controls on the property.

40 (cf: P.L.1996, c.62, s.56)

41

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

44 36. a. When real property is remediated to a nonresidential soil
45 remediation standard or engineering or institutional controls are used

1 in lieu of remediating a site to meet an established remediation
2 standard for soil, groundwater, or surface water, the department shall,
3 as a condition of the use of that standard or control measure:

4 (1) require the establishment of any engineering or institutional
5 controls the department determines are reasonably necessary to
6 prevent exposure to the contaminants, require maintenance, as
7 necessary, of those controls, and require the restriction of the use of
8 the property in a manner that prevents exposure;

9 (2) require, with the consent of the owner of the real property, the
10 recording with the office of the county recording officer, in the county
11 in which the property is located, a notice to inform prospective holders
12 of an interest in the property that contamination exists on the property
13 at a level that may statutorily restrict certain uses of or access to all or
14 part of that property, a delineation of those restrictions, a description
15 of all specific engineering or institutional controls at the property that
16 exist and that shall be maintained in order to prevent exposure to
17 contaminants remaining on the property, and the written consent to the
18 notice by the owner of the property;

19 (3) require a notice to the governing body of each municipality in
20 which the property is located that contaminants will exist at the
21 property above residential use soil remediation standards or any other
22 remediation standards and specifying the restrictions on the use of or
23 access to all or part of that property and of the specific engineering or
24 institutional controls at the property that exist and that shall be
25 maintained;

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

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

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

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

44 c. Whenever engineering or institutional controls on property as
45 provided in subsection a. of this section are no longer required, or

1 whenever the engineering or institutional controls are changed because
2 of the performance of subsequent remedial activities, a change in
3 conditions at the site, or the adoption of revised remediation
4 standards, the department shall require that the owner or operator of
5 that property record with the office of the county recording officer a
6 notice that the use of the property is no longer restricted or delineating
7 the new restrictions. The department shall also require that the owner
8 or operator notify, in writing, the municipality in which the property
9 is located of the removal or change of the restrictive use conditions.

10 d. The owner or lessee of any real property, or any person
11 operating a business on real property, which has been remediated to
12 a nonresidential use soil remediation standard or on which the
13 department has allowed engineering or institutional controls for soil,
14 groundwater, or surface water to protect the public health, safety, or
15 the environment, as applicable, shall maintain the engineering or
16 institutional controls as required by the department. An owner, lessee,
17 or operator who takes any action that results in the improper alteration
18 or removal of engineering or institutional controls or who fails to
19 maintain the engineering or institutional controls as required by the
20 department, shall be subject to the penalties and actions set forth in
21 section 22 of P.L.1976, c.141 (C.58:10-23.11u). The provisions of
22 this subsection shall not apply if a notification received pursuant to
23 subsection b. of this section authorizes all restrictions or controls to
24 be removed from the subject property.

25 e. Notwithstanding the provisions of any other law, or any rule,
26 regulation, or order adopted pursuant thereto to the contrary,
27 whenever contamination at a property is remediated in compliance
28 with [any] the applicable soil, groundwater, or surface water
29 remediation standards adopted by the department pursuant to section
30 35 of P.L.1993, c.139 (C.58:10B-12) that were in effect at the
31 completion of the remediation or until the department adopts such
32 standards, the standards approved by the department for the property
33 at the time of remediation, [the owner or operator of the property or
34 person performing the remediation,] no person except as otherwise
35 provided in this section, shall [not] be liable for the cost of any
36 additional remediation that may be required [by] upon a subsequent
37 adoption by the department of a more stringent remediation standard
38 for a particular contaminant or upon the subsequent discovery of
39 contamination that existed on the property at the time of the
40 remediation. [Upon the adoption of a regulation that amends a
41 remediation standard, only a person who is liable to clean up and
42 remove that contamination pursuant to section 8 of P.L.1976, c.141
43 (C.58:10-23.11g) shall be liable for any additional remediation costs
44 necessary to bring the site into compliance with the new remediation
45 standards except that no person shall be so liable unless the difference

1 between the new remediation standard and the level or concentration
2 of a contaminant at the property differs by an order of magnitude.]

3 Nothing in the provisions of this subsection shall be construed to
4 limit the liability of any person who is liable to remediate the
5 contamination and at the time of the remediation knows of
6 contamination existing on the property and fails to remediate or
7 disclose it, or the liability of the discharger for the cost of any
8 additional remediation required due to the subsequent discovery of
9 contamination that existed on the property at the time of the
10 remediation.

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

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

19 f. Whenever the department approves or has approved the use of
20 engineering or institutional controls for the remediation of soil,
21 groundwater, or surface water, to protect public health, safety or the
22 environment in lieu of remediating a site to a condition that meets an
23 established residential remediation standard, the department shall not
24 require additional remediation of that site unless the engineering or
25 institutional controls no longer are protective of public health, safety,
26 or the environment.

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

28

29 5. This act shall take effect immediately.

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34 Limits liability for hazardous substances in certain circumstances.