

58:10-23.11f

LEGISLATIVE HISTORY CHECKLIST

NJSA: 58:10-23.11f

(Spill compensation and control act-change lien priorities)

LAWS OF: 1985

CHAPTER:11

Bill No: S1423

Sponsor(s): Lesniak

Date Introduced: February 27, 1984

Committee: Assembly: Agriculture and Environment

Senate: Energy and Environment

Amended during passage: Yes

Substituted for A1585 (OCR and Assembly committee statement-attached). Amendments during passage denoted by asterisks.

///

Date of Passage: Assembly: Nov. 19, 1984

Senate: Sep. 13, 1984

Date of Approval: January 22, 1985

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

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APPROVED 11 1-22-85

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 1423

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 27, 1984

By Senator LESNIAK

Referred to Committee on Energy and Environment

AN ACT concerning certain liens and amending 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 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 depart-  
8 ment may order the facility closed for the duration of the removal  
9 operations. The department may monitor the discharger's com-  
10 pliance 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 shall  
13 be subject to the revocation or suspension of any license or permit  
14 he holds authorizing him to operate a hazardous or solid waste  
15 disposal facility.

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

22 Whenever the department acts to remove a discharge or contracts  
23 to secure prospective removal services, it is authorized to draw

**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 committee amendments adopted April 30, 1984.

\*\*—Assembly committee amendments adopted October 18, 1984.

24 upon the money available in the fund. Such moneys shall be used  
 25 to pay promptly for all cleanup costs incurred by the department  
 26 in removing or in minimizing damage caused by such discharge.

27 Nothing in this section is intended to preclude removal and  
 28 cleanup operations by any person threatened by such discharges,  
 29 provided such persons coordinate and obtain approval for such  
 30 actions with ongoing State or federal operations. No action taken  
 31 by any person to contain or remove a discharge shall be construed  
 32 as an admission of liability for said discharge. No person who  
 33 renders assistance in **\*\*[continuing]\*\*** *\*\*containing\*\** or removing  
 34 a discharge shall be liable for any civil damages to third parties  
 35 resulting solely from acts or omissions of such person in rendering  
 36 such assistance<sup>\*\*</sup>,<sup>\*\*</sup> except for acts or omissions of gross negligence  
 37 or willful misconduct. In the course of cleanup operations, no  
 38 person shall discharge any detergent into the waters of this State  
 39 without prior authorization of the commissioner.

40 b. Notwithstanding any other provisions of P. L. 1976, c. 141  
 41 (C. 58:10-23.11 et seq.), the department, after notifying the ad-  
 42 ministrator and subject to the approval of the administrator with  
 43 regard to the availability of funds therefor, may remove or ar-  
 44 range for the removal of any hazardous substance which:

45 (1) Has not been discharged from a grounded or disabled  
 46 vessel<sup>\*\*</sup>,<sup>\*\*</sup> if the department determines that such removal is  
 47 necessary to prevent an imminent discharge of such hazardous  
 48 substance; *\*\*or\*\**

49 (2) Has not been discharged<sup>\*\*</sup>,<sup>\*\*</sup> if the department determines  
 50 that such substance is not satisfactorily stored or contained and  
 51 said substance possesses any one or more of the following  
 51A characteristics:

52 (a) Explosiveness;

53 (b) High flammability;

54 (c) Radioactivity;

55 (d) Chemical properties which in combination with any dis-  
 56 charged hazardous substance at the same storage facility would  
 57 create a substantial risk of imminent damage to public health  
 58 or safety or an imminent and severe damage to the environ-  
 59 ment;

60 (e) Is stored in a container from which its discharge is im-  
 61 minent as a result of contact with a hazardous substance which  
 62 has already been discharged and such additional discharge  
 63 would create a substantial risk of imminent damage to public  
 64 health or safety or imminent and severe damage to the en-  
 65 vironment; or

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

74 (3) Has been discharged prior to the effective date of P. L. 1976,  
 75 c. 141\*\***[**, if such discharge poses a substantial risk of imminent  
 76 damage to the public health or safety or imminent and severe  
 77 damage to the environment**]**\*\*.

78 c. If and to the extent that he determines that funds are available,  
 79 the administrator shall approve and make payments for any cleanup  
 80 and removal costs incurred by the department for the removal of  
 81 a hazardous substance other than petroleum as authorized by sub-  
 82 section b. of this section; provided that in determining the avail-  
 83 ability of funds, the administrator shall not include as available  
 84 funds revenues realized or to be realized from the tax on the trans-  
 85 fer of petroleum\*\*,\*\* to the extent that such revenues result from a  
 86 tax levied at a rate in excess of \$0.01 per barrel, pursuant to sub-  
 87 section 9b. of P. L. 1976, c. 141 (C. 58:10-23.11h), unless the admin-  
 88 istrator determines that the sum of claims paid by the fund on  
 89 behalf of petroleum discharges or removals plus pending reasonable  
 90 claims against the fund on behalf of petroleum discharges or re-  
 91 movals is greater than 30% of the sum of all claims paid by the fund  
 92 plus all pending\*\***[,]**\*\* reasonable claims against the fund.

93 d. The administrator may only approve and make payments for  
 94 any cleanup and removal costs incurred by the department for the  
 95 removal of a hazardous substance discharged prior to the effective  
 96 date of P. L. 1976, c. 141, pursuant to subsection b. of this section,  
 97 if, and to the extent that, he determines that adequate funds from  
 98 another source are not or will not be available; and further pro-  
 99 vided, with regard to the cleanup and removal costs incurred for  
 100 discharges which occurred prior to the effective date of P. L. 1976,  
 101 c. 141, the administrator may not during any one year period pay  
 102 more than \*\***[\$3,000,000.00]**\*\* \*\*\$18,000,000.00\*\* in total or more  
 103 than \*\***[\$1,500,000.00]**\*\* \*\*\$3,000,000.00\*\* for any discharge or  
 103A related set or series of discharges.

104 e. Notwithstanding any other provisions of P. L. 1976, c. 141,  
 105 the administrator, upon the approval of the department\*\*, \*\* after  
 106 considering, among any other relevant factors, its priorities for

107 spending funds pursuant to P. L. 1976, c. 141, and within the limits  
108 of available funds, shall make payments for the restoration or re-  
109 placement of, or connection to an alternative water supply for, any  
110 private residential well destroyed, contaminated, or impaired as a  
111 result of a discharge prior to the effective date of P. L. 1976, c. 141,  
112 provided however total payments for said purpose shall not exceed  
113 \$500,000.00 for the period between the effective date of this sub-  
114 section *\*\*e.\*\** and January 1, 1983, and in any calendar year there-  
114A after.

115 f. Any expenditures made by the administrator pursuant to this  
116 act shall constitute [a first priority claim and lien paramount to all  
117 other claims and liens upon], *in each instance, a debt of the dis-*  
118 *charger to the fund. The debt shall constitute a lien on all property*  
119 *owned by the discharger when a notice of lien, incorporating*  
120 *a description of the property of the discharger subject to the*  
121 *cleanup and removal and an identification of the amount of cleanup,*  
122 *removal and related costs expended from the fund is duly filed with*  
123 *the clerk of the Superior Court. The clerk shall promptly enter*  
124 *upon the civil judgment or order docket the name and address of*  
125 *the discharger and the amount of the lien as set forth in the notice*  
126 *of lien. Upon entry by the clerk, the lien, to the amount committed*  
127 *by the administrator for cleanup and removal, shall attach to the*  
128 *revenues and all real and personal property of the discharger,*  
129 *whether or not the discharger is insolvent. \* [Notice of lien filed pur-*  
130 *suant to this subsection shall: (1) with respect to the property*  
131 *subject to the cleanup and removal described in the notice of lien,*  
132 *create a lien with priority over all other claims and liens; and (2)*  
133 *with respect to all other property of the discharger wherever*  
134 *situated in the State, have priority from the date of the filing of the*  
135 *notice of lien, and shall neither constitute a valid lien against the*  
136 *property, nor affect any valid lien, right or interest in the property*  
137 *if the lien, right or interest is filed in accordance with established*  
138 *procedure prior to the filing and entry of the notice of a lien filed*  
139 *under this subsection. Prior to the enforcement of lien on real*  
140 *property created under this subsection, the administrator shall*  
141 *seek satisfaction of a judgment against the personal property of*  
142 *the discharger. ]\* \*The notice of lien filed pursuant to this sub-*  
143 *section which affects the property of a discharger subject to the*  
144 *cleanup and removal of a discharge shall create a lien with priority*  
145 *over all other claims or liens which are or have been filed against*  
146 *the property\*\*, except if the property comprises six dwelling units*  
147 *or less and is used exclusively for residential purposes, this notice*  
148 *of lien shall not affect any valid lien, right or interest in the*

149 *property filed in accordance with established procedure prior to*  
 150 *the filing of this notice of lien\*\*.* *The notice of lien filed pursuant to*  
 151 *this subsection which affects any property of a discharger other*  
 152 *than the property subject to the cleanup and removal, shall have*  
 153 *priority from the day of the filing of the notice of the lien over all*  
 154 *other claims and liens filed against the property, but shall not affect*  
 155 *any valid lien, right, or interest in the property filed in accordance*  
 155A *with established procedure prior to the filing of a notice of lien*  
 155B *pursuant to this subsection.* **\*\****[Prior to the enforcement of a lien*  
 155C *filed pursuant to this subsection the administrator shall seek*  
 155D *satisfaction of a judgment against the personal property of the*  
 155E *discharger.]\*\*\**

156 **[All liens under P. L. 1976, c. 141 (C. 58:10-23.11 et seq.) shall**  
 157 **be filed with the clerk or register of deeds and mortgages of the**  
 158 **county wherein the affected property is located, and with the clerk**  
 159 **of the Superior Court, and shall immediately attach to, and become**  
 160 **binding upon, all the property, whether real or personal, of the**  
 161 **party against whom the lien is filed. If it is believed that the party**  
 162 **chargeable under the lien has an interest or estate, whether vested**  
 163 **or contingent, in property within the State, but the exact location**  
 164 **of the property is not known, then the liens shall be filed with the**  
 165 **clerk of the Superior Court and shall become binding upon all the**  
 166 **property of the party chargeable under the lien wherever situated**  
 167 **within the State.]**

1     2. This act shall take effect immediately and shall **\*[be retro-**  
 2     **active to December 11, 1981]\*** *\*apply to all liens which are or have*  
 3     *been filed pursuant to P. L. 1976, c. 141 (C. 58:10-23.11 et seq.)\*.*

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S 1423 (1984)  
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STATEMENT

The availability of mortgage funds has been seriously jeopardized by the potential effect of the lien priority established under section 7. f. of the "Spill Compensation and Control Act," P. L. 1976, c. 141 (C. 58:10-23.11f.). Accordingly, this bill modifies the lien priority obtained by the spill fund administrator for funds expended for hazardous substance cleanup and removal. Specifically the bill provides that the administrator must file a notice of lien with the Clerk of the Superior Court on properties cleaned up with spill fund moneys. This lien will have first priority on only those properties of the discharger which were subject to cleanup with spill fund moneys. The priority of the administrator's lien on other properties of the discharger will be effective from the date of filing of the notice of lien.

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SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

**SENATE, No. 1423**

**STATE OF NEW JERSEY**

DATED: APRIL 30, 1984

Senate Bill No. 1423 amends the section of the "Spill Compensation and Control Act," P. L. 1976, c. 141 (C. 58:10-23.11 et seq.) which sets forth the procedure to be followed by the State in filing liens against the property of a person responsible for an illegal discharge of a hazardous substance. The Spill Act now authorizes the Administrator of the Spill Fund to file a "priority lien" (one which takes precedence over all other liens, claims or other interests in the property) against the property of a discharger, but does not distinguish between property of the discharger which is subject to a cleanup operation and other property ("clean property") which the discharger owns. This bill makes such a distinction.

Senate Bill No. 1423 provides that a lien filed by the Administrator of the Spill Fund against the property of a discharger which is subject to a cleanup will have priority over all other liens against the property. Liens filed against other "clean property" owned by a discharger will have priority only from the date of filing, and would not supersede other liens against the property. Senate Bill No. 1423 also provides that before enforcing a lien against property of a discharger the Administrator of the Spill Fund would seek satisfaction of a judgment against the personal property of this discharger.

The committee's amendments to Senate Bill No. 1423 clarified the existing amendatory language and affirmed, in the effective date section of the bill, that the distinctions made in the bill would apply to all liens which have been filed pursuant to the Spill Act.



ASSEMBLY AGRICULTURE AND ENVIRONMENT  
COMMITTEE

STATEMENT TO

**SENATE, No. 1423**

[OFFICIAL COPY REPRINT]

with Assembly committee amendments

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**STATE OF NEW JERSEY**

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DATED: OCTOBER 18, 1984

As amended by the Assembly Agriculture and Environment Committee, Senate Bill No. 1423 provides that a lien filed by the Administrator of the New Jersey Spill Compensation Fund, established pursuant to P. L. 1976, c. 141 (C. 58:10-23.11 et seq.), against the property of a discharger which is subject to a cleanup would have priority over all other liens against the property unless the property includes six dwelling units or less and is used exclusively for residential purposes in which case the lien will have priority only from the date of filing. Liens filed against other "clean property" owned by a discharger would also have priority only from the date of filing, and would not supersede other liens against the property.

The bill also provides in the effective date section of the bill, that the distinctions made in the bill would apply to all liens which have been filed pursuant to P. L. 1976, c. 141.

P. L. 1976, c. 141 currently authorizes the Administrator of the Spill Fund to file a "priority lien" (one which takes precedence over all other liens, claims or other interests in the property) against the property of a discharger, but does not distinguish between property of the discharger which is subject to a cleanup operation and other property ("clean property") which the discharger owns. This bill, as amended, makes such a distinction.

The committee also amended the bill to update its text in conformance with P. L. 1984, c. 142, recently enacted, which amended the same sections of law.

[OFFICIAL COPY REPRINT]  
**ASSEMBLY, No. 1585**

**STATE OF NEW JERSEY**

INTRODUCED FEBRUARY 27, 1984

By Assemblyman HOLLENBECK

AN ACT concerning certain liens and amending 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 7 of P. L. 1976, c. 141 (C. 58:10-23.11f.) is amended  
2 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 depart-  
8 ment may order the facility closed for the duration of the removal  
9 operations. The department may monitor the discharger's com-  
10 pliance 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 damage  
17 from discharges shall, to the greatest extent possible, be in ac-  
18 cordance with the National Contingency Plan for removal of oil  
19 and hazardous substances established pursuant to section 311 (c)  
20 (2) of the Federal Water Pollution Control Act Amendments of  
21 1972 (P. L. 92-500, 33 U. S. C. 1251 et seq.).

22 Whenever the department acts to remove a discharge or contracts  
23 to secure prospective removal services, it is authorized to draw

**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:

\*—Assembly committee amendments adopted May 14, 1984.

24 upon the money available in the fund. Such moneys shall be used  
25 to pay promptly for all cleanup costs incurred by the department  
26 in removing or in minimizing damage caused by such discharge.

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

40 b. Notwithstanding any other provisions of P. L. 1976, c. 141  
41 (C. 58:10-23.11 et seq.), the department, after notifying the ad-  
42 ministrator and subject to the approval of the administrator with  
43 regard to the availability of funds therefor, may remove or ar-  
44 range for the removal of any hazardous substance which:

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

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

51 (a) Explosiveness;

52 (b) High flammability;

53 (c) Radioactivity;

54 (d) Chemical properties which in combination with any dis-  
55 charged hazardous substance at the same storage facility would  
56 create a substantial risk of imminent damage to public health  
57 or safety or an imminent and severe damage to the environ-  
58 ment;

59 (e) Is stored in a container from which its discharge is im-  
60 minent as a result of contact with a hazardous substance which  
61 has already been discharged and such additional discharge  
62 would create a substantial risk of imminent damage to public  
63 health or safety or imminent and severe damage to the en-  
64 vironment; or

65 (f) High toxicity and is stored or being transported in a  
66 container or motor vehicle, truck, railcar or other mechanized  
67 conveyance from which its discharge is imminent as a result

68 of the significant deterioration or the precarious location of  
69 the container, motor vehicle, truck, railcar or other mechanized  
70 conveyance, and such discharge would create a substantial risk  
71 of imminent damage to public health or safety or imminent  
72 and severe damage to the environment; or

73 (3) Has been discharged prior to the effective date of P. L. 1976,  
74 c. 141, if such discharge poses a substantial risk of imminent damage  
75 to the public health or safety or imminent and severe damage to the  
76 environment.

77 c. If and to the extent that he determines that funds are available,  
78 the administrator shall approve and make payments for any cleanup  
79 and removal costs incurred by the department for the removal of  
80 a hazardous substance other than petroleum as authorized by sub-  
81 section b. of this section; provided that in determining the avail-  
82 ability of funds, the administrator shall not include as available  
83 funds revenues realized or to be realized from the tax on the trans-  
84 fer of petroleum to the extent that such revenues result from a  
85 tax levied at a rate in excess of \$0.01 per barrel, pursuant to sub-  
86 section 9b. of P. L. 1976, c. 141 (C. 58:10-23.11h), unless the ad-  
87 ministrator determines that the sum of claims paid by the fund on  
88 behalf of petroleum discharges or removals plus pending reasonable  
89 claims against the fund on behalf of petroleum discharges or re-  
90 movals is greater than 30% of the sum of all claims paid by the fund  
91 plus all pending, reasonable claims against the fund.

92 d. The administrator may only approve and make payments for  
93 any cleanup and removal costs incurred by the department for the  
94 removal of a hazardous substance discharged prior to the effective  
95 date of P. L. 1976, c. 141, pursuant to subsection b. of this section,  
96 if, and to the extent that, he determines that adequate funds from  
97 another source are not or will not be available; and further pro-  
98 vided, with regard to the cleanup and removal costs incurred for  
99 discharges which occurred prior to the effective date of P. L. 1976,  
100 c. 141, the administrator may not during any one year period pay  
101 more than \$3,000,000.00 in total or more than \$1,500,000.00 for any  
102 discharge or related set or series of discharges.

103 e. Notwithstanding any other provisions of P. L. 1976, c. 141,  
104 the administrator, upon the approval of the department after con-  
105 sidering, among any other relevant factors, its priorities for  
106 spending funds pursuant to P. L. 1976, c. 141, and within the limits  
107 of available funds, shall make payments for the restoration or re-  
108 placement of, or connection to an alternative water supply for, any  
109 private residential well destroyed, contaminated, or impaired as a  
110 result of a discharge prior to the effective date of P. L. 1976, c. 141,

111 provided however total payments for said purpose shall not exceed  
112 \$500,000.00 for the period between the effective date of this sub-  
113 section and January 1, 1983, and in any calendar year thereafter.

114 f. Any expenditures made by the administrator pursuant to this  
115 act shall constitute **[a first priority claim and lien paramount to all**  
116 **other claims and liens upon]**, *in each instance, a debt of the dis-*  
117 *charger to the fund. The debt shall constitute a lien on all property*  
118 *owned by the discharger when a notice of lien, incorporating a*  
119 *description of the property of the discharger subject to the cleanup*  
120 *and removal and an identification of the amount of cleanup, removal*  
121 *and related costs expended from the fund is duly filed with the clerk*  
122 *of the Superior Court. The clerk shall promptly enter upon the civil*  
123 *judgment or order docket the name and address of the discharger*  
124 *and the amount of the lien as set forth in the notice of lien. Upon*  
125 *entry by the clerk, the lien to the amount committed by the adminis-*  
126 *trator for cleaning and removal, shall attach to the revenues and all*  
127 *real and personal property of the discharger, whether or not the*  
128 *discharger is insolvent. \***[Notice of lien filed pursuant to this sub-***  
129 *section shall: (1) with respect to the property subject to the cleanup*  
130 *and removal described in the notice of lien, create a lien with pri-*  
131 *ority over all other claims and liens; and (2) with respect to all*  
132 *other property of the discharger wherever situated in the State,*  
133 *have priority from the date of the filing of the notice of lien, and*  
134 *shall neither constitute a valid lien against the property, nor affect*  
135 *any valid lien, right or interest in the property if the lien, right or*  
136 *interest is filed in accordance with established procedure prior to*  
137 *the filing and entry of the notice of a lien filed under this subsection.*  
138 *Prior to the enforcement of lien on real property created under*  
139 *this subsection, the administrator shall seek satisfaction of a judg-*  
140 *ment against the personal property of the discharger.]\* \*The notice*  
141 *of lien filed pursuant to this subsection which affects the property*  
142 *of a discharger subject to the cleanup and removal of a discharge*  
143 *shall create a lien with priority over all other claims or liens which*  
144 *are or have been filed against the property. The notice of lien filed*  
145 *pursuant to this subsection which affects any property of a dis-*  
146 *charger other than the property subject to the cleanup and removal,*  
147 *shall have priority from the day of the filing of the notice of the lien*  
148 *over all other claims and liens filed against the property, but shall*  
149 *not affect any valid lien, right, or interest in the property filed in*  
150 *accordance with established procedure prior to the filing of a notice*  
151 *of lien pursuant to this subsection, provided that if the discharger*  
152 *is not the owner of the property subject to the cleanup and removal*  
153 *of the discharge the notice of lien filed pursuant to this subsection*

154 *against the property of the discharger associated with the produc-*  
 155 *tion, treatment, storage, transportation or distribution of the dis-*  
 156 *charged hazardous substances shall create a lien with priority over*  
 157 *all other claims or liens which are or have been filed against the*  
 158 *property.*

159 *If the department can demonstrate before a court of competent*  
 160 *jurisdiction that a person holding a lien, right, or interest against*  
 161 *any property of a discharger other than the property which is the*  
 162 *subject of a cleanup and removal, knew or had reason to know of*  
 163 *the discharge which occurred at the property of the discharger*  
 164 *which is subject to the cleanup and removal, and did not report the*  
 165 *discharge to the department or take any other reasonable action to*  
 166 *prevent or abate the discharge, a notice of lien filed pursuant to this*  
 167 *subsection shall have priority over the lien, right, or interest of this*  
 168 *person.\**

169 **【All liens under P. L. 1976, c. 141 (C. 58:10-23.11 et seq.) shall**  
 170 **be filed with the clerk or register of deeds and mortgages of the**  
 171 **county wherein the affected property is located, and with the clerk**  
 172 **of the Superior Court, and shall immediately attach to, and become**  
 173 **binding upon, all the property, whether real or personal, of the**  
 174 **party against whom the lien is filed. If it is believed that the party**  
 175 **chargeable under the lien has an interest or estate, whether vested**  
 176 **or contingent, in property within the State, but the exact location**  
 177 **of the property is not known, then the liens shall be filed with the**  
 178 **Clerk of the Superior Court and shall become binding upon all the**  
 179 **property of the party chargeable under the lien wherever situated**  
 180 **within the State.】**

1     2. This act shall take effect immediately and shall **\*【be retro-**  
 2     **active to December 11, 1981】\*** *\*apply to all liens which are or have*  
 3     *been filed pursuant to P. L. 1976, c. 141 (C. 58:10-23.11 et seq.)\*.*

ASSEMBLY AGRICULTURE AND ENVIRONMENT  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1585**

with Assembly committee amendments

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**STATE OF NEW JERSEY**

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DATED: MAY 14, 1984

Assembly Bill No. 1585 amends the section of the "Spill Compensation and Control Act," P. L. 1976, c. 141 (C. 58:10-23.11 et seq.) (Spill Act) which sets forth the procedure to be followed by the State in filing liens against the property of a person responsible for an illegal discharge of a hazardous substance. The Spill Act now authorizes the Administrator of the Spill Fund to file a "priority lien" (one which takes precedence over all other liens, claims or other interests in the property) against the property of a discharger, but does not distinguish between property of the discharger which is subject to a cleanup operation and other property ("clean property") which the discharger owns. This bill makes such a distinction.

Assembly Bill No. 1585 provides that a lien filed by the Administrator of the Spill Fund against the property of a discharger which is subject to a cleanup will have priority over all other liens against the property. Liens filed against other "clean property" owned by a discharger will have priority only from the date of filing, and would not supersede other liens against the property. A-1585 also provides that before enforcing a lien against property of a discharger the Administrator of the Spill Fund would seek satisfaction of a judgment against the personal property of this discharger.

The Agriculture and Environment Committee amended A-1585 to clarify the existing amendatory language and affirm, in the effective date section of the bill, that the distinctions made in the bill would apply to all liens which have been filed pursuant to the Spill Act.

The amended bill also removes the provision that prior to enforcing the lien against real property, the administrator would have to seek satisfaction of a judgment against personal property as this is not the current practice of the administrator and would pose an unnecessary procedural burden on the State.

The committee further amended the bill to provide that if the discharger does not own the discharge property, the lien filed against the property of the discharger associated with the production, treatment, storage, transportation or distribution of the discharged hazardous

substances would take priority over all others. This was to maintain the priority lien as an enforcement tool against "midnight dumpers" and those that produce hazardous substances lawfully but discharge unlawfully.

Finally, the committee amended the bill to retain the priority lien against "clean property" if the department can show the person holding a lien, right, or interest in that property knew or had reason to know of the discharge and did not inform the department.

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# OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

Contact: PAUL WOLCOTT  
609-292-8956

TRENTON, N.J. 08625

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Governor Thomas H. Kean has signed legislation which substantially increases penalties for violation of the Air Pollution Control Act, and adds new administrative penalties to the civil penalties already set out in the act.

"New Jersey has some of the most stringent environmental regulations of any state in the Nation," Kean said. "With this bill we are making those laws even tougher, and sending a signal that New Jersey will not tolerate actions which pollute the air we breathe."

The bill, S-2480, is sponsored by State Senator Raymond Lesniak, D-Union. It makes the first increases in air pollution penalties since 1967.

The bill sets fines of not more than \$10,000 for the first offense, \$25,000 for the second offense, and \$50,000 for the third and subsequent offenses. The old penalty was \$2,500 per offense.

"Penalties of this severity make it clear that air pollution is considered a very serious violation, and, as well, actually create an incentive to avoid the release of pollutants," the Governor said.

Another provision of the bill allows the Commissioner of the Department of Environmental Protection to directly levy administrative penalties against a violator without first seeking relief in the Superior Court. It also eliminates a 15-day waiting period before a hearing can be held on emissions of contaminants which are not specifically limited by code, rule or regulation.

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S-2480-Air Pollution Control Act

S-1423-Spill Compensation and Control Act

Wednesday, January 23, 1985

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That provision will allow the Commissioner to act immediately to halt pollution when the materials are not specifically covered by the law.

Where a release of contaminants is in a quantity or concentration which poses a health or environmental threat, or which reasonably might result in citizen complaints, the polluter must immediately notify the DEP.

The Governor also signed S-1423, sponsored by Senator Lesniak, which modifies the lien priority contained in the Spill Compensation and Control Act by placing limits on the applicability of the so-called "super lien." This provision of the law, which places a first priority lien posed by the Spill Fund Administrator on all the property owned by a discharger of hazardous substances, had created problems in clearing property titles.

The amendments rectify that problem by modifying the first priority status of the "super lien" on some residential property, and on property which was not the subject of a clean-up or removal of hazardous substances.

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