

58:10-23.11b

LEGISLATIVE HISTORY COMPLETION

("Spill Compensation and Control Act--  
recycling of non-ferrous metals--  
per barrel tax)

WASA 58-10-23.11b

LAWS OF 1980

CHAPTER 73

Bill No. A1308

Sponsor(s) Lesniak

Date Introduced March 10, 1980

Committee: Assembly Agriculture and Environment

Senate Labor, Industry and Professions

Amended during passage Yes xR Amendments during passage denoted by asterisks

Date of Passage: Assembly June 16, 1980

Senate June 26, 1980

Date of approval July 21, 1980

Following statements are attached if available:

Sponsor statement	Yes	<del>xx</del>
Committee Statement: Assembly	Yes	<del>xx</del>
Senate	Yes	<del>xx</del>
Fiscal Note	<del>Yes</del>	No
Veto message	<del>Yes</del>	No
Message on signing	Yes	<del>xx</del>
Following were printed:		
Reports	<del>Yes</del>	No
Hearings	<del>Yes</del>	No

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Sponsor's statement:

This bill addresses an inequity in the present law, which imposes an unfair and unintended tax burden on the precious metal recycling industry, owing principally to the disproportionate market value of such metals. This amendment provides that hazardous substances associated with recycling be taxed only on a per barrel basis. The bill also corrects a number of purely technical errors.

2/15/73

7-21-80

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**ASSEMBLY, No. 1308****STATE OF NEW JERSEY**

INTRODUCED MARCH 10, 1980

By Assemblyman LESNIAK

Referred to Committee on Agriculture and Environment

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;

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

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.**

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 of the State or onto lands from which it might  
33 flow or drain into said waters, or into waters outside the juris-  
34 diction of the State when damage may result to the lands, waters  
35 or natural resources within the jurisdiction of the State;

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

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

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

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

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

64 (1) 50,000 gallons or more for hazardous substances which are  
65 other than petroleum or petroleum products, or

66 (2) 400,000 gallons or more for hazardous substances of all kinds.

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

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

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

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

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

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

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

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

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

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

114 v. "*Act of God*" means an act exclusively occasioned by an  
 115 unanticipated grave natural disaster without the interference of  
 116 any human agency.

1 2. Section 5 of P. L. 1976, c. 141 (C. 58:10-23.11d) is amended  
 2 to read as follows:

3 5. Each owner or operator of a major facility shall submit to  
 4 the department the following information:

5 a. The number of barrels or another measurement of the storage  
 6 capacity of the facility;

7 b. Average daily throughput of the facility;

8 c. A primary and contingency cleanup and removal plan which  
 9 includes, but is not limited to, an inventory of;

10 (1) The storage and transfer capacity of the facility;

11 (2) The containment and removal equipment, including, but not  
 12 limited to, vehicles, vessels, pumps, skimmers, booms, chemicals,  
 13 and communication devices, to which the facility has access through  
 14 direct ownership or by contract or membership in a discharge  
 15 cleanup organization recognized by the department, as well as the  
 16 time lapse following a discharge which precedes such access;

17 (3) The trained personnel which are required and available to  
 18 operate such containment and removal equipment and the time  
 19 lapse following a discharge which proceeds such availability;

20 (4) All equipment and trained personnel used or employed in  
 21 any capacity at the facility to prevent discharges of hazardous  
 22 substances;

23 (5) The terms of agreement and operation plan of any discharge  
 24 cleanup organization to which the owner or operator of the facility  
 25 belongs;

26 (6) The type and amount of hazardous substances transferred,  
 27 refined, processed or stored at the facility;

28 d. The steps taken to insure prevention of a discharge;

29 e. The source, nature of, and conditions of financial responsi-  
 30 bility;

31 f. The department shall promulgate rules and regulations, as  
 32 provided in section 21 of this act, establishing standards for the

33 availability of preventative, cleanup and removal procedures, per-  
34 sonnel and equipment at any major facility with a total combined  
35 above-ground or buried storage capacity of 400,000 gallons or more  
36 of *hazardous substances*, as well as requiring the formulation of  
37 cleanup and removal plans for each such major facility, where such  
38 plans are not required by existing Federal statute, rule or regula-  
39 tion. Compliance with such standards and plans shall not be deemed  
40 a defense in addition to the defenses enumerated in subsection d.  
41 of section 8 of this act.

1 3. Section 9 of P. L. 1976, c. 141 (C. 58:10-23.11h) is amended  
2 to read as follows:

3 9. a. There is hereby levied upon each owner or operator of one  
4 or more major facilities a tax to insure compensation for cleanup  
5 costs and damages associated with any discharge of hazardous  
6 substances to be paid by the transferee; provided, however, that  
7 in the case of a major facility which operates as a public storage  
8 terminal for hazardous substances owned by others, the owner of  
9 the hazardous substance transferred to such major facility or his  
10 authorized agent shall be considered to be the transferee or trans-  
11 feror, as the case may be, for the purposes of this section and shall  
12 be deemed to be a taxpayer for purposes of this act. Where such  
13 person has failed to file a return or pay the tax imposed by this act  
14 within 60 days after the due date thereof, the director shall forth-  
15 with take appropriate steps to collect same from the owner of the  
16 hazardous substance. In the event the director is not successful in  
17 collecting said tax then on notice to the owner or operator of the  
18 public storage terminal of said fact said owner of operator shall  
19 not release any hazardous substance owned by the taxpayer. The  
20 director may forthwith proceed to satisfy any tax liability of the  
21 taxpayer by seizing, selling or otherwise disposing of said hazard-  
22 ous substance to satisfy the taxpayer's tax liability and to take any  
23 further steps permitted by law for its collection. For the purposes  
24 of this act public storage terminal shall mean a public or privately  
25 owned major facility operated for public use which is used for the  
26 storage or transfer of hazardous substances. The tax shall be  
27 measured by the number of barrels or the fair market value, as the  
28 case may be, of hazardous substances transferred to the major fa-  
29 cility, provided, however, that the same barrel, including any prod-  
30 ucts derived therefrom, subject to multiple transfers from or be-  
31 tween major facilities shall be taxed only once at the point of the  
32 first transfer.

33 When a hazardous substance other than petroleum which has not  
34 been previously taxed is transferred from a major in-State facility

35 to a facility which is not a major facility, the transferor shall be  
36 liable for tax payment for said transfer.

37 b. The tax shall be \$0.01 per barrel transferred and in the case  
38 of the transfer of hazardous substances other than petroleum *or*  
39 *petroleum products*, the tax shall be the greater of \$0.01 per barrel  
40 or 0.4% of the fair market value of the product, until the balance  
41 in the fund equals or exceeds \$50,000,000.00; provided, however,  
42 that with respect to transfers of hazardous substances other than  
43 petroleum *or petroleum products* which are **[in mixtures containing**  
44 **any precious metal or metals]** *\*[incident to the recycling or rere-*  
45 *fining of nonferrous metals]\** *\*or contain any precious metals to*  
46 *be recycled, refined, or rerefined in this State, or which are trans-*  
47 *ferred into this State subsequent to being recycled, refined or re-*  
48 *refined\**, the tax shall be **[the greater of]** \$0.01 per barrel **[or**  
49 **0.4% of the fair market value]** of the **[predominant]** hazardous  
49A substance **[of the mixture]**. **[For the purposes of this section,**  
49B **precious metals shall mean gold, silver, platinum, palladium,**  
49C **iridium, rhodium, and ruthenium]**. *\*For the purposes of this section,*  
49D *“precious metals” means gold, silver, osmium, platinum, palladium,*  
49E *iridium, rhodium, ruthenium and copper.\** In each fiscal year fol-  
50 lowing any year in which the balance of the fund equals or exceeds  
51 \$50,000,000.00, no tax shall be levied unless (1) the current balance  
52 in the fund is less than \$40,000,000.00 or (2) pending claims against  
53 the fund exceed 50% of the existing balance of the fund. The  
54 provisions of the foregoing notwithstanding, should claims paid  
55 from or pending against the fund not exceed \$5,000,000.00 within  
56 3 years after the tax is first levied, the tax shall be \$0.01 per barrel  
57 transferred or 0.4% of the fair market value of the product, as the  
58 case may be, until the balance in the fund equals or exceeds  
59 \$36,000,000.00, and thereafter shall not be levied unless: (1) the  
60 current balance in the fund is less than \$30,000,000.00 or (2) pend-  
61 ing claims against the fund exceed 50% of the existing balance of  
62 the fund. In the event of either such occurrence and upon certifica-  
63 tion thereof by the State Treasurer, the director shall within 10  
64 days of the date of such certification relevel the excise tax, which  
65 shall take effect on the first day of the month following such relevel.  
66 With respect to the tax imposed upon the transfer of hazardous  
67 substances which are other than petroleum or petroleum products,  
68 if the revenues from such tax exceed \$7,000,000.00 during any  
69 calendar year, such excess shall be refunded or credited to the tax-  
70 payers who paid such tax during the calendar year. The refund  
71 or credit shall be based upon the amount of taxes paid by each  
72 taxpayer on transfers of hazardous substances which are other than  
73 petroleum or petroleum products for the calendar year in propor-

74 tion to all taxes paid by all taxpayers on such transfers during said  
 75 year; provided, however, that if at the end of the calendar year the  
 76 increased tax rate as authorized by this subsection or subsection i.  
 77 is in effect, no refund or credit shall be allowed for such calendar  
 78 year; and further, provided that no refund or credit shall be  
 79 allowed for a calendar year if by reason of such refund or credit a  
 80 condition would occur which would authorize the imposition of the  
 81 tax at the higher rate authorized in this subsection or subsection i.  
 82 However, a partial refund or credit shall be allowed to the extent  
 83 that such a condition would not occur. \*~~¶~~In the event of a major dis-  
 84 charge or series of discharges of petroleum or petroleum products  
 85 resulting in claims against the fund exceeding the existing balance  
 86 of the fund, the tax shall be levied at the rate of \$0.04 per barrel  
 87 transferred until the balance in the fund equals 150% of pending  
 88 claims against the fund; provided, however, that the rate may be set  
 89 at less than \$0.04 per barrel transferred if the administrator deter-  
 90 mines that the revenue produced by such lower rate shall be suffi-  
 91 cient to pay outstanding claims against the fund within 1 year of  
 92 such levy. In the event of a major discharge or series of discharges  
 93 of hazardous substances other than petroleum or petroleum prod-  
 94 ucts resulting in claims against the fund exceeding the existing  
 95 balance of the fund, the tax shall be levied at the rate of the greater  
 96 of \$0.04 per barrel transferred, or 0.8% of the fair market value of  
 97 such hazardous substance, until the balance in the fund equals 150%  
 98 of pending claims against the fund; provided, however, that the  
 99 rate may be set at less than \$0.04 per barrel transferred or 0.8% of  
 100 the fair market value of such hazardous substance if the adminis-  
 101 trator determines that the revenue produced by such lower rate  
 102 shall be sufficient to pay outstanding claims against the fund within  
 103 1 year of such levy.]\* *\*In the event of a major discharge or series*  
 104 *of discharges resulting in reasonable claims against the fund ex-*  
 105 *ceeding the existing balance of the fund, the tax shall be levied as*  
 106 *follows:*

107 (1) *On petroleum or petroleum products, at the rate of \$0.04 per*  
 107A *barrel transferred, until the \*\*~~¶~~balance in the fund equals 150% of*  
 107B *pending reasonable claims against the fund, if, in the 12 month*  
 107C *period preceding the time when the fund is so exceeded, reason-*  
 107D *able claims resulting from the discharge of petroleum or petro-*  
 107E *leum products represent more than 50% of the total dollar amount*  
 107F *of all reasonable claims filed during such 12 month period, includ-*  
 107G *ing the particular claim which causes the existing balance of the*  
 107H *fund to be exceeded; provided, however, that such rate may be set*  
 107I *at less than \$0.04 per barrel transferred if the administrator de-*



107J *termines that the revenue produced by such lower rate will be*  
 107K *sufficient to pay outstanding reasonable claims against the fund*  
 107L *within 1 year of such levy; or*

107M (2) *On hazardous substances other than petroleum or petroleum*  
 107N *products, at the rate of the greater of \$0.04 per barrel transferred*  
 107O *or 0.8% of the fair market value of such hazardous substance, until*  
 107P *the balance in the fund equals 150% of pending reasonable claims*  
 107Q *against the fund, if, in the 12 month period preceding the time*  
 107R *when the fund is so exceeded, reasonable claims resulting from the*  
 107S *discharge of hazardous substances other than petroleum or petro-*  
 107T *leum products represent more than 50% of the total dollar amount*  
 107U *of all reasonable claims filed during such 12 month period, includ-*  
 107V *ing the particular claim which causes the existing balance of the*  
 107W *fund to be exceeded; provided, however, that with respect to*  
 107X *transfers of hazardous substances other than petroleum or petro-*  
 107Y *leum products which are or contain any precious metals to be re-*  
 107Z *cycled, refined, or rerefined in this State, or which are transferred*  
 108 *into this State subsequent to being recycled, refined or rerefined,*  
 108A *the tax shall be \$0.04 per barrel of the hazardous substances; and*  
 108B *provided further, however, that such rate may be set at less than*  
 108C *\$0.04 per barrel transferred or 0.8% of the fair market value of*  
 108D *such hazardous substance if the administrator determines that the*  
 108E *revenue produced by such lower rate shall be sufficient to pay*  
 108F *outstanding reasonable claims against the fund within 1 year of*  
 108G *such levy.\*]\*\* \*\*revenue produced by such increased rate equals*  
 108H *150% of the total dollar amount of all pending reasonable claims*  
 108I *resulting from the discharge of petroleum or petroleum products;*  
 108J *provided, however, that such rate may be set at less than \$0.04*  
 108K *per barrel transferred if the administrator determines that the*  
 108L *revenue produced by such lower rate will be sufficient to pay out-*  
 108M *standing reasonable claims against the fund within 1 year of*  
 108N *such levy; and*

108O (2) *On hazardous substances other than petroleum or petroleum*  
 108P *products, at the rate of the greater of \$0.04 per barrel transferred*  
 108Q *or 0.8% of the fair market value of such hazardous substance,*  
 108R *until the revenue produced by such increased rate equals 150%*  
 108S *of the total dollar amount of all pending reasonable claims result-*  
 108T *ing from the discharge of hazardous substances other than petro-*  
 108U *leum or petroleum products; provided, however, that with respect*  
 108V *to transfers of hazardous substances other than petroleum or*  
 108W *petroleum products which are or contain any precious metals to*  
 108X *be recycled, refined, or rerefined in this State, or which are trans-*  
 108Y *ferred into this State subsequent to being recycled, refined, or*

109 *rerefined, the tax shall be \$0.04 per barrel of the hazardous sub-*  
109A *stances; and provided further, however, that any such increased*  
109B *tax rate on hazardous substances other than petroleum or petro-*  
109C *leum products may be set at less than \$0.04 per barrel transferred,*  
109D *or 0.8% of the fair market value of the hazardous substance, as*  
109E *the case may be, if the administrator determines that the revenue*  
109F *produced by such lower rate shall be sufficient to pay outstanding*  
109G *reasonable claims against the fund within 1 year of such levy.\*\**

109H Interest received on moneys in the fund shall be credited to the  
109I fund. Should the fund exceed \$36,000,000.00 or \$50,000,000.00, as  
109J herein provided, as a result of such interest, the administrator and  
109K the commissioner shall report to the Legislature and the Governor  
109L concerning the options for the use of such interest.

109M c. (1) Every taxpayer and owner or operator of a public storage  
109N terminal for hazardous substances shall on or before the twentieth  
110 day of the month following the close of each tax period render a  
111 return under oath to the director on such forms as may be pre-  
112 scribed by the director indicating the number of barrels of hazar-  
113 dous substances transferred and where appropriate, the fair market  
114 value of the hazardous substances transferred to or from the major  
115 facility, and at said time the taxpayer shall pay the full amount of  
116 the tax due.

117 (2) Every taxpayer or owner or operator of a major facility or  
118 vessel which transfers a hazardous substance, as defined in this  
119 act, and who is subject to the tax under subsection a. shall within  
120 20 days after the first such transfer in any fiscal year register with  
121 the director on such form as shall be prescribed by him.

122 d. If a return required by this act is not filed, or if a return when  
123 filed is incorrect or insufficient in the opinion of the director, the  
124 amount of tax due shall be determined by the director from such  
125 information as may be available. Notice of such determination  
126 shall be given to the taxpayer liable for the payment of the tax.  
127 Such determination shall finally and irrevocably fix the tax unless  
128 the person against whom it is assessed, within 30 days after receiv-  
129 ing notice of such determination, shall apply to the director for a  
130 hearing, or unless the director on his own motion shall redetermine  
131 the same. After such hearing the director shall give notice of his  
132 determination to the person to whom the tax is assessed.

133 e. Any taxpayer who shall fail to file his return when due or to  
134 pay any tax when the same becomes due, as herein provided, shall  
135 be subject to such penalties and interest as provided in the "State  
136 Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised  
137 Statutes. If the Division of Taxation determines that the failure

138 to comply with any provision of this section was excusable under  
139 the circumstances, it may remit such part or all of the penalty as  
140 shall be appropriate under such circumstances.

141 f. (1) Any person failing to file a return, failing to pay the tax,  
142 or filing or causing to be filed, or making or causing to be made,  
143 or giving or causing to be given any return, certificate, affidavit,  
144 representation, information, testimony or statement required or  
145 authorized by this act, or rules or regulations adopted hereunder  
146 which is willfully false, or failing to keep any records required  
147 by this act or rules and regulations adopted hereunder, shall, in  
148 addition to any other penalties herein or elsewhere prescribed, be  
149 guilty of a misdemeanor.

150 (2) The certificate of the director to the effect that a tax has not  
151 been paid, that a return has not been filed, that information has  
152 not been supplied or that inaccurate information has been supplied  
153 pursuant to the provisions of this act or rules or regulations  
154 adopted hereunder shall be presumptive evidence thereof.

155-156 g. In addition to the other powers granted to the director in this  
157 section, he is hereby authorized and empowered:

158 (1) To delegate to any officer or employee of his division such of  
159 his powers and duties as he may deem necessary to carry out  
160 efficiently the provisions of this section, and the person or persons  
161 to whom such power has been delegated shall possess and may  
162 exercise all of said powers and perform all of the duties delegated  
163 by the director;

164 (2) To prescribe and distribute all necessary forms for the im-  
165 plementation of this section.

166 h. The tax imposed by this act shall be governed in all respects  
167 by the provisions of the "State Tax Uniform Procedure Law,"  
168 Subtitle 9 of Title 54 of the Revised Statutes, except only to the  
169 extent that a specific provision of this act may be in conflict there-  
170 with.

171 i. Notwithstanding any other provisions of this section, the  
172 Treasurer may order the director to levy the tax on all hazardous  
173 substances other than petroleum or *petroleum products* at a  
174 specified rate greater than \$0.01 per barrel or 0.4% of the fair  
175 market value of the product, \***[whichever is greater]**\* *as the case*  
176 *may be*\*, but in no event to exceed \*\$0.04 per barrel with respect to  
177 *transfers of hazardous substances other than petroleum or petro-*  
178 *leum products which are or contain any precious metals to be re-*  
178A *cycled, refined or rerefined in this State, or which are transferred*  
178B *into this State subsequent to being recycled, refined or rerefined,*  
178C *or*\* the greater of \$0.04 per barrel or 0.6% of the fair market

178d value of the product *\*with respect to transfers of any other*  
178e *hazardous substances other than petroleum or petroleum pro-*  
178f *ducts\**, if **\*[any]\*** *\*and\** as long as the administrator determines  
178g the following:

179 (1) That pending, reasonable claims against the fund for hazar-  
180 dous substances other than petroleum *or petroleum products* exceed  
181 70% of the existing balance of the fund, and

182 (2) That the sum of the claims paid by the fund on behalf of  
183 discharges or removals of hazardous substances other than petro-  
184 leum *or petroleum products* plus pending, reasonable claims against  
185 the fund on behalf of discharges or hazardous substances other than  
186 petroleum is equal to or greater than 70% of all claims paid by the  
187 fund plus all pending, reasonable claims against the fund.

188 The provisions of this subsection shall not preclude the impo-  
189 sition of the tax at the higher rate authorized under subsection b.  
190 of this section.

1 4. This act shall take effect immediately, and shall apply to  
2 transfers undertaken on or after April 1, 1980.

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ASSEMBLY AGRICULTURE AND ENVIRONMENT  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1308**

with Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: MAY 22, 1980

This bill addresses an inequity in the present law which imposes an unfair and unintended tax burden on the precious metal recycling industry, owing principally to the disproportionately high market value of such metals. The bill as amended by the committee provides that hazardous substances which are themselves or contain precious metals be taxed at a per barrel rate, rather than by a percentage of market value rate. This rate would be \$0.01 per barrel under normal circumstances and up to \$0.04 per barrel when pending reasonable claims against the fund resulting from "chemical" discharges exceed 70% of the existing balance of the fund.

The bill as amended also provides that the accelerator tax under section 9 would be levied on petroleum or petroleum products when discharges of petroleum or petroleum products result in more than 50% of the dollar amount reasonable of all claims filed during a given 12 month period, and on "chemicals" when discharges of "chemicals" result in more than 50% of the dollar amount of all reasonable claims filed during a given 12 month period.

Finally, the bill as amended provides that substances or additives actually used in crude or stock petroleum refining or blending processes be taxed as petroleum and petroleum products, rather than as "chemicals."

SENATE LABOR, INDUSTRY AND  
PROFESSIONS COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 1308**  
[OFFICIAL COPY REPRINT]

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**STATE OF NEW JERSEY**

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DATED: JUNE 23, 1980

This bill addresses an inequity in the "Spill Compensation and Control Act" (P. L. 1976, c. 141) which imposes an unfair and unintended tax burden on the precious metal recycling industry, owing principally to the disproportionately high market value of such metals. For this reason, the bill provides that hazardous substances which are themselves or contain precious metals be taxed at a per barrel rate, rather than by a percentage of market value rate. This rate would be \$0.01 per barrel under normal circumstances and up to \$0.04 per barrel when pending reasonable claims against the fund resulting from "chemical" discharges exceed 70% of the existing balance of the fund. The bill also provides that substances or additives actually used in crude or stock petroleum refining or blending processes be taxed as petroleum and petroleum products, rather than as "chemicals."

Assembly committee amendments had provided that the accelerator tax under section 9 be levied on petroleum or petroleum products when discharges of petroleum or petroleum products result in more than 50% of the dollar amount reasonable of claims of the filed during a given 12 month period, and on "chemicals" when discharges of "chemicals" result in more than 50% of the dollar amount of all reasonable claims filed during a given 12 month period. That provision, however, while an improvement over the existing law, still resulted in an inequity by collecting, for example, 100% of the increased tax from the industry only 52% responsible for depleting the fund.

In order to address this remaining inequity, Senate committee amendments provide that the increased rate of taxation be levied on petroleum and petroleum products and on "chemicals" in direct proportion to the total dollar amounts of claims resulting from petroleum discharges and "chemical" discharges, respectively.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

JULY 22, 1980

KATHRYN FORSYTH

Governor Brendan Byrne signed A-1308, sponsored by Assemblyman Raymond Lesniak (D-Union), which makes two major and several technical changes in the Spill Compensation and Control Act.

The bill limits the tax on precious metals which are hazardous substances to a cents-per-barrel tax rather than a fair market value tax and changes the accelerated tax which the fund administrator may impose when the fund goes into deficit in order to provide a more equitable allocation between the oil and chemical industries.

Under the original law, hazardous substances other than petroleum products are taxed at \$.01 per barrel or 0.4 percent of the fair market value of the substance, whichever is greater.

The intent of the statute was to lessen the tax liability on precious metals, which, due to their extremely high and fluctuating value, would be exorbitant but the original language was inadequate.

Under A-1308, hazardous substances which are, or which contain, gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium or copper which are to be refined, rerefined or recycled in New Jersey or which are transferred into this state subsequent to any of those processes will be taxed at the rate of \$.01 per barrel rather than at 0.4 percent of the fair market value.

The other major amendment changes the section of the Act to clarify when and upon whom the administrator of the Spill Compensation Fund may impose the accelerated tax which goes into effect when the fund goes into deficit.

Under the original law, in the event of a discharge or series of discharges of petroleum or petroleum products which results in the claims against the fund exceeding the existing balance of the fund, the administrator may increase the tax rate from \$.01 per barrel to \$.04 per barrel until the balance of the fund equals 150 percent of pending claims.

If the hazardous substance is something other than petroleum or petroleum products, the administrator may increase the tax from \$.01 or 0.4 percent of the fair market value (whichever is greater) until the fund reaches 150 percent of the claims. The tax on precious metals, in similar circumstances, would be accelerated to \$.04 per barrel.

Under this bill, when the fund went into deficit the oil and chemical industries would each pay the accelerated rate until revenues from the accelerated tax equal 150 percent of the pending claims relating to their particular products.

The administrator could also set an accelerated rate lower than the maximum rate if the lower rate would produce the required revenues within one year of the levy.

These amendments will bring the required revenues into the fund more rapidly than under the original law and provide a more equitable allocation of the accelerated tax upon the responsible industries.

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