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P.L. 2004, CHAPTER 51, *approved June 29, 2004*  
Assembly, No. 3118 (*First Reprint*)

1 AN ACT imposing a surcharge based on certain air emissions, and  
2 supplementing Title 13 of the Revised Statutes.

3

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

6

7 1. As used in this act:

8 "CAS" means the Chemical Abstract Service registry number;

9 "Department" means the Department of Environmental Protection;

10 "Division" means the Division of Taxation in the Department of the  
11 Treasury;

12 "Director" means the Director of the Division of Taxation in the  
13 Department of the Treasury;

14 "Category 4 toxic substance" means the following substances as  
15 identified by the following name or chemical abstract service registry  
16 number: orenethylbenzene (CAS No. 100-41-4), chloroform (CAS No.  
17 67-66-3), 1,4-dioxane (CAS No. 123-91-1), dichloromethane (CAS  
18 No. 75-09-2), styrene (CAS No. 100-42-5), p-cresol (CAS No.  
19 106-44-5), trichloroethylene (CAS No. 79-01-6), 1,2-dichloroethane  
20 (CAS No. 107-06-2), vinyl acetate (CAS No. 108-05-4), vinylidene  
21 chloride (CAS No. 75-35-4), benzene (CAS No. 71-43-2), arsenic  
22 compounds (CAS No. N020), nickel (CAS No. 7440-02-0), nickel  
23 compounds (CAS No. N495), vinyl chloride (CAS No. 75-01-4),  
24 epichlorohydrin (CAS No. 106-89-8), formaldehyde (CAS No.  
25 50-00-0), tetrachloroethylene (perchloroethylene) (CAS No.  
26 127-18-4), hydrazine (CAS No. 302-01-2), propylene oxide (CAS No.  
27 75-56-9), toluene diisocyanate (mixed isomers) (CAS No.  
28 26471-62-5), aniline (and salts) (CAS No. 62-53-3), beryllium (CAS  
29 No. 7440-41-7), cadmium compounds (CAS No. N078), chromium  
30 (CAS No. 7440-47-3), chromium compounds (CAS No. N090),  
31 ethylene oxide (CAS No. 75-21-8), nitrobenzene (CAS No. 98-95-3),  
32 naphthalene (CAS No. 91-20-3), chlordane (CAS No. 57-74-9),  
33 acetaldehyde (CAS No. 75-07-0), 1,2-butylene oxide (CAS No.  
34 106-88-7), cobalt (CAS No. 7440-48-4), cobalt compounds (CAS No.  
35 N096), di(2-ethylhexyl) phthalate (DEHP) (CAS No. 117-81-7), lead  
36 (CAS No. 7439-92-1), lead compounds (CAS No. N420), mercury  
37 (CAS No. 7439-97-6), mercury compounds (CAS No. N458), benzyl  
38 chloride (CAS No. 100-44-7), pentachlorobenzen (CAS No.

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly ABU committee amendments adopted June 21, 2004.

1 608-93-5), creosote (CAS No. 8001-58-9), pendimethalin (CAS No.  
2 40487-42-1), asbestos (friable) (CAS No. 1332-21-4), dioxin and  
3 dioxin-like compounds (CAS No. N150), polycyclic aromatic  
4 compounds (CAS No. N590), polychlorinated biphenyls (PCB) (CAS  
5 No. 1336-36-3), acrylamide (CAS No. 79-06-01), benzoic trichloride  
6 (CAS No. 98-07-7), dimethyl sulfate (CAS No. 77-78-1),  
7 1,3-butadiene (CAS No. 106-99-0), benzal chloride (CAS No.  
8 98-87-3), diethyl sulfate (CAS No. 64-67-5), dimethylcarbonyl  
9 chloride (CAS No. 79-44-7), hexachloroethane (CAS No. 67-72-1),  
10 heptachlor (CAS No. 76-44-8), hexachlorobenzene (CAS No.  
11 118-74-1), acrylonitrile (CAS No. 107-13-1), antimony compounds  
12 (CAS No. N010), catechol (CAS No. 120-80-9), diglycidyl resorcinol  
13 ether (CAS No. 101-90-6), ethyl acrylate (CAS No. 140-88-5),  
14 nitrofen (CAS No. 1836-75-5), propyleneimine (CAS No. 75-55-8),  
15 sodium o-phenylphenoxide (CAS No. 132-27-4), urethane (CAS No.  
16 51-79-6), benzo(g,h,i)perylene (CAS No. 191-24-2), allyl chloride  
17 (CAS No. 107-05-1), and decabromodiphenyl oxide (CAS No.  
18 1163-19-5), 1,1,1,2-tetrachloroethane (CAS No. 630-20-6),  
19 1,1,2,2-tetrachloroethane (CAS No. 79-34-5), 1,1,2-trichloroethane  
20 (CAS No. 79-00-5), 1,1-dimethyl hydrazine (CAS No. 57-14-7),  
21 1,2-dibromo-3-chloropropane (CAS No. 96-12-8), 1,2-dibromoethane  
22 (CAS No. 106-93-4), 1,2-diphenylhydrazine (CAS No. 122-66-7),  
23 1,3-dichloropropylene (CAS No. 542-75-6), 1,4-dichlorobenzene  
24 (CAS No. 106-46-7), 2,4,6-trichlorophenol (CAS No. 88-06-2),  
25 2,4-diaminoanisole (CAS No. 615-05-4), 2,4-diaminotoluene (CAS  
26 No. 95-80-7), 2,4-dinitrotoluene (CAS No. 121-14-2),  
27 2,6-dinitrotoluene (CAS No. 606-20-2), 2,6-xylydine (CAS No.  
28 87-62-7), 2-nitropropane (CAS No. 79-46-9), 3,3'-dichlorobenzidine  
29 (CAS No. 91-94-1), 3,3-dimethoxybenzidine (CAS No. 119-90-4),  
30 3,3-dimethylbenzidine (CAS No. 119-93-7), 4,4-diaminodiphenyl ether  
31 (CAS No. 101-80-4), 4,4-methylenebis(2-chloroaniline), (CAS No.  
32 101-14-4), 4,4-methylenebis(n,n-dimethyl), benzenamin (CAS No.  
33 101-61-1), 4,4-methylenedianiline (CAS No. 101-77-9),  
34 4,4-thiodianiline (CAS No. 139-65-1), 4-aminoazobenzene (CAS No.  
35 60-09-3), 4-aminobiphenyl (CAS No. 92-67-1),  
36 4-dimethylaminoazobenzene (CAS No. 60-11-7), acephate (CAS No.  
37 30560-19-1), acetamide (CAS No. 60-35-5), aldrin (CAS No.  
38 309-00-2), alpha-hexachlorocyclohexane (CAS No. 319-84-6), arsenic  
39 (CAS No. 7440-38-2), benzidine (CAS No. 92-87-5), benzoyl chloride  
40 (CAS No. 98-88-4), beryllium compounds (CAS No. n050),  
41 beta-naphthylamine (CAS No. 91-59-8), beta-propiolactone (CAS No.  
42 57-57-8), bis(2-chloroethyl), ether (CAS No. 111-44-4),  
43 bis(chloromethyl), ether (CAS No. 542-88-1), bromoform (CAS No.  
44 75-25-2), c.i. acid red 114 (CAS No. 6459-94-5), c.i. food red 5 (CAS  
45 No. 3761-53-3), c.i. solvent yellow 3 (CAS No. 97-56-3), c.i. solvent  
46 yellow 34 (CAS No. 492-80-8), cadmium (CAS No. 7440-43-9),

1 carbon tetrachloride (CAS No. 56-23-5), chlorendic acid (CAS No.  
2 115-28-6), chloromethyl methyl ether (CAS No. 107-30-2),  
3 chloroprene (CAS No. 126-99-8), chlorothalonil (CAS No.  
4 1897-45-6), dichlorobromomethane (CAS No. 75-27-4), dichlorvos  
5 (CAS No. 62-73-7), dihydrosafrole (CAS No. 94-58-6), dimethipin  
6 (CAS No. 55290-64-7), ethyleneimine (CAS No. 151-56-4),  
7 ethylidene dichloride (CAS No. 75-34-3), folpet (CAS No. 133-07-3),  
8 fomesafen (CAS No. 72178-02-0), hexachloro-1,3-butadiene (CAS  
9 No. 87-68-3), hexamethylphosphoramide (CAS No. 680-31-9),  
10 hydrazine sulfate (CAS No. 10034-93-2), isodrin (CAS No.  
11 465-73-6), lindane (CAS No. 58-89-9), linuron (CAS No. 330-55-2),  
12 m-cresol (CAS No. 108-39-4), methoxychlor (CAS No. 72-43-5),  
13 mustard gas (CAS No. 505-60-2), nitrilotriacetic acid (CAS No.  
14 139-13-9), nitrogen mustard (mechlorethamine) (CAS No. 51-75-2),  
15 n-nitrosodiethylamine (CAS No. 55-18-5), n-nitrosodimethylamine  
16 (CAS No. 62-75-9), n-nitrosodi-n-butylamine (CAS No. 924-16-3),  
17 n-nitrosodi-n-propylamine (CAS No. 621-64-7),  
18 n-nitrosodiphenylamine (CAS No. 86-30-6),  
19 n-nitrosomethylvinylamine (CAS No. 4549-40-0), n-nitrosomorpholine  
20 (CAS No. 59-89-2), n-nitroso-n-ethylurea (CAS No. 759-73-9),  
21 n-nitroso-n-methylurea (CAS No. 684-93-5), n-nitrosornicotine  
22 (CAS No. 16543-55-8), n-nitrosopiperidine (CAS No. 100-75-4),  
23 o-anisidine (CAS No. 90-04-0), o-cresol (CAS No. 95-48-7),  
24 octachlorostyrene (CAS No. 29082-74-4), oryzalin (CAS No.  
25 19044-88-3), o-toluidine (CAS No. 95-53-4), paraquat dichloride  
26 (paraquat) (CAS No. 1910-42-5), parathion (CAS No. 56-38-2),  
27 p-chloroaniline (CAS No. 106-47-8), p-chloro-o-toluidine (CAS No.  
28 95-69-2), p-cresidine (CAS No. 120-71-8), pentachlorophenol (pcp),  
29 (CAS No. 87-86-5), phenytoin (CAS No. 57-41-0),  
30 p-nitrosodiphenylamine (CAS No. 156-10-5), polybrominated  
31 biphenyls (pbbs), (CAS No. n575), potassium bromate (CAS No.  
32 7758-01-2), propane sultone (CAS No. 1120-71-4), quinoline (CAS  
33 No. 91-22-5), safrole (CAS No. 94-59-7), styrene oxide (CAS No.  
34 96-09-3), thioacetamide (CAS No. 62-55-5), toxaphene (camphechlor)  
35 (CAS No. 8001-35-2), trifluralin (CAS No. 1582-09-8),  
36 tris(2,3-dibromopropyl), phosphate (CAS No. 126-72-7), trypan blue  
37 (CAS No. 72-57-1), <sup>1</sup>and<sup>1</sup> vinyl chloride (CAS No. 593-60-2) <sup>1</sup>], or  
38 any other toxic substance reportable on the release and pollution  
39 prevention report and defined by United States Environmental  
40 Protection Agency or the International Agency for Research on Cancer  
41 as showing evidence of being carcinogenic or any other substance  
42 defined by the United State Environmental Protection Agency as being  
43 persistent, bioaccumulative, and toxic] <sup>1</sup> ;

44 "Category 3 toxic substance" means the following substances as  
45 identified by the following name or chemical abstract service registry  
46 number: methyl ethyl ketone (CAS No. 78-93-3), carbon disulfide

1 (CAS No. 75-15-0), chloroethane (CAS No. 75-00-3), glycol ethers  
2 (except surfactants) (CAS No. N230), copper compounds (with  
3 exceptions) (CAS No. N100), ammonia (CAS No. 7664-41-7),  
4 chlorine (CAS No. 7782-50-5), copper (CAS No. 7440-50-8), sulfuric  
5 acid (CAS No. 7664-93-9), triethylamine (CAS No. 121-44-8),  
6 bromomethane (CAS No. 74-83-9), hydrochloric acid (CAS No.  
7 7647-01-0), xylene (mixed isomers) (CAS No. 1330-20-7), acetonitrile  
8 (CAS No. 75-05-8), barium compounds (except barium sulfate) (CAS  
9 No. N040), chlorine dioxide (CAS No. 10049-04-4), manganese (CAS  
10 No. 7439-96-5), manganese compounds (CAS No. N450), phosphorus  
11 (CAS No. 7723-14-0), zinc compounds (CAS No. N982),  
12 dicyclopentadiene (CAS No. 77-73-6), maleic anhydride (CAS No.  
13 108-31-6), phthalic anhydride (CAS No. 85-44-9), titanium  
14 tetrachloride (CAS No. 7550-45-0), toluene-2,4-diisocyanate (CAS  
15 No. 584-84-9), zinc (fume or dust) (CAS No. 7440-66-6),  
16 chloromethane (CAS No. 74-87-3), selenium (CAS No. 7782-49-2),  
17 1,2-dichloropropane (CAS No. 78-87-5), diethanolamine (CAS No.  
18 111-42-2), n,n-dimethylformamide (CAS No. 68-12-2),  
19 2-chloroacetophenone (CAS No. 532-27-4), anthracene (CAS No.  
20 120-12-7), barium (CAS No. 7440-39-3), boron trifluoride (CAS No.  
21 7637-07-2), chloropicrin (CAS No. 76-06-2),  
22 hexachlorocyclopentadiene (CAS No. 77-47-4), hydrogen cyanide  
23 (hydrocyanic acid) (CAS No. 74-90-8), methacrylonitrile (CAS No.  
24 126-98-7), methyl isocyanate (CAS No. 624-83-9), phosphine (CAS  
25 No. 7803-51-2), selenium compounds (CAS No. N725), <sup>1</sup>and<sup>1</sup>  
26 toluene-2,6-diisocyanate (CAS No. 91-08-7) <sup>1</sup>], or any other toxic  
27 substance reportable on the release and pollution prevention report  
28 and identified by the department as having severe long-term and  
29 short-term noncancer health effects such that, for long-term noncancer  
30 effects, the reference concentration, or concentration below which no  
31 effect is expected, is less than or equal to 100 ug/m<sup>3</sup>, and for  
32 short-term noncancer effects, the substance may have reproductive or  
33 developmental effects]<sup>1</sup> ;

34 "Category 2 toxic substance" means the following substances as  
35 identified by the following name or chemical abstract service registry  
36 number: 1,1,1-trichloroethane (CAS No. 71-55-6), phenol (CAS No.  
37 108-95-2), toluene (CAS No. 108-88-3), methanol (CAS No.  
38 67-56-1), methyl methacrylate (CAS No. 80-62-6),  
39 1,2-dichlorobenzene (CAS No. 95-50-1), chlorobenzene (CAS No.  
40 108-90-7), cumene (CAS No. 98-82-8), methyl isobutyl ketone (CAS  
41 No. 108-10-1), 1-chloro-1,1-difluoroethane (HCFC-142b) (CAS No.  
42 75-68-3), cresol (mixed isomers) (CAS No. 1319-77-3),  
43 dichlorodifluoromethane (CFC-12) (CAS No. 75-71-8), ethylene  
44 glycol (CAS No. 107-21-1), freon 113 (CAS No. 76-13-1), n-hexane  
45 (CAS No. 110-54-3), trichlorofluoromethane (CFC-11) (CAS No.  
46 75-69-4), chlorodifluoromethane (hcf-22) (CAS No. 75-45-6), methyl

1 tert-butyl ether (CAS No. 1634-04-4), propylene (propene) (CAS No.  
2 115-07-1), hydrogen fluoride (CAS No. 7664-39-3), phosgene (CAS  
3 No. 75-44-5), acrylic acid (CAS No. 79-10-7), isopropyl alcohol  
4 (mfg-strong acid process) (CAS No. 67-63-0), <sup>1</sup>and<sup>1</sup> acrolein (CAS  
5 No. 107-02-8) <sup>1</sup>[, or any other toxic substance reportable on the  
6 release and pollution prevention report and identified by the  
7 department as having less severe long-term and short-term noncancer  
8 health effects such that for long-term noncancer effects, the reference  
9 concentration, or concentration below which no effect is expected, is  
10 greater than 100 ug/m3, or for short-term noncancer effects, the health  
11 endpoint is considered mild, such as an irritation]<sup>1</sup> ;

12 "Facility" means the building, equipment and contiguous area at a  
13 single location used for the conduct of business and for which the  
14 owner or operator is required to submit a release and pollution  
15 prevention report <sup>1</sup>pursuant to the reporting requirements of 42  
16 U.S.C. s.11023, or other criteria adopted by the Department of  
17 Environmental Protection and in effect on the date of enactment of this  
18 act<sup>1</sup>;

19 "Owner or operator" means any person who owns a facility, or any  
20 person in control of, or exercising responsibility for, the daily  
21 operation of the facility;

22 "Person" means an individual, partnership, corporation, association,  
23 organization, government or governmental subdivision or agency,  
24 business trust, estate, trust, or any other legal or commercial entity;

25 "Release and pollution prevention report" means the combined  
26 report submitted to the department annually pursuant to the "Worker  
27 and Community Right to Know Act," P.L.1983, c.315 (C.34:5A-1 et  
28 al.) and the "Pollution Prevention Act," P.L.1991, c.235 (C.13:1D-35  
29 et seq.), and any rules and regulations adopted pursuant thereto <sup>1</sup>[,]  
30 that are in effect on the date of enactment of this act, and<sup>1</sup> that  
31 provides environmental emissions release and throughput data on an  
32 annual basis; and

33 "Toxic substance" means any hazardous substance as defined  
34 pursuant to section 3 of P.L.1991, c.235 (C.13:1D-37).

35  
36 2. a. (1) There is imposed upon the owner or operator of each  
37 facility an air toxics surcharge in the amount provided in subsection b.  
38 of this section. The surcharge shall be based on the annual emissions  
39 of each Category 2 toxic substance, Category 3 toxic substance and  
40 Category 4 toxic substance as reported in the release and pollution  
41 prevention report for that facility.

42 (2) The air toxics surcharge due in a calender year shall be based  
43 upon the data reported in the release and pollution prevention report  
44 for emissions that occurred two calender years prior to the year for  
45 which the return is filed.

46 (3) Failure to submit a release and pollution prevention report shall

- 1 not relieve the owner or operator of a facility of <sup>1</sup>[his] the<sup>1</sup> obligation  
2 to pay the required air toxics surcharge.
- 3 b. The air toxics surcharge for each facility shall be assessed as  
4 follows:
- 5 (1) \$10.00 shall be assessed for each pound of Category 4 toxic  
6 substances released as stack or fugitive emissions as reported on the  
7 release and pollution prevention report;
- 8 (2) \$1.00 shall be assessed for each pound of Category 3 toxic  
9 substances released as stack or fugitive emissions as reported on the  
10 release and pollution prevention report; and
- 11 (3) \$0.10 shall be assessed for each pound of Category 2 toxic  
12 substances released as stack or fugitive emissions as reported on the  
13 release and pollution prevention report.
- 14 c. <sup>1</sup>[The owner or operator of each facility that releases any  
15 Category 2 toxic substance, Category 3 toxic substance or Category  
16 4 toxic substance in any amount as stack or fugitive emissions as  
17 reported on the release and pollution prevention report, shall pay a  
18 minimum surcharge amount of \$1,000 each year regardless of the  
19 amount of Category 2 toxic substances, Category 3 toxic substances  
20 and Category 4 toxic substances released in the year subject to the air  
21 toxics surcharge.
- 22 d.]<sup>1</sup> The air toxics surcharge imposed on the owner or operator of  
23 a facility shall not exceed \$500,000 in any calendar year.
- 24 <sup>1</sup>[e.] d.<sup>1</sup> The owner or operator of each facility subject to the air  
25 toxics surcharge imposed pursuant to this section shall file with the  
26 director a certificate of registration on a form prescribed by the  
27 director.
- 28 <sup>1</sup>[f.] e.<sup>1</sup> The owner or operator of each facility subject to the air  
29 toxics surcharge imposed pursuant to this section shall, on or before  
30 March 15 of each year, prepare and file a return under oath for the  
31 preceding calendar year with the director on such forms as may be  
32 prescribed by the director. The return shall include any information  
33 that the director shall prescribe, shall indicate the dollar value of the  
34 air toxics surcharge due pursuant to that return for the facility and at  
35 the said time the owner or operator of each facility shall pay the full  
36 amount of the air toxics surcharge due.
- 37 <sup>1</sup>[g.] f.<sup>1</sup> If a return required by this section is not filed, or if a  
38 return when filed is incorrect or insufficient as determined by the  
39 director, the amount of surcharge due shall be determined by the  
40 director based on collections of the air toxics surcharge from the  
41 owner or operator of the facility liable for the payment of the air toxics  
42 surcharge during the previous five years. Notice of the determination  
43 shall be given to the owner or operator of the facility liable for the  
44 payment of the air toxics surcharge. The determination shall finally  
45 and irrevocably fix the air toxics surcharge unless the owner or  
46 operator of the facility against whom it is assessed, within 90 days



1 after the giving of the notice of the determination, shall file a protest  
2 in writing as provided in R.S.54:49-18 and request a hearing, or unless  
3 the director on the director's own motion shall redetermine the same.  
4 After the hearing the director shall give notice of the determination to  
5 the owner or operator of the facility to whom the air toxics surcharge  
6 is assessed.

7 <sup>1</sup>[h.] g.<sup>1</sup> The air toxics surcharge imposed pursuant to this section  
8 shall be governed by the provisions of the State Uniform Tax  
9 Procedure Law, R.S.54:48-1 et seq.

10 <sup>1</sup>[i.] h.<sup>1</sup> In addition to the other powers granted by this section,  
11 the director may adopt any rules and regulations necessary for the  
12 implementation of this section.

13 <sup>1</sup>[j.] i.<sup>1</sup> Notwithstanding the provisions of subparagraph (C) of  
14 paragraph (2) of subsection (k) of section 4 of P.L.1945, c.162  
15 (C.54:10A-4), if any, to the contrary, any deduction of the air toxics  
16 surcharge imposed pursuant to subsection a. of this section allowed in  
17 computing a taxpayer's taxable income which the taxpayer is required  
18 to report to the United States Treasury Department for the purpose of  
19 computing its federal taxable income shall be allowed in determining  
20 the taxpayer's "entire net income" pursuant to subsection (k) of section  
21 4 of P.L.1945, c.162 (C.54:10A-4).

22

23 <sup>1</sup>3. a. Any owner or operator of a facility required to remit an air  
24 toxics surcharge pursuant to section 2 of this act shall be allowed a  
25 credit against the amount of air toxic surcharge due for each facility  
26 for any calendar year as follows:

27 (1) For any owner or operator of a facility required to remit an air  
28 toxics surcharge for any calendar year, a credit of 50% of the total air  
29 toxics surcharge due shall be allowed, provided that the owner or  
30 operator certifies that the total actual emissions to the atmosphere of  
31 mercury from that facility for the calendar year two years prior to the  
32 calender year for which the return is filed is equal to or less than the  
33 numerical limits on mercury emissions from operations at the facility  
34 set by the Department of Environmental Protection for mercury in  
35 rules and regulations adopted after the date of enactment of this act,  
36 pursuant to the "Air Pollution Control Act (1954)," P.L.1954, c.212  
37 (C.26:2C-1 et seq.):

38 (2) For any owner or operator of a facility required to remit an air  
39 toxics surcharge, an annual credit of 50% of the total air toxics  
40 surcharge due shall be allowed provided that the owner or operator  
41 has installed, uses and properly maintains selective catalytic reduction  
42 equipment or a scrubber, or other particulate control technology with  
43 similar benefits to selective catalytic reduction equipment or scrubbers,  
44 permitted by the department to reduce air emissions; and

45 (3) An annual credit for each year after the date of enactment of  
46 this act, up to a maximum of 10 years, may be claimed in the amount

1 of not more than 5% of the purchase price, excluding interest or  
2 financing costs, of any control equipment purchased or installed  
3 subsequent to two years prior to the date of enactment of this act  
4 provided that:

5 (a) the control equipment is installed and used exclusively within  
6 this State at the facility for which the return is filed;

7 (b) the owner or operator of the facility has received a certification  
8 from the department pursuant to section 4 of this act that use of the  
9 control equipment will result in the reduction or prevention of  
10 emissions of toxic substances to the atmosphere;

11 (c) the credit of air toxics surcharge due for any calendar year shall  
12 not exceed 50% of the total amount of air toxics surcharge due in that  
13 calendar year as calculated pursuant section 2 of this act; and

14 (d) for any calendar year in which a credit is claimed pursuant to  
15 this paragraph, the owner or operator of a facility has certified that the  
16 control equipment has been fully functional and properly maintained.

17 b. No credit received by any owner or operator of a facility  
18 pursuant to this section may exceed 50 percent of the maximum  
19 allowable air toxics surcharge calculated pursuant to section 2 of this  
20 act.<sup>1</sup>

21  
22 <sup>14.</sup> The owner or operator of a facility may request that the  
23 department, in issuing a permit to construct, reconstruct, install, or  
24 modify air pollution control equipment required pursuant to P.L.1954,  
25 c.212 (C.26:2C-1 et seq.), also issue a certification that the control  
26 equipment will prevent or reduce the emission of toxic substances into  
27 the atmosphere. The owner or operator shall make such a request  
28 before the permit is issued. The commissioner, when requested for  
29 any such certification, shall certify the control equipment whenever the  
30 commissioner finds that the control equipment constructed or installed,  
31 or to be constructed or installed, will control or abate the emission of  
32 toxic substances to the atmosphere and is suitable and reasonably  
33 adequate for that purpose. This certificate shall contain information  
34 identifying the facilities and the control equipment and the cost thereof  
35 and shall be in such form and detail as the commissioner shall  
36 prescribe. This certificate shall be submitted to the applicant therefor  
37 with a copy to the director, and the allowable credit as provided in  
38 paragraph (3) of subsection a. of section 3 of this act for such control  
39 equipment shall become effective for the calender year in which  
40 certification has been granted.<sup>1</sup>

41  
42 <sup>15.</sup> There is established the "Nuclear Power Plant Security Fund"  
43 as a special non-lapsing fund in the Department of Environmental  
44 Protection. The fund shall be credited with \$2,000,000 from the  
45 amount of air toxics surcharges collected pursuant to section 2 of this  
46 act. Monies in the fund shall be used to provide or enhance security

1 at nuclear power plants in this State.<sup>1</sup>

2

3 <sup>1</sup>[3.] 6.<sup>1</sup> This act shall take effect immediately and shall first apply  
4 to the calender year in which it takes effect.

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9 Imposes annual air toxics surcharge based on emissions at certain  
10 facilities.

# ASSEMBLY, No. 3118

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## STATE OF NEW JERSEY

### 211th LEGISLATURE

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INTRODUCED JUNE 21, 2004

**Sponsored by:**  
**Assemblyman LOUIS D. GREENWALD**  
**District 6 (Camden)**

#### **SYNOPSIS**

Imposes annual air toxics surcharge based on emissions at certain facilities.

#### **CURRENT VERSION OF TEXT**

As introduced.



**A3118 GREENWALD**

2

1 **AN ACT** imposing a surcharge based on certain air emissions, and  
2 supplementing Title 13 of the Revised Statutes.

3

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

6

7 1. As used in this act:

8 "CAS" means the Chemical Abstract Service registry number.

9 "Department" means the Department of Environmental Protection.

10 "Division" means the Division of Taxation in the Department of the  
11 Treasury.

12 "Director" means the Director of the Division of Taxation in the  
13 Department of the Treasury.

14 "Category 4 toxic substance" means the following substances as  
15 identified by the following name or chemical abstract service registry  
16 number: orenethylbenzene (CAS No. 100-41-4), chloroform (CAS No.  
17 67-66-3), 1,4-dioxane (CAS No. 123-91-1), dichloromethane (CAS  
18 No. 75-09-2), styrene (CAS No. 100-42-5), p-cresol (CAS No.  
19 106-44-5), trichloroethylene (CAS No. 79-01-6), 1,2-dichoroethane  
20 (CAS No. 107-06-2), vinyl acetate (CAS No. 108-05-4), vinylidene  
21 chloride (CAS No. 75-35-4), benzene (CAS No. 71-43-2), arsenic  
22 compounds (CAS No. N020), nickel (CAS No. 7440-02-0), nickel  
23 compounds (CAS No. N495), vinyl chloride (CAS No. 75-01-4),  
24 epichlorohydrin (CAS No. 106-89-8), formaldehyde (CAS No.  
25 50-00-0), tetrachloroethylene (perchloroethylene) (CAS No.  
26 127-18-4), hydrazine (CAS No. 302-01-2), propylene oxide (CAS No.  
27 75-56-9), toluene diisocyanate (mixed isomers) (CAS No.  
28 26471-62-5), aniline (and salts) (CAS No. 62-53-3), beryllium (CAS  
29 No. 7440-41-7), cadmium compounds (CAS No. N078), chromium  
30 (CAS No. 7440-47-3), chromium compounds (CAS No. N090),  
31 ethylene oxide (CAS No. 75-21-8), nitrobenzene (CAS No. 98-95-3),  
32 naphthalene (CAS No. 91-20-3), chlordane (CAS No. 57-74-9),  
33 acetaldehyde (CAS No. 75-07-0), 1,2-butylene oxide (CAS No.  
34 106-88-7), cobalt (CAS No. 7440-48-4), cobalt compounds (CAS No.  
35 N096), di(2-ethylhexyl) phthalate (DEHP) (CAS No. 117-81-7), lead  
36 (CAS No. 7439-92-1), lead compounds (CAS No. N420), mercury  
37 (CAS No. 7439-97-6), mercury compounds (CAS No. N458), benzyl  
38 chloride (CAS No. 100-44-7), pentachlorobenzen (CAS No.  
39 608-93-5), creosote (CAS No. 8001-58-9), pendimethalin (CAS No.  
40 40487-42-1), asbestos (friable) (CAS No. 1332-21-4), dioxin and  
41 dioxin-like compounds (CAS No. N150), polycyclic aromatic  
42 compounds (CAS No. N590), polychlorinated biphenyls (PCB) (CAS  
43 No. 1336-36-3), acrylamide (CAS No. 79-06-01), benzoic trichloride  
44 (CAS No. 98-07-7), dimethyl sulfate (CAS No. 77-78-1),  
45 1,3-butadiene (CAS No. 106-99-0), benzal chloride (CAS No.  
46 98-87-3), diethyl sulfate (CAS No. 64-67-5), dimethylcarbanyl

## A3118 GREENWALD

1 chloride (CAS No. 79-44-7), hexachloroethane (CAS No. 67-72-1),  
2 heptachlor (CAS No. 76-44-8), hexachlorobenzene (CAS No.  
3 118-74-1), acrylonitrile (CAS No. 107-13-1), antimony compounds  
4 (CAS No. N010), catechol (CAS No. 120-80-9), diglycidyl resorcinol  
5 ether (CAS No. 101-90-6), ethyl acrylate (CAS No. 140-88-5),  
6 nitrofen (CAS No. 1836-75-5), propyleneimine (CAS No. 75-55-8),  
7 sodium o-phenylphenoxide (CAS No. 132-27-4), urethane (CAS No.  
8 51-79-6), benzo(g,h,i)perylene (CAS No. 191-24-2), allyl chloride  
9 (CAS No. 107-05-1), and decabromodiphenyl oxide (CAS No.  
10 1163-19-5), 1,1,1,2-tetrachloroethane (CAS No. 630-20-6),  
11 1,1,2,2-tetrachloroethane (CAS No. 79-34-5), 1,1,2-trichloroethane  
12 (CAS No. 79-00-5), 1,1-dimethyl hydrazine (CAS No. 57-14-7),  
13 1,2-dibromo-3-chloropropane (CAS No. 96-12-8), 1,2-dibromoethane  
14 (CAS No. 106-93-4), 1,2-diphenylhydrazine (CAS No. 122-66-7),  
15 1,3-dichloropropylene (CAS No. 542-75-6), 1,4-dichlorobenzene  
16 (CAS No. 106-46-7), 2,4,6-trichlorophenol (CAS No. 88-06-2),  
17 2,4-diaminoanisole (CAS No. 615-05-4), 2,4-diaminotoluene (CAS  
18 No. 95-80-7), 2,4-dinitrotoluene (CAS No. 121-14-2),  
19 2,6-dinitrotoluene (CAS No. 606-20-2), 2,6-xylidine (CAS No.  
20 87-62-7), 2-nitropropane (CAS No. 79-46-9), 3,3'-dichlorobenzidine  
21 (CAS No. 91-94-1), 3,3-dimethoxybenzidine (CAS No. 119-90-4),  
22 3,3-dimethylbenzidine (CAS No. 119-93-7), 4,4-diaminodiphenyl ether  
23 (CAS No. 101-80-4), 4,4-methylenebis(2-chloroaniline), (CAS No.  
24 101-14-4), 4,4-methylenebis(n,n-dimethyl), benzenamin (CAS No.  
25 101-61-1), 4,4-methylenedianiline (CAS No. 101-77-9),  
26 4,4-thiodianiline (CAS No. 139-65-1), 4-aminoazobenzene (CAS No.  
27 60-09-3), 4-aminobiphenyl (CAS No. 92-67-1),  
28 4-dimethylaminoazobenzene (CAS No. 60-11-7), acephate (CAS No.  
29 30560-19-1), acetamide (CAS No. 60-35-5), aldrin (CAS No.  
30 309-00-2), alpha-hexachlorocyclohexane (CAS No. 319-84-6), arsenic  
31 (CAS No. 7440-38-2), benzidine (CAS No. 92-87-5), benzoyl chloride  
32 (CAS No. 98-88-4), beryllium compounds (CAS No. n050),  
33 beta-naphthylamine (CAS No. 91-59-8), beta-propiolactone (CAS No.  
34 57-57-8), bis(2-chloroethyl), ether (CAS No. 111-44-4),  
35 bis(chloromethyl), ether (CAS No. 542-88-1), bromoform (CAS No.  
36 75-25-2), c.i. acid red 114 (CAS No. 6459-94-5), c.i. food red 5 (CAS  
37 No. 3761-53-3), c.i. solvent yellow 3 (CAS No. 97-56-3), c.i. solvent  
38 yellow 34 (CAS No. 492-80-8), cadmium (CAS No. 7440-43-9),  
39 carbon tetrachloride (CAS No. 56-23-5), chlorendic acid (CAS No.  
40 115-28-6), chloromethyl methyl ether (CAS No. 107-30-2),  
41 chloroprene (CAS No. 126-99-8), chlorothalonil (CAS No.  
42 1897-45-6), dichlorobromomethane (CAS No. 75-27-4), dichlorvos  
43 (CAS No. 62-73-7), dihydrosafrole (CAS No. 94-58-6), dimethipin  
44 (CAS No. 55290-64-7), ethyleneimine (CAS No. 151-56-4),  
45 ethylidene dichloride (CAS No. 75-34-3), folpet (CAS No. 133-07-3),  
46 fomesafen (CAS No. 72178-02-0), hexachloro-1,3-butadiene (CAS

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1 No. 87-68-3), hexamethylphosphoramide (CAS No. 680-31-9),  
2 hydrazine sulfate (CAS No. 10034-93-2), isodrin (CAS No.  
3 465-73-6), lindane (CAS No. 58-89-9), linuron (CAS No. 330-55-2),  
4 m-cresol (CAS No. 108-39-4), methoxychlor (CAS No. 72-43-5),  
5 mustard gas (CAS No. 505-60-2), nitrilotriacetic acid (CAS No.  
6 139-13-9), nitrogen mustard (mechlorethamine) (CAS No. 51-75-2),  
7 n-nitrosodiethylamine (CAS No. 55-18-5), n-nitrosodimethylamine  
8 (CAS No. 62-75-9), n-nitrosodi-n-butylamine (CAS No. 924-16-3),  
9 n-nitrosodi-n-propylamine (CAS No. 621-64-7),  
10 n-nitrosodiphenylamine (CAS No. 86-30-6),  
11 n-nitrosomethylvinylamine (CAS No. 4549-40-0), n-nitrosomorpholine  
12 (CAS No. 59-89-2), n-nitroso-n-ethylurea (CAS No. 759-73-9),  
13 n-nitroso-n-methylurea (CAS No. 684-93-5), n-nitrosornicotine  
14 (CAS No. 16543-55-8), n-nitrosopiperidine (CAS No. 100-75-4),  
15 o-anisidine (CAS No. 90-04-0), o-cresol (CAS No. 95-48-7),  
16 octachlorostyrene (CAS No. 29082-74-4), oryzalin (CAS No.  
17 19044-88-3), o-toluidine (CAS No. 95-53-4), paraquat dichloride  
18 (paraquat) (CAS No. 1910-42-5), parathion (CAS No. 56-38-2),  
19 p-chloroaniline (CAS No. 106-47-8), p-chloro-o-toluidine (CAS No.  
20 95-69-2), p-cresidine (CAS No. 120-71-8), pentachlorophenol (pcp),  
21 (CAS No. 87-86-5), phenytoin (CAS No. 57-41-0),  
22 p-nitrosodiphenylamine (CAS No. 156-10-5), polybrominated  
23 biphenyls (pbbs), (CAS No. n575), potassium bromate (CAS No.  
24 7758-01-2), propane sultone (CAS No. 1120-71-4), quinoline (CAS  
25 No. 91-22-5), safrole (CAS No. 94-59-7), styrene oxide (CAS No.  
26 96-09-3), thioacetamide (CAS No. 62-55-5), toxaphene (camphechlor)  
27 (CAS No. 8001-35-2), trifluralin (CAS No. 1582-09-8),  
28 tris(2,3-dibromopropyl), phosphate (CAS No. 126-72-7), trypan blue  
29 (CAS No. 72-57-1), vinyl chloride (CAS No. 593-60-2), or any other  
30 toxic substance reportable on the release and pollution prevention  
31 report and defined by United States Environmental Protection Agency  
32 or the International Agency for Research on Cancer as showing  
33 evidence of being carcinogenic or any other substance defined by the  
34 United State Environmental Protection Agency as being persistent,  
35 bioaccumulative, and toxic;

36 "Category 3 toxic substance" means the following substances as  
37 identified by the following name or chemical abstract service registry  
38 number: methyl ethyl ketone (CAS No. 78-93-3), carbon disulfide  
39 (CAS No. 75-15-0), chloroethane (CAS No. 75-00-3), glycol ethers  
40 (except surfactants) (CAS No. N230), copper compounds (with  
41 exceptions) (CAS No. N100), ammonia (CAS No. 7664-41-7),  
42 chlorine (CAS No. 7782-50-5), copper (CAS No. 7440-50-8), sulfuric  
43 acid (CAS No. 7664-93-9), triethylamine (CAS No. 121-44-8),  
44 bromomethane (CAS No. 74-83-9), hydrochloric acid (CAS No.  
45 7647-01-0), xylene (mixed isomers) (CAS No. 1330-20-7), acetonitrile  
46 (CAS No. 75-05-8), barium compounds (except barium sulfate) (CAS

## A3118 GREENWALD

1 No. N040), chlorine dioxide (CAS No. 10049-04-4), manganese(CAS  
2 No. 7439-96-5), manganese compounds (CAS No. N450), phosphorus  
3 (CAS No. 7723-14-0), zinc compounds (CAS No. N982),  
4 dicyclopentadiene (CAS No. 77-73-6), maleic anhydride (CAS No.  
5 108-31-6), phthalic anhydride (CAS No. 85-44-9), titanium  
6 tetrachloride (CAS No. 7550-45-0), toluene-2,4-diisocyanate (CAS  
7 No. 584-84-9), zinc (fume or dust) (CAS No. 7440-66-6),  
8 chloromethane (CAS No. 74-87-3), selenium (CAS No. 7782-49-2),  
9 1,2-dichloropropane (CAS No. 78-87-5), diethanolamine (CAS No.  
10 111-42-2), n,n-dimethylformamide (CAS No. 68-12-2),  
11 2-chloroacetophenone (CAS No. 532-27-4), anthracene (CAS No.  
12 120-12-7), barium (CAS No. 7440-39-3), boron trifluoride (CAS No.  
13 7637-07-2), chloropicrin (CAS No. 76-06-2),  
14 hexachlorocyclopentadiene (CAS No. 77-47-4), hydrogen cyanide  
15 (hydrocyanic acid) (CAS No. 74-90-8), methacrylonitrile (CAS No.  
16 126-98-7), methyl isocyanate (CAS No. 624-83-9), phosphine (CAS  
17 No. 7803-51-2), selenium compounds (CAS No. N725),  
18 toluene-2,6-diisocyanate (CAS No. 91-08-7), or any other toxic  
19 substance reportable on the release and pollution prevention report  
20 and identified by the department as having severe long-term and  
21 short-term noncancer health effects such that, for long-term noncancer  
22 effects, the reference concentration, or concentration below which no  
23 effect is expected, is less than or equal to 100 ug/m<sup>3</sup>, and for  
24 short-term noncancer effects, the substance may have reproductive or  
25 developmental effects;

26 "Category 2 toxic substance" means the following substances as  
27 identified by the following name or chemical abstract service registry  
28 number: 1,1,1-trichloroethane (CAS No. 71-55-6), phenol (CAS No.  
29 108-95-2), toluene (CAS No. 108-88-3), methanol (CAS No.  
30 67-56-1), methyl methacrylate (CAS No. 80-62-6),  
31 1,2-dichlorobenzene (CAS No. 95-50-1), chlorobenzene (CAS No.  
32 108-90-7), cumene (CAS No. 98-82-8), methyl isobutyl ketone (CAS  
33 No. 108-10-1), 1-chloro-1,1-difluoroethane (HCFC-142b) (CAS No.  
34 75-68-3), cresol (mixed isomers) (CAS No. 1319-77-3),  
35 dichlorodifluoromethane (CFC-12) (CAS No. 75-71-8), ethylene  
36 glycol (CAS No. 107-21-1), freon 113 (CAS No. 76-13-1), n-hexane  
37 (CAS No. 110-54-3), trichlorofluoromethane (CFC-11) (CAS No.  
38 75-69-4), chlorodifluoromethane (hcfc-22) (CAS No. 75-45-6), methyl  
39 tert-butyl ether (CAS No. 1634-04-4), propylene (propene) (CAS No.  
40 115-07-1), hydrogen fluoride (CAS No. 7664-39-3), phosgene (CAS  
41 No. 75-44-5), acrylic acid (CAS No. 79-10-7), isopropyl alcohol  
42 (mfg-strong acid process) (CAS No. 67-63-0), acrolein (CAS No.  
43 107-02-8), or any other toxic substance reportable on the release and  
44 pollution prevention report and identified by the department as having  
45 less severe long-term and short-term noncancer health effects such that  
46 for long-term noncancer effects, the reference concentration, or



1 concentration below which no effect is expected, is greater than 100  
2 ug/m<sup>3</sup>, or for short-term noncancer effects, the health endpoint is  
3 considered mild, such as an irritation;

4 "Facility" means the building, equipment and contiguous area at a  
5 single location used for the conduct of business and for which the  
6 owner or operator is required to submit a release and pollution  
7 prevention report;

8 "Owner or operator" means any person who owns a facility, or any  
9 person in control of, or exercising responsibility for, the daily  
10 operation of the facility;

11 "Person" means an individual, partnership, corporation, association,  
12 organization, government or governmental subdivision or agency,  
13 business trust, estate, trust, or any other legal or commercial entity;

14 "Release and pollution prevention report" means the combined  
15 report submitted to the department annually pursuant to the "Worker  
16 and Community Right to Know Act," P.L.1983, c.315 (C.34:5A-1 et  
17 al.) and the "Pollution Prevention Act," P.L.1991, c.235 (C.13:1D-35  
18 et seq.), and any rules and regulations adopted pursuant thereto, that  
19 provides environmental emissions release and throughput data on an  
20 annual basis;

21 "Toxic substance" means any hazardous substance as defined  
22 pursuant to section 3 of P.L.1991, c.235 (C.13:1D-37).

23

24 2. a. (1) There is imposed upon the owner or operator of each  
25 facility an air toxics surcharge in the amount provided in subsection b.  
26 of this section. The surcharge shall be based on the annual emissions  
27 of each Category 2 toxic substance, Category 3 toxic substance and  
28 Category 4 toxic substance as reported in the release and pollution  
29 prevention report for that facility.

30 (2) The air toxics surcharge due in a calendar year shall be based  
31 upon the data reported in the release and pollution prevention report  
32 for emissions that occurred two calendar years prior to the year for  
33 which the return is filed.

34 (3) Failure to submit a release and pollution prevention report shall  
35 not relieve the owner or operator of a facility of his obligation to pay  
36 the required air toxics surcharge.

37 b. The air toxics surcharge for each facility shall be assessed as  
38 follows:

39 (1) \$10.00 shall be assessed for each pound of Category 4 toxic  
40 substances released as stack or fugitive emissions as reported on the  
41 release and pollution prevention report;

42 (2) \$1.00 shall be assessed for each pound of Category 3 toxic  
43 substances released as stack or fugitive emissions as reported on the  
44 release and pollution prevention report; and

45 (3) \$0.10 shall be assessed for each pound of Category 2 toxic  
46 substances released as stack or fugitive emissions as reported on the

- 1 release and pollution prevention report.
- 2 c. The owner or operator of each facility that releases any  
3 Category 2 toxic substance, Category 3 toxic substance or Category  
4 4 toxic substance in any amount as stack or fugitive emissions as  
5 reported on the release and pollution prevention report, shall pay a  
6 minimum surcharge amount of \$1,000 each year regardless of the  
7 amount of Category 2 toxic substances, Category 3 toxic substances  
8 and Category 4 toxic substances released in the year subject to the air  
9 toxics surcharge.
- 10 d. The air toxics surcharge imposed on the owner or operator of  
11 a facility shall not exceed \$500,000 in any calender year.
- 12 e. The owner or operator of each facility subject to the air toxics  
13 surcharge imposed pursuant to this section shall file with the director  
14 a certificate of registration on a form prescribed by the director.
- 15 f. The owner or operator of each facility subject to the air toxics  
16 surcharge imposed pursuant to this section shall, on or before March  
17 15 of each year, prepare and file a return under oath for the preceding  
18 calendar year with the director on such forms as may be prescribed by  
19 the director. The return shall include any information that the director  
20 shall prescribe, shall indicate the dollar value of the air toxics  
21 surcharge due pursuant to that return for the facility and at the said  
22 time the owner or operator of each facility shall pay the full amount of  
23 the air toxics surcharge due.
- 24 g. If a return required by this section is not filed, or if a return  
25 when filed is incorrect or insufficient as determined by the director, the  
26 amount of surcharge due shall be determined by the director based on  
27 collections of the air toxics surcharge from the owner or operator of  
28 the facility liable for the payment of the air toxics surcharge during the  
29 previous five years. Notice of the determination shall be given to the  
30 owner or operator of the facility liable for the payment of the air toxics  
31 surcharge. The determination shall finally and irrevocably fix the air  
32 toxics surcharge unless the owner or operator of the facility against  
33 whom it is assessed, within 90 days after the giving of the notice of the  
34 determination, shall file a protest in writing as provided in  
35 R.S.54:49-18 and request a hearing, or unless the director on the  
36 director's own motion shall redetermine the same. After the hearing the  
37 director shall give notice of the determination to the owner or operator  
38 of the facility to whom the air toxics surcharge is assessed.
- 39 h. The air toxics surcharge imposed pursuant to this section shall  
40 be governed by the provisions of the State Uniform Tax Procedure  
41 Law, R.S.54:48-1 et seq.
- 42 i. In addition to the other powers granted by this section, the  
43 director may adopt any rules and regulations necessary for the  
44 implementation of this section.
- 45 j. Notwithstanding the provisions of subparagraph (C) of paragraph  
46 (2) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), if

1 any, to the contrary, any deduction of the air toxics surcharge imposed  
2 pursuant to subsection a. of this section allowed in computing a  
3 taxpayer's taxable income which the taxpayer is required to report to  
4 the United States Treasury Department for the purpose of computing  
5 its federal taxable income shall be allowed in determining the  
6 taxpayer's "entire net income" pursuant to subsection (k) of section 4  
7 of P.L.1945, c.162 (C.54:10A-4).

8  
9 3. This act shall take effect immediately and shall first apply to the  
10 calender year in which it takes effect.

11  
12  
13 STATEMENT  
14

15 This bill would impose upon the owner or operator of each facility  
16 an air toxics surcharge. The surcharge would be based on the annual  
17 emissions of each Category 2 toxic substance, Category 3 toxic  
18 substance and Category 4 toxic substance as reported in the release  
19 and pollution prevention report for that facility. The air toxics  
20 surcharge for each facility would assessed as follows: (1) \$10.00 for  
21 each pound of Category 4 toxic substances released as stack or  
22 fugitive emissions; (2) \$1.00 for each pound of Category 3 toxic  
23 substances released as stack or fugitive emissions; and (3) \$0.10 for  
24 each pound of Category 2 toxic substances released as stack or  
25 fugitive emissions. The bill defines facility as the building, equipment  
26 and contiguous area at a single location used for the conduct of  
27 business and for which the owner or operator submits a release and  
28 pollution prevention report.

29 The bill would also provide that the owner or operator of each  
30 facility that releases any Category 2 toxic substance, Category 3 toxic  
31 substance or Category 4 toxic substance in any amount as stack or  
32 fugitive emissions as reported on the release and pollution prevention  
33 report, would pay a minimum surcharge amount of \$1,000 and a  
34 maximum of \$500,000 per facility each year regardless of the amount  
35 of Category 2 toxic substances, Category 3 toxic substances and  
36 Category 4 toxic substances released in the year subject to the air  
37 toxics surcharge.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 3118

with Assembly committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 22, 2004

The Assembly Budget Committee reports favorably Assembly Bill No. 3118, with committee amendments.

Assembly Bill No. 3118, as amended, imposes an air toxics surcharge upon the owner or operator of each "facility." The surcharge is based on the annual emissions of each Category 2 toxic substance, Category 3 toxic substance and Category 4 toxic substance as reported in the release and pollution prevention report for that facility. The air toxics surcharge for each facility will be assessed as follows: (1) \$10.00 for each pound of Category 4 toxic substances released as stack or fugitive emissions; (2) \$1.00 for each pound of Category 3 toxic substances released as stack or fugitive emissions; and (3) \$0.10 for each pound of Category 2 toxic substances released as stack or fugitive emissions. The bill defines facility as the building, equipment and contiguous area at a single location used for the conduct of business and for which the owner or operator submits a release and pollution prevention report.

The bill also provides that the owner or operator of each facility that releases any Category 2 toxic substance, Category 3 toxic substance or Category 4 toxic substance in any amount as stack or fugitive emissions as reported on the release and pollution prevention report, would pay a maximum of \$500,000 per facility each year regardless of the amount of Category 2 toxic substances, Category 3 toxic substances and Category 4 toxic substances released in the year subject to the air toxics surcharge.

#### FISCAL IMPACT

The Executive budget proposal projects annual revenue from a \$10-per-pound surcharge on air toxic emissions at \$6 million.

#### COMMITTEE AMENDMENTS:

The amendments:

(1) remove the Department of Environmental Protection's authority to add toxic substances to the lists of air toxic substances enumerated as taxable in the bill;

(2) amend the definition of "release and pollution report" and

"facility" to provide that those subject to the air toxics surcharge will be those required to file a release and pollution prevention report pursuant to federal law or to department rules and regulations in effect on the date of enactment of the bill;

(3) remove the requirement that any person liable for the surcharge imposed by the bill would be required to pay a minimum surcharge of \$1,000;

(4) provide for a credit of 50% of the amount of the air toxic surcharge due by the owner or operator of a facility if the owner or operator undertakes certain environmental improvements at the facility to reduce air emissions; and

(5) dedicate \$2 million of the air toxics surcharges collected pursuant to this bill to a nuclear power plant security fund for the provision or enhancement of security at nuclear power plants in this State.

**SENATE, No. 1772**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED JUNE 17, 2004

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

**SYNOPSIS**

Imposes annual air toxics surcharge based on emissions at certain facilities.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT imposing a surcharge based on certain air emissions, and  
2 supplementing Title 13 of the Revised Statutes.

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

6  
7 1. As used in this act:

8 "CAS" means the Chemical Abstract Service registry number;

9 "Department" means the Department of Environmental Protection;

10 "Division" means the Division of Taxation in the Department of the  
11 Treasury;

12 "Director" means the Director of the Division of Taxation in the  
13 Department of the Treasury;

14 "Category 4 toxic substance" means the following substances as  
15 identified by the following name or chemical abstract service registry  
16 number: orenethylbenzene (CAS No. 100-41-4), chloroform (CAS No.  
17 67-66-3), 1,4-dioxane (CAS No. 123-91-1), dichloromethane (CAS  
18 No. 75-09-2), styrene (CAS No. 100-42-5), p-cresol (CAS No.  
19 106-44-5), trichloroethylene (CAS No. 79-01-6), 1,2-dichoroethane  
20 (CAS No. 107-06-2), vinyl acetate (CAS No. 108-05-4), vinylidene  
21 chloride (CAS No. 75-35-4), benzene (CAS No. 71-43-2), arsenic  
22 compounds (CAS No. N020), nickel (CAS No. 7440-02-0), nickel  
23 compounds (CAS No. N495), vinyl chloride (CAS No. 75-01-4),  
24 epichlorohydrin (CAS No. 106-89-8), formaldehyde (CAS No.  
25 50-00-0), tetrachloroethylene (perchloroethylene) (CAS No.  
26 127-18-4), hydrazine (CAS No. 302-01-2), propylene oxide (CAS No.  
27 75-56-9), toluene diisocyanate (mixed isomers) (CAS No.  
28 26471-62-5), aniline (and salts) (CAS No. 62-53-3), beryllium (CAS  
29 No. 7440-41-7), cadmium compounds (CAS No. N078), chromium  
30 (CAS No. 7440-47-3), chromium compounds (CAS No. N090),  
31 ethylene oxide (CAS No. 75-21-8), nitrobenzene (CAS No. 98-95-3),  
32 naphthalene (CAS No. 91-20-3), chlordane (CAS No. 57-74-9),  
33 acetaldehyde (CAS No. 75-07-0), 1,2-butylene oxide (CAS No.  
34 106-88-7), cobalt (CAS No. 7440-48-4), cobalt compounds (CAS No.  
35 N096), di(2-ethylhexyl) phthalate (DEHP) (CAS No. 117-81-7), lead  
36 (CAS No. 7439-92-1), lead compounds (CAS No. N420), mercury  
37 (CAS No. 7439-97-6), mercury compounds (CAS No. N458), benzyl  
38 chloride (CAS No. 100-44-7), pentachlorobenzen (CAS No.  
39 608-93-5), creosote (CAS No. 8001-58-9), pendimethalin (CAS No.  
40 40487-42-1), asbestos (friable) (CAS No. 1332-21-4), dioxin and  
41 dioxin-like compounds (CAS No. N150), polycyclic aromatic  
42 compounds (CAS No. N590), polychlorinated biphenyls (PCB) (CAS  
43 No. 1336-36-3), acrylamide (CAS No. 79-06-01), benzoic trichloride  
44 (CAS No. 98-07-7), dimethyl sulfate (CAS No. 77-78-1),  
45 1,3-butadiene (CAS No. 106-99-0), benzal chloride (CAS No.  
46 98-87-3), diethyl sulfate (CAS No. 64-67-5), dimethylcarbanyl

1 chloride (CAS No. 79-44-7), hexachloroethane (CAS No. 67-72-1),  
2 heptachlor (CAS No. 76-44-8), hexachlorobenzene (CAS No.  
3 118-74-1), acrylonitrile (CAS No. 107-13-1), antimony compounds  
4 (CAS No. N010), catechol (CAS No. 120-80-9), diglycidyl resorcinol  
5 ether (CAS No. 101-90-6), ethyl acrylate (CAS No. 140-88-5),  
6 nitrofen (CAS No. 1836-75-5), propyleneimine (CAS No. 75-55-8),  
7 sodium o-phenylphenoxide (CAS No. 132-27-4), urethane (CAS No.  
8 51-79-6), benzo(g,h,i)perylene (CAS No. 191-24-2), allyl chloride  
9 (CAS No. 107-05-1), and decabromodiphenyl oxide (CAS No.  
10 1163-19-5), 1,1,1,2-tetrachloroethane (CAS No. 630-20-6),  
11 1,1,2,2-tetrachloroethane (CAS No. 79-34-5), 1,1,2-trichloroethane  
12 (CAS No. 79-00-5), 1,1-dimethyl hydrazine (CAS No. 57-14-7),  
13 1,2-dibromo-3-chloropropane (CAS No. 96-12-8), 1,2-dibromoethane  
14 (CAS No. 106-93-4), 1,2-diphenylhydrazine (CAS No. 122-66-7),  
15 1,3-dichloropropylene (CAS No. 542-75-6), 1,4-dichlorobenzene  
16 (CAS No. 106-46-7), 2,4,6-trichlorophenol (CAS No. 88-06-2),  
17 2,4-diaminoanisole (CAS No. 615-05-4), 2,4-diaminotoluene (CAS  
18 No. 95-80-7), 2,4-dinitrotoluene (CAS No. 121-14-2),  
19 2,6-dinitrotoluene (CAS No. 606-20-2), 2,6-xylidine (CAS No.  
20 87-62-7), 2-nitropropane (CAS No. 79-46-9), 3,3'-dichlorobenzidine  
21 (CAS No. 91-94-1), 3,3-dimethoxybenzidine (CAS No. 119-90-4),  
22 3,3-dimethylbenzidine (CAS No. 119-93-7), 4,4-diaminodiphenyl ether  
23 (CAS No. 101-80-4), 4,4-methylenebis(2-chloroaniline), (CAS No.  
24 101-14-4), 4,4-methylenebis(n,n-dimethyl), benzenamin (CAS No.  
25 101-61-1), 4,4-methylenedianiline (CAS No. 101-77-9),  
26 4,4-thiodianiline (CAS No. 139-65-1), 4-aminoazobenzene (CAS No.  
27 60-09-3), 4-aminobiphenyl (CAS No. 92-67-1),  
28 4-dimethylaminoazobenzene (CAS No. 60-11-7), acephate (CAS No.  
29 30560-19-1), acetamide (CAS No. 60-35-5), aldrin (CAS No.  
30 309-00-2), alpha-hexachlorocyclohexane (CAS No. 319-84-6), arsenic  
31 (CAS No. 7440-38-2), benzidine (CAS No. 92-87-5), benzoyl chloride  
32 (CAS No. 98-88-4), beryllium compounds (CAS No. n050),  
33 beta-naphthylamine (CAS No. 91-59-8), beta-propiolactone (CAS No.  
34 57-57-8), bis(2-chloroethyl), ether (CAS No. 111-44-4),  
35 bis(chloromethyl), ether (CAS No. 542-88-1), bromoform (CAS No.  
36 75-25-2), c.i. acid red 114 (CAS No. 6459-94-5), c.i. food red 5 (CAS  
37 No. 3761-53-3), c.i. solvent yellow 3 (CAS No. 97-56-3), c.i. solvent  
38 yellow 34 (CAS No. 492-80-8), cadmium (CAS No. 7440-43-9),  
39 carbon tetrachloride (CAS No. 56-23-5), chlorendic acid (CAS No.  
40 115-28-6), chloromethyl methyl ether (CAS No. 107-30-2),  
41 chloroprene (CAS No. 126-99-8), chlorothalonil (CAS No.  
42 1897-45-6), dichlorobromomethane (CAS No. 75-27-4), dichlorvos  
43 (CAS No. 62-73-7), dihydrosafrole (CAS No. 94-58-6), dimethipin  
44 (CAS No. 55290-64-7), ethyleneimine (CAS No. 151-56-4),  
45 ethylidene dichloride (CAS No. 75-34-3), folpet (CAS No. 133-07-3),  
46 fomesafen (CAS No. 72178-02-0), hexachloro-1,3-butadiene (CAS



1 No. 87-68-3), hexamethylphosphoramide (CAS No. 680-31-9),  
2 hydrazine sulfate (CAS No. 10034-93-2), isodrin (CAS No.  
3 465-73-6), lindane (CAS No. 58-89-9), linuron (CAS No. 330-55-2),  
4 m-cresol (CAS No. 108-39-4), methoxychlor (CAS No. 72-43-5),  
5 mustard gas (CAS No. 505-60-2), nitrilotriacetic acid (CAS No.  
6 139-13-9), nitrogen mustard (mechlorethamine) (CAS No. 51-75-2),  
7 n-nitrosodiethylamine (CAS No. 55-18-5), n-nitrosodimethylamine  
8 (CAS No. 62-75-9), n-nitrosodi-n-butylamine (CAS No. 924-16-3),  
9 n-nitrosodi-n-propylamine (CAS No. 621-64-7),  
10 n-nitrosodiphenylamine (CAS No. 86-30-6),  
11 n-nitrosomethylvinylamine (CAS No. 4549-40-0), n-nitrosomorpholine  
12 (CAS No. 59-89-2), n-nitroso-n-ethylurea (CAS No. 759-73-9),  
13 n-nitroso-n-methylurea (CAS No. 684-93-5), n-nitrosornicotine  
14 (CAS No. 16543-55-8), n-nitrosopiperidine (CAS No. 100-75-4),  
15 o-anisidine (CAS No. 90-04-0), o-cresol (CAS No. 95-48-7),  
16 octachlorostyrene (CAS No. 29082-74-4), oryzalin (CAS No.  
17 19044-88-3), o-toluidine (CAS No. 95-53-4), paraquat dichloride  
18 (paraquat) (CAS No. 1910-42-5), parathion (CAS No. 56-38-2),  
19 p-chloroaniline (CAS No. 106-47-8), p-chloro-o-toluidine (CAS No.  
20 95-69-2), p-cresidine (CAS No. 120-71-8), pentachlorophenol (pcp),  
21 (CAS No. 87-86-5), phenytoin (CAS No. 57-41-0),  
22 p-nitrosodiphenylamine (CAS No. 156-10-5), polybrominated  
23 biphenyls (pbbs), (CAS No. n575), potassium bromate (CAS No.  
24 7758-01-2), propane sultone (CAS No. 1120-71-4), quinoline (CAS  
25 No. 91-22-5), safrole (CAS No. 94-59-7), styrene oxide (CAS No.  
26 96-09-3), thioacetamide (CAS No. 62-55-5), toxaphene (camphechlor)  
27 (CAS No. 8001-35-2), trifluralin (CAS No. 1582-09-8),  
28 tris(2,3-dibromopropyl) phosphate (CAS No. 126-72-7), trypan blue  
29 (CAS No. 72-57-1), vinyl chloride (CAS No. 593-60-2), or any other  
30 toxic substance reportable on the release and pollution prevention  
31 report and defined by United States Environmental Protection Agency  
32 or the International Agency for Research on Cancer as showing  
33 evidence of being carcinogenic or any other substance defined by the  
34 United State Environmental Protection Agency as being persistent,  
35 bioaccumulative, and toxic;

36 "Category 3 toxic substance" means the following substances as  
37 identified by the following name or chemical abstract service registry  
38 number: methyl ethyl ketone (CAS No. 78-93-3), carbon disulfide  
39 (CAS No. 75-15-0), chloroethane (CAS No. 75-00-3), glycol ethers  
40 (except surfactants) (CAS No. N230), copper compounds (with  
41 exceptions) (CAS No. N100), ammonia (CAS No. 7664-41-7),  
42 chlorine (CAS No. 7782-50-5), copper (CAS No. 7440-50-8), sulfuric  
43 acid (CAS No. 7664-93-9), triethylamine (CAS No. 121-44-8),  
44 bromomethane (CAS No. 74-83-9), hydrochloric acid (CAS No.  
45 7647-01-0), xylene (mixed isomers) (CAS No. 1330-20-7), acetonitrile  
46 (CAS No. 75-05-8), barium compounds (except barium sulfate) (CAS

1 No. N040), chlorine dioxide (CAS No. 10049-04-4), manganese(CAS  
2 No. 7439-96-5), manganese compounds (CAS No. N450), phosphorus  
3 (CAS No. 7723-14-0), zinc compounds (CAS No. N982),  
4 dicyclopentadiene (CAS No. 77-73-6), maleic anhydride (CAS No.  
5 108-31-6), phthalic anhydride (CAS No. 85-44-9), titanium  
6 tetrachloride (CAS No. 7550-45-0), toluene-2,4-diisocyanate (CAS  
7 No. 584-84-9), zinc (fume or dust) (CAS No. 7440-66-6),  
8 chloromethane (CAS No. 74-87-3), selenium (CAS No. 7782-49-2),  
9 1,2-dichloropropane (CAS No. 78-87-5), diethanolamine (CAS No.  
10 111-42-2), n,n-dimethylformamide (CAS No. 68-12-2),  
11 2-chloroacetophenone (CAS No. 532-27-4), anthracene (CAS No.  
12 120-12-7), barium (CAS No. 7440-39-3), boron trifluoride (CAS No.  
13 7637-07-2), chloropicrin (CAS No. 76-06-2),  
14 hexachlorocyclopentadiene (CAS No. 77-47-4), hydrogen cyanide  
15 (hydrocyanic acid) (CAS No. 74-90-8), methacrylonitrile (CAS No.  
16 126-98-7), methyl isocyanate (CAS No. 624-83-9), phosphine (CAS  
17 No. 7803-51-2), selenium compounds (CAS No. N725),  
18 toluene-2,6-diisocyanate (CAS No. 91-08-7), or any other toxic  
19 substance reportable on the release and pollution prevention report  
20 and identified by the department as having severe long-term and  
21 short-term noncancer health effects such that, for long-term noncancer  
22 effects, the reference concentration, or concentration below which no  
23 effect is expected, is less than or equal to 100 ug/m<sup>3</sup>, and for  
24 short-term noncancer effects, the substance may have reproductive or  
25 developmental effects;

26 "Category 2 toxic substance" means the following substances as  
27 identified by the following name or chemical abstract service registry  
28 number: 1,1,1-trichloroethane (CAS No. 71-55-6), phenol (CAS No.  
29 108-95-2), toluene (CAS No. 108-88-3), methanol (CAS No.  
30 67-56-1), methyl methacrylate (CAS No. 80-62-6),  
31 1,2-dichlorobenzene (CAS No. 95-50-1), chlorobenzene (CAS No.  
32 108-90-7), cumene (CAS No. 98-82-8), methyl isobutyl ketone (CAS  
33 No. 108-10-1), 1-chloro-1,1-difluoroethane (HCFC-142b) (CAS No.  
34 75-68-3), cresol (mixed isomers) (CAS No. 1319-77-3),  
35 dichlorodifluoromethane (CFC-12) (CAS No. 75-71-8), ethylene  
36 glycol (CAS No. 107-21-1), freon 113 (CAS No. 76-13-1), n-hexane  
37 (CAS No. 110-54-3), trichlorofluoromethane (CFC-11) (CAS No.  
38 75-69-4), chlorodifluoromethane (hcfc-22) (CAS No. 75-45-6), methyl  
39 tert-butyl ether (CAS No. 1634-04-4), propylene (propene) (CAS No.  
40 115-07-1), hydrogen fluoride (CAS No. 7664-39-3), phosgene (CAS  
41 No. 75-44-5), acrylic acid (CAS No. 79-10-7), isopropyl alcohol  
42 (mfg-strong acid process) (CAS No. 67-63-0), acrolein (CAS No.  
43 107-02-8), or any other toxic substance reportable on the release and  
44 pollution prevention report and identified by the department as having  
45 less severe long-term and short-term noncancer health effects such that  
46 for long-term noncancer effects, the reference concentration, or

1 concentration below which no effect is expected, is greater than 100  
2 ug/m<sup>3</sup>, or for short-term noncancer effects, the health endpoint is  
3 considered mild, such as an irritation;

4 "Facility" means the building, equipment and contiguous area at a  
5 single location used for the conduct of business and for which the  
6 owner or operator is required to submit a release and pollution  
7 prevention report;

8 "Owner or operator" means any person who owns a facility, or any  
9 person in control of, or exercising responsibility for, the daily  
10 operation of the facility;

11 "Person" means an individual, partnership, corporation, association,  
12 organization, government or governmental subdivision or agency,  
13 business trust, estate, trust, or any other legal or commercial entity;

14 "Release and pollution prevention report" means the combined  
15 report submitted to the department annually pursuant to the "Worker  
16 and Community Right to Know Act," P.L.1983, c.315 (C.34:5A-1 et  
17 al.) and the "Pollution Prevention Act," P.L.1991, c.235 (C.13:1D-35  
18 et seq.), and any rules and regulations adopted pursuant thereto, that  
19 provides environmental emissions release and throughput data on an  
20 annual basis; and

21 "Toxic substance" means any hazardous substance as defined  
22 pursuant to section 3 of P.L.1991, c.235 (C.13:1D-37).

23

24 2. a. (1) There is imposed upon the owner or operator of each  
25 facility an air toxics surcharge in the amount provided in subsection b.  
26 of this section. The surcharge shall be based on the annual emissions  
27 of each Category 2 toxic substance, Category 3 toxic substance and  
28 Category 4 toxic substance as reported in the release and pollution  
29 prevention report for that facility.

30 (2) The air toxics surcharge due in a calendar year shall be based  
31 upon the data reported in the release and pollution prevention report  
32 for emissions that occurred two calendar years prior to the year for  
33 which the return is filed.

34 (3) Failure to submit a release and pollution prevention report shall  
35 not relieve the owner or operator of a facility of his obligation to pay  
36 the required air toxics surcharge.

37 b. The air toxics surcharge for each facility shall be assessed as  
38 follows:

39 (1) \$10.00 shall be assessed for each pound of Category 4 toxic  
40 substances released as stack or fugitive emissions as reported on the  
41 release and pollution prevention report;

42 (2) \$1.00 shall be assessed for each pound of Category 3 toxic  
43 substances released as stack or fugitive emissions as reported on the  
44 release and pollution prevention report; and

45 (3) \$0.10 shall be assessed for each pound of Category 2 toxic  
46 substances released as stack or fugitive emissions as reported on the

1 release and pollution prevention report.

2 c. The owner or operator of each facility that releases any  
3 Category 2 toxic substance, Category 3 toxic substance or Category  
4 4 toxic substance in any amount as stack or fugitive emissions as  
5 reported on the release and pollution prevention report, shall pay a  
6 minimum surcharge amount of \$1,000 each year regardless of the  
7 amount of Category 2 toxic substances, Category 3 toxic substances  
8 and Category 4 toxic substances released in the year subject to the air  
9 toxics surcharge.

10 d. The air toxics surcharge imposed on the owner or operator of  
11 a facility shall not exceed \$500,000 in any calendar year.

12 e. The owner or operator of each facility subject to the air toxics  
13 surcharge imposed pursuant to this section shall file with the director  
14 a certificate of registration on a form prescribed by the director.

15 f. The owner or operator of each facility subject to the air toxics  
16 surcharge imposed pursuant to this section shall, on or before March  
17 15 of each year, prepare and file a return under oath for the preceding  
18 calendar year with the director on such forms as may be prescribed by  
19 the director. The return shall include any information that the director  
20 shall prescribe, shall indicate the dollar value of the air toxics  
21 surcharge due pursuant to that return for the facility and at the said  
22 time the owner or operator of each facility shall pay the full amount of  
23 the air toxics surcharge due.

24 g. If a return required by this section is not filed, or if a return  
25 when filed is incorrect or insufficient as determined by the director, the  
26 amount of surcharge due shall be determined by the director based on  
27 collections of the air toxics surcharge from the owner or operator of  
28 the facility liable for the payment of the air toxics surcharge during the  
29 previous five years. Notice of the determination shall be given to the  
30 owner or operator of the facility liable for the payment of the air toxics  
31 surcharge. The determination shall finally and irrevocably fix the air  
32 toxics surcharge unless the owner or operator of the facility against  
33 whom it is assessed, within 90 days after the giving of the notice of the  
34 determination, shall file a protest in writing as provided in  
35 R.S.54:49-18 and request a hearing, or unless the director on the  
36 director's own motion shall redetermine the same. After the hearing the  
37 director shall give notice of the determination to the owner or operator  
38 of the facility to whom the air toxics surcharge is assessed.

39 h. The air toxics surcharge imposed pursuant to this section shall  
40 be governed by the provisions of the State Uniform Tax Procedure  
41 Law, R.S.54:48-1 et seq.

42 i. In addition to the other powers granted by this section, the  
43 director may adopt any rules and regulations necessary for the  
44 implementation of this section.

45 j. Notwithstanding the provisions of subparagraph (C) of paragraph  
46 (2) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), if

1 any, to the contrary, any deduction of the air toxics surcharge imposed  
2 pursuant to subsection a. of this section allowed in computing a  
3 taxpayer's taxable income which the taxpayer is required to report to  
4 the United States Treasury Department for the purpose of computing  
5 its federal taxable income shall be allowed in determining the  
6 taxpayer's "entire net income" pursuant to subsection (k) of section 4  
7 of P.L.1945, c.162 (C.54:10A-4).

8  
9 3. This act shall take effect immediately and shall first apply to the  
10 calender year in which it takes effect.

11  
12  
13 STATEMENT  
14

15 This bill would impose upon the owner or operator of each facility  
16 an air toxics surcharge. The surcharge would be based on the annual  
17 emissions of each Category 2 toxic substance, Category 3 toxic  
18 substance and Category 4 toxic substance as reported in the release  
19 and pollution prevention report for that facility. The air toxics  
20 surcharge for each facility would assessed as follows: (1) \$10.00 for  
21 each pound of Category 4 toxic substances released as stack or  
22 fugitive emissions; (2) \$1.00 for each pound of Category 3 toxic  
23 substances released as stack or fugitive emissions; and (3) \$0.10 for  
24 each pound of Category 2 toxic substances released as stack or  
25 fugitive emissions. The bill defines facility as the building, equipment  
26 and contiguous area at a single location used for the conduct of  
27 business and for which the owner or operator submits a release and  
28 pollution prevention report.

29 The bill would also provide that the owner or operator of each  
30 facility that releases any Category 2 toxic substance, Category 3 toxic  
31 substance or Category 4 toxic substance in any amount as stack or  
32 fugitive emissions as reported on the release and pollution prevention  
33 report, would pay a minimum surcharge amount of \$1,000 and a  
34 maximum of \$500,000 per facility each year regardless of the amount  
35 of Category 2 toxic substances, Category 3 toxic substances and  
36 Category 4 toxic substances released in the year subject to the air  
37 toxics surcharge.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **SENATE, No. 1772**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 22, 2004

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 1772.

This bill would impose upon the owner or operator of each facility an air toxics surcharge. The surcharge would be based on the annual emissions of each Category 2 toxic substance, Category 3 toxic substance and Category 4 toxic substance as reported in the release and pollution prevention report for that facility. The air toxics surcharge for each facility would be assessed as follows: (1) \$10.00 for each pound of Category 4 toxic substances released as stack or fugitive emissions; (2) \$1.00 for each pound of Category 3 toxic substances released as stack or fugitive emissions; and (3) \$0.10 for each pound of Category 2 toxic substances released as stack or fugitive emissions. The bill defines "facility" as the building, equipment and contiguous area at a single location used for the conduct of business and for which the owner or operator submits a release and pollution prevention report.

The bill would also provide that the owner or operator of each facility that releases any Category 2 toxic substance, Category 3 toxic substance or Category 4 toxic substance in any amount as stack or fugitive emissions, as reported on the release and pollution prevention report, would pay a maximum of \$500,000 per facility each year.

#### COMMITTEE AMENDMENTS

Committee amendments to this bill (1) remove a provision giving the Department of Environmental Protection (DEP) authority to add toxic substances to the lists of air toxic substances enumerated (and taxable) in the bill; (2) amend the definition of "release and pollution report" and "facility" to provide that those subject to the air toxics surcharge would be those required to file a release and pollution prevention report pursuant to federal law, or to DEP rules and regulations in effect on the date that the bill becomes law; (3) remove a requirement that any person liable for the surcharge imposed by the bill would be required to pay a minimum surcharge of \$1,000; (4) provide for a credit of 50% of the amount of the air toxic surcharge due by the owner or operator of a facility if the owner or operator

undertakes certain environmental improvements at the facility to reduce air emissions; and (5) dedicate \$2 million of the air toxics surcharges collected pursuant to this bill to a nuclear power plant security fund for the provision or enhancement of security at nuclear power plants in this State.

**FISCAL IMPACT**

The Executive Branch estimate for the amount that would be annually realized under the provisions of this bill is about \$6 million.