

# 58:10-23.11g

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2005 **CHAPTER:** 43

**NJSA:** 58:10-23.11g (Provides exemption from cleanup liability at Superfund sites to certain persons)

**BILL NO:** S682 (Substituted for A802)

**SPONSOR(S):** Martin and others

**DATE INTRODUCED:** January 26, 2004

**COMMITTEE:** **ASSEMBLY:** Environment and Solid Waste  
**SENATE:** Environment

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:** **ASSEMBLY:** February 24, 2005

**SENATE:** December 6, 2004

**DATE OF APPROVAL:** March 21, 2005

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL](#) Senate Committee Substitute enacted

**S682**

[SPONSOR'S STATEMENT:](#) (Begins on page 14 of original bill) [Yes](#)

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

[SENATE:](#) [Yes](#)

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**A802** [SPONSOR'S STATEMENT:](#) (Begins on page 14 of original bill) [Yes](#)

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

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

IS 3/26/07

P.L. 2005, CHAPTER 43, *approved March 21, 2005*  
Senate Committee Substitute for  
Senate, No. 682

1 **AN ACT** concerning liability for the cleanup of hazardous substances,  
2 and amending and supplementing 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 8 of P.L.1976, c.141 (C.58:10-23.11g) is amended to  
8 read as follows:

9 8. a. The fund shall be strictly liable, without regard to fault, for  
10 all cleanup and removal costs and for all direct and indirect damages  
11 no matter by whom sustained, including but not limited to:

12 (1) The cost of restoring, repairing, or replacing any real or  
13 personal property damaged or destroyed by a discharge, any income  
14 lost from the time such property is damaged to the time such property  
15 is restored, repaired or replaced, and any reduction in value of such  
16 property caused by such discharge by comparison with its value prior  
17 thereto;

18 (2) The cost of restoration and replacement, where possible, of  
19 any natural resource damaged or destroyed by a discharge;

20 (3) Loss of income or impairment of earning capacity due to  
21 damage to real or personal property, including natural resources  
22 destroyed or damaged by a discharge; provided that such loss or  
23 impairment exceeds 10% of the amount which claimant derives, based  
24 upon income or business records, exclusive of other sources of  
25 income, from activities related to the particular real or personal  
26 property or natural resources damaged or destroyed by such discharge  
27 during the week, month or year for which the claim is filed;

28 (4) Loss of tax revenue by the State or local governments for a  
29 period of one year due to damage to real or personal property  
30 proximately resulting from a discharge;

31 (5) Interest on loans obtained or other obligations incurred by a  
32 claimant for the purpose of ameliorating the adverse effects of a  
33 discharge pending the payment of a claim in full as provided by this  
34 act.

35 b. The damages which may be recovered by the fund, without  
36 regard to fault, subject to the defenses enumerated in subsection d. of  
37 this section against the owner or operator of a major facility or vessel,  
38 shall not exceed \$50,000,000.00 for each major facility or \$150.00 per  
39 gross ton for each vessel, except that such maximum limitation shall

**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 not apply and the owner or operator shall be liable, jointly and  
2 severally, for the full amount of such damages if it can be shown that  
3 such discharge was the result of (1) gross negligence or willful  
4 misconduct, within the knowledge and privity of the owner, operator  
5 or person in charge, or (2) a gross or willful violation of applicable  
6 safety, construction or operating standards or regulations. Damages  
7 which may be recovered from, or by, any other person shall be limited  
8 to those authorized by common or statutory law.

9 c. (1) [Any] Except as provided in section 2 of P.L. , c. (C. )  
10 (now in the Legislature as this bill), any person who has discharged a  
11 hazardous substance, or is in any way responsible for any hazardous  
12 substance, shall be strictly liable, jointly and severally, without regard  
13 to fault, for all cleanup and removal costs no matter by whom  
14 incurred. Such person shall also be strictly liable, jointly and severally,  
15 without regard to fault, for all cleanup and removal costs incurred by  
16 the department or a local unit pursuant to subsection b. of section 7 of  
17 P.L.1976, c.141 (C.58:10-23.11f).

18 (2) In addition to the persons liable pursuant to this subsection,  
19 in the case of a discharge of a hazardous substance from a vessel into  
20 the waters of the State, the owner or operator of a refinery, storage,  
21 transfer, or pipeline facility to which the vessel was en route to deliver  
22 the hazardous substance who, by contract, agreement, or otherwise,  
23 was scheduled to assume ownership of the discharged hazardous  
24 substance, and any other person who was so scheduled to assume  
25 ownership of the discharged hazardous substance, shall be strictly  
26 liable, jointly and severally, without regard to fault, for all cleanup and  
27 removal costs if the owner or operator of the vessel did not have the  
28 evidence of financial responsibility required pursuant to section 2 of  
29 P.L.1991, c.58 (C.58:10-23.11g2).

30 Where a person is liable for cleanup and removal costs as provided  
31 in this paragraph, any expenditures made by the administrator for that  
32 cleanup and removal shall constitute a debt of that person to the fund.  
33 The debt shall constitute a lien on all property owned by that person  
34 when a notice of lien identifying the nature of the discharge and the  
35 amount of the cleanup, removal and related costs expended from the  
36 fund is duly filed with the clerk of the Superior Court. The clerk shall  
37 promptly enter upon the civil judgment or order docket the name and  
38 address of the liable person and the amount of the lien as set forth in  
39 the notice of lien. Upon entry by the clerk, the lien, to the amount  
40 committed by the administrator for cleanup and removal, shall attach  
41 to the revenues and all real and personal property of the liable person,  
42 whether or not that person is insolvent.

43 For the purpose of determining priority of this lien over all other  
44 claims or liens which are or have been filed against the property of an  
45 owner or operator of a refinery, storage, transfer, or pipeline facility,  
46 the lien on the facility to which the discharged hazardous substance

1 was en route shall have priority over all other claims or liens which are  
2 or have been filed against the property. The notice of lien filed  
3 pursuant to this paragraph which affects any property of a person  
4 liable pursuant to this paragraph other than the property of an owner  
5 or operator of a refinery, storage, transfer, or pipeline facility to which  
6 the discharged hazardous substance was en route, shall have priority  
7 from the day of the filing of the notice of the lien over all claims and  
8 liens filed against the property, but shall not affect any valid lien, right,  
9 or interest in the property filed in accordance with established  
10 procedure prior to the filing of a notice of lien pursuant to this  
11 paragraph.

12 To the extent that a person liable pursuant to this paragraph is not  
13 otherwise liable pursuant to paragraph (1) of this subsection, or under  
14 any other provision of law or under common law, that person may  
15 bring an action for indemnification for costs paid pursuant to this  
16 paragraph against any other person who is strictly liable pursuant to  
17 paragraph (1) of this subsection.

18 Nothing in this paragraph shall be construed to extend or negate  
19 the right of any person to bring an action for contribution that may  
20 exist under P.L.1976, c.141, or any other act or under common law.

21 (3) In addition to the persons liable pursuant to this subsection,  
22 any person who owns real property acquired on or after September 14,  
23 1993 on which there has been a discharge prior to the person's  
24 acquisition of that property and who knew or should have known that  
25 a hazardous substance had been discharged at the real property, shall  
26 be strictly liable, jointly and severally, without regard to fault, for all  
27 cleanup and removal costs no matter by whom incurred. Such person  
28 shall also be strictly liable, jointly and severally, without regard to  
29 fault, for all cleanup and removal costs incurred by the department or  
30 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141  
31 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter  
32 liability of any person who acquired real property prior to September  
33 14, 1993.

34 d. (1) In addition to those defenses provided in this subsection, an  
35 act or omission caused solely by war, sabotage, or God, or a  
36 combination thereof, shall be the only defenses which may be raised by  
37 any owner or operator of a major facility or vessel responsible for a  
38 discharge in any action arising under the provisions of this act.

39 (2) A person, including an owner or operator of a major facility,  
40 who owns real property acquired on or after September 14, 1993 on  
41 which there has been a discharge, shall not be liable for cleanup and  
42 removal costs or for any other damages to the State or to any other  
43 person for the discharged hazardous substance pursuant to subsection  
44 c. of this section or pursuant to civil common law, if that person can  
45 establish by a preponderance of the evidence that subparagraphs (a)  
46 through (d) apply, or if applicable, subparagraphs (a) through (e)

1 apply:

2 (a) the person acquired the real property after the discharge of  
3 that hazardous substance at the real property;

4 (b) (i) at the time the person acquired the real property, the person  
5 did not know and had no reason to know that any hazardous substance  
6 had been discharged at the real property, or (ii) the person acquired  
7 the real property by devise or succession, except that any other funds  
8 or property received by that person from the deceased real property  
9 owner who discharged a hazardous substance or was in any way  
10 responsible for a hazardous substance, shall be made available to  
11 satisfy the requirements of P.L.1976, c.141, or (iii) the person  
12 complies with the provisions of subparagraph (e) of paragraph (2) of  
13 this subsection;

14 (c) the person did not discharge the hazardous substance, is not  
15 in any way responsible for the hazardous substance, and is not a  
16 corporate successor to the discharger or to any person in any way  
17 responsible for the hazardous substance or to anyone liable for cleanup  
18 and removal costs pursuant to this section;

19 (d) the person gave notice of the discharge to the department  
20 upon actual discovery of that discharge.

21 To establish that a person had no reason to know that any  
22 hazardous substance had been discharged for the purposes of this  
23 paragraph (2), the person must have undertaken, at the time of  
24 acquisition, all appropriate inquiry into the previous ownership and  
25 uses of the property. For the purposes of this paragraph (2), all  
26 appropriate inquiry shall mean the performance of a preliminary  
27 assessment, and site investigation, if the preliminary assessment  
28 indicates that a site investigation is necessary, as defined in section 23  
29 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with  
30 rules and regulations promulgated by the department defining these  
31 terms.

32 Nothing in this paragraph (2) shall be construed to alter liability of  
33 any person who acquired real property prior to September 14, 1993;  
34 and

35 (e) For the purposes of this subparagraph the person must have  
36 (i) acquired the property subsequent to a hazardous substance being  
37 discharged on the site and which discharge was discovered at the time  
38 of acquisition as a result of the appropriate inquiry, as defined in this  
39 paragraph (2), (ii) performed, following the effective date of P.L.1997,  
40 c.278, a remediation of the site or discharge consistent with the  
41 provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied  
42 upon a valid no further action letter from the department for a  
43 remediation performed prior to acquisition, or obtained approval of a  
44 remedial action workplan by the department after the effective date of  
45 P.L.1997, c.278 and continued to comply with the conditions of that  
46 workplan, and (iii) established and maintained all engineering and

1 institutional controls as may be required pursuant to sections 35 and  
2 36 of P.L.1993, c.139. A person who complies with the provisions of  
3 this subparagraph by actually performing a remediation of the site or  
4 discharge as set forth in (ii) above shall be issued, upon application, a  
5 no further action letter by the department. A person who complies  
6 with the provisions of this subparagraph either by receipt of a no  
7 further action letter from the department following the effective date  
8 of P.L.1997, c.278, or by relying on a previously issued no further  
9 action letter shall not be liable for any further remediation including  
10 any changes in a remediation standard or for the subsequent discovery  
11 of a hazardous substance, at the site, or emanating from the site, if the  
12 remediation was for the entire site, and the hazardous substance was  
13 discharged prior to the person acquiring the property.  
14 Notwithstanding any other provisions of this subparagraph, a person  
15 who complies with the provisions of this subparagraph only by virtue  
16 of the existence of a previously issued no further action letter shall  
17 receive no liability protections for any discharge which occurred  
18 during the time period between the issuance of the no further action  
19 letter and the property acquisition. Compliance with the provisions of  
20 this subparagraph (e) shall not relieve any person of any liability for a  
21 discharge that is off the site of the property covered by the no further  
22 action letter, for a discharge that occurs at that property after the  
23 person acquires the property, for any actions that person negligently  
24 takes that aggravates or contributes to a discharge of a hazardous  
25 substance, for failure to comply in the future with laws and  
26 regulations, or if that person fails to maintain the institutional or  
27 engineering controls on the property or to otherwise comply with the  
28 provisions of the no further action letter.

29 (3) Notwithstanding the provisions of paragraph (2) of this  
30 subsection to the contrary, if a person who owns real property obtains  
31 actual knowledge of a discharge of a hazardous substance at the real  
32 property during the period of that person's ownership and  
33 subsequently transfers ownership of the property to another person  
34 without disclosing that knowledge, the transferor shall be strictly liable  
35 for the cleanup and removal costs of the discharge and no defense  
36 under this subsection shall be available to that person.

37 (4) Any federal, State, or local governmental entity which  
38 acquires ownership of real property through bankruptcy, tax  
39 delinquency, abandonment, escheat, eminent domain, condemnation or  
40 any circumstance in which the governmental entity involuntarily  
41 acquires title by virtue of its function as sovereign, or where the  
42 governmental entity acquires the property by any means for the  
43 purpose of promoting the redevelopment of that property, shall not be  
44 liable, pursuant to subsection c. of this section or pursuant to common  
45 law, to the State or to any other person for any discharge which  
46 occurred or began prior to that ownership. This paragraph shall not

1 provide any liability protection to any federal, State or local  
2 governmental entity which has caused or contributed to the discharge  
3 of a hazardous substance. This paragraph shall not provide any  
4 liability protection to any federal, State, or local government entity  
5 that acquires ownership of real property by condemnation or eminent  
6 domain where the real property is being remediated in a timely manner  
7 at the time of the condemnation or eminent domain action.

8 (5) A person, including an owner or operator of a major facility,  
9 who owns real property acquired prior to September 14, 1993 on  
10 which there has been a discharge, shall not be liable for cleanup and  
11 removal costs or for any other damages to the State or to any other  
12 person for the discharged hazardous substance pursuant to subsection  
13 c. of this section or pursuant to civil common law, if that person can  
14 establish by a preponderance of the evidence that subparagraphs (a)  
15 through (d) apply:

16 (a) the person acquired the real property after the discharge of  
17 that hazardous substance at the real property;

18 (b) (i) at the time the person acquired the real property, the person  
19 did not know and had no reason to know that any hazardous substance  
20 had been discharged at the real property, or (ii) the person acquired  
21 the real property by devise or succession, except that any other funds  
22 or property received by that person from the deceased real property  
23 owner who discharged a hazardous substance or was in any way  
24 responsible for a hazardous substance, shall be made available to  
25 satisfy the requirements of P.L.1976, c.141;

26 (c) the person did not discharge the hazardous substance, is not  
27 in any way responsible for the hazardous substance, and is not a  
28 corporate successor to the discharger or to any person in any way  
29 responsible for the hazardous substance or to anyone liable for cleanup  
30 and removal costs pursuant to this section;

31 (d) the person gave notice of the discharge to the department  
32 upon actual discovery of that discharge.

33 To establish that a person had no reason to know that any  
34 hazardous substance had been discharged for the purposes of this  
35 paragraph (5), the person must have undertaken, at the time of  
36 acquisition, all appropriate inquiry on the previous ownership and uses  
37 of the property based upon generally accepted good and customary  
38 standards.

39 Nothing in this paragraph (5) shall be construed to alter liability of  
40 any person who acquired real property on or after September 14,  
41 1993.

42 e. Neither the fund nor the Sanitary Landfill Contingency Fund  
43 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be  
44 liable for any damages incurred by any person who is relieved from  
45 liability pursuant to subsection d. or f. of this section for a remediation  
46 that involves the use of engineering controls but the fund and the



1 Sanitary Landfill Contingency Fund shall be liable for any remediation  
2 that involves only the use of institutional controls if after a valid no  
3 further action letter has been issued the department orders additional  
4 remediation except that the fund and the Sanitary Landfill Contingency  
5 Fund shall not be liable for any additional remediation that is required  
6 to remove an institutional control.

7 f. Notwithstanding any other provision of this section, a person,  
8 who owns real property acquired on or after the effective date of  
9 P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for any  
10 cleanup and removal costs or damages, under this section or pursuant  
11 to any other statutory or civil common law, to any person, other than  
12 the State and the federal government, harmed by any hazardous  
13 substance discharged on that property prior to acquisition, and any  
14 migration off that property related to that discharge, provided all the  
15 conditions of this subsection are met:

16 (1) the person acquired the real property after the discharge of  
17 that hazardous substance at the real property;

18 (2) the person did not discharge the hazardous substance, is not  
19 in any way responsible for the hazardous substance, and is not a  
20 corporate successor to the discharger or to any person in any way  
21 responsible for the hazardous substance or to anyone liable for a  
22 discharge pursuant to this section;

23 (3) the person gave notice of the discharge to the department  
24 upon actual discovery of that discharge;

25 (4) within 30 days after acquisition of the property, the person  
26 commenced a remediation of the discharge, including any migration,  
27 pursuant to a department oversight document executed prior to  
28 acquisition, and the department is satisfied that remediation was  
29 completed in a timely and appropriate fashion; and

30 (5) Within ten days after acquisition of the property, or within 30  
31 days after the expiration of the period or periods allowed for the right  
32 of redemption pursuant to tax foreclosure law, the person agrees in  
33 writing to provide access to the State for remediation and related  
34 activities, as determined by the State.

35 The provisions of this subsection shall not relieve any person of  
36 any liability:

37 (1) for a discharge that occurs at that property after the person  
38 acquired the property;

39 (2) for any actions that person negligently takes that aggravates  
40 or contributes to the harm inflicted upon any person;

41 (3) if that person fails to maintain the institutional or engineering  
42 controls on the property or to otherwise comply with the provisions  
43 of a no further action letter or a remedial action workplan and a  
44 person is harmed thereby;

45 (4) for any liability to clean up and remove, pursuant to the  
46 department's regulations and directions, any hazardous substances that

1 may have been discharged on the property or that may have migrated  
2 therefrom; and

3 (5) for that person's failure to comply in the future with laws and  
4 regulations.

5 g. Nothing in the amendatory provisions to this section adopted  
6 pursuant to P.L.1997, c.278 shall be construed to remove any defense  
7 to liability that a person may have had pursuant to subsection e. of this  
8 section that existed prior to the effective date of P.L.1997, c.278.

9 h. Nothing in this section shall limit the requirements of any  
10 person to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).  
11 (cf: P.L.2003, c.224, s.1)

12

13 2. (New section) a. (1) Notwithstanding the provisions of  
14 section 8 of P.L.1976, c.141 (C.58:10-23.11g), any rule or regulation  
15 adopted pursuant thereto, or any other law to the contrary, any person  
16 who discharges, or is in any way responsible for a discharged  
17 hazardous substance, at a site included on the National Priorities List  
18 pursuant to the "Comprehensive Environmental Response,  
19 Compensation and Liability Act of 1980," 42 U.S.C. s.9601 et seq.,  
20 where the total amount of material containing hazardous substances  
21 discharged by that person at the site is in an amount less than 110  
22 gallons of liquid material or less than 200 pounds of solid material,  
23 shall not be liable for cleanup and removal costs or for the remediation  
24 of the site.

25 (2) The liability protection provided in paragraph (1) of this  
26 subsection shall not apply: (a) if the Commissioner of Environmental  
27 Protection determines, in writing, that the discharged hazardous  
28 substance contributed significantly, or could contribute significantly,  
29 to the cost of the remediation or the cleanup and removal; (b) if the  
30 person who discharges, or is in any way responsible for a discharged  
31 hazardous substance, impedes the performance of the cleanup at the  
32 site or fails to comply with a request for information issued by the  
33 department pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.); or  
34 (c) if the person has been convicted of a criminal offense for the  
35 conduct to which the liability protection would otherwise apply.

36 (3) In an action for contribution brought pursuant to paragraph (2)  
37 of subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f), the  
38 contribution plaintiff shall have the burden of proof to demonstrate  
39 that the person does not meet the conditions for the protection from  
40 liability as provided in paragraph (1) of this subsection.

41 b. (1) Notwithstanding the provisions of section 8 of P.L.1976,  
42 c.141 (C.58:10-23.11g), any rule or regulation adopted pursuant  
43 thereto, or any other law to the contrary, any person who discharges,  
44 or is in any way responsible for a discharged hazardous substance, at  
45 a site included on the National Priorities List pursuant to the  
46 "Comprehensive Environmental Response, Compensation and Liability

1 Act of 1980," 42 U.S.C. s.9601 et seq., shall not be liable for cleanup  
2 and removal costs or for the costs of remediation of the site if the  
3 person can demonstrate:

4 (a) the discharged hazardous substance consisted solely of  
5 municipal solid waste; and

6 (b) (i) the discharged hazardous substance originated from a  
7 residence,

8 (ii) the discharged hazardous substance originated from a business  
9 entity that, during the three years preceding the discharge, employed  
10 an average of not more than 100 full-time workers, or the equivalent,  
11 and is a small business concern as defined in the federal "Small  
12 Business Act," 15 U.S.C. s.631 et seq., from which all of the municipal  
13 solid waste attributable to the entity at the site was generated, or

14 (iii) the municipal solid waste originated from an organization  
15 described in section 501(c)(3) of the federal Internal Revenue Code,  
16 26 U.S.C. s.501(c)(3), that is exempt from taxation pursuant to  
17 section 501(a) of the federal Internal Revenue Code, 26 U.S.C.  
18 s.501(a), and during the taxable year prior to discharge, the  
19 organization employed not more than 100 full-time workers, or the  
20 equivalent, at the location from which the municipal solid waste  
21 originated.

22 (2) The liability protection provided in paragraph (1) of this  
23 subsection shall not apply: (a) if the Commissioner of Environmental  
24 Protection determines, in writing, that the municipal solid waste  
25 contributed significantly, or could contribute significantly, to the cost  
26 of the remediation or the cleanup and removal; (b) if the person who  
27 discharged, or is in any way responsible for a discharged hazardous  
28 substance, impedes the performance of the cleanup at the site or fails  
29 to comply with a request for information issued by the department  
30 pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.); or (c) if the  
31 person has been convicted of a criminal offense for the conduct to  
32 which the liability protection would otherwise apply.

33 (3) In an action for contribution brought pursuant to paragraph (2)  
34 of subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f), the  
35 contribution plaintiff shall have the burden of proof to demonstrate  
36 that the person does not meet the conditions for protection from  
37 liability as provided in paragraph (1) of this subsection.

38 c. Any person who brings a contribution action pursuant to  
39 paragraph (2) of subsection a. of section 7 of P.L.1976, c.141  
40 (C.58:10-23.11f) after the effective date of this section shall be liable  
41 to the defendant for all reasonable costs of defending the action,  
42 including all reasonable attorney's fees and expert witness fees, if the  
43 defendant is not liable for contribution because of a protection from  
44 liability as provided in this section.

45 d. As used in this section, "municipal solid waste" means solid  
46 waste of the type generated by a household or solid waste generated

1 by a commercial, industrial, or institutional entity that is essentially the  
2 same as waste generated by a household, is collected and disposed of  
3 with other municipal waste as part of the normal municipal solid waste  
4 collection service, and contains a relative quantity of hazardous  
5 substances contained in waste generated by a typical single family  
6 household. Municipal solid waste may include, but need not be limited  
7 to, food and yard waste, paper, clothing, appliances, consumer product  
8 packaging, disposable diapers, office supplies, cosmetics, glass and  
9 metal food containers, elementary or secondary school science  
10 laboratory waste, and household hazardous waste.

11

12 3. This act shall take effect immediately.

13

14

15

16

17 Provides exemption from cleanup liability at Superfund sites to certain  
18 persons.

**SENATE, No. 682**

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

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INTRODUCED JANUARY 26, 2004

**Sponsored by:**

**Senator ROBERT J. MARTIN**

**District 26 (Morris and Passaic)**

**SYNOPSIS**

Provides exemption from cleanup liability at Superfund sites to certain persons.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning liability for the cleanup of hazardous substances,  
2 and amending and supplementing 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 fiscal year beginning on July 1,  
34 2004, for the purposes of this definition, costs incurred by the State  
35 shall not include any indirect costs for department oversight performed  
36 after June 30, 2004, but may include only those program costs directly  
37 related to the cleanup and removal of the discharge; however,  
38 whenever the State or the fund have expended money for the cleanup  
39 and removal of a discharge and are seeking to recover the costs  
40 incurred in that cleanup and removal action from a responsible party,  
41 costs 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 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 "Municipal solid waste" means solid waste of the type generated by  
31 a household or solid waste generated by a commercial, industrial, or  
32 institutional entity that is essentially the same as waste generated by a  
33 household, is collected and disposed of with other municipal waste as  
34 part of the normal municipal solid waste collection service, and  
35 contains a relative quantity of hazardous substances contained in waste  
36 generated by a typical single family household;

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

40 "Owner" or "operator" means, with respect to a vessel, any person  
41 owning, operating or chartering by demise such vessel; with respect to  
42 any major facility, any person owning such facility, or operating it by  
43 lease, contract or other form of agreement; with respect to abandoned  
44 or derelict major facilities, the person who owned or operated such  
45 facility immediately prior to such abandonment, or the owner at the  
46 time of discharge;



1 "Person" means public or private corporations, companies,  
2 associations, societies, firms, partnerships, joint stock companies,  
3 individuals, the United States, the State of New Jersey and any of its  
4 political subdivisions or agents;

5 "Petroleum" or "petroleum products" means oil or petroleum of any  
6 kind and in any form, including, but not limited to, oil, petroleum,  
7 gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other  
8 wastes, crude oils, and substances or additives to be utilized in the  
9 refining or blending of crude petroleum or petroleum stock in this  
10 State; however, any compound designated by specific chemical name  
11 on the list of hazardous substances adopted by the department  
12 pursuant to this section shall not be considered petroleum or a  
13 petroleum product for the purposes of P.L.1976, c.141, unless such  
14 compound is to be utilized in the refining or blending of crude  
15 petroleum or petroleum stock in this State;

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

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

36 "Remedial investigation" means a process to determine the nature  
37 and extent of a discharge of a contaminant at a site or a discharge of  
38 a contaminant that has migrated or is migrating from the site and the  
39 problems presented by a discharge, and may include data collected,  
40 site characterization, sampling, monitoring, and the gathering of any  
41 other sufficient and relevant information necessary to determine the  
42 necessity for remedial action and to support the evaluation of remedial  
43 actions if necessary;

44 "Remediation" or "remediate" means all necessary actions to  
45 investigate and clean up or respond to any known, suspected, or  
46 threatened discharge, including, as necessary, the preliminary

1 assessment, site investigation, remedial investigation, and remedial  
2 action, provided, however, that "remediation" or "remediate" shall not  
3 include the payment of compensation for damage to, or loss of, natural  
4 resources;

5 "Site investigation" means the collection and evaluation of data  
6 adequate to determine whether or not discharged contaminants exist  
7 at a site or have migrated or are migrating from the site at levels in  
8 excess of the applicable remediation standards. A site investigation  
9 shall be developed based upon the information collected pursuant to  
10 the preliminary assessment;

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

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

15 "Transfer" means unloading or offloading between major facilities  
16 and vessels, or vessels and major facilities, and from vessel to vessel  
17 or major facility to major facility, except for fueling or refueling  
18 operations and except that with regard to the movement of hazardous  
19 substances other than petroleum, it shall also include any unloading of  
20 or offloading from a major facility;

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

25 "Waters" means the ocean and its estuaries to the seaward limit of  
26 the State's jurisdiction, all springs, streams and bodies of surface or  
27 groundwater, whether natural or artificial, within the boundaries of  
28 this State.

29 (cf: P.L.2002, c.37, s.2)

30

31 2. Section 8 of P.L.1976, c.141 (C.58:10-23.11g) is amended to  
32 read as follows:

33 8. a. The fund shall be strictly liable, without regard to fault, for  
34 all cleanup and removal costs and for all direct and indirect damages  
35 no matter by whom sustained, including but not limited to:

36 (1) The cost of restoring, repairing, or replacing any real or  
37 personal property damaged or destroyed by a discharge, any income  
38 lost from the time such property is damaged to the time such property  
39 is restored, repaired or replaced, and any reduction in value of such  
40 property caused by such discharge by comparison with its value prior  
41 thereto;

42 (2) The cost of restoration and replacement, where possible, of any  
43 natural resource damaged or destroyed by a discharge;

44 (3) Loss of income or impairment of earning capacity due to  
45 damage to real or personal property, including natural resources  
46 destroyed or damaged by a discharge; provided that such loss or

1 impairment exceeds 10% of the amount which claimant derives, based  
2 upon income or business records, exclusive of other sources of  
3 income, from activities related to the particular real or personal  
4 property or natural resources damaged or destroyed by such discharge  
5 during the week, month or year for which the claim is filed;

6 (4) Loss of tax revenue by the State or local governments for a  
7 period of one year due to damage to real or personal property  
8 proximately resulting from a discharge;

9 (5) Interest on loans obtained or other obligations incurred by a  
10 claimant for the purpose of ameliorating the adverse effects of a  
11 discharge pending the payment of a claim in full as provided by this  
12 act.

13 b. The damages which may be recovered by the fund, without  
14 regard to fault, subject to the defenses enumerated in subsection d. of  
15 this section against the owner or operator of a major facility or vessel,  
16 shall not exceed \$50,000,000.00 for each major facility or \$150.00 per  
17 gross ton for each vessel, except that such maximum limitation shall  
18 not apply and the owner or operator shall be liable, jointly and  
19 severally, for the full amount of such damages if it can be shown that  
20 such discharge was the result of (1) gross negligence or willful  
21 misconduct, within the knowledge and privity of the owner, operator  
22 or person in charge, or (2) a gross or willful violation of applicable  
23 safety, construction or operating standards or regulations. Damages  
24 which may be recovered from, or by, any other person shall be limited  
25 to those authorized by common or statutory law.

26 c. (1) [Any] Except as provided in section 3 of P.L. .c. (C. )  
27 (now is the Legislature as this bill), any person who has discharged a  
28 hazardous substance, or is in any way responsible for any hazardous  
29 substance, shall be strictly liable, jointly and severally, without regard  
30 to fault, for all cleanup and removal costs no matter by whom  
31 incurred. Such person shall also be strictly liable, jointly and severally,  
32 without regard to fault, for all cleanup and removal costs incurred by  
33 the department or a local unit pursuant to subsection b. of section 7 of  
34 P.L.1976, c.141 (C.58:10-23.11f).

35 (2) In addition to the persons liable pursuant to this subsection, in  
36 the case of a discharge of a hazardous substance from a vessel into the  
37 waters of the State, the owner or operator of a refinery, storage,  
38 transfer, or pipeline facility to which the vessel was en route to deliver  
39 the hazardous substance who, by contract, agreement, or otherwise,  
40 was scheduled to assume ownership of the discharged hazardous  
41 substance, and any other person who was so scheduled to assume  
42 ownership of the discharged hazardous substance, shall be strictly  
43 liable, jointly and severally, without regard to fault, for all cleanup and  
44 removal costs if the owner or operator of the vessel did not have the  
45 evidence of financial responsibility required pursuant to section 2 of  
46 P.L.1991, c.58 (C.58:10-23.11g2).

1       Where a person is liable for cleanup and removal costs as provided  
2 in this paragraph, any expenditures made by the administrator for that  
3 cleanup and removal shall constitute a debt of that person to the fund.  
4 The debt shall constitute a lien on all property owned by that person  
5 when a notice of lien identifying the nature of the discharge and the  
6 amount of the cleanup, removal and related costs expended from the  
7 fund is duly filed with the clerk of the Superior Court. The clerk shall  
8 promptly enter upon the civil judgment or order docket the name and  
9 address of the liable person and the amount of the lien as set forth in  
10 the notice of lien. Upon entry by the clerk, the lien, to the amount  
11 committed by the administrator for cleanup and removal, shall attach  
12 to the revenues and all real and personal property of the liable person,  
13 whether or not that person is insolvent.

14       For the purpose of determining priority of this lien over all other  
15 claims or liens which are or have been filed against the property of an  
16 owner or operator of a refinery, storage, transfer, or pipeline facility,  
17 the lien on the facility to which the discharged hazardous substance  
18 was en route shall have priority over all other claims or liens which are  
19 or have been filed against the property. The notice of lien filed  
20 pursuant to this paragraph which affects any property of a person  
21 liable pursuant to this paragraph other than the property of an owner  
22 or operator of a refinery, storage, transfer, or pipeline facility to which  
23 the discharged hazardous substance was en route, shall have priority  
24 from the day of the filing of the notice of the lien over all claims and  
25 liens filed against the property, but shall not affect any valid lien, right,  
26 or interest in the property filed in accordance with established  
27 procedure prior to the filing of a notice of lien pursuant to this  
28 paragraph.

29       To the extent that a person liable pursuant to this paragraph is not  
30 otherwise liable pursuant to paragraph (1) of this subsection, or under  
31 any other provision of law or under common law, that person may  
32 bring an action for indemnification for costs paid pursuant to this  
33 paragraph against any other person who is strictly liable pursuant to  
34 paragraph (1) of this subsection.

35       Nothing in this paragraph shall be construed to extend or negate the  
36 right of any person to bring an action for contribution that may exist  
37 under P.L.1976, c.141, or any other act or under common law.

38       (3) In addition to the persons liable pursuant to this subsection, any  
39 person who owns real property acquired on or after September 14,  
40 1993 on which there has been a discharge prior to the person's  
41 acquisition of that property and who knew or should have known that  
42 a hazardous substance had been discharged at the real property, shall  
43 be strictly liable, jointly and severally, without regard to fault, for all  
44 cleanup and removal costs no matter by whom incurred. Such person  
45 shall also be strictly liable, jointly and severally, without regard to  
46 fault, for all cleanup and removal costs incurred by the department or

1 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141  
2 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter  
3 liability of any person who acquired real property prior to September  
4 14, 1993.

5 d. (1) In addition to those defenses provided in this subsection, an  
6 act or omission caused solely by war, sabotage, or God, or a  
7 combination thereof, shall be the only defenses which may be raised by  
8 any owner or operator of a major facility or vessel responsible for a  
9 discharge in any action arising under the provisions of this act.

10 (2) A person, including an owner or operator of a major facility,  
11 who owns real property acquired on or after September 14, 1993 on  
12 which there has been a discharge, shall not be liable for cleanup and  
13 removal costs or for any other damages to the State or to any other  
14 person for the discharged hazardous substance pursuant to subsection  
15 c. of this section or pursuant to civil common law, if that person can  
16 establish by a preponderance of the evidence that subparagraphs (a)  
17 through (d) apply, or if applicable, subparagraphs (a) through (e)  
18 apply:

19 (a) the person acquired the real property after the discharge of that  
20 hazardous substance at the real property;

21 (b) (i) at the time the person acquired the real property, the person  
22 did not know and had no reason to know that any hazardous substance  
23 had been discharged at the real property, or (ii) the person acquired  
24 the real property by devise or succession, except that any other funds  
25 or property received by that person from the deceased real property  
26 owner who discharged a hazardous substance or was in any way  
27 responsible for a hazardous substance, shall be made available to  
28 satisfy the requirements of P.L.1976, c.141, or (iii) the person  
29 complies with the provisions of subparagraph (e) of paragraph (2) of  
30 this subsection;

31 (c) the person did not discharge the hazardous substance, is not in  
32 any way responsible for the hazardous substance, and is not a  
33 corporate successor to the discharger or to any person in any way  
34 responsible for the hazardous substance or to anyone liable for cleanup  
35 and removal costs pursuant to this section;

36 (d) the person gave notice of the discharge to the department upon  
37 actual discovery of that discharge.

38 To establish that a person had no reason to know that any  
39 hazardous substance had been discharged for the purposes of this  
40 paragraph (2), the person must have undertaken, at the time of  
41 acquisition, all appropriate inquiry into the previous ownership and  
42 uses of the property. For the purposes of this paragraph (2), all  
43 appropriate inquiry shall mean the performance of a preliminary  
44 assessment, and site investigation, if the preliminary assessment  
45 indicates that a site investigation is necessary, as defined in section 23  
46 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with

1 rules and regulations promulgated by the department defining these  
2 terms.

3 Nothing in this paragraph (2) shall be construed to alter liability of  
4 any person who acquired real property prior to September 14, 1993;  
5 and

6 (e) For the purposes of this subparagraph the person must have (i)  
7 acquired the property subsequent to a hazardous substance being  
8 discharged on the site and which discharge was discovered at the time  
9 of acquisition as a result of the appropriate inquiry, as defined in this  
10 paragraph (2), (ii) performed, following the effective date of P.L.1997,  
11 c.278, a remediation of the site or discharge consistent with the  
12 provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied  
13 upon a valid no further action letter from the department for a  
14 remediation performed prior to acquisition, or obtained approval of a  
15 remedial action workplan by the department after the effective date of  
16 P.L.1997, c.278 and continued to comply with the conditions of that  
17 workplan, and (iii) established and maintained all engineering and  
18 institutional controls as may be required pursuant to sections 35 and  
19 36 of P.L.1993, c.139. A person who complies with the provisions of  
20 this subparagraph by actually performing a remediation of the site or  
21 discharge as set forth in (ii) above shall be issued, upon application, a  
22 no further action letter by the department. A person who complies  
23 with the provisions of this subparagraph either by receipt of a no  
24 further action letter from the department following the effective date  
25 of P.L.1997, c.278, or by relying on a previously issued no further  
26 action letter shall not be liable for any further remediation including  
27 any changes in a remediation standard or for the subsequent discovery  
28 of a hazardous substance, at the site, if the remediation was for the  
29 entire site, and the hazardous substance was discharged prior to the  
30 person acquiring the property. Notwithstanding any other provisions  
31 of this subparagraph, a person who complies with the provisions of  
32 this subparagraph only by virtue of the existence of a previously issued  
33 no further action letter shall receive no liability protections for any  
34 discharge which occurred during the time period between the issuance  
35 of the no further action letter and the property acquisition.  
36 Compliance with the provisions of this subparagraph (e) shall not  
37 relieve any person of any liability for a discharge that is off the site of  
38 the property covered by the no further action letter, for a discharge  
39 that occurs at that property after the person acquires the property, for  
40 any actions that person negligently takes that aggravates or contributes  
41 to a discharge of a hazardous substance, for failure to comply in the  
42 future with laws and regulations, or if that person fails to maintain the  
43 institutional or engineering controls on the property or to otherwise  
44 comply with the provisions of the no further action letter.

45 (3) Notwithstanding the provisions of paragraph (2) of this  
46 subsection to the contrary, if a person who owns real property obtains

1 actual knowledge of a discharge of a hazardous substance at the real  
2 property during the period of that person's ownership and  
3 subsequently transfers ownership of the property to another person  
4 without disclosing that knowledge, the transferor shall be strictly liable  
5 for the cleanup and removal costs of the discharge and no defense  
6 under this subsection shall be available to that person.

7 (4) Any federal, State, or local governmental entity which acquires  
8 ownership of real property through bankruptcy, tax delinquency,  
9 abandonment, escheat, eminent domain, condemnation or any  
10 circumstance in which the governmental entity involuntarily acquires  
11 title by virtue of its function as sovereign, or where the governmental  
12 entity acquires the property by any means for the purpose of  
13 promoting the redevelopment of that property, shall not be liable,  
14 pursuant to subsection c. of this section or pursuant to common law,  
15 to the State or to any other person for any discharge which occurred  
16 or began prior to that ownership. This paragraph shall not provide any  
17 liability protection to any federal, State or local governmental entity  
18 which has caused or contributed to the discharge of a hazardous  
19 substance. This paragraph shall not provide any liability protection to  
20 any federal, State, or local government entity that acquires ownership  
21 of real property by condemnation or eminent domain where the real  
22 property is being remediated in a timely manner at the time of the  
23 condemnation or eminent domain action.

24 (5) A person, including an owner or operator of a major facility,  
25 who owns real property acquired prior to September 14, 1993 on  
26 which there has been a discharge, shall not be liable for cleanup and  
27 removal costs or for any other damages to the State or to any other  
28 person for the discharged hazardous substance pursuant to subsection  
29 c. of this section or pursuant to civil common law, if that person can  
30 establish by a preponderance of the evidence that subparagraphs (a)  
31 through (d) apply:

32 (a) the person acquired the real property after the discharge of that  
33 hazardous substance at the real property;

34 (b) (i) at the time the person acquired the real property, the person  
35 did not know and had no reason to know that any hazardous substance  
36 had been discharged at the real property, or (ii) the person acquired  
37 the real property by devise or succession, except that any other funds  
38 or property received by that person from the deceased real property  
39 owner who discharged a hazardous substance or was in any way  
40 responsible for a hazardous substance, shall be made available to  
41 satisfy the requirements of P.L.1976, c.141;

42 (c) the person did not discharge the hazardous substance, is not in  
43 any way responsible for the hazardous substance, and is not a  
44 corporate successor to the discharger or to any person in any way  
45 responsible for the hazardous substance or to anyone liable for cleanup  
46 and removal costs pursuant to this section;

1 (d) the person gave notice of the discharge to the department upon  
2 actual discovery of that discharge.

3 To establish that a person had no reason to know that any  
4 hazardous substance had been discharged for the purposes of this  
5 paragraph (5), the person must have undertaken, at the time of  
6 acquisition, all appropriate inquiry on the previous ownership and uses  
7 of the property based upon generally accepted good and customary  
8 standards.

9 Nothing in this paragraph (5) shall be construed to alter liability of  
10 any person who acquired real property on or after September 14,  
11 1993.

12 e. Neither the fund nor the Sanitary Landfill Contingency Fund  
13 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be  
14 liable for any damages incurred by any person who is relieved from  
15 liability pursuant to subsection d. or f. of this section for a remediation  
16 that involves the use of engineering controls but the fund and the  
17 Sanitary Landfill Contingency Fund shall be liable for any remediation  
18 that involves only the use of institutional controls if after a valid no  
19 further action letter has been issued the department orders additional  
20 remediation except that the fund and the Sanitary Landfill Contingency  
21 Fund shall not be liable for any additional remediation that is required  
22 to remove an institutional control.

23 f. Notwithstanding any other provision of this section, a person,  
24 who owns real property acquired on or after the effective date of  
25 P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for any  
26 cleanup and removal costs or damages, under this section or pursuant  
27 to any other statutory or civil common law, to any person, other than  
28 the State and the federal government, harmed by any hazardous  
29 substance discharged on that property prior to acquisition, and any  
30 migration off that property related to that discharge, provided all the  
31 conditions of this subsection are met:

32 (1) the person acquired the real property after the discharge of that  
33 hazardous substance at the real property;

34 (2) the person did not discharge the hazardous substance, is not in  
35 any way responsible for the hazardous substance, and is not a  
36 corporate successor to the discharger or to any person in any way  
37 responsible for the hazardous substance or to anyone liable for a  
38 discharge pursuant to this section;

39 (3) the person gave notice of the discharge to the department upon  
40 actual discovery of that discharge;

41 (4) within 30 days after acquisition of the property, the person  
42 commenced a remediation of the discharge, including any migration,  
43 pursuant to a department oversight document executed prior to  
44 acquisition, and the department is satisfied that remediation was  
45 completed in a timely and appropriate fashion; and

46 (5) Within ten days after acquisition of the property, the person



1 agrees in writing to provide access to the State for remediation and  
2 related activities, as determined by the State.

3 The provisions of this subsection shall not relieve any person of any  
4 liability:

5 (1) for a discharge that occurs at that property after the person  
6 acquired the property;

7 (2) for any actions that person negligently takes that aggravates or  
8 contributes to the harm inflicted upon any person;

9 (3) if that person fails to maintain the institutional or engineering  
10 controls on the property or to otherwise comply with the provisions  
11 of a no further action letter or a remedial action workplan and a  
12 person is harmed thereby;

13 (4) for any liability to clean up and remove, pursuant to the  
14 department's regulations and directions, any hazardous substances that  
15 may have been discharged on the property or that may have migrated  
16 therefrom; and

17 (5) for that person's failure to comply in the future with laws and  
18 regulations.

19 g. Nothing in the amendatory provisions to this section adopted  
20 pursuant to P.L.1997, c.278 shall be construed to remove any defense  
21 to liability that a person may have had pursuant to subsection e. of this  
22 section that existed prior to the effective date of P.L.1997, c.278.

23 h. Nothing in this section shall limit the requirements of any person  
24 to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).

25 (cf: P.L.2001, c.154, s.2)

26

27 3. (New section) a. Notwithstanding the provisions of section 8 of  
28 P.L.1976, c.141 (C.58:10-23.11g), any rule or regulation adopted  
29 pursuant thereto, or any other law to the contrary, any person who  
30 discharges, or is in any way responsible for a discharged hazardous  
31 substance, at a site included on the National Priorities List pursuant to  
32 the "Comprehensive Environmental Response, Compensation and  
33 Liability Act of 1980," 42 U.S.C. s.9601 et seq., where the total  
34 amount of material discharged by that person at the site containing  
35 hazardous substances is in an amount less than 110 gallons of liquid  
36 material or less than 200 pounds of solid material, shall not be liable  
37 for cleanup and removal costs or for the remediation of the site.

38 b. Notwithstanding the provisions of section 8 of P.L.1976, c.141  
39 (C.58:10-23.11g), any rule or regulation adopted pursuant thereto, or  
40 any other law to the contrary, any person who discharges, or is in any  
41 way responsible for a discharged hazardous substance, at a site  
42 included on the National Priorities List pursuant to the  
43 "Comprehensive Environmental Response, Compensation and Liability  
44 Act of 1980," 42 U.S.C. s.9601 et seq., shall not be liable for cleanup  
45 and removal costs or for the costs of remediation of the site if the  
46 person can demonstrate:

1 (1) the discharged hazardous substance consisted solely of  
2 municipal solid waste; and

3 (2) (a) the discharged hazardous substance originated from a  
4 residence,

5 (b) the discharged hazardous substance originated from a business  
6 entity that, during the three years preceding the discharge, employed  
7 an average of not more than 100 full-time workers, or the equivalent,  
8 and is a small business concern as defined in the federal "Small  
9 Business Act," 15 U.S.C. s.631 et seq., from which all of the municipal  
10 solid waste attributable to the entity at the site was generated, or

11 (c) the municipal solid waste originated from a nonprofit  
12 organization that was exempt from federal taxation pursuant to section  
13 501(c)(3) of the federal Internal Revenue Code, 26 U.S.C. s.501(c)(3),  
14 during the taxable year prior to the discharge, and the organization  
15 employed not more than 100 paid workers or the equivalent, at the  
16 location from which the municipal solid waste originated.

17

18 4. This act shall take effect immediately.

19

20

21

#### STATEMENT

22

23

24 This bill would provide an exemption from liability for remediation  
25 costs and for cleanup and removal costs pursuant to the "Spill  
26 Compensation and Control Act," P.L.1976, c.141 (C.58:10:23.11 et  
27 seq.) at Superfund sites if the discharged hazardous substance  
28 consisted of municipal solid waste and originated from a residence, a  
29 tax-exempt organization with less than 100 paid workers or a small  
30 business with an average of not more than 100 paid full-time workers.

31 The bill would also provide an exemption for remediation costs and  
32 for cleanup and removal costs at Superfund sites if a person  
33 discharged de minimus amounts of material, i.e. amounts less than 200  
34 pounds of solid material or 110 gallons of liquid material.

# SENATE ENVIRONMENT COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 682**

# **STATE OF NEW JERSEY**

DATED: OCTOBER 4, 2004

The Senate Environment Committee favorably reports a Senate Committee Substitute for Senate Bill No. 682.

This substitute bill would provide an exemption from liability for remediation costs and for cleanup and removal costs pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10:23.11 et seq.) at sites on the National Priorities List if the discharged hazardous substance consisted of municipal solid waste and originated from a residence, a small business with an average of not more than 100 paid full-time workers, or an organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C.501(c)(3), that is exempt from taxation pursuant to section 501(a) of that act, that employs less than 100 full-time workers, or the equivalent in the taxable year prior to the discharge.

The committee substitute would also provide an exemption from liability for remediation costs and for cleanup and removal costs at sites on the National Priorities List if a person discharged de minimis amounts of material, i.e. amounts less than 200 pounds of solid material or 110 gallons of liquid material.

The substitute bill provides that the liability protections would not apply if the Commissioner of Environmental Protection determines, in writing, that the discharged hazardous substance or the municipal solid waste contributed significantly, or could contribute significantly, to the cost of the remediation or the cleanup and removal, if the person who discharged, or is in any way responsible for a discharged hazardous substance, impedes the performance of the cleanup at the site or fails to comply with a request for information issued by the department pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) or if the person has been convicted of a criminal offense for the conduct to which the liability protection would otherwise apply.

The substitute bill would also provide that in an action for contribution brought pursuant to paragraph (2) of subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f), the contribution plaintiff shall have the burden of proof to demonstrate that the person does not meet the conditions for protection from liability as provided in the bill. Further, any person who brings a contribution action after

the effective date shall be liable to the defendant for all reasonable costs of defending the action, including all reasonable attorney's fees and expert witness fees, if the defendant is not liable for contribution because of the protection from liability as provided in the bill.

ASSEMBLY ENVIRONMENT AND SOLID WASTE  
COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 682**

**STATE OF NEW JERSEY**

DATED: JANUARY 13, 2005

The Assembly Environment and Solid Waste Committee reports favorably Senate Bill No. 682 (SCS).

This committee substitute would provide an exemption from liability for remediation costs and for cleanup and removal costs pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10:23.11 et seq.) at sites on the National Priorities List if the discharged hazardous substance consisted of municipal solid waste and originated from a residence, a small business with an average of not more than 100 paid full-time workers, or an organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C.501(c)(3), that is exempt from taxation pursuant to section 501(a) of that act, that employs less than 100 full-time workers, or the equivalent in the taxable year prior to the discharge.

The committee substitute would also provide an exemption from liability for remediation costs and for cleanup and removal costs at sites on the National Priorities List if a person discharged de minimis amounts of material, i.e. amounts less than 200 pounds of solid material or 110 gallons of liquid material.

The committee substitute would provide that the liability protections would not apply if the Commissioner of Environmental Protection determines, in writing, that the discharged hazardous substance or the municipal solid waste contributed significantly, or could contribute significantly, to the cost of the remediation or the cleanup and removal, if the person who discharged, or is in any way responsible for a discharged hazardous substance, impedes the performance of the cleanup at the site or fails to comply with a request for information issued by the department pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) or if the person has been convicted of a criminal offense for the conduct to which the liability protection would otherwise apply.

The substitute bill would also provide that in an action for contribution brought pursuant to paragraph (2) of subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f), the contribution

plaintiff shall have the burden of proof to demonstrate that the person does not meet the conditions for protection from liability as provided in the bill. Further, any person who brings a contribution action after the effective date shall be liable to the defendant for all reasonable costs of defending the action, including all reasonable attorney's fees and expert witness fees, if the defendant is not liable for contribution because of the protection from liability as provided in the bill.

As reported by the committee, Senate Bill No. 682 (SCS) is identical to Assembly Bill No. 802 (ACS) as also reported by the committee.

# ASSEMBLY, No. 802

## STATE OF NEW JERSEY 211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

**Sponsored by:**  
**Assemblyman REED GUSCIORA**  
**District 15 (Mercer)**

### **SYNOPSIS**

Provides exemption from cleanup liability at Superfund sites to certain persons.

### **CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



A802 GUSCIORA

2

1 AN ACT concerning liability for the cleanup of hazardous substances,  
2 and amending and supplementing 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 fiscal year beginning on July 1,  
34 2004, for the purposes of this definition, costs incurred by the State  
35 shall not include any indirect costs for department oversight performed  
36 after June 30, 2004, but may include only those program costs directly  
37 related to the cleanup and removal of the discharge; however,  
38 whenever the State or the fund have expended money for the cleanup  
39 and removal of a discharge and are seeking to recover the costs  
40 incurred in that cleanup and removal action from a responsible party,  
41 costs 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 intended to be omitted in the law.**

**Matter underlined thus is new matter.**



**A802 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;

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 "Municipal solid waste" means solid waste of the type generated by  
31 a household or solid waste generated by a commercial, industrial, or  
32 institutional entity that is essentially the same as waste generated by a  
33 household, is collected and disposed of with other municipal waste as  
34 part of the normal municipal solid waste collection service, and  
35 contains a relative quantity of hazardous substances contained in waste  
36 generated by a typical single family household;

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

40 "Owner" or "operator" means, with respect to a vessel, any person  
41 owning, operating or chartering by demise such vessel; with respect to  
42 any major facility, any person owning such facility, or operating it by  
43 lease, contract or other form of agreement; with respect to abandoned  
44 or derelict major facilities, the person who owned or operated such  
45 facility immediately prior to such abandonment, or the owner at the  
46 time of discharge;

1 "Person" means public or private corporations, companies,  
2 associations, societies, firms, partnerships, joint stock companies,  
3 individuals, the United States, the State of New Jersey and any of its  
4 political subdivisions or agents;

5 "Petroleum" or "petroleum products" means oil or petroleum of any  
6 kind and in any form, including, but not limited to, oil, petroleum,  
7 gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other  
8 wastes, crude oils, and substances or additives to be utilized in the  
9 refining or blending of crude petroleum or petroleum stock in this  
10 State; however, any compound designated by specific chemical name  
11 on the list of hazardous substances adopted by the department  
12 pursuant to this section shall not be considered petroleum or a  
13 petroleum product for the purposes of P.L.1976, c.141, unless such  
14 compound is to be utilized in the refining or blending of crude  
15 petroleum or petroleum stock in this State;

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

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

36 "Remedial investigation" means a process to determine the nature  
37 and extent of a discharge of a contaminant at a site or a discharge of  
38 a contaminant that has migrated or is migrating from the site and the  
39 problems presented by a discharge, and may include data collected,  
40 site characterization, sampling, monitoring, and the gathering of any  
41 other sufficient and relevant information necessary to determine the  
42 necessity for remedial action and to support the evaluation of remedial  
43 actions if necessary;

44 "Remediation" or "remediate" means all necessary actions to  
45 investigate and clean up or respond to any known, suspected, or  
46 threatened discharge, including, as necessary, the preliminary

1 assessment, site investigation, remedial investigation, and remedial  
2 action, provided, however, that "remediation" or "remediate" shall not  
3 include the payment of compensation for damage to, or loss of, natural  
4 resources;

5 "Site investigation" means the collection and evaluation of data  
6 adequate to determine whether or not discharged contaminants exist  
7 at a site or have migrated or are migrating from the site at levels in  
8 excess of the applicable remediation standards. A site investigation  
9 shall be developed based upon the information collected pursuant to  
10 the preliminary assessment;

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

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

15 "Transfer" means unloading or offloading between major facilities  
16 and vessels, or vessels and major facilities, and from vessel to vessel  
17 or major facility to major facility, except for fueling or refueling  
18 operations and except that with regard to the movement of hazardous  
19 substances other than petroleum, it shall also include any unloading of  
20 or offloading from a major facility;

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

25 "Waters" means the ocean and its estuaries to the seaward limit of  
26 the State's jurisdiction, all springs, streams and bodies of surface or  
27 groundwater, whether natural or artificial, within the boundaries of  
28 this State.

29 (cf: P.L.2002, c.37, s.2)

30

31 2. Section 8 of P.L.1976, c.141 (C.58:10-23.11g) is amended to  
32 read as follows:

33 8. a. The fund shall be strictly liable, without regard to fault, for  
34 all cleanup and removal costs and for all direct and indirect damages  
35 no matter by whom sustained, including but not limited to:

36 (1) The cost of restoring, repairing, or replacing any real or  
37 personal property damaged or destroyed by a discharge, any income  
38 lost from the time such property is damaged to the time such property  
39 is restored, repaired or replaced, and any reduction in value of such  
40 property caused by such discharge by comparison with its value prior  
41 thereto;

42 (2) The cost of restoration and replacement, where possible, of any  
43 natural resource damaged or destroyed by a discharge;

44 (3) Loss of income or impairment of earning capacity due to  
45 damage to real or personal property, including natural resources  
46 destroyed or damaged by a discharge; provided that such loss or

1 impairment exceeds 10% of the amount which claimant derives, based  
2 upon income or business records, exclusive of other sources of  
3 income, from activities related to the particular real or personal  
4 property or natural resources damaged or destroyed by such discharge  
5 during the week, month or year for which the claim is filed;

6 (4) Loss of tax revenue by the State or local governments for a  
7 period of one year due to damage to real or personal property  
8 proximately resulting from a discharge;

9 (5) Interest on loans obtained or other obligations incurred by a  
10 claimant for the purpose of ameliorating the adverse effects of a  
11 discharge pending the payment of a claim in full as provided by this  
12 act.

13 b. The damages which may be recovered by the fund, without  
14 regard to fault, subject to the defenses enumerated in subsection d. of  
15 this section against the owner or operator of a major facility or vessel,  
16 shall not exceed \$50,000,000.00 for each major facility or \$150.00 per  
17 gross ton for each vessel, except that such maximum limitation shall  
18 not apply and the owner or operator shall be liable, jointly and  
19 severally, for the full amount of such damages if it can be shown that  
20 such discharge was the result of (1) gross negligence or willful  
21 misconduct, within the knowledge and privity of the owner, operator  
22 or person in charge, or (2) a gross or willful violation of applicable  
23 safety, construction or operating standards or regulations. Damages  
24 which may be recovered from, or by, any other person shall be limited  
25 to those authorized by common or statutory law.

26 c. (1) [Any] Except as provided in section 3 of P.L. .c. (C. )  
27 (now is the Legislature as this bill), any person who has discharged a  
28 hazardous substance, or is in any way responsible for any hazardous  
29 substance, shall be strictly liable, jointly and severally, without regard  
30 to fault, for all cleanup and removal costs no matter by whom  
31 incurred. Such person shall also be strictly liable, jointly and severally,  
32 without regard to fault, for all cleanup and removal costs incurred by  
33 the department or a local unit pursuant to subsection b. of section 7 of  
34 P.L.1976, c.141 (C.58:10-23.11f).

35 (2) In addition to the persons liable pursuant to this subsection, in  
36 the case of a discharge of a hazardous substance from a vessel into the  
37 waters of the State, the owner or operator of a refinery, storage,  
38 transfer, or pipeline facility to which the vessel was en route to deliver  
39 the hazardous substance who, by contract, agreement, or otherwise,  
40 was scheduled to assume ownership of the discharged hazardous  
41 substance, and any other person who was so scheduled to assume  
42 ownership of the discharged hazardous substance, shall be strictly  
43 liable, jointly and severally, without regard to fault, for all cleanup and  
44 removal costs if the owner or operator of the vessel did not have the  
45 evidence of financial responsibility required pursuant to section 2 of  
46 P.L.1991, c.58 (C.58:10-23.11g2).

1       Where a person is liable for cleanup and removal costs as provided  
2 in this paragraph, any expenditures made by the administrator for that  
3 cleanup and removal shall constitute a debt of that person to the fund.  
4 The debt shall constitute a lien on all property owned by that person  
5 when a notice of lien identifying the nature of the discharge and the  
6 amount of the cleanup, removal and related costs expended from the  
7 fund is duly filed with the clerk of the Superior Court. The clerk shall  
8 promptly enter upon the civil judgment or order docket the name and  
9 address of the liable person and the amount of the lien as set forth in  
10 the notice of lien. Upon entry by the clerk, the lien, to the amount  
11 committed by the administrator for cleanup and removal, shall attach  
12 to the revenues and all real and personal property of the liable person,  
13 whether or not that person is insolvent.

14       For the purpose of determining priority of this lien over all other  
15 claims or liens which are or have been filed against the property of an  
16 owner or operator of a refinery, storage, transfer, or pipeline facility,  
17 the lien on the facility to which the discharged hazardous substance  
18 was en route shall have priority over all other claims or liens which are  
19 or have been filed against the property. The notice of lien filed  
20 pursuant to this paragraph which affects any property of a person  
21 liable pursuant to this paragraph other than the property of an owner  
22 or operator of a refinery, storage, transfer, or pipeline facility to which  
23 the discharged hazardous substance was en route, shall have priority  
24 from the day of the filing of the notice of the lien over all claims and  
25 liens filed against the property, but shall not affect any valid lien, right,  
26 or interest in the property filed in accordance with established  
27 procedure prior to the filing of a notice of lien pursuant to this  
28 paragraph.

29       To the extent that a person liable pursuant to this paragraph is not  
30 otherwise liable pursuant to paragraph (1) of this subsection, or under  
31 any other provision of law or under common law, that person may  
32 bring an action for indemnification for costs paid pursuant to this  
33 paragraph against any other person who is strictly liable pursuant to  
34 paragraph (1) of this subsection.

35       Nothing in this paragraph shall be construed to extend or negate the  
36 right of any person to bring an action for contribution that may exist  
37 under P.L.1976, c.141, or any other act or under common law.

38       (3) In addition to the persons liable pursuant to this subsection, any  
39 person who owns real property acquired on or after September 14,  
40 1993 on which there has been a discharge prior to the person's  
41 acquisition of that property and who knew or should have known that  
42 a hazardous substance had been discharged at the real property, shall  
43 be strictly liable, jointly and severally, without regard to fault, for all  
44 cleanup and removal costs no matter by whom incurred. Such person  
45 shall also be strictly liable, jointly and severally, without regard to  
46 fault, for all cleanup and removal costs incurred by the department or

1 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141  
2 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter  
3 liability of any person who acquired real property prior to September  
4 14, 1993.

5 d. (1) In addition to those defenses provided in this subsection, an  
6 act or omission caused solely by war, sabotage, or God, or a  
7 combination thereof, shall be the only defenses which may be raised by  
8 any owner or operator of a major facility or vessel responsible for a  
9 discharge in any action arising under the provisions of this act.

10 (2) A person, including an owner or operator of a major facility,  
11 who owns real property acquired on or after September 14, 1993 on  
12 which there has been a discharge, shall not be liable for cleanup and  
13 removal costs or for any other damages to the State or to any other  
14 person for the discharged hazardous substance pursuant to subsection  
15 c. of this section or pursuant to civil common law, if that person can  
16 establish by a preponderance of the evidence that subparagraphs (a)  
17 through (d) apply, or if applicable, subparagraphs (a) through (e)  
18 apply:

19 (a) the person acquired the real property after the discharge of that  
20 hazardous substance at the real property;

21 (b) (i) at the time the person acquired the real property, the person  
22 did not know and had no reason to know that any hazardous substance  
23 had been discharged at the real property, or (ii) the person acquired  
24 the real property by devise or succession, except that any other funds  
25 or property received by that person from the deceased real property  
26 owner who discharged a hazardous substance or was in any way  
27 responsible for a hazardous substance, shall be made available to  
28 satisfy the requirements of P.L.1976, c.141, or (iii) the person  
29 complies with the provisions of subparagraph (e) of paragraph (2) of  
30 this subsection;

31 (c) the person did not discharge the hazardous substance, is not in  
32 any way responsible for the hazardous substance, and is not a  
33 corporate successor to the discharger or to any person in any way  
34 responsible for the hazardous substance or to anyone liable for cleanup  
35 and removal costs pursuant to this section;

36 (d) the person gave notice of the discharge to the department upon  
37 actual discovery of that discharge.

38 To establish that a person had no reason to know that any  
39 hazardous substance had been discharged for the purposes of this  
40 paragraph (2), the person must have undertaken, at the time of  
41 acquisition, all appropriate inquiry into the previous ownership and  
42 uses of the property. For the purposes of this paragraph (2), all  
43 appropriate inquiry shall mean the performance of a preliminary  
44 assessment, and site investigation, if the preliminary assessment  
45 indicates that a site investigation is necessary, as defined in section 23  
46 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with

1 rules and regulations promulgated by the department defining these  
2 terms.

3 Nothing in this paragraph (2) shall be construed to alter liability of  
4 any person who acquired real property prior to September 14, 1993;  
5 and

6 (e) For the purposes of this subparagraph the person must have (i)  
7 acquired the property subsequent to a hazardous substance being  
8 discharged on the site and which discharge was discovered at the time  
9 of acquisition as a result of the appropriate inquiry, as defined in this  
10 paragraph (2), (ii) performed, following the effective date of P.L.1997,  
11 c.278, a remediation of the site or discharge consistent with the  
12 provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied  
13 upon a valid no further action letter from the department for a  
14 remediation performed prior to acquisition, or obtained approval of a  
15 remedial action workplan by the department after the effective date of  
16 P.L.1997, c.278 and continued to comply with the conditions of that  
17 workplan, and (iii) established and maintained all engineering and  
18 institutional controls as may be required pursuant to sections 35 and  
19 36 of P.L.1993, c.139. A person who complies with the provisions of  
20 this subparagraph by actually performing a remediation of the site or  
21 discharge as set forth in (ii) above shall be issued, upon application, a  
22 no further action letter by the department. A person who complies  
23 with the provisions of this subparagraph either by receipt of a no  
24 further action letter from the department following the effective date  
25 of P.L.1997, c.278, or by relying on a previously issued no further  
26 action letter shall not be liable for any further remediation including  
27 any changes in a remediation standard or for the subsequent discovery  
28 of a hazardous substance, at the site, if the remediation was for the  
29 entire site, and the hazardous substance was discharged prior to the  
30 person acquiring the property. Notwithstanding any other provisions  
31 of this subparagraph, a person who complies with the provisions of  
32 this subparagraph only by virtue of the existence of a previously issued  
33 no further action letter shall receive no liability protections for any  
34 discharge which occurred during the time period between the issuance  
35 of the no further action letter and the property acquisition.  
36 Compliance with the provisions of this subparagraph (e) shall not  
37 relieve any person of any liability for a discharge that is off the site of  
38 the property covered by the no further action letter, for a discharge  
39 that occurs at that property after the person acquires the property, for  
40 any actions that person negligently takes that aggravates or contributes  
41 to a discharge of a hazardous substance, for failure to comply in the  
42 future with laws and regulations, or if that person fails to maintain the  
43 institutional or engineering controls on the property or to otherwise  
44 comply with the provisions of the no further action letter.

45 (3) Notwithstanding the provisions of paragraph (2) of this  
46 subsection to the contrary, if a person who owns real property obtains



1 actual knowledge of a discharge of a hazardous substance at the real  
2 property during the period of that person's ownership and  
3 subsequently transfers ownership of the property to another person  
4 without disclosing that knowledge, the transferor shall be strictly liable  
5 for the cleanup and removal costs of the discharge and no defense  
6 under this subsection shall be available to that person.

7 (4) Any federal, State, or local governmental entity which acquires  
8 ownership of real property through bankruptcy, tax delinquency,  
9 abandonment, escheat, eminent domain, condemnation or any  
10 circumstance in which the governmental entity involuntarily acquires  
11 title by virtue of its function as sovereign, or where the governmental  
12 entity acquires the property by any means for the purpose of  
13 promoting the redevelopment of that property, shall not be liable,  
14 pursuant to subsection c. of this section or pursuant to common law,  
15 to the State or to any other person for any discharge which occurred  
16 or began prior to that ownership. This paragraph shall not provide any  
17 liability protection to any federal, State or local governmental entity  
18 which has caused or contributed to the discharge of a hazardous  
19 substance. This paragraph shall not provide any liability protection to  
20 any federal, State, or local government entity that acquires ownership  
21 of real property by condemnation or eminent domain where the real  
22 property is being remediated in a timely manner at the time of the  
23 condemnation or eminent domain action.

24 (5) A person, including an owner or operator of a major facility,  
25 who owns real property acquired prior to September 14, 1993 on  
26 which there has been a discharge, shall not be liable for cleanup and  
27 removal costs or for any other damages to the State or to any other  
28 person for the discharged hazardous substance pursuant to subsection  
29 c. of this section or pursuant to civil common law, if that person can  
30 establish by a preponderance of the evidence that subparagraphs (a)  
31 through (d) apply:

32 (a) the person acquired the real property after the discharge of that  
33 hazardous substance at the real property;

34 (b) (i) at the time the person acquired the real property, the person  
35 did not know and had no reason to know that any hazardous substance  
36 had been discharged at the real property, or (ii) the person acquired  
37 the real property by devise or succession, except that any other funds  
38 or property received by that person from the deceased real property  
39 owner who discharged a hazardous substance or was in any way  
40 responsible for a hazardous substance, shall be made available to  
41 satisfy the requirements of P.L.1976, c.141;

42 (c) the person did not discharge the hazardous substance, is not in  
43 any way responsible for the hazardous substance, and is not a  
44 corporate successor to the discharger or to any person in any way  
45 responsible for the hazardous substance or to anyone liable for cleanup  
46 and removal costs pursuant to this section;

1 (d) the person gave notice of the discharge to the department upon  
2 actual discovery of that discharge.

3 To establish that a person had no reason to know that any  
4 hazardous substance had been discharged for the purposes of this  
5 paragraph (5), the person must have undertaken, at the time of  
6 acquisition, all appropriate inquiry on the previous ownership and uses  
7 of the property based upon generally accepted good and customary  
8 standards.

9 Nothing in this paragraph (5) shall be construed to alter liability of  
10 any person who acquired real property on or after September 14,  
11 1993.

12 e. Neither the fund nor the Sanitary Landfill Contingency Fund  
13 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be  
14 liable for any damages incurred by any person who is relieved from  
15 liability pursuant to subsection d. or f. of this section for a remediation  
16 that involves the use of engineering controls but the fund and the  
17 Sanitary Landfill Contingency Fund shall be liable for any remediation  
18 that involves only the use of institutional controls if after a valid no  
19 further action letter has been issued the department orders additional  
20 remediation except that the fund and the Sanitary Landfill Contingency  
21 Fund shall not be liable for any additional remediation that is required  
22 to remove an institutional control.

23 f. Notwithstanding any other provision of this section, a person,  
24 who owns real property acquired on or after the effective date of  
25 P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for any  
26 cleanup and removal costs or damages, under this section or pursuant  
27 to any other statutory or civil common law, to any person, other than  
28 the State and the federal government, harmed by any hazardous  
29 substance discharged on that property prior to acquisition, and any  
30 migration off that property related to that discharge, provided all the  
31 conditions of this subsection are met:

32 (1) the person acquired the real property after the discharge of that  
33 hazardous substance at the real property;

34 (2) the person did not discharge the hazardous substance, is not in  
35 any way responsible for the hazardous substance, and is not a  
36 corporate successor to the discharger or to any person in any way  
37 responsible for the hazardous substance or to anyone liable for a  
38 discharge pursuant to this section;

39 (3) the person gave notice of the discharge to the department upon  
40 actual discovery of that discharge;

41 (4) within 30 days after acquisition of the property, the person  
42 commenced a remediation of the discharge, including any migration,  
43 pursuant to a department oversight document executed prior to  
44 acquisition, and the department is satisfied that remediation was  
45 completed in a timely and appropriate fashion; and

46 (5) Within ten days after acquisition of the property, the person

1 agrees in writing to provide access to the State for remediation and  
2 related activities, as determined by the State.

3 The provisions of this subsection shall not relieve any person of any  
4 liability:

5 (1) for a discharge that occurs at that property after the person  
6 acquired the property;

7 (2) for any actions that person negligently takes that aggravates or  
8 contributes to the harm inflicted upon any person;

9 (3) if that person fails to maintain the institutional or engineering  
10 controls on the property or to otherwise comply with the provisions  
11 of a no further action letter or a remedial action workplan and a  
12 person is harmed thereby;

13 (4) for any liability to clean up and remove, pursuant to the  
14 department's regulations and directions, any hazardous substances that  
15 may have been discharged on the property or that may have migrated  
16 therefrom; and

17 (5) for that person's failure to comply in the future with laws and  
18 regulations.

19 g. Nothing in the amendatory provisions to this section adopted  
20 pursuant to P.L.1997, c.278 shall be construed to remove any defense  
21 to liability that a person may have had pursuant to subsection e. of this  
22 section that existed prior to the effective date of P.L.1997, c.278.

23 h. Nothing in this section shall limit the requirements of any person  
24 to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).

25 (cf: P.L.2001, c.154, s.2)

26

27 3. (New section) a. Notwithstanding the provisions of section 8  
28 of P.L.1976, c.141 (C.58:10-23.11g), any rule or regulation adopted  
29 pursuant thereto, or any other law to the contrary, any person who  
30 discharges, or is in any way responsible for a discharged hazardous  
31 substance, at a site included on the National Priorities List pursuant to  
32 the "Comprehensive Environmental Response, Compensation and  
33 Liability Act of 1980," 42 U.S.C. s.9601 et seq., where the total  
34 amount of material discharged by that person at the site containing  
35 hazardous substances is in an amount less than 110 gallons of liquid  
36 material or less than 200 pounds of solid material, shall not be liable  
37 for cleanup and removal costs or for the remediation of the site.

38 b. Notwithstanding the provisions of section 8 of P.L.1976, c.141  
39 (C.58:10-23.11g), any rule or regulation adopted pursuant thereto, or  
40 any other law to the contrary, any person who discharges, or is in any  
41 way responsible for a discharged hazardous substance, at a site  
42 included on the National Priorities List pursuant to the  
43 "Comprehensive Environmental Response, Compensation and Liability  
44 Act of 1980," 42 U.S.C. s.9601 et seq., shall not be liable for cleanup  
45 and removal costs or for the costs of remediation of the site if the  
46 person can demonstrate:

1 (1) the discharged hazardous substance consisted solely of  
2 municipal solid waste; and

3 (2) (a) the discharged hazardous substance originated from a  
4 residence,

5 (b) the discharged hazardous substance originated from a business  
6 entity that, during the three years preceding the discharge, employed  
7 an average of not more than 100 full-time workers, or the equivalent,  
8 and is a small business concern as defined in the federal "Small  
9 Business Act," 15 U.S.C. s.631 et seq., from which all of the municipal  
10 solid waste attributable to the entity at the site was generated, or

11 (c) the municipal solid waste originated from a nonprofit  
12 organization that was exempt from federal taxation pursuant to section  
13 501(c)(3) of the federal Internal Revenue Code, 26 U.S.C. s.501(c)(3),  
14 during the taxable year prior to the discharge, and the organization  
15 employed not more than 100 paid workers or the equivalent, at the  
16 location from which the municipal solid waste originated.

17

18 4. This act shall take effect immediately.

19

20

21

#### STATEMENT

22

23 This bill would provide an exemption from liability for remediation  
24 costs and for cleanup and removal costs pursuant to the "Spill  
25 Compensation and Control Act," P.L.1976, c.141 (C.58:10:23.11 et  
26 seq.) at Superfund sites for tax-exempt organizations with less than  
27 100 paid workers, small businesses with an average of not more than  
28 100 paid full-time workers, and residential property owners, that  
29 disposed of municipal solid waste. Finally, the bill would also provide  
30 an exemption for remediation costs and for cleanup and removal costs  
31 at Superfund sites to persons who discharge de minimus amounts of  
32 material, i.e. amounts less than 200 pounds of solid material or 110  
33 gallons of liquid material.

ASSEMBLY ENVIRONMENT AND SOLID WASTE  
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 802**

**STATE OF NEW JERSEY**

DATED: JANUARY 13, 2005

The Assembly Environment and Solid Waste Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 802.

This committee substitute would provide an exemption from liability for remediation costs and for cleanup and removal costs pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10:23.11 et seq.) at sites on the National Priorities List if the discharged hazardous substance consisted of municipal solid waste and originated from a residence, a small business with an average of not more than 100 paid full-time workers, or an organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C.501(c)(3), that is exempt from taxation pursuant to section 501(a) of that act, that employs less than 100 full-time workers, or the equivalent in the taxable year prior to the discharge.

The committee substitute would also provide an exemption from liability for remediation costs and for cleanup and removal costs at sites on the National Priorities List if a person discharged de minimis amounts of material, i.e. amounts less than 200 pounds of solid material or 110 gallons of liquid material.

The committee substitute would provide that the liability protections would not apply if the Commissioner of Environmental Protection determines, in writing, that the discharged hazardous substance or the municipal solid waste contributed significantly, or could contribute significantly, to the cost of the remediation or the cleanup and removal, if the person who discharged, or is in any way responsible for a discharged hazardous substance, impedes the performance of the cleanup at the site or fails to comply with a request for information issued by the department pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) or if the person has been convicted of a criminal offense for the conduct to which the liability protection would otherwise apply.

The committee substitute would also provide that in an action for contribution brought pursuant to paragraph (2) of subsection a. of

section 7 of P.L.1976, c.141 (C.58:10-23.11f), the contribution plaintiff shall have the burden of proof to demonstrate that the person does not meet the conditions for protection from liability as provided in the bill. Further, any person who brings a contribution action after the effective date shall be liable to the defendant for all reasonable costs of defending the action, including all reasonable attorney's fees and expert witness fees, if the defendant is not liable for contribution because of the protection from liability as provided in the bill.

As reported by the committee, this committee substitute for Assembly Bill No. 802 is identical to Senate Bill No. 682 (SCS) as also reported by the committee.