

58:10-23.11b

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2002 **CHAPTER:** 37
NJSA: 58:10-23.11b (Contaminated sites—indirect costs for remediation)
BILL NO: A2510 (Substituted for S1511)
SPONSOR(S): Gusciora

DATE INTRODUCED: June 6, 2003

COMMITTEE: **ASSEMBLY:** Budget

SENATE -----

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 27, 2002

SENATE: June 27, 2002

DATE OF APPROVAL: July 1, 2003

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Assembly committee substitute enacted)

A2510

[SPONSORS STATEMENT:](#) (Begins on page 6 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)

S1511

[SPONSORS STATEMENT:](#) (Begins on page 6 of original bill) [Yes](#)

Bill and Sponsors Statement identical to A2510

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes [6-20-2002 \(Environ.\)](#)
[6-24-2002 \(Budget\)](#)

Both statements identical to Assembly Statement for A2510

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATES: No [7-16-2002](#)
[10-17-2002](#)

Identical to fiscal estimate for A2510

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING:

No

FOLLOWING WERE PRINTED:

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No

P.L. 2002, CHAPTER 37, *approved July 1, 2002*

Assembly Committee Substitute for

Assembly, No. 2510

1 **AN ACT** concerning oversight fees for hazardous substance cleanups
2 and remediations, supplementing P.L.1993, c.139 (C.58:10B-1 et
3 al.), and amending P.L.1976, c.141.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) a. In the case of an owner or operator of an
9 industrial establishment or any other person required to perform
10 remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.),
11 or a discharger, a person in any way responsible for a hazardous
12 substance, or a person otherwise liable for cleanup and removal costs
13 pursuant to subsection c. of section 8 of P.L.1976, c.141
14 (C.58:10-23.11g) and who does not have a defense to liability
15 pursuant to subsection d. of that section, the fees for department
16 oversight of the cleanup and removal of a discharge of a hazardous
17 substance performed after the effective date of P.L. , c. (now in
18 the Legislature as this bill) may include indirect costs.

19 b. In the case of the remediation of a contaminated site performed
20 by any person not subject to the provisions of subsection a. of this
21 section, the fees for department oversight of the remediation
22 performed after the effective date of P.L. , c. (now in the
23 Legislature as this bill) shall not include any indirect costs, but may
24 include only those program costs directly related to the oversight of
25 the remediation.

26 c. In the case of the cleanup and removal of a discharged
27 hazardous substance at a person's primary residence, the fees for
28 department oversight of the remediation performed after the effective
29 date of P.L. , c. (now in the Legislature as this bill) shall not
30 include any indirect costs, but may include only those program costs
31 directly related to the oversight of the remediation.

32 d. The department shall not establish or impose a fee for the
33 oversight of any cleanup and removal of a discharged hazardous
34 substance or for the remediation of a contaminated site that includes
35 direct program costs and indirect costs which together exceed seven
36 and one-half percent of the cost of the remediation of a contaminated
37 site or the cleanup and removal of a discharged hazardous substance.

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

Matter underlined thus is new matter.

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

8 "Administrator" means the chief executive of the New Jersey Spill
9 Compensation Fund;

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

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

16 "Cleanup and removal costs" means all costs associated with a
17 discharge, incurred by the State or its political subdivisions or their
18 agents or any person with written approval from the department in the:
19 (1) removal or attempted removal of hazardous substances, or (2)
20 taking of reasonable measures to prevent or mitigate damage to the
21 public health, safety, or welfare, including, but not limited to, public
22 and private property, shorelines, beaches, surface waters, water
23 columns and bottom sediments, soils and other affected property,
24 including wildlife and other natural resources, and shall include costs
25 incurred by the State for the indemnification and legal defense of
26 contractors pursuant to sections 1 through 11 of P.L.1991, c.373
27 (C.58:10-23.11f8 et seq.). For the fiscal year beginning on July 1,
28 2004, for the purposes of this definition, costs incurred by the State
29 shall not include any indirect costs for department oversight performed
30 after [the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.)]
31 June 30, 2004, but may include only those program costs directly
32 related to the cleanup and removal of the discharge; however, [where]
33 whenever the State or the fund have expended money for the cleanup
34 and removal of a discharge and are seeking to recover the costs
35 incurred in that cleanup and removal action from a responsible party,
36 costs incurred by the State shall include any indirect costs;

37 "Commissioner" means the Commissioner of Environmental
38 Protection;

39 "Contamination" or "contaminant" means any discharged
40 hazardous substance, hazardous waste as defined pursuant to section
41 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to
42 section 3 of P.L.1977, c.74 (C.58:10A-3);

43 "Department" means the Department of Environmental Protection;

44 "Director" means the Director of the Division of Taxation in the
45 Department of the Treasury;

46 "Discharge" means any intentional or unintentional action or

1 omission resulting in the releasing, spilling, leaking, pumping, pouring,
2 emitting, emptying or dumping of hazardous substances into the
3 waters or onto the lands of the State, or into waters outside the
4 jurisdiction of the State when damage may result to the lands, waters
5 or natural resources within the jurisdiction of the State;

6 "Emergency response action" means those activities conducted by
7 a local unit to clean up, remove, prevent, contain, or mitigate a
8 discharge that poses an immediate threat to the environment or to the
9 public health, safety, or welfare;

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

16 "Fund" means the New Jersey Spill Compensation Fund;

17 "Hazardous substances" means the "environmental hazardous
18 substances" on the environmental hazardous substance list adopted by
19 the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4);
20 such elements and compounds, including petroleum products, which
21 are defined as such by the department, after public hearing, and which
22 shall be consistent to the maximum extent possible with, and which
23 shall include, the list of hazardous substances adopted by the federal
24 Environmental Protection Agency pursuant to section 311 of the
25 federal Water Pollution Control Act Amendments of 1972,
26 Pub.L.92-500, as amended by the Clean Water Act of 1977,
27 Pub.L.95-217 (33 U.S.C.s.1251 et seq.); the list of toxic pollutants
28 designated by Congress or the EPA pursuant to section 307 of that
29 act; and the list of hazardous substances adopted by the federal
30 Environmental Protection Agency pursuant to section 101 of the
31 "Comprehensive Environmental Response, Compensation and Liability
32 Act of 1980," Pub.L.96-510 (42 U.S.C.s.9601 et seq.); provided,
33 however, that sewage and sewage sludge shall not be considered as
34 hazardous substances for the purposes of P.L.1976, c.141
35 (C.58:10-23.11 et seq.);

36 "Local unit" means any county or municipality, or any agency or
37 other instrumentality thereof, or a duly incorporated volunteer fire,
38 ambulance, first aid, emergency, or rescue company or squad;

39 "Major facility" includes, but is not limited to, any refinery, storage
40 or transfer terminal, pipeline, deep-water port, drilling platform or any
41 appurtenance related to any of the preceding that is used or is capable
42 of being used to refine, produce, store, handle, transfer, process or
43 transport hazardous substances. "Major facility" shall include a vessel
44 only when that vessel is engaged in a transfer of hazardous substances
45 between it and another vessel, and in any event shall not include a
46 vessel used solely for activities directly related to recovering,

1 containing, cleaning up or removing discharges of petroleum in the
2 surface waters of the State, including training, research, and other
3 activities directly related to spill response.

4 A facility shall not be considered a major facility for the purpose
5 of P.L.1976, c.141 unless it has total combined aboveground or buried
6 storage capacity of:

7 (1) 20,000 gallons or more for hazardous substances which are
8 other than petroleum or petroleum products, or

9 (2) 200,000 gallons or more for hazardous substances of all kinds.

10 In determining whether a facility is a major facility for the purposes
11 of P.L.1976, c.141 (C.58:10-23.11 et seq.), any underground storage
12 tank at the facility used solely to store heating oil for on-site
13 consumption shall not be considered when determining the combined
14 storage capacity of the facility.

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

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

25 "Owner" or "operator" means, with respect to a vessel, any person
26 owning, operating or chartering by demise such vessel; with respect to
27 any major facility, any person owning such facility, or operating it by
28 lease, contract or other form of agreement; with respect to abandoned
29 or derelict major facilities, the person who owned or operated such
30 facility immediately prior to such abandonment, or the owner at the
31 time of discharge;

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

36 "Petroleum" or "petroleum products" means oil or petroleum of
37 any kind and in any form, including, but not limited to, oil, petroleum,
38 gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other
39 wastes, crude oils, and substances or additives to be utilized in the
40 refining or blending of crude petroleum or petroleum stock in this
41 State; however, any compound designated by specific chemical name
42 on the list of hazardous substances adopted by the department
43 pursuant to this section shall not be considered petroleum or a
44 petroleum product for the purposes of P.L.1976, c.141, unless such
45 compound is to be utilized in the refining or blending of crude
46 petroleum or petroleum stock in this State;

1 "Preliminary assessment" means the first phase in the process of
2 identifying areas of concern and determining whether contaminants are
3 or were present at a site or have migrated or are migrating from a site,
4 and shall include the initial search for and evaluation of, existing site
5 specific operational and environmental information, both current and
6 historic, to determine if further investigation concerning the
7 documented, alleged, suspected or latent discharge of any contaminant
8 is required. The evaluation of historic information shall be conducted
9 from 1932 to the present, except that the department may require the
10 search for and evaluation of additional information relating to
11 ownership and use of the site prior to 1932 if such information is
12 available through diligent inquiry of the public records;

13 "Remedial action" means those actions taken at a site or offsite if
14 a contaminant has migrated or is migrating therefrom, as may be
15 required by the department, including the removal, treatment,
16 containment, transportation, securing, or other engineering or
17 treatment measures, whether to an unrestricted use or otherwise,
18 designed to ensure that any discharged contaminant at the site or that
19 has migrated or is migrating from the site, is remediated in compliance
20 with the applicable health risk or environmental standards;

21 "Remedial investigation" means a process to determine the nature
22 and extent of a discharge of a contaminant at a site or a discharge of
23 a contaminant that has migrated or is migrating from the site and the
24 problems presented by a discharge, and may include data collected,
25 site characterization, sampling, monitoring, and the gathering of any
26 other sufficient and relevant information necessary to determine the
27 necessity for remedial action and to support the evaluation of remedial
28 actions if necessary;

29 "Remediation" or "remediate" means all necessary actions to
30 investigate and clean up or respond to any known, suspected, or
31 threatened discharge, including, as necessary, the preliminary
32 assessment, site investigation, remedial investigation, and remedial
33 action, provided, however, that "remediation" or "remediate" shall not
34 include the payment of compensation for damage to, or loss of, natural
35 resources;

36 "Site investigation" means the collection and evaluation of data
37 adequate to determine whether or not discharged contaminants exist
38 at a site or have migrated or are migrating from the site at levels in
39 excess of the applicable remediation standards. A site investigation
40 shall be developed based upon the information collected pursuant to
41 the preliminary assessment;

42 "Taxpayer" means the owner or operator of a major facility subject
43 to the tax provisions of P.L.1976, c.141;

44 "Tax period" means every calendar month on the basis of which the
45 taxpayer is required to report under P.L.1976, c.141;

46 "Transfer" means onloading or offloading between major facilities

1 and vessels, or vessels and major facilities, and from vessel to vessel
2 or major facility to major facility, except for fueling or refueling
3 operations and except that with regard to the movement of hazardous
4 substances other than petroleum, it shall also include any unloading of
5 or offloading from a major facility;

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

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

14 (cf: P.L.2001, c.154, s.1)

15

16 3. This act shall take effect immediately, and section 1 shall expire
17 on June 30, 2004.

18

19

20

21

22 Concerns indirect costs for the remediation of contaminated sites.

ASSEMBLY, No. 2510

STATE OF NEW JERSEY

210th LEGISLATURE

INTRODUCED JUNE 6, 2002

Sponsored by:
Assemblyman REED GUSCIORA
District 15 (Mercer)

SYNOPSIS

Ends exclusion of indirect program costs from cleanup and removal costs.

CURRENT VERSION OF TEXT

As introduced.



A2510 GUSCIORA

2

1 AN ACT concerning administrative costs for hazardous substance
2 cleanups, and amending P.L.1976, c.141.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 3 of P.L.1976, c.141 (C.58:10-23.11b) is amended to
8 read as follows:

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

11 "Act of God" means an act exclusively occasioned by an
12 unanticipated, grave natural disaster without the interference of any
13 human agency;

14 "Administrator" means the chief executive of the New Jersey Spill
15 Compensation Fund;

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

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

22 "Cleanup and removal costs" means all costs associated with a
23 discharge, incurred by the State or its political subdivisions or their
24 agents or any person with written approval from the department in the:
25 (1) removal or attempted removal of hazardous substances, or (2)
26 taking of reasonable measures to prevent or mitigate damage to the
27 public health, safety, or welfare, including, but not limited to, public
28 and private property, shorelines, beaches, surface waters, water
29 columns and bottom sediments, soils and other affected property,
30 including wildlife and other natural resources, and shall include costs
31 incurred by the State for the indemnification and legal defense of
32 contractors pursuant to sections 1 through 11 of P.L.1991, c.373
33 (C.58:10-23.11f8 et seq.)**[**. For the purposes of this definition, costs
34 incurred by the State shall not include any indirect costs for
35 department oversight performed after the effective date of P.L.1997,
36 c.278 (C.58:10B-1.1 et al.), but may include only those program costs
37 directly related to the cleanup and removal of the discharge; however,
38 where the State or the fund have expended money for the cleanup and
39 removal of a discharge and are seeking to recover the costs incurred
40 in that cleanup and removal action from a responsible party, costs
41 incurred by the State shall include any indirect costs**]**;

42 "Commissioner" means the Commissioner of Environmental
43 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.

Matter underlined thus is new matter.

A2510 GUSCIORA

1 "Contamination" or "contaminant" means any discharged hazardous
2 substance, hazardous waste as defined pursuant to section 1 of
3 P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to
4 section 3 of P.L.1977, c.74 (C.58:10A-3);

5 "Department" means the Department of Environmental Protection;

6 "Director" means the Director of the Division of Taxation in the
7 Department of the Treasury;

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

14 "Emergency response action" means those activities conducted by
15 a local unit to clean up, remove, prevent, contain, or mitigate a
16 discharge that poses an immediate threat to the environment or to the
17 public health, safety, or welfare;

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

24 "Fund" means the New Jersey Spill Compensation Fund;

25 "Hazardous substances" means the "environmental hazardous
26 substances" on the environmental hazardous substance list adopted by
27 the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4);
28 such elements and compounds, including petroleum products, which
29 are defined as such by the department, after public hearing, and which
30 shall be consistent to the maximum extent possible with, and which
31 shall include, the list of hazardous substances adopted by the federal
32 Environmental Protection Agency pursuant to section 311 of the
33 federal Water Pollution Control Act Amendments of 1972,
34 Pub.L.92-500, as amended by the Clean Water Act of 1977,
35 Pub.L.95-217 (33 U.S.C.s.1251 et seq.); the list of toxic pollutants
36 designated by Congress or the EPA pursuant to section 307 of that
37 act; and the list of hazardous substances adopted by the federal
38 Environmental Protection Agency pursuant to section 101 of the
39 "Comprehensive Environmental Response, Compensation and Liability
40 Act of 1980," Pub.L.96-510 (42 U.S.C.s.9601 et seq.); provided,
41 however, that sewage and sewage sludge shall not be considered as
42 hazardous substances for the purposes of P.L.1976, c.141
43 (C.58:10-23.11 et seq.);

44 "Local unit" means any county or municipality, or any agency or
45 other instrumentality thereof, or a duly incorporated volunteer fire,
46 ambulance, first aid, emergency, or rescue company or squad;

A2510 GUSCIORA

1 "Major facility" includes, but is not limited to, any refinery, storage
2 or transfer terminal, pipeline, deep-water port, drilling platform or any
3 appurtenance related to any of the preceding that is used or is capable
4 of being used to refine, produce, store, handle, transfer, process or
5 transport hazardous substances. "Major facility" shall include a vessel
6 only when that vessel is engaged in a transfer of hazardous substances
7 between it and another vessel, and in any event shall not include a
8 vessel used solely for activities directly related to recovering,
9 containing, cleaning up or removing discharges of petroleum in the
10 surface waters of the State, including training, research, and other
11 activities directly related to spill response.

12 A facility shall not be considered a major facility for the purpose of
13 P.L.1976, c.141 unless it has total combined aboveground or buried
14 storage capacity of:

15 (1) 20,000 gallons or more for hazardous substances which are
16 other than petroleum or petroleum products, or

17 (2) 200,000 gallons or more for hazardous substances of all kinds.

18 In determining whether a facility is a major facility for the purposes
19 of P.L.1976, c.141 (C.58:10-23.11 et seq.), any underground storage
20 tank at the facility used solely to store heating oil for on-site
21 consumption shall not be considered when determining the combined
22 storage capacity of the facility.

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

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

33 "Owner" or "operator" means, with respect to a vessel, any person
34 owning, operating or chartering by demise such vessel; with respect to
35 any major facility, any person owning such facility, or operating it by
36 lease, contract or other form of agreement; with respect to abandoned
37 or derelict major facilities, the person who owned or operated such
38 facility immediately prior to such abandonment, or the owner at the
39 time of discharge;

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

44 "Petroleum" or "petroleum products" means oil or petroleum of any
45 kind and in any form, including, but not limited to, oil, petroleum,
46 gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other

1 wastes, crude oils, and substances or additives to be utilized in the
2 refining or blending of crude petroleum or petroleum stock in this
3 State; however, any compound designated by specific chemical name
4 on the list of hazardous substances adopted by the department
5 pursuant to this section shall not be considered petroleum or a
6 petroleum product for the purposes of P.L.1976, c.141, unless such
7 compound is to be utilized in the refining or blending of crude
8 petroleum or petroleum stock in this State;

9 "Preliminary assessment" means the first phase in the process of
10 identifying areas of concern and determining whether contaminants are
11 or were present at a site or have migrated or are migrating from a site,
12 and shall include the initial search for and evaluation of, existing site
13 specific operational and environmental information, both current and
14 historic, to determine if further investigation concerning the
15 documented, alleged, suspected or latent discharge of any contaminant
16 is required. The evaluation of historic information shall be conducted
17 from 1932 to the present, except that the department may require the
18 search for and evaluation of additional information relating to
19 ownership and use of the site prior to 1932 if such information is
20 available through diligent inquiry of the public records;

21 "Remedial action" means those actions taken at a site or offsite if
22 a contaminant has migrated or is migrating therefrom, as may be
23 required by the department, including the removal, treatment,
24 containment, transportation, securing, or other engineering or
25 treatment measures, whether to an unrestricted use or otherwise,
26 designed to ensure that any discharged contaminant at the site or that
27 has migrated or is migrating from the site, is remediated in compliance
28 with the applicable health risk or environmental standards;

29 "Remedial investigation" means a process to determine the nature
30 and extent of a discharge of a contaminant at a site or a discharge of
31 a contaminant that has migrated or is migrating from the site and the
32 problems presented by a discharge, and may include data collected,
33 site characterization, sampling, monitoring, and the gathering of any
34 other sufficient and relevant information necessary to determine the
35 necessity for remedial action and to support the evaluation of remedial
36 actions if necessary;

37 "Remediation" or "remediate" means all necessary actions to
38 investigate and clean up or respond to any known, suspected, or
39 threatened discharge, including, as necessary, the preliminary
40 assessment, site investigation, remedial investigation, and remedial
41 action, provided, however, that "remediation" or "remediate" shall not
42 include the payment of compensation for damage to, or loss of, natural
43 resources;

44 "Site investigation" means the collection and evaluation of data
45 adequate to determine whether or not discharged contaminants exist
46 at a site or have migrated or are migrating from the site at levels in

1 excess of the applicable remediation standards. A site investigation
2 shall be developed based upon the information collected pursuant to
3 the preliminary assessment;

4 "Taxpayer" means the owner or operator of a major facility subject
5 to the tax provisions of P.L.1976, c.141;

6 "Tax period" means every calendar month on the basis of which the
7 taxpayer is required to report under P.L.1976, c.141;

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

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

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

22 (cf: P.L.2001, c.154, s.1)

23

24 2. This act shall take effect immediately.

25

26

27

STATEMENT

28

29 This bill would amend the definition of "cleanup and removal costs"
30 in the "Spill Compensation and Control Act," P.L.1976, c.141
31 (C.58:10-23.11 et seq.) to delete a provision that excluded the indirect
32 costs of Department of Environmental Protection oversight from the
33 definition. Therefore, under the provisions of this bill, the indirect
34 program costs for oversight may be included in the definition of
35 cleanup and removal costs and may be included in the oversight fees
36 charged by the Department of Environmental Protection to a
37 responsible party.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2510

STATE OF NEW JERSEY

DATED: JUNE 24, 2002

The Assembly Budget Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2510.

This Assembly Committee Substitute for Assembly Bill No. 2510 defines the circumstances under which the Department of Environmental Protection may establish or impose fees for department oversight of hazardous substance cleanups and remediations which include indirect costs. These provisions expire on June 30, 2004.

In the case of an owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), or a discharger, a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs pursuant to subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g) who does not have a defense to liability pursuant to subsection d. of that section, the fees for department oversight of the cleanup and removal of a discharge of a hazardous substance performed after the effective date of the substitute bill may include indirect costs.

In the case of the remediation of a contaminated site performed by any person not subject to those provisions, the fees for department oversight of the remediation performed after the effective date of the substitute shall not include any indirect costs, but may include only those program costs directly related to the oversight of the remediation.

In the case of the cleanup and removal of a discharged hazardous substance at a person's primary residence, the fees for department oversight of the remediation performed after the effective date of the substitute bill shall not include any indirect costs, but may include only those program costs directly related to the oversight of the remediation.

The department shall not establish or impose a fee for the oversight of any cleanup and removal of a discharged hazardous substance or for the remediation of a contaminated site that includes direct program costs and indirect costs which together exceed seven and one-half percent of the cost of the remediation of a contaminated site or the cleanup and removal of a discharged hazardous substance.

Cleanup and removal costs shall not include any indirect costs for department oversight performed after June 30, 2004, but may include only those program costs directly related to the cleanup and removal of the discharge. If, however, the department or the Spill Fund have expended money for the cleanup and removal of a discharge and are seeking to recover the costs incurred in that cleanup and removal action from a responsible party, costs incurred by the department shall include any indirect costs.

FISCAL IMPACT:

This bill increases costs that may be included in the oversight fees that may be charged by the Department of Environmental Protection to a responsible party. The amounts of these costs, and the impact on responsible parties and the department, are not available.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2510
STATE OF NEW JERSEY
210th LEGISLATURE

DATED: JULY 16, 2002

SUMMARY

Synopsis: Concerns indirect costs for the remediation of contaminated sites.
Type of Impact: Revenue gain in N.J. Spill Compensation Fund and the Hazardous Discharge Site Cleanup Fund.
Agencies Affected: Department of Environmental Protection

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Indeterminate - See Comments Below		

- ! The bill defines the circumstances under which the Department of Environmental Protection (DEP) may include indirect costs in oversight fees imposed on responsible parties who conduct remediation of contaminated sites. These provisions expire on June 30, 2004.
- ! The bill amends the "Spill Compensation and Control Act," P.L.1976, c.141 by redefining "cleanup and removal costs" to include indirect costs incurred by the DEP in overseeing privately-funded site remediation projects.
- ! Indirect costs, as defined under the bill, are not allowed to exceed 7.5 percent of the total remediation costs of a site remediation project. Indirect oversight costs refer to DEP overhead or ongoing operational expenses.
- ! The Office of Legislative Services (OLS) estimates that additional project fees would be collected under the bill, but reliable estimates cannot be calculated at this time for future projects.

BILL DESCRIPTION

Assembly Committee Substitute for Assembly Bill No. 2510 of 2002 defines the circumstances under which the Department of Environmental Protection (DEP) may include indirect costs in oversight fees imposed on responsible parties who conduct hazardous substance cleanups and remediation of contaminated sites. These provisions would limit indirect costs to

7.5 percent of total project costs and would expire on June 30, 2004.

The bill also amends the definition of "cleanup and removal costs" in the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.) by deleting from this definition a provision that excluded indirect costs attributed to oversight functions performed by the Department of Environmental Protection (DEP). Such indirect costs would therefore become a recoverable expense and could be included in the oversight fees charged by the department to a responsible party conducting a site remediation project. Indirect costs are generally defined as overhead or operating expenses of the department that are not specific to any one project, such as office supplies, rent, automobile expenses, data processing, etc.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) estimates that the bill will enable the department to charge and recover more oversight fees from parties responsible for site contamination remediation costs. Although an estimate of such additional cost recoveries on future projects cannot be calculated, the DEP has provided data on the bill during committee hearings that indicate in FY 2001, \$4.8 million in indirect cost fees would have been charged to responsible parties for ongoing projects had the department had the ability to assess these charges.

The collection of indirect cost charges under the bill would be deposited in either the Spill Compensation Fund or the Hazardous Discharge Site Cleanup Fund, depending on which revenue source is supporting project staff at the time of the assessment. While both Funds currently support most of the DEP Site Remediation Program's operating budget, the additional revenues collected under the bill will ease the financial burden on the program by charging responsible parties for the full cost of departmental oversight on all remediation projects.

Section: *Environment, Agriculture, Energy and Natural Resources*

Analyst: *Richard M. Handelman*
Senior Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

SENATE, No. 1511

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MAY 13, 2002

Sponsored by:
Senator BOB SMITH
District 17 (Middlesex and Somerset)

SYNOPSIS

Ends exclusion of indirect program costs from cleanup and removal costs.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning administrative costs for hazardous substance
2 cleanups, and amending P.L.1976, c.141.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 3 of P.L.1976, c.141 (C.58:10-23.11b) is amended to
8 read as follows:

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

11 "Act of God" means an act exclusively occasioned by an
12 unanticipated, grave natural disaster without the interference of any
13 human agency;

14 "Administrator" means the chief executive of the New Jersey Spill
15 Compensation Fund;

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

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

22 "Cleanup and removal costs" means all costs associated with a
23 discharge, incurred by the State or its political subdivisions or their
24 agents or any person with written approval from the department in the:
25 (1) removal or attempted removal of hazardous substances, or (2)
26 taking of reasonable measures to prevent or mitigate damage to the
27 public health, safety, or welfare, including, but not limited to, public
28 and private property, shorelines, beaches, surface waters, water
29 columns and bottom sediments, soils and other affected property,
30 including wildlife and other natural resources, and shall include costs
31 incurred by the State for the indemnification and legal defense of
32 contractors pursuant to sections 1 through 11 of P.L.1991, c.373
33 (C.58:10-23.11f8 et seq.)**[**. For the purposes of this definition, costs
34 incurred by the State shall not include any indirect costs for
35 department oversight performed after the effective date of P.L.1997,
36 c.278 (C.58:10B-1.1 et al.), but may include only those program costs
37 directly related to the cleanup and removal of the discharge; however,
38 where the State or the fund have expended money for the cleanup and
39 removal of a discharge and are seeking to recover the costs incurred
40 in that cleanup and removal action from a responsible party, costs
41 incurred by the State shall include any indirect costs**]**;

42 "Commissioner" means the Commissioner of Environmental
43 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.

Matter underlined thus is new matter.

1 "Contamination" or "contaminant" means any discharged hazardous
2 substance, hazardous waste as defined pursuant to section 1 of
3 P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to
4 section 3 of P.L.1977, c.74 (C.58:10A-3);

5 "Department" means the Department of Environmental Protection;

6 "Director" means the Director of the Division of Taxation in the
7 Department of the Treasury;

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

14 "Emergency response action" means those activities conducted by
15 a local unit to clean up, remove, prevent, contain, or mitigate a
16 discharge that poses an immediate threat to the environment or to the
17 public health, safety, or welfare;

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

24 "Fund" means the New Jersey Spill Compensation Fund;

25 "Hazardous substances" means the "environmental hazardous
26 substances" on the environmental hazardous substance list adopted by
27 the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4);
28 such elements and compounds, including petroleum products, which
29 are defined as such by the department, after public hearing, and which
30 shall be consistent to the maximum extent possible with, and which
31 shall include, the list of hazardous substances adopted by the federal
32 Environmental Protection Agency pursuant to section 311 of the
33 federal Water Pollution Control Act Amendments of 1972,
34 Pub.L.92-500, as amended by the Clean Water Act of 1977,
35 Pub.L.95-217 (33 U.S.C. s.1251 et seq.); the list of toxic pollutants
36 designated by Congress or the EPA pursuant to section 307 of that
37 act; and the list of hazardous substances adopted by the federal
38 Environmental Protection Agency pursuant to section 101 of the
39 "Comprehensive Environmental Response, Compensation and Liability
40 Act of 1980," Pub.L.96-510 (42 U.S.C. s.9601 et seq.); provided,
41 however, that sewage and sewage sludge shall not be considered as
42 hazardous substances for the purposes of P.L.1976, c.141
43 (C.58:10-23.11 et seq.);

44 "Local unit" means any county or municipality, or any agency or
45 other instrumentality thereof, or a duly incorporated volunteer fire,
46 ambulance, first aid, emergency, or rescue company or squad;

1 "Major facility" includes, but is not limited to, any refinery, storage
2 or transfer terminal, pipeline, deep-water port, drilling platform or any
3 appurtenance related to any of the preceding that is used or is capable
4 of being used to refine, produce, store, handle, transfer, process or
5 transport hazardous substances. "Major facility" shall include a vessel
6 only when that vessel is engaged in a transfer of hazardous substances
7 between it and another vessel, and in any event shall not include a
8 vessel used solely for activities directly related to recovering,
9 containing, cleaning up or removing discharges of petroleum in the
10 surface waters of the State, including training, research, and other
11 activities directly related to spill response.

12 A facility shall not be considered a major facility for the purpose of
13 P.L.1976, c.141 unless it has total combined aboveground or buried
14 storage capacity of:

15 (1) 20,000 gallons or more for hazardous substances which are
16 other than petroleum or petroleum products, or

17 (2) 200,000 gallons or more for hazardous substances of all kinds.

18 In determining whether a facility is a major facility for the purposes
19 of P.L.1976, c.141 (C.58:10-23.11 et seq.), any underground storage
20 tank at the facility used solely to store heating oil for on-site
21 consumption shall not be considered when determining the combined
22 storage capacity of the facility.

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

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

33 "Owner" or "operator" means, with respect to a vessel, any person
34 owning, operating or chartering by demise such vessel; with respect to
35 any major facility, any person owning such facility, or operating it by
36 lease, contract or other form of agreement; with respect to abandoned
37 or derelict major facilities, the person who owned or operated such
38 facility immediately prior to such abandonment, or the owner at the
39 time of discharge;

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

44 "Petroleum" or "petroleum products" means oil or petroleum of any
45 kind and in any form, including, but not limited to, oil, petroleum,
46 gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other

1 wastes, crude oils, and substances or additives to be utilized in the
2 refining or blending of crude petroleum or petroleum stock in this
3 State; however, any compound designated by specific chemical name
4 on the list of hazardous substances adopted by the department
5 pursuant to this section shall not be considered petroleum or a
6 petroleum product for the purposes of P.L.1976, c.141, unless such
7 compound is to be utilized in the refining or blending of crude
8 petroleum or petroleum stock in this State;

9 "Preliminary assessment" means the first phase in the process of
10 identifying areas of concern and determining whether contaminants are
11 or were present at a site or have migrated or are migrating from a site,
12 and shall include the initial search for and evaluation of, existing site
13 specific operational and environmental information, both current and
14 historic, to determine if further investigation concerning the
15 documented, alleged, suspected or latent discharge of any contaminant
16 is required. The evaluation of historic information shall be conducted
17 from 1932 to the present, except that the department may require the
18 search for and evaluation of additional information relating to
19 ownership and use of the site prior to 1932 if such information is
20 available through diligent inquiry of the public records;

21 "Remedial action" means those actions taken at a site or offsite if
22 a contaminant has migrated or is migrating therefrom, as may be
23 required by the department, including the removal, treatment,
24 containment, transportation, securing, or other engineering or
25 treatment measures, whether to an unrestricted use or otherwise,
26 designed to ensure that any discharged contaminant at the site or that
27 has migrated or is migrating from the site, is remediated in compliance
28 with the applicable health risk or environmental standards;

29 "Remedial investigation" means a process to determine the nature
30 and extent of a discharge of a contaminant at a site or a discharge of
31 a contaminant that has migrated or is migrating from the site and the
32 problems presented by a discharge, and may include data collected,
33 site characterization, sampling, monitoring, and the gathering of any
34 other sufficient and relevant information necessary to determine the
35 necessity for remedial action and to support the evaluation of remedial
36 actions if necessary;

37 "Remediation" or "remediate" means all necessary actions to
38 investigate and clean up or respond to any known, suspected, or
39 threatened discharge, including, as necessary, the preliminary
40 assessment, site investigation, remedial investigation, and remedial
41 action, provided, however, that "remediation" or "remediate" shall not
42 include the payment of compensation for damage to, or loss of, natural
43 resources;

44 "Site investigation" means the collection and evaluation of data
45 adequate to determine whether or not discharged contaminants exist
46 at a site or have migrated or are migrating from the site at levels in

1 excess of the applicable remediation standards. A site investigation
2 shall be developed based upon the information collected pursuant to
3 the preliminary assessment;

4 "Taxpayer" means the owner or operator of a major facility subject
5 to the tax provisions of P.L.1976, c.141;

6 "Tax period" means every calendar month on the basis of which the
7 taxpayer is required to report under P.L.1976, c.141;

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

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

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

22 (cf: P.L.2001, c.154, s.1)

23

24 2. This act shall take effect immediately.

25

26

27

STATEMENT

28

29 This bill would amend the definition of "cleanup and removal costs"
30 in the "Spill Compensation and Control Act," P.L.1976, c.141
31 (C.58:10-23.11 et seq.) to delete a provision that excluded the indirect
32 costs of Department of Environmental Protection oversight from the
33 definition. Therefore, under the provisions of this bill, the indirect
34 program costs for oversight may be included in the definition of
35 cleanup and removal costs and may be included in the oversight fees
36 charged by the Department of Environmental Protection to a
37 responsible party.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1511**

STATE OF NEW JERSEY

DATED: JUNE 20, 2002

The Senate Environment Committee reports favorably a Senate Committee Substitute for Senate Bill No. 1511.

The substitute bill defines the circumstances under which the Department of Environmental Protection may establish or impose fees for department oversight of hazardous substance cleanups and remediations which include indirect costs. These provisions would expire on June 30, 2004.

In the case of an owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), or a discharger, a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs pursuant to subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g) and who does not have a defense to liability pursuant to subsection d. of that section, the fees for department oversight of the cleanup and removal of a discharge of a hazardous substance performed after the effective date of the substitute bill may include indirect costs.

In the case of the remediation of a contaminated site performed by any person not subject to the aforementioned provisions, the fees for department oversight of the remediation performed after the effective date of the substitute bill shall not include any indirect costs, but may include only those program costs directly related to the oversight of the remediation.

In the case of the cleanup and removal of a discharged hazardous substance at a person's primary residence, the fees for department oversight of the remediation performed after the effective date of the substitute bill shall not include any indirect costs, but may include only those program costs directly related to the oversight of the remediation.

The department shall not establish or impose a fee for the oversight of any cleanup and removal of a discharged hazardous substance or for the remediation of a contaminated site that includes direct program costs and indirect costs which together exceed seven and one-half percent of the cost of the remediation of a contaminated site or the cleanup and removal of a discharged hazardous substance.

Cleanup and removal costs shall not include any indirect costs for department oversight performed after June 30, 2004, but may include only those program costs directly related to the cleanup and removal of the discharge. Whenever the department or the Spill Fund have expended money for the cleanup and removal of a discharge and are seeking to recover the costs incurred in that cleanup and removal action from a responsible party, costs incurred by the department shall include any indirect costs.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1511**

STATE OF NEW JERSEY

DATED: JUNE 24, 2002

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1511 SCS.

This bill defines the circumstances under which the Department of Environmental Protection may establish or impose fees for department oversight of hazardous substance cleanups and remediations that include indirect costs. These provisions would expire on June 30, 2004.

In the case of an owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), or a discharger, a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs pursuant to subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g) and who does not have a defense to liability pursuant to subsection d. of that section, the fees for department oversight of the cleanup and removal of a discharge of a hazardous substance performed after the effective date of the legislation may include indirect costs.

In the case of the remediation of a contaminated site performed by any person not subject to the aforementioned provisions, the fees for department oversight of the remediation performed after the effective date of the substitute bill shall not include any indirect costs, but may include only those program costs directly related to the oversight of the remediation.

In the case of the cleanup and removal of a discharged hazardous substance at a person's primary residence, the fees for department oversight of the remediation performed after the effective date of the substitute bill shall not include any indirect costs, but may include only those program costs directly related to the oversight of the remediation.

The department shall not establish or impose a fee for the oversight of any cleanup and removal of a discharged hazardous substance or for the remediation of a contaminated site that includes direct program costs and indirect costs which together exceed seven and one-half percent of the cost of the remediation of a contaminated site or the cleanup and removal of a discharged hazardous substance.

Cleanup and removal costs shall not include any indirect costs for department oversight performed after June 30, 2004, but may include only those program costs directly related to the cleanup and removal of the discharge. Whenever the department or the Spill Fund have expended money for the cleanup and removal of a discharge and are seeking to recover the costs incurred in that cleanup and removal action from a responsible party, costs incurred by the department shall include any indirect costs.

FISCAL IMPACT:

This bill increases costs that may be included in the oversight fees charged by the Department of Environmental Protection to a responsible party. The amounts of these costs, and the impact on responsible parties and the department, are not available.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 1511
STATE OF NEW JERSEY
210th LEGISLATURE

DATED: JULY 16, 2002

SUMMARY

Synopsis: Ends exclusion of indirect program costs from cleanup and removal costs.

Type of Impact: Revenue gain in N.J. Spill Compensation Fund and the Hazardous Discharge Site Cleanup Fund.

Agencies Affected: Department of Environmental Protection

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Indeterminate - See Comments Below		

- ! The bill amends the "Spill Compensation and Control Act," P.L.1976, c.141 by redefining "cleanup and removal costs" to include indirect costs incurred by the Department of Environmental Protection (DEP) in overseeing privately-funded site remediation projects.
- ! The redefinition allows the DEP to charge parties responsible for site remediation for indirect oversight costs, which refer to DEP overhead or ongoing operational expenses.
- ! The DEP Site Remediation Program, which manages both publicly and privately-funded site remediation projects, is supported by the Spill Compensation Fund and the Hazardous Discharge Site Cleanup Fund. Indirect cost fees would thus augment the Program's budget.
- ! The Office of Legislative Services (OLS) estimates that although additional project fees would be collected under the bill, an accurate estimate cannot be calculated for future projects.

BILL DESCRIPTION

Senate Bill No. 1511 of 2002 amends the definition of "cleanup and removal costs" in the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.) by deleting from this definition a provision that excluded indirect costs attributed to oversight functions performed by the Department of Environmental Protection (DEP). Such indirect costs would therefore become a recoverable expense and could be included in the oversight fees charged by

the department to a responsible party conducting a site remediation project. Indirect costs are generally defined as overhead or operating expenses of the department that are not specific to any one project, such as office supplies, rent, automobile expenses, data processing, etc.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) estimates that the bill will enable the department to charge and recover more oversight fees from parties responsible for site contamination remediation costs. Although an estimate of such additional cost recoveries on future projects cannot be calculated, the DEP has provided data on the bill during committee hearings that indicate in FY 2001, \$4.8 million in indirect cost fees would have been charged to responsible parties for ongoing projects had the department had the ability to assess these charges.

The collection of indirect cost charges under the bill would be deposited in either the Spill Compensation Fund or the Hazardous Discharge Site Cleanup Fund, depending on which revenue source is supporting project staff at the time of the assessment. While both Funds currently support most of the DEP Site Remediation Program's operating budget, the additional revenues collected under the bill will ease the financial burden on the program by charging responsible parties for the full cost of departmental oversight on all remediation projects.

Section: *Environment, Agriculture, Energy and Natural Resources*

Analyst: *Richard M. Handelman*
Senior Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

LEGISLATIVE FISCAL ESTIMATE
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1511
STATE OF NEW JERSEY
210th LEGISLATURE

DATED: OCTOBER 17, 2002

SUMMARY

Synopsis: Concerns indirect costs for the remediation of contaminated sites.
Type of Impact: Revenue gain in N.J. Spill Compensation Fund and the Hazardous Discharge Site Cleanup Fund.
Agencies Affected: Department of Environmental Protection

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Indeterminate - See Comments Below		

- ! The bill defines the circumstances under which the Department of Environmental Protection (DEP) may include indirect costs in oversight fees imposed on responsible parties who conduct remediation of contaminated sites. These provisions expire on June 30, 2004.
- ! The bill amends the "Spill Compensation and Control Act," P.L.1976, c.141 by redefining "cleanup and removal costs" to include indirect costs incurred by the DEP in overseeing privately-funded site remediation projects.
- ! Indirect costs, as defined under the bill, are not allowed to exceed 7.5 percent of the total remediation costs of a site remediation project. Indirect oversight costs refer to DEP overhead or ongoing operational expenses.
- ! The Office of Legislative Services estimates that additional project fees would be collected under the bill, but reliable estimates cannot be calculated at this time for future projects.

BILL DESCRIPTION

Senate Committee Substitute for Senate Bill No. 1511 of 2002 defines the circumstances under which the Department of Environmental Protection (DEP) may include indirect costs in oversight fees imposed on responsible parties who conduct hazardous substance cleanups and

remediation of contaminated sites. These provisions would limit indirect costs to 7.5 percent of total project costs and would expire on June 30, 2004.

The bill also amends the definition of "cleanup and removal costs" in the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.) by deleting from this definition a provision that excluded indirect costs attributed to oversight functions performed by the Department of Environmental Protection (DEP). Such indirect costs would therefore become a recoverable expense and could be included in the oversight fees charged by the department to a responsible party conducting a site remediation project. Indirect costs are generally defined as overhead or operating expenses of the department that are not specific to any one project, such as office supplies, rent, automobile expenses, data processing, etc.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) estimates that the bill will enable the department to charge and recover more oversight fees from parties responsible for site contamination remediation costs. Although an estimate of such additional cost recoveries on future projects cannot be calculated, the DEP has provided data on the bill during committee hearings that indicate in FY 2001, \$4.8 million in indirect cost fees would have been charged to responsible parties for ongoing projects had the department had the ability to assess these charges.

The collection of indirect cost charges under the bill would be deposited in either the Spill Compensation Fund or the Hazardous Discharge Site Cleanup Fund, depending on which revenue source is supporting project staff at the time of the assessment. While both Funds currently support most of the DEP Site Remediation Program's operating budget, the additional revenues collected under the bill will ease the financial burden on the program by charging responsible parties for the full cost of departmental oversight on all remediation projects.

Section: *Environment, Agriculture, Energy and Natural Resources*

Analyst: *Richard M. Handelman*
Senior Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.