

58:10-23.11g

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(Petroleum
discharges--strict
liability)

LAWS OF: 1991

CHAPTER: 58

Bill No: S2440

Sponsor(s): Gormley

Date Introduced: March 8, 1990

Committee: Assembly: -----

Senate: Environmental Quality

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: January 31, 1991

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Date of Approval: March 13, 1991

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: No

Senate: Yes

Fiscal Note: No

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Reports: No

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Also attached: Statements to Senate
amendments adopted 6/25/90 and 10/15/90

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[THIRD REPRINT]
SENATE, No. 2440

STATE OF NEW JERSEY

INTRODUCED MARCH 8, 1990

By Senator GORMLEY

AN ACT concerning strict liability for certain discharges of ¹[petroleum] hazardous substances^{1, 2}requiring the owners or operators of certain vessels to provide evidence of financial responsibility, and² ¹[and]¹ amending ¹and supplementing¹ P.L.1976, c.141.

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

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

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

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

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

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

(4) Loss of tax revenue by the State or local governments for a period of 1 year due to damage to real or personal property proximately resulting from a discharge;

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SEQ committee amendments adopted May 17, 1990.

² Senate floor amendments adopted June 25, 1990.

³ Senate floor amendments adopted October 15, 1990.

this act.

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

c. (1) Any person who has discharged a hazardous substance or is in any way responsible for any hazardous substance which the department has removed or is removing pursuant to subsection b. of section 7 of this act shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs.

(2) ¹[In the case of a discharge of petroleum from a vessel into the waters of the State, or into waters outside the waters of the State if the discharged petroleum enters the waters of the State, the following persons shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs and for all direct and indirect damages no matter by whom sustained, proximately resulting from the discharge:

(a) The owner or operator of the vessel from which the petroleum was discharged;

(b) Any person who owned the discharged petroleum at any time from the loading of the petroleum onto the vessel to the time at which the petroleum was discharged;

(c) The owner or operator of the major facility to which the vessel from which the petroleum was discharged was en route to deliver the petroleum if the owner or operator of the major facility was scheduled to assume ownership of the discharged petroleum; and

(d) the owner or operator of the major facility from which the petroleum was transferred to the vessel from which the petroleum was discharged, if the owner or operator of the major facility owned the petroleum at the time of the transfer.]

In addition to the persons liable pursuant to paragraph (1) of this subsection, in the case of a discharge of a hazardous substance from a vessel into the waters of the State, ²[or into waters outside the waters of the State that enters the waters of the State,]² the owner or operator of a refinery, storage, transfer, or pipeline facility to which the vessel was en route to

deliver the hazardous substance² who, by contract, agreement, or otherwise, was scheduled to assume ownership of the discharged hazardous substance, and any other person who was so scheduled to assume ownership of the discharged hazardous substance², shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs² [and for all direct or indirect damages no matter by whom sustained, proximately resulting from the discharge,]² if the owner or operator of the² [refinery, storage, transfer, or pipeline facility by contract, agreement or otherwise was scheduled to assume ownership of the discharged hazardous substance] vessel did not have the evidence of financial responsibility required pursuant to section 2 of P.L. , c. (C.) (now before the Legislature as this bill).

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

For the purpose of determining priority of this lien over all other claims or liens which are or have been filed against the property of an owner or operator of a refinery, storage, transfer, or pipeline facility, the lien on the facility to which the discharged hazardous substance was en route shall have priority over all other claims or liens which are or have been filed against the property. The notice of lien filed pursuant to this paragraph which affects any property of a person liable pursuant to this paragraph other than the property of an owner or operator of a refinery, storage, transfer, or pipeline facility to which the discharged hazardous substance was en route, shall have priority from the day of the filing of the notice of the lien over all claims and liens filed against the property, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this paragraph².

To the extent that² [the owner or operator of the refinery, storage, transfer, or pipeline facility] a person liable pursuant to this paragraph² is not otherwise liable pursuant to paragraph (1) of this subsection, or under any other provision of law or under

common law, ²[the owner or operator liable pursuant to this paragraph] that person² may bring an action for indemnification for ²[damages] costs² paid pursuant to this paragraph against any other person who is strictly liable pursuant to paragraph (1) of this subsection.

Nothing in this ²[subsection] paragraph² shall be construed to extend or negate the right of any person to bring an action for contribution that may exist under ²[this act] P.L.1976, c.141², or any other act or under common law.¹

d. An act or omission caused solely by war, sabotage, or God, or a combination thereof, shall be the only defenses which may be raised by any owner or operator of a major facility or vessel responsible for a discharge in any action arising under the provisions of this act.

(cf: P.L.1979, c.346, s.5)

^{12.} (New section) The ³[Department of Environmental Protection shall, within one year of the effective date of this act, adopt pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations requiring]³ owners and operators of vessels ²[and refinery, storage, transfer, and pipeline facilities, in accordance with section 3 of P.L. , c. (C.)](now before the Legislature as this bill),]² ³[to] shall³ establish and maintain evidence of financial responsibility for the purpose of assuring adequate financial resources to pay for the cost of cleanup and removal of a discharged hazardous substance ³[into the waters of this State]³ as a result of the transportation of a hazardous substance by vessel or a transfer of that hazardous substance between a refinery, storage, transfer, or pipeline facility ²[to] and² a vessel or between two vessels. Evidence of financial responsibility ³[may] shall³ be established by ²[any one, or combination, of the following methods which the department determines to be acceptable: evidence of insurance, surety bond, guarantee, letter of credit, qualification as a self-insurer, or other evidence of financial responsibility] a method set forth under ³[33 U.S.C. §1321] §108 of the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" (42 U.S.C. §9607) or §1016 of the "Oil Pollution Act of 1990"³ , any regulation adopted pursuant thereto, or any other federal law requiring evidence of financial responsibility to operate a vessel in the waters of the United States.

The evidence of financial responsibility required by this section shall be the only evidence required by the State that a vessel has the ability to meet the liabilities incurred for a violation of P.L.1976, c.141² ³, but nothing in this section shall be construed to limit the liability of any person for a discharge of a hazardous substance for which the person is liable pursuant to P.L. 1976, c. 141 or under any other law or under common law³. ³[Evidence of financial responsibility shall be maintained on file with the

department. Any bond filed shall be issued by a bonding company authorized to do business in ²[New Jersey. In promulgating rules or regulations under this section, the department may require policy or other contractual terms, conditions, or defenses which are necessary to establish evidence of financial responsibility to effectuate the purposes of this section.¹] the United States.

Any claim for cleanup and removal costs or related costs incurred by the owner or operator of a vessel pursuant to P.L.1976, c.141 may be brought directly against the insurer or any other person providing vidence of financial responsibility as required pursuant to this section.²] The State Police shall have the power to inspect any vessel and to require the display of evidence of financial responsibility in order to ensure compliance with this section. The State Police may deny entry to any vessel to any place in the State, or to the navigable waters under the jurisdiction of the State, or detain at the place, any vessel that, upon request, does not produce the evidence of financial responsibility required for that vessel pursuant to this section. Any vessel subject to the requirements of this section which is found in the navigable waters of the State without the necessary evidence of financial responsibility for the vessel shall be subject to seizure by and forfeiture to the State.³

²[13. (New section) In complying with the requirements of maintaining evidence of financial responsibility pursuant to section 2 of P.L. , c. (C.)(now before the Legislature as this bill) the owners or operators of vessels and refinery, storage, transfer, and pipeline facilities shall meet the following requirements:

a. the owner or operator of any tank vessel that transports a hazardous substance to the waters of this State shall establish and maintain evidence of financial responsiblity for each such vessel in the greater amount of (1) \$1,200 per gross ton, or, (2) in the case of a vessel greater than 3,000 gross tons, in the amount of \$10,000,000, or in the case of a vessel 3,000 gross tons or less, \$2,000,000;

b. the owner or operator of any vessel other than a tank vessel that transports a hazardous substance into the waters of this State shall establish and maintain evidence of financial responsibility for each such vessel in the greater amount of (1) \$600 per gross ton, or, (2) \$500,000;

c. the owner or operator of an onshore refinery, storage, transfer, or pipeline facility that is engaged in the transfer of hazardous substances between that facility and a vessel shall establish and maintain evidence of financial responsibility for that facility in an amount between \$8,000,000 and \$350,000,000 depending on the size, storage capacity, petroleum throughput, proximity to sensitive areas, type of petroleum handled, history of discharges, and other factors relevant to risks posed by the

class or category of facility. The department shall establish, by regulation, the amount of financial responsibility that each class or category of facility must establish and maintain.^{1]2}

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

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

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

b. "Barrel" means 42 United States gallons or 159.09 liters or an appropriate equivalent measure set by the director for hazardous substances which are other than fluid or which are not commonly measured by the barrel;

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

d. "Cleanup and removal costs" means all costs associated with a discharge, incurred by the State or its political subdivisions or their agents or any person with written approval from the department in the: (1) removal or attempted removal of hazardous substances, or (2) taking of reasonable measures to prevent or mitigate damage to the public health, safety, or welfare, including, but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property, including wildlife and other natural resources, and shall include costs incurred by the department for the indemnification and legal defense of contractors pursuant to subsection a. of section 7 of this act, subject to the appropriation by law of moneys from the General Fund to the fund to defray these costs;

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

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

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

h. "Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substances into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State [,] when damage may result to the lands, waters or natural resources within the jurisdiction of the State;

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

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

k. "Hazardous substances" means the "environmental hazardous substances" on the environmental hazardous substance list adopted by the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4); such elements and compounds, including petroleum products, which are defined as such by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 311 of the federal Water Pollution Control Act Amendments of 1972, Pub.L. 92-500, as amended by the Clean Water Act of 1977, Pub.L. 95-217 (33 U.S.C. §1251 et seq.); the list of toxic pollutants designated by Congress or the EPA pursuant to section 307 of that act; and the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 101 of the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L. 96-510 (42 U.S.C. §9601 et seq.); provided, however, that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of this act;

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

A facility shall not be considered a major facility for the purpose of this act unless it has total combined aboveground or buried storage capacity of:

- (1) 20,000 gallons or more for hazardous substances which are other than petroleum or petroleum products, or
- (2) 200,000 gallons or more for hazardous substances of all kinds.

For the purposes of this definition, "storage capacity" shall mean only that total combined capacity which is dedicated to, used for or intended to be used for storage of hazardous substances of all kinds. Where appropriate to the nature of the facility, storage capacity may be determined by the intended or actual use of open land or unenclosed space as well as by the capacities of tanks or other enclosed storage spaces;

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

n. "Owner" or "operator" means, with respect to a vessel, any person owning, operating or chartering by demise such vessel; with respect to any major facility, any person owning such facility, or operating it by lease, contract or other form of

agreement; with respect to abandoned or derelict major facilities, the person who owned or operated such facility immediately prior to such abandonment, or the owner at the time of discharge;

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

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

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

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

s. "Transfer" means unloading or offloading between major facilities and vessels, or vessels and major facilities, and from vessel to vessel or major facility to major facility, except for fueling or refueling operations and except that with regard to the movement of hazardous substances other than petroleum, it shall also include any unloading of or offloading from a major facility;

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

u. "Waters" means the ocean and its estuaries to the seaward limit of the State's jurisdiction, all springs, streams and bodies of surface or groundwater, whether natural or artificial, within the boundaries of this State;

v. "Act of God" means an act exclusively occasioned by an unanticipated, grave natural disaster without the interference of any human agency.²

(cf: P.L.1986, c.143, s.1)

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

7. a. Whenever any hazardous substance is discharged, the department may, in its discretion, act to remove or arrange for the removal of such discharge or may direct the discharger to remove, or arrange for the removal of, such discharge. If the

discharge occurs at any hazardous or solid waste disposal facility, the department may order the facility closed for the duration of the removal operations. The department may monitor the discharger's compliance with any such directive. Any discharger who fails to comply with such a directive shall be liable to the department in an amount equal to three times the cost of such removal, and shall be subject to the revocation or suspension of any license or permit he holds authorizing him to operate a hazardous or solid waste disposal facility.

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

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

The department may agree to defend and indemnify a contractor against claims, causes of action, demands, costs, or judgments made against a contractor arising as a direct result of the contractor's provision of hazardous substance cleanup or mitigation services pursuant to a contract with the department. This legal defense and indemnification shall not apply to claims, causes of action, demands, costs, or judgments which are proven to have arisen from gross negligence, willful misconduct, fraud, intentional tort, bad faith, or criminal misconduct, or to claims for punitive or exemplary damage. The department shall agree to provide legal defense and indemnification to a contractor only if it determines that adequate environmental liability insurance is not available or not available at a reasonable cost to the contractor. The department shall agree to provide legal defense and indemnification to a contractor pursuant to terms and limitations which it deems appropriate. Any agreement by the department to defend or indemnify a contractor shall not bar the department from the exercise of any available legal remedies for the enforcement of the contract between the department and the contractor, the recovery of damages to which the department may be entitled resulting from a contractor's failure to perform the contract, or for the recovery of funds expended for the defense of a contractor if the defense was undertaken in response to a claim or cause of action brought against the contractor which is proven to have arisen from gross negligence, willful misconduct, fraud, intentional tort, bad faith, or criminal misconduct. No person other than a contractor shall have the

right to enforce any agreement for defense and indemnification between a contractor and the department. The department shall not enter into an agreement to provide legal defense and indemnification to a contractor after January 1, 1990. For the purposes of this subsection, "contractor" means a person providing services to mitigate or clean up a discharge or release or threatened discharge or release of a hazardous substance in this State pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) or the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub. L.96-510 (42 U.S.C. §9601 et seq.).

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

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

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

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

(a) Explosiveness;

(b) High flammability;

(c) Radioactivity;

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

(e) Is stored in a container from which its discharge is imminent as a result of contact with a hazardous substance which has already been discharged and such additional discharge would create a substantial risk of imminent damage to public health or

safety or imminent and severe damage to the environment; or

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

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

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

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

e. Notwithstanding any other provisions of P.L.1976, c.141, the administrator, after considering, among any other relevant factors, the department's priorities for spending funds pursuant to P.L.1976, c.141, and within the limits of available funds, shall make payments for the restoration or replacement of, or connection to an alternative water supply for, any private residential well destroyed, contaminated, or impaired as a result of a discharge prior to the effective date of P.L.1976, c.141; provided, however, total payments for said purpose shall not

exceed \$500,000.00 for the period between the effective date of this subsection e. and January 1, 1983, and in any calendar year thereafter.

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

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

g. In the event a vessel discharges a hazardous substance into the waters of the State, the cleanup and removal and related costs resulting from that discharge that constitute a maritime lien on the discharging vessel pursuant to 33 U.S.C. §1321 or any other law, may be recovered by the Department of Environmental Protection in an action in rem brought in the district court of the United States. An impoundment of a vessel resulting from this action shall continue until:

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

(2) the owner or operator of the vessel, or a representative of the owner or operator, provides evidence of financial responsibility as provided in section 2 of P.L. , c. (C.)(now before the Legislature as this bill) and satisfactorily guarantees

that these costs will be paid; or

(3) the impoundment is otherwise vacated by a court order.

The remedy provided in this subsection is in addition to any other remedy or enforcement power that the department may have under any other law.

Any action brought by the State pursuant to this subsection and any impoundment of a vessel resulting therefrom shall not subject the State to any liability to any person harmed thereby or cause the State to be in anyway liable for a subsequent or continued discharge of a hazardous substance from that vessel.²

(cf: P.L.1987, c.415, s.1)

¹[2.] ²[4.1] ⁵.² This act shall take effect immediately.

ENVIRONMENT

Expands strict, joint and several liability for discharge of hazardous substances into State waters and requires evidence of financial responsibility for certain vessels.

1 maximum limitation shall not apply and the owner or operator
2 shall be liable, jointly and severally, for the full amount of such
3 damages if it can be shown that such discharge was the result of
4 (1) ~~gross negligence or willful misconduct, within the knowledge~~
5 and privity of the owner, operator or person in charge, or (2) a
6 gross or willful violation of applicable safety, construction or
7 operating standards or regulations. Damages which may be
8 recovered from, or by, any other person shall be limited to those
9 authorized by common or statutory law.

10 c. (1) Any person who has discharged a hazardous substance or
11 is in any way responsible for any hazardous substance which the
12 department has removed or is removing pursuant to subsection b.
13 of section 7 of this act shall be strictly liable, jointly and
14 severally, without regard to fault, for all cleanup and removal
15 costs.

16 (2) In the case of a discharge of petroleum from a vessel into
17 the waters of the State, or into waters outside the waters of the
18 State if the discharged petroleum enters the waters of the State,
19 the following persons shall be strictly liable, jointly and severally,
20 without regard to fault, for all cleanup and removal costs and for
21 all direct and indirect damages no matter by whom sustained,
22 proximately resulting from the discharge:

23 (a) The owner or operator of the vessel from which the
24 petroleum was discharged;

25 (b) Any person who owned the discharged petroleum at any
26 time from the loading of the petroleum onto the vessel to the
27 time at which the petroleum was discharged;

28 (c) The owner or operator of the major facility to which the
29 vessel from which the petroleum was discharged was en route to
30 deliver the petroleum if the owner or operator of the major
31 facility was scheduled to assume ownership of the discharged
32 petroleum; and

33 (d) the owner or operator of the major facility from which the
34 petroleum was transferred to the vessel from which the
35 petroleum was discharged, if the owner or operator of the major
36 facility owned the petroleum at the time of the transfer.

37 d. An act or omission caused solely by war, sabotage, or God,
38 or a combination thereof, shall be the only defenses which may be
39 raised by any owner or operator of a major facility or vessel
40 responsible for a discharge in any action arising under the
41 provisions of this act.

42 (cf: P.L.1979, c.346, s.5)

43 2. This act shall take effect immediately.

44
45 Spon 5075

46 STATEMENT

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48 This bill would expand the liability for discharges of petroleum
49 from a vessel into the waters of the State by imposing strict
50 liability, jointly and severally, for all cleanup costs and damages,

1 on the following persons: (1) the owner or operator of the vessel
2 from which the petroleum was discharged; (2) the owner of the
3 discharged petroleum at the time of the discharge; (3) the owner
4 or operator of the major facility to which the vessel from which
5 the petroleum was discharged was on route to deliver the
6 petroleum if the owner or operator of the major facility was
7 scheduled to assume ownership of the discharged petroleum; and
8 (4) the owner or operator of the major facility from which the
9 petroleum was transferred to the vessel from which the
10 petroleum was discharged, if the owner or operator of the major
11 facility owned the petroleum at the time of the transfer.

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ENVIRONMENT

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Expands strict liability for certain petroleum discharges.

SENATE ENVIRONMENTAL QUALITY COMMITTEE

STATEMENT TO

SENATE, No. 2440

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 17, 1990

The Senate Environmental Quality Committee favorably reports Senate Bill No. 2440 with Senate Committee Amendments.

Senate Bill No. 2440 would expand the strict, joint, and several liability provisions of the "Spill Compensation and Control Act" for the cleanup of unauthorized discharges of petroleum. Under current law, the person discharging a hazardous substance and the person responsible for the hazardous substance are responsible, without regard to fault, for all cleanup and removal costs. The proposed committee amendments would extend the provisions of the bill to all hazardous substances, not just petroleum, and would hold the owner or operator of any facility, not just a major facility, strictly, jointly, and severally liable, if that owner or operator was to assume ownership of the hazardous substance. The provisions of the bill would also apply to discharges entering the waters of New Jersey from waters outside the State.

The proposed amendments would authorize a facility owner or operator, who has been found liable for a discharge pursuant to these amendments but who would not otherwise have been liable under any existing law, to bring an indemnification action for damages imposed. The amendments do not affect existing rights to bring contribution actions.

Finally, the proposed amendments would establish financial responsibility requirements required to be maintained by owners and operators of vessels and facilities to assure that adequate financial resources exist to pay for the cost of cleanup and removal of discharges of hazardous substances.

authorized to do business in ²[New Jersey. In promulgating rules or regulations under this section, the department may require policy or other contractual terms, conditions, or defenses which are necessary to establish evidence of financial responsibility to effectuate the purposes of this section.] ¹ the United States.

Any claim for cleanup and removal costs or related costs incurred by the owner or operator of a vessel pursuant to P.L.1976, c.141 may be brought directly against the insurer or any other person providing evidence of financial responsibility as required pursuant to this section.² The State police have the power to inspect any vessel and to require the display of evidence of financial responsibility in order to ensure compliance with this section. The State Police may deny entry to any vessel to any place in the State, or to the navigable waters under the jurisdiction of the State, or detain at the place, any vessel that, upon request, does not produce the evidence of financial responsibility required for that vessel pursuant to this section. Any vessel subject to the requirements of this section which is found in the navigable waters of the State without the necessary evidence of financial responsibility for the vessel shall be subject to seizure by and forfeiture to the State.³

shall

S2440

STATEMENT *to Senate amendments*
adopted 10/15/90

This amendment would conform the bill to the recently adopted federal "Oil Pollution Act of 1990." The amendments would provide that vessels containing oil have evidence of financial responsibility as required pursuant to the "Oil Pollution Act of 1990" and that vessels containing hazardous substances have evidence of financial responsibility as required pursuant to the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980." The State Police would be empowered to inspect vessels for compliance and deny entry or seize and subject to forfeiture any vessel without proper evidence of financial responsibility.

The amendments also delete the requirement that DEP adopt regulations relying instead on compliance with federal requirements.

that constitute a maritime lien on the discharging vessel pursuant to 33 U.S.C. §1321 or any other law. may be recovered by the Department of Environmental Protection in an action in rem brought in the district court of the United States. An impoundment of a vessel resulting from this action shall continue until:

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

(2) the owner or operator of the vessel, or a representative of the owner or operator, provides evidence of financial responsibility as provided in section 2 of P.L. c. (C.) (now before the Legislature as this bill) and satisfactorily guarantees that these costs will be paid; or

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

Any action brought by the State pursuant to this subsection and any impoundment of a vessel resulting therefrom shall not subject the State to any liability to any person harmed thereby or cause the State to be in anyway liable for a subsequent or continued discharge of a hazardous substance from that vessel.²

(cf: P.L. 1987, c.415 s.1)

RENUMBER SECTION 4 AS SECTION 5

REPLACE SYNOPSIS TO READ:

ENVIRONMENT

Expands strict, joint and several liability for discharge of hazardous substances into State waters and requires evidence of financial responsibility for certain vessels.

S2440

STATEMENT *to senate amendments*
adopted 6/25/90

The amendments to this bill provide that:

• A facility (refinery, storage, transfer, and pipeline) owner or operator scheduled to assume ownership of a hazardous substance, as well as any other person scheduled to assume such ownership, would be strictly liable, jointly and severally, for a hazardous substance discharge from a vessel heading to deliver that hazardous substance at the facility or to that person, if the vessel did not have proper evidence of financial responsibility.

• The amount of financial responsibility and the type of evidence required would be identical to that provided in the federal Clean Water Act or any other pertinent

federal law. The amount of financial responsibility would vary depending on the type and size of the vessel.

- A facility or other liable person would have a right of indemnification against any person otherwise liable under existing law.

- When a vessel discharges a hazardous substance, the State would have the explicit right to exercise maritime lien and impoundment powers provided in the federal CWA. The impoundment would be lifted when sufficient evidence to pay is secured, the costs of a cleanup are paid, or when a court so orders.

- If a person or facility is strictly liable for a vessel's discharge, a lien would attach to all the person's or facility owner's or operator's property until satisfied. The lien would have priority over all other liens or claims when attached to the facility to which the vessel was en route.

In addition, the amendment would delete the provision requiring the owners or operators of facilities to provide evidence of financial responsibility and would make a technical change to the definition of a "discharge."