

58:10-23.11b

1/28/87

LEGISLATIVE HISTORY CHECKLIST

NJSA: 58:10-23.11b ("Spill Compensation and Control Act")

LAWS OF: 1984 CHAPTER 142

BILL NO: A1704

Sponsor(s): Adubato

Date Introduced: March 20, 1984

Committee: Assembly: Agriculture and Environment

Senate: Energy and Environment

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

Date of Passage: Assembly: May 14, 1984

Senate: June 25, 1984

Date of Approval: September 9, 1984

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

See newspaper clipping file, "N.J.-Hazardous Substances-Cleanup-1984" in New Jersey Reference Department.

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ASSEMBLY, No. 1704

STATE OF NEW JERSEY

INTRODUCED MARCH 20, 1984

By Assemblyman S. ADUBATO

AN ACT to amend the "Spill Compensation and Control Act,"
approved January 6, 1977 (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 3 of P. L. 1976, c. 141 (C. 58:10-23.11b) is amended to
2 read as follows:

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

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

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

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

13 d. "Cleanup and removal costs" means all costs associated with
14 a discharge incurred by the State or its political subdivisions or
15 their agents or any person with written approval from the depart-
16 ment in the (1) removal or attempted removal of hazardous sub-
17 stances or, (2) taking of reasonable measures to prevent or miti-
18 gate damages to the public health, safety, or welfare, including
19 but not limited to, public and private property, shorelines, beaches,
20 surface waters, water columns and bottom sediments, soils and
21 other affected property, including wildlife and other natural
22 resources;

**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 7, 1984.**

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

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

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

29 h. "Discharge" means any intentional or unintentional action
30 or omission resulting in the releasing, spilling, leaking, pumping,
31 pouring, emitting, emptying or dumping of hazardous substance
32 into the waters *or onto the lands* of the State [or onto lands from
33 which it might flow or drain into said waters], or into waters out-
34 side the jurisdiction of the State when damage may result to the
35 lands, waters or natural resources within the jurisdiction of the
36 State;

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

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

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

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

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

66 (1) 50,000 gallons or more for hazardous substances which are
67 other than petroleum or petroleum products, or

68 (2) 400,000 gallons or more for hazardous substances of all kinds.

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

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

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

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

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

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

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

104 s. "Transfer" means unloading or offloading between major
105 facilities and vessels, or vessels and major facilities, and from
106 vessel to vessel or major facility to major facility, except for fuel-
107 ing or refueling operations and except that with regard to the

108 movement of hazardous substances other than petroleum, it shall
109 also include any unloading of or offloading from a major facility;

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

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

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

1 2. 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
13 shall be subject to the revocation or suspension of any license or
14 permit he holds authorizing him to operate a hazardous or solid
15 waste disposal facility.

16 Removal of hazardous substances and actions to minimize
17 damage from discharges shall, to the greatest extent possible, be in
18 accordance 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
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
38 any detergent into the waters of this State without prior authoriza-
39 tion 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; or

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

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 dam-
 76 age to the public health or safety or imminent and severe damage
 77 to the environment] *;or

77A (3) *Has been discharged prior to the effective date of P. L. 1976,*
 77B *c. 141*.*

78 c. If and to the extent that he determines that funds are available,
 79 the administrator shall approve and make payments for any clean-
 80 up and removal costs incurred by the department for the removal
 81 of a hazardous substance other than petroleum as authorized by
 82 subsection 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 ad-
 88 ministrator determines that the sum of claims paid by the fund on
 89 behalf of petroleum discharges or removals plus pending reason-
 90 able claims against the fund on behalf of petroleum discharges or
 91 removals is greater than 30% of the sum of all claims paid by the
 92 fund 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 in total or more than \$1,500,000.00 for any
 103 discharge or related set or series of discharges.] *[(Deleted by
 104 amendment, P. L. 19 , c.).]* *The administrator may only
 104A approve and make payments for any cleanup and removal costs
 104B incurred by the department for the removal of a hazardous sub-
 104C stance discharged prior to the effective date of P. L. 1976, c. 141,
 104D pursuant to subsection b. of this section, if, and to the extent that,
 104E he determines that adequate funds from another source are not
 104F or will not be available; and further provided, with regard to the
 104G cleanup and removal costs incurred for discharges which occurred
 104H prior to the effective date of P. L. 1976, c. 141, the administrator
 104I may not during any one year period pay more than \$18,000,000.00
 104J in total or more than \$3,000,000.00 for any discharge or related set
 104K or series of discharges.*

105 e. Notwithstanding any other provisions of P. L. 1976, c. 141,
106 the administrator, upon the approval of the department after con-
107 sidering, among any other relevant factors, its priorities for
108 spending funds pursuant to P. L. 1976, c. 141, and within the limits
109 of available funds, shall make payments for the restoration or re-
110 placement of, or connection to an alternative water supply for, any
111 private residential well destroyed, contaminated, or impaired as a
112 result of a discharge prior to the effective date of P. L. 1976, c. 141,
113 provided however total payments for said purpose shall not exceed
114 \$500,000.00 for the period between the effective date of this sub-
115 section and January 1, 1983, and in any calendar year thereafter.

116 f. Any expenditures made by the administrator pursuant to this
117 act shall constitute a first priority claim and lien paramount to all
118 other claims and liens upon the revenues and all real and personal
119 property of the discharger, whether or not the discharger is in-
120 solvent. All liens under P. L. 1976, c. 141 (C. 58:10-23.11 et seq.)
121 shall be filed with the clerk or register of deeds and mortgages of the
122 county wherein the affected property is located, and with the clerk
123 of the Superior Court, and shall immediately attach to, and become
124 binding upon, all the property, whether real or personal, of the
125 party against whom the lien is filed. If it is believed that the party
126 chargeable under the lien has an interest or estate, whether vested
127 or contingent, in property within the State, but the exact location
128 of the property is not known, then the liens shall be filed with the
129 clerk of the Superior Court and shall become binding upon all the
130 property of the party chargeable under the lien wherever situated
131 within the State.

1 3. Section 12 of P. L. 1976, c. 141 (C. 58:10-23.11k) is amended
2 to read as follows:

3 12. Claims shall be filed with the administrator not later than
4 one year after the date of discovery of damage [nor later than six
5 years after the date of the incident which caused the damage]. The
6 administrator shall prescribe appropriate forms and procedures
7 for such claims, which shall include a provision requiring the
8 claimant to make a sworn verification of the claim to the best of
9 his knowledge. Any person who knowingly gives or causes to be
10 given any false information as a part of any such claim shall, in
11 addition to any other penalties herein or elsewhere prescribed,
12 be guilty of a misdemeanor. Upon receipt of any claim, the
13 administrator shall as soon as practicable inform all affected
14 parties of the claim.

1 4. This act shall take effect immediately.

STATEMENT

This bill would amend the "Spill Compensation and Control Act," P. L. 1976, c. 141 (C. 58:10-23.11 et seq.) to remove certain obstacles to the efficient administration of hazardous discharge cleanup operations in the State. First, the bill alters the "water-borne" nature of the law. Currently, a person has to prove that a discharge enters or might flow or drain into the waters of the State in order to make a claim against the New Jersey Spill Compensation Fund (fund). This bill amends the law to provide that a discharge on land also is compensable. Second, the bill deletes the "caps" placed on the amount of moneys from the fund that can be used for cleanup and removal costs of hazardous discharges which occurred prior to January 6, 1977, the effective date of the "Spill Compensation and Control Act." Many of the discharges which have only recently been discovered actually occurred prior to January 6, 1977. Finally, the bill would delete the "statute of limitation" on the filing of claims within six years of the "incident which caused the damage" while retaining the requirement that the claims be filed within one year of the date of discovery. Again, in many cases the incidence of damage may have been well over six years from the actual discovery of damage.

Sponsor Statement to A 1704

ASSEMBLY AGRICULTURE AND ENVIRONMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1704

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 7, 1984

As amended by the committee, this bill would amend the "Spill Compensation and Control Act," P. L. 1976, c. 141 (C. 58:10-23.11 et seq.) to remove certain obstacles to the efficient administration of hazardous discharge cleanup operations in the State. First, the bill alters the "waterborne" nature of the law. Currently, a person has to prove that a discharge enters or might flow or drain into the waters of the State in order to make a claim against the New Jersey Spill Compensation Fund (fund). This bill amends the law to provide that a discharge on land is compensable. Second, the bill would raise the "caps" placed on the amount of moneys from the fund that can be used for cleanup and removal costs of hazardous discharges which occurred prior to January 6, 1977, the effective date of the "Spill Compensation and Control Act" to \$18 million per year, with a cap of \$3 million per site. Finally, the bill would delete the "statute of limitation" on the filing of claims within six years of the "incident which caused the damage" while retaining the requirement that the claims be filed within one year of the date of discovery. Again, in many cases the incidence of damage may have been well over six years from the actual discovery of damage.

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

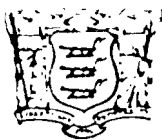
ASSEMBLY, No. 1704

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: JUNE 8, 1984

Assembly Bill No. 1704 (Official Copy Reprint) makes four changes to the administration and implementation of the New Jersey "Spill" Compensation and Control Act, (P. L. 1976, c. 141; C. 58:10-23.11 et seq.). These changes (1) provide that to qualify for cleanup with Spill Fund moneys a hazardous discharge need not involve a water-born hazardous substance, or one which threatens the State's waters, (2) remove the requirement to show that a hazardous discharge which occurred prior to the effective date of the "Spill Act" (a "pre-act" discharge) presents an "imminent danger" to the environment before Spill Fund moneys may be used for cleanup purposes, (3) increase the limits on spending Spill Fund moneys on "pre-act" discharge sites from \$1.5 million for any one site and \$3 million for all "pre-act" sites in any one year to, respectively, \$3 million and \$18 million, and, (4) remove the six year statute of limitations for filing a claim against Spill Fund for damages. Currently a claim must be filed within 6 years after the date of the incident which caused the damage. This amendment does not change, however, the requirement to file a claim one year of the discovery of the damage.



OFFICE OF THE GOVERNOR

NEWS RELEASE

CN-001

Contact: CARL GOLDEN
292-8956

TRENTON, N.J. 08625

Release: THURS. SEPTEMBER 6, 1984

Governor Thomas H. Kean today signed legislation to increase the amount of money which can be spent from the State's Spill Compensation Fund for the cleanup and removal of hazardous waste discharges. The bill also will make it easier for the Department of Environmental Protection to administer the compensation and clean-up program.

The legislation, A-1704, was sponsored by Assemblyman Stephen Adubato, Jr., D-Essex, and is effective immediately.

It increases the cap on expenditures from the fund from the current \$3 million per year to \$18 million per year. It also increases the cap on the money which can be spent per site from the current \$1.5 million to \$3 million.

It expands the definition of the types of spills for which compensation can be asked to include a discharge of toxic or hazardous waste on land. The current law confines the definition to a discharge which could flow or drain into waters in the State.

The third provision of the bill eliminates the requirement in the existing law that claims must be filed within six years of the spill incident. It retains the requirement that claims must be filed within one year of the date of discovery of the spill.

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"These changes in the law will enable the Department of Environmental Protection to respond more quickly and more effectively to spill incidents," Kean said. "It will also give the Department greatly expanded flexibility to deal with land as well as water spills and will permit greater use of the compensation fund on individual sites."