

2C:17-2 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:17-2 et al (Hazardous substances
--disposal--criminal
procedures--extend statute
of limitations)

LAWS OF: 1985 **CHAPTER:** 348

BILL NO: S2375

Sponsor(s): Orechio and others

Date Introduced: October 22, 1984

Committee: Assembly: Judiciary
Senate: Judiciary

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

Date of Passage: Assembly: September 9, 1985
Senate: May 2, 1985

Date of Approval: November 1, 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: No

Following were printed:

Reports: No

Hearings: No

11-1-85

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SENATE, No. 2375**STATE OF NEW JERSEY**

INTRODUCED OCTOBER 22, 1984

By Senators ORECHIO, RUSSO, DALTON and LESNIAK

Referred to Committee on Judiciary

AN ACT concerning the statute of limitations for violations of the law concerning the handling or disposal of hazardous substances, and amending N. J. S. 2C:17-2 and P. L. 1970, c. 39.

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

1 1. N. J. S. 2C:17-2 is amended to read as follows:

2 2C:17-2. Causing or Risking Widespread Injury or Damage.

3 a. (1) A person who, purposely or knowingly, unlawfully causes
4 an explosion, flood, avalanche, collapse of a building, release or
5 abandonment of poison gas, radioactive material or any other
6 harmful or destructive substance[■], including but not limited to
7 hazardous waste as defined in section 1 of P. L. 1976, c. 99 (C.
8 13:1E-38) and toxic pollutant as defined in section 3 of P. L. 1977,
9 c. 74, (C. 58:10A-3),[■] commits a crime of the second degree. A
10 person who, purposely or knowingly, unlawfully causes widespread
11 injury or damage in any manner commits a crime of the second
12 degree.

13 (2) *A person who, purposely or knowingly, unlawfully causes a*
14 *hazardous discharge required to be reported pursuant to the "Spill*
15 *Compensation and Control Act," P. L. 1976, c. 141 (C. 58:10-23.11*
16 *et seq.) or any rules and regulations adopted pursuant thereto, or*
17 *who, purposely or knowingly, unlawfully causes a release *[■]into the*
18 *environment[■]* *or abandonment* of hazardous waste as defined in*
19 *section 1 of P. L. 1976, c. 99 (C. 13:1E-38) or a toxic pollutant as*
20 *defined in section 3 of P. L. 1977, c. 74 (C. 58:10A-3) commits a*
21 *crime of the second degree. *Any person who recklessly violates*

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 January 28, 1985.**

21A *the provisions of this paragraph is guilty of a crime of the third*
 21B *degree.* The provisions of N. J. S. 2C:1-6 to the contrary notwith-*
 22 *standing, a prosecution for a violation of the provisions of this*
 23 *paragraph shall be commenced within five years of the date of the*
 24 *discovery of the violation.*

25 b. A person who recklessly causes widespread injury or damage
 26 is guilty of a crime of the third degree.

27 c. A person who recklessly creates a risk of widespread injury
 28 or damage commits a crime of the fourth degree even if no such
 29 injury or damage occurs.

30 d. A person who knowingly or recklessly fails to take reasonable
 31 measures to prevent or mitigate widespread injury or damage
 32 commits a crime of the fourth degree if:

33 (1) He knows that he is under an official, contractual or other
 34 legal duty to take such measures; or

35 (2) He did or assented to the act causing or threatening the
 36 injury or damage.

37 e. For purposes of this section, widespread injury or damage
 38 means serious bodily injury to 10 or more people or damage to
 39 10 or more habitations or to a building which would normally have
 40 contained 50 or more persons at the time of the offense.

1 2. Section 9 of P. L. 1970, c. 39 (C. 13:1E-9) is amended to read
 2 as follows:

3 9. a. All codes, rules and regulations adopted by the department
 4 related to solid waste collection and disposal shall have the force
 5 and effect of law. Such codes, rules and regulations shall be ob-
 6 served throughout the State and shall be enforced by the depart-
 7 ment and by every local board of health, or county health depart-
 8 ment, as the case may be.

9 The department and the local board of health, or the county
 10 health department, as the case may be, shall have the right to enter
 11 a solid waste facility at any time in order to determine compliance
 12 with the registration statement and engineering design, and with
 13 the provisions of all applicable laws or rules and regulations
 14 adopted pursuant thereto.

15 The municipal attorney or an attorney retained by a municipality
 16 in which a violation of such laws or rules and regulations adopted
 17 pursuant thereto is alleged to have occurred shall act as counsel to
 18 a local board of health.

19 The county counsel or an attorney retained by a county in which
 20 a violation of such laws or rules and regulations adopted pursuant
 21 thereto is alleged to have occurred shall act as counsel to the county
 22 health department.

23 Any county health department may charge and collect from the
24 owner or operator of any sanitary landfill facility within its juris-
25 diction such fees for enforcement activities as may be established
26 by ordinance or resolution adopted by the governing body of any
27 such county. Such fees shall be established in accordance with a
28 fee schedule regulation to be adopted by the department, pursuant
29 to law, within 60 days of the effective date of this amendatory act
30 and shall be utilized exclusively to fund such enforcement activities.

31 All enforcement activities undertaken by county health depart-
32 ments pursuant to this subsection shall conform to all applicable
33 performance and administrative standards adopted pursuant to
34 section 10 of the "County Environment Health Act," P. L. 1977,
35 c. 443 (C. 26:3A2-28).

36 b. The commissioner, a local board of health or county health
37 department may institute an action or proceeding in the Superior
38 Court for injunctive and other relief, including the appointment of
39 a receiver for any solid waste collection or disposal facility or
40 operation, which is established or operated in violation of this act,
41 or of any code, rule or regulation promulgated pursuant to this act
42 and said court may proceed in the action in a summary manner.
43 In any such proceeding the court may grant temporary or inter-
44 locutory relief notwithstanding the provisions of R. S. 48:2-24.

45 Such relief may include, singly or in combination :

46 (1) A temporary or permanent injunction;

47 (2) Assessment of the violator for the costs of any investigation,
48 inspection, or monitoring survey which led to the establishment of
49 the violation, and for the reasonable costs of preparing and liti-
50 gating the case under this subsection;

51 (3) Assessment of the violator for any cost incurred by the State
52 in removing, correcting or terminating the adverse effects upon
53 water and air quality resulting from any violation of any provision
54 of this act or any rule, regulation or condition of approval for
55 which the action under this subsection may have been brought;

56 (4) Assessment against the violator of compensatory damages
57 for any loss or destruction of wildlife, fish or aquatic life, and for
58 any other actual damages caused by any violation of this act or any
59 rule, regulation or condition of approval established pursuant
60 to this act for which the action under this subsection may have
61 been brought. Assessments under this subsection shall be paid to
62 the State Treasurer, or to the local board of health, or to the county
63 health department, as the case may be, except that compensatory
64 damages may be paid by specific order of the court to any persons
65 who have been aggrieved by the violation.

66 If a proceeding is instituted by a local board of health or county
67 health department, notice thereof shall be served upon the com-
68 missioner in the same manner as if the commissioner were a named
69 party to the action or proceeding. The department may intervene
70 as a matter of right in any proceeding brought by a local board of
71 health or county health department.

72 c. Any person who violates the provisions of this act or any code,
73 rule or regulation promulgated pursuant to this act shall be liable
74 to a penalty of not more than \$25,000.00 per day to be collected in
75 a civil action commenced by a local board of health, a county health
76 department, or the commissioner by a summary proceeding under
77 "the penalty enforcement law" (N. J. S. 2A:58-1 et seq.) in the
78 Superior Court***■**, county district court,**■*** or a municipal court, all
79 of which shall have jurisdiction to enforce the "penalty enforcement
80 law" in connection with this act. If the violation is of a continuing
81 nature, each day during which it continues after the date given by
82 which the violation must be eliminated in accordance with the order
83 of the department shall constitute an additional, separate and
84 distinct offense.

85 d. The department is hereby authorized and empowered to com-
86 promise and settle any claim for a penalty under this section in such
87 amount in the discretion of the department as may appear appro-
88 priate and equitable under all of the circumstances, including a
89 rebate of any such penalty paid up to 90% thereof where such
90 person satisfies the department within one year or such other period
91 as the department may deem reasonable that such violation has
92 been eliminated or removed or that such order or injunction has
93 been met or satisfied, as the case may be.

94 e. Any person who knowingly:

95 (1) Transports any hazardous waste to a facility or any other
96 place which does not have authorization from the department to
97 accept such waste;

98 (2) Generates and causes or permits to be transported any
99 hazardous waste to a facility or any other place which does not have
100 authorization from the department to accept such waste;

101 (3) Disposes, treats, stores or transports hazardous waste with-
102 out authorization from the department;

103 (4) Makes any false or misleading statement to any person who
104 prepares any hazardous waste application, label, manifest, record,
105 report, design or other document required to be submitted to the
106 department; or

107 (5) Makes any false or misleading statement on any hazardous
108 waste application, label, manifest, record, report, design or other

109 document required to be submitted to the department shall, upon
 110 conviction, be guilty of a crime of the third degree and, notwith-
 111 standing the provisions of N. J. S. 2C:43-3, shall be subject to a
 112 fine of not more than \$25,000.00 for the first offense and not more
 113 than \$50,000.00 for the second and each subsequent offense and
 114 restitution, in addition to any other appropriate disposition
 115 authorized by subsection b. of N. J. S. 2C:43-2.

116 f. Any person who recklessly:

117 (1) Transports any hazardous waste to a facility or any other
 118 place which does not have authorization from the department to
 119 accept such waste;

120 (2) Generates and causes or permits to be transported any haz-
 121 ardous waste to a facility or any other place which does not have
 122 authorization from the department to accept such waste;

123 (3) Disposes, treats, stores or transports hazardous waste with-
 124 out authorization from the department;

125 (4) Makes any false or misleading statement to any person who
 126 prepares any hazardous waste application, label, manifest, record,
 127 report, design or other document required to be submitted to the
 128 department; or

129 (5) Makes any false or misleading statement on any hazardous
 130 waste application, label, manifest, record, report, design or other
 131 document required to be submitted to the department, shall, upon
 132 conviction, be guilty of a crime of the fourth degree.

133 g. Any person who, regardless of intent, generates and causes or
 134 permits any hazardous waste to be transported, transports, or re-
 135 ceives transported hazardous waste without completing and sub-
 136 mitting to the department a hazardous waste manifest in accordance
 137 with the provisions of this act or any rule or regulation adopted
 138 pursuant hereto shall, upon conviction, be guilty of a crime of the
 139 fourth degree.

140 **h. All conveyances used or intended for use in the willful dis-*
 141 *charge, in violation of the provisions of P. L. 1970, c. 39 (C. 13:1E-1*
 142 *et seq.), of any solid waste, or hazardous waste as defined in P. L.*
 143 *1976, c. 99 (C. 13:1E-38 et seq.) are subject to forfeiture to the*
 144 *State pursuant to the provisions of P. L. 1981, c. 387 (C. 13:1K-1*
 145 *et seq.).**

146 **[h.]* *i.* The provisions of N. J. S. 2C:1-6 to the contrary not-*
 147 *withstanding, a prosecution for a violation of the provisions of*
 148 *subsection e., subsection f. or subsection g. of this section shall be*
 149 *commenced within five years of the date of discovery of the*
 150 *violation.*

1 3. This act shall take effect immediately.

111 standing the provisions of N. J. S. 2C:43-3, shall be subject to a
 112 fine of not more than \$25,000.00 for the first offense and not more
 113 than \$50,000.00 for the second and each subsequent offense and
 114 restitution, in addition to any other appropriate disposition
 115 authorized by subsection b. of N. J. S. 2C:43-2.

116 f. Any person who recklessly:

117 (1) Transports any hazardous waste to a facility or any other
 118 place which does not have authorization from the department to
 119 accept such waste;

120 (2) Generates and causes or permits to be transported any haz-
 121 ardous waste to a facility or any other place which does not have
 122 authorization from the department to accept such waste;

123 (3) Disposes, treats, stores or transports hazardous waste with-
 124 out authorization from the department;

125 (4) Makes any false or misleading statement to any person who
 126 prepares any hazardous waste application, label, manifest, record,
 127 report, design or other document required to be submitted to the
 128 department; or

129 (5) Makes any false or misleading statement on any hazardous
 130 waste application, label, manifest, record, report, design or other
 131 document required to be submitted to the department, shall, upon
 132 conviction, be guilty of a crime of the fourth degree.

133 g. Any person who, regardless of intent, generates and causes or
 134 permits any hazardous waste to be transported, transports, or re-
 135 ceives transported hazardous waste without completing and sub-
 136 mitting to the department a hazardous waste manifest in accordance
 137 with the provisions of this act or any rule or regulation adopted
 138 pursuant hereto shall, upon conviction, be guilty of a crime of the
 139 fourth degree.

140 h. *The provisions of N. J. S. 2C:1-6 to the contrary notwithstanding, a prosecution for a violation of the provisions of subsection e.,*
 141 *subsection f. or subsection g. of this section shall be commenced*
 142 *within five years of the date of discovery of the violation.*

1 3. This act shall take effect immediately.

STATEMENT

This bill would extend the statute of limitations for commencing criminal prosecutions for the unlawful handling or disposing of hazardous substances. Currently criminal prosecutions have to be commenced within five years of the date of the crime. The evidence of a criminal act concerning the unlawful handling or disposal of

S 2375 (1985)

hazardous substances, however, is often not discovered, or indeed discoverable, until years after the offense. In recognition of this problem concerning environmental crimes, this bill would provide that a prosecution for criminal actions concerning hazardous substances be commenced within five years of the date of the discovery of the crime.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2375

STATE OF NEW JERSEY

DATED: JUNE 24, 1985

Presently, a prosecution for a crime except murder must be instituted within five years of the date of the crime. This bill would provide that a prosecution for crimes involving the unlawful handling or disposal of hazardous substances must be commenced within five years of the date of the discovery of the crime. The rationale for this change is that crimes of this nature are often not discovered or are not discoverable until years after the offense.

The Senate Judiciary Committee adopted the following amendments:

1. Clarified that the bill is meant to cover the abandonment as well as the release of a hazardous waste or toxic pollutant.
2. Provided that any person who "recklessly" commits a crime involving the unlawful handling or disposal of hazardous substances commits a crime of the third degree.
3. Conformed the language of Senate Bill No. 2375 with the provisions of recently enacted P. L. 1984, c. 240 which provides for the forfeiture of conveyances used to illegally discharge solid or hazardous wastes.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2375

STATE OF NEW JERSEY

DATED: JANUARY 28, 1985

Presently, a prosecution for a crime except murder must be instituted within five years of the date of the crime. This bill would provide that a prosecution for crimes involving the unlawful handling or disposal of hazardous substances must be commenced within five years of the date of the discovery of the crime. The rationale for this change is that crimes of this nature are often not discovered or are not discoverable until years after the offense.

The committee adopted the following amendments:

1. Clarified that the bill is meant to cover the abandonment as well as the release of a hazardous waste or toxic pollutant.
2. Provided that any person who "recklessly" commits a crime involving the unlawful handling or disposal of hazardous substances commits a crime of the third degree.
3. Conformed the language of Senate Bill No. 2375 with the provisions of recently enacted P. L. 1984, c. 240 which provides for the forfeiture of conveyances used to illegally discharge solid or hazardous wastes.