

SENATE, No. 1689

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 18, 1996

By Senator CODEY

1 AN ACT concerning liability for discharges of hazardous substances  
2 and amending P.L.1976, c.141.

3

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 is  
15 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). Where a person is  
34 liable for cleanup and removal costs as provided in this paragraph, any  
35 expenditures made by the administrator for that cleanup and removal  
36 shall constitute a debt of that person to the fund. The debt shall  
37 constitute a lien on all property owned by that person when a notice  
38 of lien identifying the nature of the discharge and the amount of the  
39 cleanup, removal and related costs expended from the fund is duly  
40 filed with the clerk of the Superior Court. The clerk shall promptly  
41 enter upon the civil judgment or order docket the name and address of  
42 the liable person and the amount of the lien as set forth in the notice  
43 of lien. Upon entry by the clerk, the lien, to the amount committed by  
44 the administrator for cleanup and removal, shall attach to the revenues  
45 and all real and personal property of the liable person, whether or not  
46 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 (3) In addition to the persons liable pursuant to this subsection, any  
26 person who owns real property acquired on or after September 14,  
27 1993 on which there has been a discharge prior to the person's  
28 acquisition of that property and the person knew or should have  
29 known that a hazardous substance had been discharged at the real  
30 property, shall be strictly liable, jointly and severally, without regard  
31 to fault, for all cleanup and removal costs no matter by whom  
32 incurred. Such person shall also be strictly liable, jointly and severally,  
33 without regard to fault, for all cleanup and removal costs incurred by  
34 the department or a local unit pursuant to subsection b. of section 7 of  
35 P.L.1976, c.141 (C.58:10-23.11f). Nothing in this paragraph shall be  
36 construed to alter liability of any person who acquired real property  
37 prior to September 14, 1993.

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

43 (2) A person, including an owner or operator of a major facility,  
44 who owns real property acquired on or after [the effective date of  
45 P.L.1993, c.139 (C.13:1K-9.6 et al.),] September 14, 1993 on which  
46 there has been a discharge, shall not be [considered a person in any

1 way responsible] liable to the State or to any other person for the  
2 discharged hazardous substance pursuant to subsection c. of this  
3 section or pursuant to common law, [unless] if that person can  
4 establish by a preponderance of the evidence that all of the following  
5 apply:

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

8 (b) (i) at the time the person acquired the real property, the person  
9 did not know and had no reason to know that any hazardous substance  
10 had been discharged at the real property, or (ii) the person acquired  
11 the real property by devise or succession, except that any other funds  
12 or property received by that person from the deceased real property  
13 owner who discharged a hazardous substance or was in any way  
14 responsible for a hazardous substance, shall be made available to  
15 satisfy the requirements of P.L.1976, c.141;

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

18 (d) the person gave notice of the discharge to the department or  
19 other appropriate governmental entity upon actual discovery of that  
20 discharge or the department or appropriate governmental entity had  
21 prior knowledge of the discharge.

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

33 Nothing in this paragraph (2) shall be construed to alter liability of  
34 any person who acquired real property prior to [the effective date of  
35 P.L.1993, c.139 (C.13:1K-9.6 et al.)] September 14, 1993.

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

44 (4) Any federal, State, or local governmental entity which acquires  
45 ownership of real property through bankruptcy, tax delinquency,  
46 abandonment, escheat, eminent domain, condemnation or any

1 circumstance in which the [government] governmental entity  
2 involuntarily acquires title by virtue of its function as sovereign, shall  
3 not be liable for the cleanup and removal costs of any discharge which  
4 occurred or began prior to that ownership. This paragraph shall not  
5 apply to any federal, State or local governmental entity which has  
6 caused or contributed to the discharge of a hazardous substance.

7 (5) An organization that is exempt from federal taxation pursuant  
8 to section 501 (c)(3) of the Internal Revenue Code of 1986, 26 U.S.C.  
9 §501, because it is organized for religious, charitable, educational, or  
10 other enumerated purposes, who owns real property on which there  
11 has been a discharge, shall not be liable to the State or to any other  
12 person for the discharged hazardous substance pursuant to this section  
13 or pursuant to common law, if that organization can establish by a  
14 preponderance of the evidence that all of the following apply:

15 (a) the organization was exempt from federal taxation at the time  
16 it acquired the real property:

17 (b) the organization did not discharge the hazardous substance; and

18 (c) the organization gave notice of the discharge to the department  
19 upon actual discovery of that discharge.

20 The provisions of this paragraph shall apply retroactively to any  
21 administrative or judicial action commenced before the effective date  
22 of P.L. , c. (C. ) (now before the Legislature as this bill),  
23 unless a final judgment or final court approval of a settlement  
24 agreement has been issued in an administrative or judicial action prior  
25 to the effective date of P.L. , c. (now before the Legislature as  
26 this bill). If a final judgment has been entered or a settlement has  
27 been approved by a court prior to the effective date of P.L. , c.  
28 (now before the Legislature as this bill), that does not resolve all  
29 contested issues, this paragraph shall apply to all contested issues not  
30 expressly resolved by the judgment or settlement agreement.

31 e. (1) If the Department of Environmental Protection issues a no  
32 further action letter or approves a remedial action workplan after [the  
33 effective date of P.L.1996, c.62 (C.55:19-20 et al.)] September 10,  
34 1996 for a site at which a discharge occurred prior to or after the  
35 [effective date of P.L.1996, c.62 (C.55:19-20 et al.)] September 10,  
36 1996, then any person who is not otherwise liable for any discharge at  
37 the site which occurred prior to the department's approval of the no  
38 further action letter or remedial action workplan shall not be liable for  
39 the discharge based solely on that person becoming an owner or  
40 operator of the site of the discharge after the discharge has occurred.  
41 For the purposes of this paragraph, a site shall constitute the real  
42 property defined in the remedial action workplan or, if no remedial  
43 action workplan is required, the no further action letter. The  
44 provisions of this paragraph shall only apply when the site is located  
45 in a qualified municipality as defined pursuant to section 3 of  
46 P.L.1996, c.62 (C.55:19-22) and there is continued compliance with

1 all of the conditions of the no further action letter, the remedial action  
2 workplan and all applicable engineering and institutional controls.

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

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

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9 2. This act shall take effect immediately.

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12 STATEMENT

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14 This bill provides that religious, charitable, educational and similar  
15 nonprofit organizations that are exempt from federal taxation are not  
16 liable for hazardous substances discharges on their real property for  
17 which they are not otherwise responsible. The bill applies  
18 retroactively and applies to causes of action brought pursuant to both  
19 the "Spill Compensation and Control Act" and common law.

20 The bill also makes certain changes in order to clarify existing  
21 provisions of law.

22 The intent of this bill is to remove a potential financial hardship  
23 from these nonprofit organizations for contamination that they did not  
24 cause. To hold them liable for this contamination could potentially  
25 ruin many nonprofit organizations and divert moneys from their  
26 intended charitable purposes.

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31 Exempts certain nonprofit organizations from hazardous substance  
32 discharge liability.