

LEGISLATIVE HISTORY CHECKLIST

NJSA: 58:10-23.11a

(Hazardous substance cleanup--indemnify contractors)

LAWS OF: 1986

CHAPTER 59

BILL NO: A1990

Sponsor(s): Martin

Date Introduced: February 13, 1986

Committee: Assembly: Environment Quality

Senate: Energy & Environment

Amended during passage: Yes Assembly Committee Substitute (OCR) enacted. Substituted for S1681 (not attached since identical to A1990).

Date of Passage: Assembly: March 13, 1986

Senate: May 15, 1986

Date of Approval: July 28, 1986

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

See newspaper clipping--attached:

"Waste cleanup bill advances," 3-16-86 Bergen Record.

"Law enacted allowing state . . . toxic waste clean-ups," 7-30-86 Star Ledger.

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ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 1990**  
**STATE OF NEW JERSEY**

ADOPTED MARCH 6, 1986

Sponsored by Assemblyman MARTIN

AN ACT to authorize the indemnification and legal defense of certain persons against claims or causes of action for damages arising in the course of rendering hazardous substance cleanup or mitigation services or participating in response actions, and amending and supplementing P. L. 1976, c. 141.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

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

3 2. The Legislature finds and declares: that New Jersey's lands  
4 and waters constitute a unique and delicately balanced resource;  
5 that the protection and preservation of these lands and waters  
6 promotes the health, safety and welfare of the people of this State;  
7 that the tourist and recreation industry dependent on clean waters  
8 and beaches is vital to the economy of this State; that the State is  
9 the trustee, for the benefit of its citizens, of all natural resources  
10 within its jurisdiction; and that the storage and transfer of  
11 petroleum products and other hazardous substances between  
12 vessels, between facilities and vessels, and between facilities,  
13 whether onshore or offshore, is a hazardous undertaking and  
14 imposes risks of damage to persons and property within this State.

15 The Legislature finds and declares that the discharge of petro-  
16 leum products and other hazardous substances within or outside  
17 the jurisdiction of this State constitutes a threat to the economy  
18 and environment of this State. The Legislature intends by the  
19 passage of this act to exercise the powers of this State to control  
20 the transfer and storage of hazardous substances and to provide

**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 printed in italics thus is new matter.**

**Matter enclosed in asterisks or stars has been adopted as follows:**

**\*—Senate amendments adopted May 5, 1986.**

21 liability for damage sustained within this State as a result of any  
22 discharge of said substances, by requiring the prompt containment  
23 and removal of such pollution and substances, and to provide a  
24 fund for swift and adequate compensation to resort businesses and  
25 other persons damaged by such discharge *and for the defense and*  
26 *indemnification of certain persons under contract with the State or*  
27 *federal government for claims or actions resulting from the provi-*  
28 *sion of services to mitigate or cleanup a release or discharge of*  
29 *hazardous substances.*

1 2. Section 3 of P. L. 1976, c. 141 (C. 58:10-23.11b) is amended to  
2 read as follows:

3 3. Unless the context clearly indicates otherwise, the following  
4 terms shall have the following meanings:

5 a. "Administrator" means the chief executive of the New Jersey  
6 Spill Compensation Fund;

7 b. "Barrel" means 42 United States gallons or 159.09 liters or  
8 an appropriate equivalent measure set by the director for hazard-  
9 ous substances which are other than fluid or which are not com-  
10 monly measured by the barrel;

11 c. "Board" means a board of arbitration convened by the  
12 administrator to settle disputed disbursements from the fund;

13 d. "Cleanup and removal costs" means all costs associated with  
14 a discharge incurred by the State or its political subdivisions or  
15 their agents or any person with written approval from the depart-  
16 ment in the (1) removal or attempted removal of hazardous  
17 substances or, (2) taking of reasonable measures to prevent or  
18 mitigate damages to the public health, safety, or welfare, including  
19 but not limited to, public and private property, shorelines, beaches,  
20 surface waters, water columns and bottom sediments, soils and  
21 other affected property, including wildlife and other natural  
22 resources, *and shall include costs incurred by the department for*  
23 *the indemnification and legal defense of contractors pursuant to*  
24 *subsection a. of section 7 of this act, subject to the appropriation*  
25 *by law of monies from the General Fund to the fund to defray*  
26 *these costs;*

27 e. "Commissioner" means the Commissioner of Environmental  
28 Protection;

29 f. "Department" means the Department of Environmental  
30 Protection;

31 g. "Director" means the Director of the Division of Taxation in  
32 the Department of the Treasury;

33 h. "Discharge" means any intentional or unintentional action

34 or omission resulting in the releasing, spilling, leaking, pumping,  
35 pouring, emitting, emptying or dumping of hazardous substance  
36 into the waters or onto the lands of the State, or into waters out-  
37 side the jurisdiction of the State when damage may result to the  
38 lands, waters or natural resources within the jurisdiction of the  
39 State;

40 i. "Fair market value" means the invoice price of the hazardous  
41 substances transferred including transportation charges; but where  
42 no price is so fixed, "fair market value" shall mean the market  
43 price as of the close of the nearest day to the transfer paid for  
44 similar hazardous substances as shall be determined by the tax-  
45 payer pursuant to rules of the director;

46 j. "Fund" means the New Jersey Spill Compensation Fund;

47 k. "Hazardous substances" means such elements and com-  
48 pounds, including petroleum products, which are defined as such  
49 by the department, after public hearing, and which shall be con-  
50 sistent to the maximum extent possible with, and which shall  
51 include, the list of hazardous substances adopted by the federal  
52 Environmental Protection Agency pursuant to Section 311 of the  
53 federal Water Pollution Control Act Amendments of 1972 as  
54 amended by the Clean Water Act of 1977 (33 U. S. C. § 1251 et seq.)  
55 and the list of toxic pollutants designated by Congress or the  
56 EPA pursuant to Section 307 of that act; provided, however that  
57 sewage and sewage sludge shall not be considered as hazardous  
58 substances for the purposes of this act;

59 l. "Major facility" includes but is not limited to any refinery,  
60 storage or transfer terminal, pipeline, deep water port, drilling  
61 platform or any appurtenance related to any of the preceding that  
62 is used or is capable of being used to refine, produce, store, handle,  
63 transfer, process or transport hazardous substances. A vessel shall  
64 be considered a major facility only when hazardous substances are  
65 transferred between vessels.

66 A facility shall not be considered a major facility for the purpose  
67 of this act unless it has total combined above-ground or buried  
68 storage capacity of—

69 (1) 50,000 gallons or more for hazardous substances which are  
70 other than petroleum or petroleum products, or

71 (2) 400,000 gallons or more for hazardous substances of all kinds.

72 For the purposes of this definition, "storage capacity" shall  
73 mean only that capacity which is dedicated to, used for or intended  
74 to be used for storage of hazardous substances. Where appropriate  
75 to the nature of the facility, storage capacity may be determined

76 by the intended or actual use of open land or unenclosed space as  
77 well as by the capacities of tanks or other enclosed storage spaces.

78 m. "Natural resources" means all land, fish, shellfish, wildlife,  
79 biota, air, waters and other such resources owned, managed, held  
80 in trust or otherwise controlled by the State;

81 n. "Owner" or "operator" means with respect to a vessel,  
82 any person owning, operating or chartering by demise such vessel;  
83 with respect to any major facility, any person owning such facility,  
84 or operating it by lease, contract or other form of agreement; with  
85 respect to abandoned or derelict major facilities, the person who  
86 owned or operated such facility immediately prior to such abandon-  
87 ment, or the owner at the time of discharge;

88 o. "Person" means public or private corporations, companies,  
89 associations, societies, firms, partnerships, joint stock companies,  
90 individuals, the United States, the State of New Jersey and any  
91 of its political subdivisions or agents;

92 p. "Petroleum" or "petroleum products" means oil or petro-  
93 leum of any kind and in any form including, but not limited to,  
94 oil, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse,  
95 oil mixed with other wastes, crude oils, and substances or additives  
96 to be utilized in the refining or blending of crude petroleum or  
97 petroleum stock in this State; however, any compound designated  
98 by specific chemical name to the list of hazardous substances  
99 adopted by the department pursuant to subsection 3 k. shall not  
100 be considered petroleum or a petroleum product for the purposes  
101 of this act, unless such compound is to be utilized in the refining  
102 or blending of crude petroleum or petroleum stock in this State;

103 q. "Taxpayer" means the owner or operator of a major facility  
104 subject to the tax provisions of this act;

105 r. "Tax period" means every calendar month on the basis of  
105a which the taxpayer is required to report under this act;

106 s. "Transfer" means unloading or offloading between major  
107 facilities and vessels, or vessels and major facilities, and from  
108 vessel to vessel or major facility to major facility, except for fuel-  
109 or refueling operations and except that with regard to the move-  
110 ment of hazardous substances other than petroleum, it shall also  
111 include any unloading of or offloading from a major facility;

112 t. "Vessel" means every description of water craft or other  
113 contrivance that is practically capable of being used as a means  
114 of commercial transportation of hazardous substances upon the  
115 water, whether or not self-propelled;

116 u. "Waters" means the ocean and its estuaries to the seaward  
117 limit of the State's jurisdiction, all springs, streams and bodies of

118 surface or groundwater, whether natural or artificial, within the  
119 boundaries of this State;

120 v. "Act of God" means an act exclusively occasioned by an  
121 unanticipated grave natural disaster without the interference of  
122 any human agency.

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

3 7. a. Whenever any hazardous substance is discharged, the de-  
4 partment may, in its discretion, act to remove or arrange for the  
5 removal of such discharge or may direct the discharger to remove,  
6 or arrange for the removal of, such discharge. If the discharge  
7 occurs at any hazardous or solid waste disposal facility, the de-  
8 partment may order the facility closed for the duration of the  
9 removal operations. The department may monitor the discharger's  
10 compliance with any such directive. Any discharger who fails to  
11 comply with such a directive shall be liable to the department in  
12 an amount equal to three times the cost of such removal, and  
13 shall be subject to the revocation or suspension of any license or  
14 permit he holds authorizing him to operate a hazardous or solid  
15 waste disposal facility.

16 Removal of hazardous substances and actions to minimize  
17 damage from discharges shall, to the greatest extent possible, be  
18 in accordance with the National Contingency Plan for removal of  
19 oil and hazardous substances established pursuant to section 311  
20 (c) (2) of the federal Water Pollution Control Act Amendments  
21 of 1972 (P. L. 92-500, 33 U. S. C. § 1251 et seq.).

22 Whenever the department acts to remove a discharge or con-  
23 tracts to secure prospective removal services, it is authorized to  
24 draw upon the money available in the fund. Such moneys shall be  
25 used to pay promptly for all cleanup costs incurred by the depart-  
26 ment in removing or in minimizing damage caused by such dis-  
27 charge.

28 *The department may agree to defend and indemnify a contractor*  
29 *against claims, causes of action, demands, costs, or judgments*  
30 *made against a contractor arising as a direct result of the con-*  
31 *tractor's provision of hazardous substance cleanup or mitigation*  
32 *services pursuant to a contract with the department. This legal*  
33 *defense and indemnification shall not apply to claims, causes of*  
34 *action, to have arisen from gross negligence, willful misconduct,*  
35 *fraud, intentional tort, bad faith, or criminal misconduct, or to*  
36 *claims for punitive or exemplary damage. The department shall*  
37 *agree to provide legal defense and indemnification to a contractor*  
38 *only if it determines that adequate environmental liability insur-*

39 *ance is not available or not available at a reasonable cost to the*  
40 *contractor. The department shall agree to provide legal defense*  
41 *and indemnification to a contractor pursuant to terms and limi-*  
42 *tations which it deems appropriate. Any agreement by the de-*  
43 *partment to defend or indemnify a contractor shall not bar the*  
44 *department from the exercise of any available legal remedies for*  
45 *the enforcement of the contract between the department and the*  
46 *contractor, the recovery of damages to which the department may*  
47 *be entitled resulting from a contractor's failure to perform the*  
48 *contract, or for the recovery of funds expended for the defense*  
49 *of a contractor if the defense was undertaken in response to a*  
50 *claim or cause of action brought against the contractor which is*  
51 *proven to have arisen from gross negligence, willful misconduct,*  
52 *fraud, intentional tort, bad faith, or criminal misconduct. No*  
53 *person other than a contractor shall have the right to enforce*  
54 *any agreement for defense and indemnification between a con-*  
55 *tractor and the department. \*The department shall not enter into*  
56 *an agreement to provide legal defense and indemnification to a*  
57 *contractor after January 1, 1988.\* For the purposes of this subsec-*  
57A *tion, "Contractor" means a person providing services to mitigate*  
57B *or cleanup a discharge or release or threatened discharge or release*  
58 *of a hazardous substance in this State pursuant to P. L. 1976,*  
59 *c. 141 (C. 58:10-23.11 et seq.) or the "Comprehensive Environ-*  
60 *mental Response, Compensation and Liability Act of 1980." Pub.*  
61 *L. 96-510 (42 U. S. C. 9601 et seq.).*

62 Nothing in this section is intended to preclude removal and  
63 cleanup operations by any person threatened by such discharges,  
64 provided such persons coordinate and obtain approval for such  
65 actions with ongoing State or federal operations. No action taken  
66 by any person to contain or remove a discharge shall be construed  
67 as an admission of liability for said discharge. No person who  
68 renders assistance in containing or removing a discharge shall be  
69 liable for any civil damages to third parties resulting solely from  
70 acts or omissions of such person in rendering such assistance,  
71 except for acts or omissions of gross negligence or willful mis-  
72 conduct. In the course of cleanup operations, no person shall dis-  
73 charge any detergent into the waters of this State without prior  
74 authorization of the commissioner.

75 b. Notwithstanding any other provisions of P. L. 1976, c. 141  
76 (C. 58:10-23.11 et seq.), the department, subject to the approval  
77 of the administrator with regard to the availability of funds  
78 therefor, may remove or arrange for the removal of any haz-  
79 ardous substance which:

80 (1) Has not been discharged from a grounded or disabled ves-  
81 sel, if the department determines that such removal is necessary  
82 to prevent an imminent discharge of such hazardous substance; or

83 (2) Has not been discharged, if the department determines that  
84 such substance is not satisfactorily stored or contained and said  
85 substance possesses any one or more of the following character-  
86 istics:

87 (a) Explosiveness;

88 (b) High flammability;

89 (c) Radioactivity;

90 (d) Chemical properties which in combination with any dis-  
91 charged hazardous substance at the same storage facility would  
92 create a substantial risk of imminent damage to public health  
93 or safety or an imminent and severe damage to the environment;

94 (e) Is stored in a container from which its discharge is im-  
95 minent as a result of contact with a hazardous substance which  
96 has already been discharged and such additional discharge would  
97 create a substantial risk of imminent damage to public health or  
98 safety or imminent and severe damage to the environment; or

99 (f) High toxicity and is stored or being transported in a con-  
100 tainer or motor vehicle, truck, railcar or other mechanized con-  
101 veyance from which its discharge is imminent as a result of the  
102 significant deterioration or the precarious location of the con-  
103 tainer, motor vehicle, truck, railcar or other mechanized convey-  
104 ance, and such discharge would create a substantial risk of im-  
105 minent damage to public health or safety or imminent and severe  
106 damage to the environment; or

107 (3) Has been discharged prior to the effective date of P. L.  
108 1976, c. 141.

109 c. If and to the extent that he determines that funds are avail-  
110 able, the administrator shall approve and make payments for any  
111 cleanup and removal costs incurred by the department for the  
112 removal of a hazardous substance other than petroleum as autho-  
113 rized by subsection b. of this section; provided that in determining  
114 the availability of funds, the administrator shall not include as  
115 available funds revenues realized or to be realized from the tax  
116 on the transfer of petroleum, to the extent that such revenues  
117 result from a tax levied at a rate in excess of \$0.01 per barrel,  
118 pursuant to subsection 9b. of P. L. 1976, c. 141 (C. 58:10-23.11h),  
119 unless the administrator determines that the sum of claims paid  
120 by the fund on behalf of petroleum discharges or removals plus  
121 pending reasonable claims against the fund on behalf of petroleum



122 discharges or removals is greater than 30% of the sum of all  
123 claims paid by the fund plus all pending reasonable claims against  
124 the fund.

125 d. The administrator may only approve and make payments for  
126 any cleanup and removal costs incurred by the department for  
127 the removal of a hazardous substance discharged prior to the  
128 effective date of P. L. 1976, c. 141, pursuant to subsection b. of  
129 this section, if, and to the extent that, he determines that ade-  
130 quate funds from another source are not or will not be available;  
131 and further provided, with regard to the cleanup and removal  
132 costs incurred for discharges which occurred prior to the effective  
133 date of P. L. 1976, c. 141, the administrator may not during any  
134 year period pay more than \$18,000,000.00 in total or more than  
135 \$3,000,000.00 for any discharge or related set or series of dis-  
136 charges.

137 Notwithstanding any other provisions of P. L. 1976, c. 141,  
138 the administrator, after considering, among any other relevant  
139 factors, the department's priorities for spending funds pursuant  
140 to P. L. 1976, c. 141, and within the limits of available funds,  
141 shall make payments for the restoration or replacement of, or  
142 connection to an alternative water supply for, any private resi-  
143 dential well destroyed, contaminated, or impaired as a result  
144 of a discharge prior to the effective date of P. L. 1976, c. 141,  
145 provided however total payments for said purpose shall not exceed  
146 \$500,000.00 for the period between the effective date of this sub-  
147 section e. and January 1, 1983, and in any calendar year there-  
148 after.

149 f. Any expenditures made by the administrator pursuant to  
150 this act shall constitute in each instance, a debt of the discharger  
151 to the fund. The debt shall constitute a lien on all property owned  
152 by the discharger when a notice of lien, incorporating a descrip-  
153 tion of the property of the discharger subject to the cleanup and  
154 removal and an identification of the amount of cleanup, removal  
155 and related costs expended from the fund is duly filed with the  
156 clerk of the Superior Court. The clerk shall promptly enter upon  
157 the civil judgment or order docket the name and address of the  
158 discharger and the amount of the lien as set forth in the notice  
159 of lien. Upon entry by the clerk, the lien, to the amount com-  
160 mitted by the administrator for cleanup and removal, shall attach  
161 to the revenues and all real and personal property of the dis-  
162 charger, whether or not the discharger is insolvent.

163 The notice of lien filed pursuant to this subsection which affects

164 the property of a discharger subject to the cleanup and removal  
165 of a discharge shall create a lien with priority over all other  
166 claims or liens which are or have been filed against the property,  
167 except if the property comprises six dwelling units or less and  
168 is used exclusively for residential purposes, this notice of lien  
169 shall not affect any valid lien, right or interest in the property  
170 filed in accordance with established procedure prior to the filing  
171 of this notice of lien. The notice of lien filed pursuant to this sub-  
172 section which affects any property of a discharger other than the  
173 property subject to the cleanup and removal, shall have priority  
174 from the day of the filing of the notice of the lien over all other  
175 claims and liens filed against the property, but shall not affect any  
176 valid lien, right, or interest in the property filed in accordance  
177 with established procedure prior to the filing of a notice of lien  
178 pursuant to this subsection.

1 4. Section 16 of P. L. 1976, c. 141 (C. 58:10-23.11o) is amended  
2 to read as follows:

3 16. Moneys in the New Jersey Spill Compensation Fund shall  
4 be disbursed by the administrator for the following purposes and  
5 no others:

6 (1) Costs incurred under section 7 of this act;

7 (2) Damages as defined in section 8 of this act;

8 (3) Such sums as may be necessary for research on the preven-  
9 tion and the effects of spills of hazardous substances on the marine  
10 environment and on the development of improved cleanup and  
11 removal operations as may be appropriated by the Legislature;  
12 provided, however, that such sums shall not exceed the amount of  
13 interest which is credited to the fund;

14 (4) Such sums as may be necessary for the boards, general  
15 administration of the fund, equipment and personnel costs of the  
16 department and any other State agency related to the enforcement  
17 of this act as may be appropriated by the Legislature;

18 (5) Such sums as may be appropriated by the Legislature for  
19 research and demonstration programs concerning the causes and  
20 abatement of ocean pollution; provided, however, that such sums  
21 shall not exceed the amount of interest which is credited to the  
22 fund.

23 (6) Such sums as may be requested by the commissioner, up  
24 to a limit of \$400,000.00 per year, to cover the costs associated  
25 with the administration of the "Environmental Cleanup Respon-  
26 sibility Act," P. L. 1983, c. 330 (C. 13:1K-6 *et al.*) [(now pending  
27 before the Legislature as Assembly Committee Substitute for  
28 Assembly Bill No. 1231 of 1982.)]

29     (7) *Costs attributable to the department's obligation to defend*  
30 *and indemnify a contractor pursuant to subsection a of section 7*  
31 *of this act, subject to the appropriation by law of monies from*  
32 *the General Fund to the fund to defray these costs.*

33     The Treasurer may invest and reinvest any moneys in said fund  
34 in legal obligations of the United States, this State or any of its  
35 political subdivisions. Any income or interest derived from such  
36 investment shall be included in the fund.

1     5. (New section) The payment of any amount of money owed  
2 by the department for the cost of legal defense or indemnification  
3 provided to a contractor pursuant to the provisions of section 7  
4 of P. L. 1976, c. 141 (C. 58:10-23.11f \***[et seq.]**\*) shall be contin-  
5 gent on the appropriation by law of monies from the General Fund  
6 to the New Jersey Spill Compensation Fund to defray the amount  
7 incurred by the department for legal defense and indemnification.

1     \*6. (New section) *Within one year of the effective date of this*  
2 *act the Department of Environmental Protection shall submit a*  
3 *report to the Governor and the Legislature outlining the number*  
4 *and nature of the department's agreements to defend and indem-*  
5 *nify contractors pursuant to section 7 of P. L. 1976, c. 141 (C.*  
6 *58:10-23.11).*\*

1     \***[6.]**\* \*7.\* This act shall take effect immediately, and shall  
2 apply to contracts entered into prior to the effective date of this  
3 act on which work is still in progress on the effective date of this  
4 act and to contracts entered into on the effective date of this act.

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**ASSEMBLY, No. 1990**  

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**STATE OF NEW JERSEY**  

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INTRODUCED FEBRUARY 13, 1986

By Assemblyman MARTIN

AN ACT to provide for the indemnification or partial indemnification and legal defense of certain persons against certain claims or causes of action for damages arising in the course of rendering hazardous substance cleanup or mitigation services or participating in response actions, establishing the Environmental Liability Indemnity Fund, providing for appropriations from the General Fund to the Environmental Liability Indemnity Fund, and supplementing Title 13 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. a. The State of New Jersey, using moneys from the "Environmental  
2 Liability Indemnity Fund" established pursuant to section 2  
3 of this act, shall indemnify or partially indemnify and defend, or  
4 provide for the defense of, any person registered by the Department  
5 of Environmental Protection, pursuant to this subsection, to  
6 provide services to cleanup or mitigate, or participate in response  
7 actions to, the release or discharge, or threatened release or discharge,  
8 of a hazardous substance in this State pursuant to P. L. 1976, c. 141 (C. 58:10-23.11 et seq.), P. L. 1981, c. 278 (C. 13:1E-100  
9 et seq.), P. L. 1984, c. 226 (C. 18A:58-68 et seq.), or the "Comprehensive Environmental Response, Compensation, and Liability  
10 Act of 1980," Pub. L. 96-510 (42 U.S.C. § 9601 et seq.). This indemnification and defense shall apply to all claims or causes of  
11 action for damages by a third party against the person providing  
12 the cleanup or mitigation services, or response actions resulting  
13 from the rendering of the cleanup or mitigation services, or response  
14 actions, except a claim or cause of action based upon gross  
15 negligence, willful misconduct, fraud, intentional tort, bad faith  
16  
17  
18

19 or criminal acts of the person or his employees. For the purposes  
20 of this act, a person may secure registration by applying therefor  
21 to the Department of Environmental Protection, accompanying the  
22 application with all relevant data concerning the policy limits of  
23 the person's present liability insurance coverage, the name of the  
24 present insurer, and a statement of the terms and conditions of  
25 the policy, including any deductibles, exclusions or limitations  
26 thereon, and any other evidence of the unavailability or prohibitive  
27 cost of securing the insurance coverage necessary to provide ad-  
28 equate protection from any claims or causes of action that may  
29 arise pursuant to the performance of any contract for cleanup  
30 or mitigation services, or response actions. The department shall  
31 register a person upon a determination that State indemnification  
32 or partial indemnification and legal defense is the only practicable  
33 and feasible method to secure services that would be required to  
34 protect the public health, safety, and welfare, and that the person  
35 has not been denied insurance coverage based on substandard  
36 practices creating what the insurance industry regards as a poor  
37 risk. In each case, the department shall determine the limit of  
38 indemnification necessary and reasonable to secure the services.

39 b. The provisions of this section shall not be construed to bar  
40 any legal remedies for all damages the State of New Jersey may  
41 have for that person's failure to fulfill the obligations pursuant  
42 to contract.

43 c. The provisions of subsection a. of this section shall not be  
44 construed to bar the State of New Jersey from the exercise of any  
45 legal remedies available for the recovery of moneys disbursed  
46 from the "Environmental Liability Indemnity Fund" established  
47 pursuant to section 2 of this act for the defense of indemnification,  
48 or both, of a person registered pursuant to subsection a. of this  
49 section if the defense or indemnification, or both, were undertaken  
50 in response to a claim or cause of action brought against the  
51 person based upon gross negligence, willful misconduct, fraud,  
52 intentional tort, bad faith or criminal acts of the person or his  
53 employers.

1 2. There is established in the Department of the Treasury a  
2 nonlapsing fund, to be known as the "Environmental Liability  
3 Indemnity Fund." Moneys in the fund shall be used solely and  
4 exclusively to indemnify and provide financial support for the  
5 defense of persons against claims or causes of action for damages  
6 arising from the rendering of hazardous substance cleanup or  
7 mitigation services or response actions pursuant to section 1 of  
8 this act. The fund shall be credited with all revenues appropriated  
9 or otherwise made available to it.

1 3. The Department of Environmental Protection and the Depart-  
 2 ment of the Treasury shall adopt, pursuant to the "Administrative  
 3 Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), rules and regulations  
 4 necessary to carry out their respective responsibilities under this  
 5 act.

1 4. There shall be appropriated from the General Fund to the  
 2 "Environmental Liability Indemnity Fund" established pursuant  
 3 to section 2 of this act such sums as may be necessary to carry  
 4 out the purposes of, and meet the obligations created under,  
 5 this act.

1 5. This act shall take effect immediately, and shall apply to  
 2 contracts entered into prior to the effective date of this act for  
 3 work still in progress on the effective date of this act and to con-  
 4 tracts entered into on the effective date of this act.

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#### STATEMENT

This bill would establish an "Environmental Liability Indemnity Fund" in the Department of the Treasury which would be used to indemnify and defend eligible persons providing hazardous substance cleanup and mitigation services. The State of New Jersey, using moneys in the fund, would defend and indemnify these persons against all claims except those based on gross negligence, willful misconduct, fraud, intentional tort, bad faith, or criminal acts.

Before being certified by the department as eligible for indemnification or partial indemnification and defense, a contractor would have to show evidence of the unavailability or prohibitive cost of securing the nature and scope of the insurance coverage necessary to provide protection for hazardous substance mitigation and cleanup activities. The State would register the contractor for defense and indemnification only upon a determination that this would be the only way to secure the services required, and that the person has not been denied insurance coverage based on substandard practices creating what the insurance industry regards as a poor risk.

This bill authorizes an appropriation from the General Fund to the "Environmental Liability Indemnity Fund" in an amount necessary to serve the defense and indemnification purposes of the fund.

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#### HAZARDOUS WASTE (CLEANUP)

Provides indemnification of contractors for liability claims or lawsuits when performing certain hazardous substances cleanup activities.

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ASSEMBLY COMMITTEE ON ENVIRONMENTAL QUALITY

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

**ASSEMBLY, No. 1990**

**STATE OF NEW JERSEY**

DATED: MARCH 6, 1986

The Assembly Environmental Quality Committee favorably reports Assembly Committee Substitute for Assembly Bill No. 1990.

As substituted by the committee, Assembly Bill No. 1990 would establish a procedure under which the Department of Environmental Protection could agree to indemnify and provide legal defense for certain persons providing hazardous discharge mitigation or cleanup services pursuant to State or federal law. The procedure established in this legislation is designed to address instances in which contractors would not be able to provide crucial mitigation and cleanup services because they cannot obtain, or cannot afford, the liability insurance necessary to protect them against claims which may arise as a result of providing these cleanup and mitigation services.

This bill would allow the Department of Environmental Protection to decide, on a case by case basis, and in the course of letting a contract for cleanup and mitigation services, whether to provide contractors with legal defense and indemnification. The indemnification and legal defense program would be a component of the hazardous discharge site cleanup and mitigation procedure developed by the department pursuant to the "Spill Compensation and Control Act," P. L. 1976, c. 141 (C. 58:10-23.11 et seq.). The department would be allowed to agree to defend and indemnify contractors against all claims resulting from the provision of cleanup or mitigation services, except claims based on gross negligence, willful misconduct, fraud, intentional tort, bad faith or criminal misconduct.

The department would provide legal defense and indemnification to contractors only if it determines that adequate liability insurance is not available or available at a reasonable cost to the contractor, and would provide the legal defense and indemnification under terms which it deems appropriate. Any agreement by the department to provide legal defense and indemnification would not bar the department from the enforcing of a contract for cleanup and mitigation services, or for

recovering funds expended for the legal defense of a contractor in the defense was undertaken in response to a claim proven to have arisen from gross negligence, willful misconduct, fraud, intentional tort, bad faith, or criminal wrongdoing.

This bill provides that any legal defense or indemnification which the department provides to a contractor would not be paid for with moneys in the New Jersey Spill Fund derived from the Spill Fund tax on petroleum and chemicals, but would be paid for with moneys appropriated by law from the General Fund to the New Jersey Spill Fund. The payment of any legal defense and indemnification costs would thus be contingent on such an appropriation.

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SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

**ASSEMBLY, No. 1990**

**STATE OF NEW JERSEY**

DATED: APRIL 28, 1986

The Senate Energy and Environment Committee favorably reports Assembly Bill No. 1990 ACS.

Assembly Bill No. 1990 would establish a procedure under which the Department of Environmental Protection could agree to indemnify and provide legal defense for certain persons providing hazardous discharge mitigation or cleanup services pursuant to State or federal law. The procedure established in this legislation is designed to address instances in which contractors would not be able to provide crucial mitigation and cleanup services because they cannot obtain, or cannot afford, the liability insurance necessary to protect them against claims which may arise as a result of providing these cleanup and mitigation services.

This bill would allow the Department of Environmental Protection to decide, on a case by case basis, and in the course of letting a contract for cleanup and mitigation services, whether to provide contractors with legal defense and indemnification for claims arising from the provisions of their services. The indemnification and legal defense program would be a component of the hazardous discharge site cleanup and mitigation procedure developed by the department pursuant to the "Spill Compensation and Control Act," P. L. 1976, c. 141 (C. 58:10-23.11 et seq.). The department would be authorized to defend and indemnify contractors against all claims resulting from the provision of cleanup or mitigation services, except claims based on gross negligence, willful misconduct, fraud, intentional tort, bad faith, or criminal misconduct.

The department would provide legal defense and indemnification to contractors only if it determines that adequate liability insurance is not available or not available at a reasonable cost to the contractor, and would provide the legal defense and indemnification under terms which it deems appropriate. Any agreement by the department to provide legal defense and indemnification would not bar the department from enforcing a contract for cleanup and mitigation services,

or from recovering funds expended for the legal defense of a contractor if the defense was undertaken in response to a claim proven to have arisen from gross negligence, willful misconduct, fraud, intentional tort, bad faith, or criminal wrong doing.

This bill provides that any legal defense or indemnification which the department provides to a contractor would be paid for not with monies in the New Jersey Spill Fund derived from the Spill Fund tax on petroleum and chemicals, but rather with monies appropriated by law from the General Fund to the New Jersey Spill Fund. The payment of any legal defense and indemnification costs would thus be contingent on such an appropriation.

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# OFFICE OF THE GOVERNOR NEWS RELEASE

**CN-001**

**Contact:** JOHN SAMERJAN  
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**TRENTON, N.J. 08625**

**Release:** TUES., JULY 29, 1986

Governor Thomas H. Kean today signed legislation authorizing the Department of Environmental Protection to contractually agree to defend and indemnify Spill Fund or Superfund hazardous waste cleanup contractors against claims or judgments arising as the direct result of the contractors' performance of cleanup.

The legislation, ACS for A-1990, sponsored by Assemblyman Robert J. Martin, R-Morris, and Senator Raymond Lesniak, D-Union, allows the DEP to indemnify a contractor only if adequate liability insurance is either unavailable or prohibitively expensive. Contractors may not be indemnified for causes of action or claims which arise from gross negligence, criminal wrongdoing, fraud, willful misconduct, etc.

This legislation is designed to address the environmental liability crisis.

The Department of Environmental Protection's obligation to indemnify and defend contractors is subject to the Legislature appropriating the necessary funds for that purpose from the General Fund to the Spill Fund.

The legislation is effective immediately and carries a sunset provision for its expiration on January 1, 1988.

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