

58:10-23.11f22

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2005 **CHAPTER:** 4

NJSA: 58:10-23.11f22 (Provides liability protection for natural resource damages)

BILL NO: A2444 (Substituted for S1374)

SPONSORS: Bateman and McKeon

DATE INTRODUCED: February 26, 2004

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

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 13, 2004

SENATE: December 6, 2004

DATE OF APPROVAL: January 19, 2005

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) 2nd reprint enacted

A2444

[SPONSOR'S STATEMENT:](#) (Begins on page 3 of original bill) [Yes](#)

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

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

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

S1374

[SPONSOR'S STATEMENT:](#) (Begins on page 3 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

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

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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HEARINGS:

No

NEWSPAPER ARTICLES:

No

IS 2/21/07

P.L. 2005, CHAPTER 4, *approved January 19, 2005*
Assembly, No. 2444 (*Second Reprint*)

1 **AN ACT** concerning liability for contaminated property, ¹[and]¹
2 supplementing P.L.1976, c.141 (C.58:10-23.11 et seq.)¹, and
3 amending ²P.L.1997, c.278 and² P.L.2001, c.154¹.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. a. The provisions of any other law, or any rule or regulation
9 adopted pursuant thereto to the contrary notwithstanding, a person,
10 who owns real property acquired on or after the effective date of
11 P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for the
12 payment of compensation for damage to, or the loss of, natural
13 resources, or for the restoration of natural resources on ²[the site]²
14 or off ²[the site of]² the property in connection with the discharge of
15 a hazardous substance at the ²[site] property², pursuant to any
16 statutory or civil common law, to any person, or to the State, provided
17 that:

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

20 (2) the person did not discharge the hazardous substance, is not in
21 any way responsible for the hazardous substance, and is not a
22 corporate successor to the discharger or to any person in any way
23 responsible for the hazardous substance or to anyone liable for cleanup
24 and removal costs pursuant to section 8 of P.L.1976, c.141 (C.58:10-
25 23.11g); and

26 (3) ²[the person performs a remediation of the property, or relies
27 upon a valid no further action letter from the department for a
28 remediation performed prior to acquisition] the person has not, by
29 contract, using the term of art "natural resource damages," expressly
30 assumed the liability for the payment of compensation for damage to,
31 or loss of, natural resources, or for the restoration of natural
32 resources, that were injured by a discharge of a hazardous substance
33 at the property².

34 b. The provisions of any other law, or any rule or regulation
35 adopted pursuant thereto to the contrary notwithstanding, a person,
36 who owns real property acquired on or after the effective date of
37 P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for cleanup
38 and removal costs for the discharge of a hazardous substance that has

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AEN committee amendments adopted June 3, 2004.

² Senate SEN committee amendments adopted October 18, 2004.

1 migrated from the property provided that:

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

4 (2) the person did not discharge the hazardous substance, is not in
5 any way responsible for the hazardous substance, and is not a
6 corporate successor to the discharger or to any person in any way
7 responsible for the hazardous substance or to anyone liable for cleanup
8 and removal costs pursuant to section 8 of P.L.1976, c.141 (C.58:10-
9 23.11g);

10 (3) ²[the person performs a remediation of the property, or relies
11 upon a valid no further action letter from the department for a
12 remediation performed prior to acquisition, contamination is found
13 that has migrated from the property, and the person can demonstrate
14 that the offsite contamination originates from more than one property;
15 and

16 (4) remediation of the offsite contamination will not reduce
17 exposure of the contaminants to the public or to the environment, or
18 the remediation of the offsite contamination will increase the exposure
19 to the contaminants] the person can demonstrate through the
20 performance of a remedial investigation that the contamination
21 identified on nearby or adjoining property, which is similar or identical
22 to contamination on the property, originates from more than one
23 source;

24 (4) the person can demonstrate through the performance of a
25 remedial investigation that a remedial action for the contamination off
26 the property is not necessary to limit the risk to the public health and
27 the environment from that contamination; and

28 (5) the person has not, by contract, voluntarily assumed the liability
29 from the person liable for cleanup and removal costs, for addressing
30 the risks to public health and the environment from a discharge of a
31 hazardous substance on the property that has migrated from the
32 property prior to that person's acquisition of the property² .

33 Only the person who is liable to clean up and remove the
34 contamination pursuant to section 8 of P.L.1976, c.141 (C.58:10-
35 23.11g) and who does not have a defense to liability pursuant to
36 subsection d. of that section shall be liable for any additional
37 remediation costs or cleanup and removal costs necessary.

38

39 ¹2. Section 5 of P.L.2001, c.154 (C.58:10B-17.1) is amended to
40 read as follows:

41 5. a. (1) Except where a limitations provision expressly and
42 specifically applies to actions commenced by the State or where a
43 longer limitations period would otherwise apply, and subject to any
44 statutory provisions or common law rules extending limitations
45 periods, any civil action concerning the remediation of a contaminated
46 site or the closure of a sanitary landfill facility commenced by the State

1 pursuant to the State's environmental laws shall be commenced within
2 three years next after the cause of action shall have accrued.

3 (2) For purposes of determining whether a civil action subject to
4 the limitations periods specified in paragraph (1) of this subsection has
5 been commenced within time, no cause of action shall be deemed to
6 have accrued prior to January 1, 2002 or until the contaminated site
7 is remediated or the sanitary landfill has been properly closed,
8 whichever is later.

9 b. (1) Except where a limitations provision expressly and
10 specifically applies to actions commenced by the State or where a
11 longer limitations period would otherwise apply, and subject to any
12 statutory provisions or common law rules extending limitations
13 periods, any civil action concerning the payment of compensation for
14 damage to, or loss of, natural resources due to the discharge of a
15 hazardous substance, commenced by the State pursuant to the State's
16 environmental laws, shall be commenced within four years next after
17 the cause of action shall have accrued.

18 (2) For purposes of determining whether a civil action subject to
19 the limitations periods specified in paragraph (1) of this subsection has
20 been commenced within time, no cause of action shall be deemed to
21 have accrued prior to January 1, 2002 or until the [performance]
22 completion of the [preliminary assessment, site investigation, and]
23 remedial investigation [, if necessary,] of the contaminated site or the
24 sanitary landfill facility, whichever is later.

25 c. As used in this section:

26 "State's environmental laws" means the "Spill Compensation and
27 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water
28 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
29 P.L.1986, c.102 (C.58:10A-21 et seq.), the "Brownfield and
30 Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1
31 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6
32 et al.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1
33 et seq.), the "Comprehensive Regulated Medical Waste Management
34 Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous
35 Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the
36 "Sanitary Landfill Facility Closure and Contingency Fund Act,"
37 P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level
38 Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333
39 (C.13:1E-177 et seq.), or any other law or regulation by which the
40 State may compel a person to perform remediation activities on
41 contaminated property; and

42 "State" means the State, its political subdivisions, any office,
43 department, division, bureau, board, commission or agency of the
44 State or one of its political subdivisions, and any public authority or
45 public agency, including, but not limited to, the New Jersey Transit
46 Corporation and the University of Medicine and Dentistry of New

1 Jersey.¹
2 (cf: P.L.2001, c.154, s.5)

3
4 ²3. Section 6 of P.L.1997, c.278 (C.58:10B-13.1) is amended to
5 read as follows:

6 6. a. Whenever after the effective date of P.L.1997, c.278
7 (C.58:10B-1.1 et al.) the Department of Environmental Protection
8 issues a no further action letter pursuant to a remediation, it shall also
9 issue to the person performing the remediation a covenant not to sue
10 with respect to the real property upon which the remediation has been
11 conducted. A covenant not to sue shall be executed by the person
12 performing the remediation and by the department in order to become
13 effective. The covenant not to sue shall be consistent with any
14 conditions and limitations contained in the no further action letter.
15 The covenant not to sue shall be for any area of concern remediated
16 and may apply to the entire real property if the remediation included
17 a preliminary assessment and, if necessary, a site investigation of the
18 entire real property, and any other necessary remedial actions. The
19 covenant remains effective only for as long as the real property for
20 which the covenant was issued continues to meet the conditions of the
21 no further action letter. Upon a finding by the department that real
22 property or a portion thereof to which a covenant not to sue pertains,
23 no longer meets with the conditions of the no further action letter, the
24 department shall provide notice of that fact to the person responsible
25 for maintaining compliance with the no further action letter. The
26 department may allow the person a reasonable time to come into
27 compliance with the terms of the original no further action letter. If
28 the property does not meet the conditions of the no further action
29 letter and if the department does not allow for a period of time to
30 come into compliance or if the person fails to come into compliance
31 within the time period, the department may invoke the provisions of
32 the covenant not to sue permitting revocation of the covenant not to
33 sue.

34 Except as provided in subsection e. of this section, a covenant not
35 to sue shall contain the following, as applicable:

36 (1) a provision releasing the person who undertook the remediation
37 from all civil liability to the State to perform any additional
38 remediation, to pay compensation for damage to, or loss of, natural
39 resources, for the restoration of natural resources in connection with
40 the discharge on the property or for any cleanup and removal costs;

41 (2) for a remediation that involves the use of engineering or
42 institutional controls:

43 (a) a provision requiring the person, or any subsequent owner,
44 lessee, or operator during the person's period of ownership, tenancy,
45 or operation, to maintain those controls, conduct periodic monitoring
46 for compliance, and submit to the department, on a biennial basis, a

1 certification that the engineering and institutional controls are being
2 properly maintained and continue to be protective of public health and
3 safety and of the environment. The certification shall state the
4 underlying facts and shall include the results of any tests or
5 procedures performed that support the certification; and

6 (b) a provision revoking the covenant if the engineering or
7 institutional controls are not being maintained or are no longer in
8 place; and

9 (3) for a remediation that involves the use of engineering controls
10 but not for any remediation that involves the use of institutional
11 controls only, a provision barring the person or persons whom the
12 covenant not to sue benefits, from making a claim against the New
13 Jersey Spill Compensation Fund and the Sanitary Landfill Facility
14 Contingency Fund for any costs or damages relating to the real
15 property and remediation covered by the covenant not to sue. The
16 covenant not to sue shall not bar a claim by any person against the
17 New Jersey Spill Compensation Fund and the Sanitary Landfill
18 Contingency Fund for any remediation that involves only the use of
19 institutional controls if, after a valid no further action letter has been
20 issued, the department orders additional remediation, except that the
21 covenant shall bar such a claim if the department ordered additional
22 remediation in order to remove the institutional control.

23 b. Unless a covenant not to sue issued under this section is
24 revoked by the department, the covenant shall remain effective. The
25 covenant not to sue shall apply to all successors in ownership of the
26 property and to all persons who lease the property or who engage in
27 operations on the property.

28 c. If a covenant not to sue is revoked, liability for any additional
29 remediation shall not be applied retroactively to any person for whom
30 the covenant remained in effect during that person's ownership,
31 tenancy, or operation of the property.

32 d. A covenant not to sue and the protections it affords shall not
33 apply to any discharge that occurs subsequent to the issuance of the
34 no further action letter which was the basis of the issuance of the
35 covenant, nor shall a covenant not to sue and the protections it affords
36 relieve any person of the obligations to comply in the future with laws
37 and regulations.

38 e. The covenant not to sue may be issued to any person who
39 obtains a no further action letter as provided in subsection a. of this
40 section. The covenant not to sue shall not provide relief from any
41 liability, either under statutory or common law, to any person who is
42 liable for cleanup and removal costs pursuant to subsection c. of
43 section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not have
44 a defense to liability pursuant to subsection d. of that section.²

45 (cf: P.L.2001, c.154, s.4)

1 ¹[2.] ²[~~3.~~¹] ~~4.~~² This act shall take effect immediately.

2

3

4

5

6 _____

6 Provides liability protection for natural resource damages and offsite
7 contamination to certain persons; makes certain changes concerning
8 the statute of limitations for certain causes of action.

ASSEMBLY, No. 2444

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED FEBRUARY 26, 2004

Sponsored by:

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

SYNOPSIS

Provides liability protection for natural resource damages and offsite contamination to certain persons.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning liability for contaminated property, and
2 supplementing P.L.1976, c.141 (C.58:10-23.11 et seq.).

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

6
7 1. a. The provisions of any other law, or any rule or regulation
8 adopted pursuant thereto to the contrary notwithstanding, a person,
9 who owns real property acquired on or after the effective date of
10 P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for the
11 payment of compensation for damage to, or the loss of, natural
12 resources, or for the restoration of natural resources on the site or off
13 the site of the property in connection with the discharge of a
14 hazardous substance at the site, pursuant to any statutory or civil
15 common law, to any person, or to the State, provided that:

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

18 (2) the person did not discharge the hazardous substance, is not in
19 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 cleanup
22 and removal costs pursuant to section 8 of P.L.1976, c.141 (C.58:10-
23 23.11g); and

24 (3) the person performs a remediation of the property, or relies
25 upon a valid no further action letter from the department for a
26 remediation performed prior to acquisition.

27 b. The provisions of any other law, or any rule or regulation
28 adopted pursuant thereto to the contrary notwithstanding, a person,
29 who owns real property acquired on or after the effective date of
30 P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for cleanup
31 and removal costs for the discharge of a hazardous substance that has
32 migrated from the property provided that:

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

35 (2) the person did not discharge the hazardous substance, is not in
36 any way responsible for the hazardous substance, and is not a
37 corporate successor to the discharger or to any person in any way
38 responsible for the hazardous substance or to anyone liable for cleanup
39 and removal costs pursuant to section 8 of P.L.1976, c.141 (C.58:10-
40 23.11g);

41 (3) the person performs a remediation of the property, or relies
42 upon a valid no further action letter from the department for a
43 remediation performed prior to acquisition, contamination is found
44 that has migrated from the property, and the person can demonstrate
45 that the offsite contamination originates from more than one property;
46 and

1 (4) remediation of the offsite contamination will not reduce
2 exposure of the contaminants to the public or to the environment, or
3 the remediation of the offsite contamination will increase the exposure
4 to the contaminants.

5 Only the person who is liable to clean up and remove the
6 contamination pursuant to section 8 of P.L.1976, c.141 (C.58:10-
7 23.11g) and who does not have a defense to liability pursuant to
8 subsection d. of that section shall be liable for any additional
9 remediation costs or cleanup and removal costs necessary.

10
11 2. This act shall take effect immediately.

12
13
14 STATEMENT

15
16 This bill would provide that a person who owns real property
17 acquired on or after the effective date of P.L.1997, c.278
18 (C.58:10B-1.1 et al.) shall not be liable for the payment of natural
19 resource damages, or for the restoration of natural resources on the
20 site or off the site of the property in connection with the discharge of
21 a hazardous substance at the site if: (1) the person acquired the real
22 property after the discharge of that hazardous substance at the real
23 property; (2) the person did not discharge the hazardous substance,
24 is not in any way responsible for the hazardous substance, and is not
25 a corporate successor to the discharger or to any person in any way
26 responsible for the hazardous substance or to anyone liable for cleanup
27 and removal costs pursuant to section 8 of P.L.1976, c.141 (C.58:10-
28 23.11g); and (3) the person performs a remediation of the property,
29 or relies upon a valid no further action letter from the department for
30 a remediation performed prior to acquisition.

31 The bill would also provide that a person who owns real property
32 acquired on or after the effective date of P.L.1997, c.278
33 (C.58:10B-1.1 et al.) shall not be liable for cleanup and removal costs
34 for the discharge of a hazardous substance that has migrated from the
35 property if: (1) the person acquired the real property after the
36 discharge of that hazardous substance at the real property; (2) the
37 person did not discharge the hazardous substance, is not in any way
38 responsible for the hazardous substance, and is not a corporate
39 successor to the discharger or to any person in any way responsible for
40 the hazardous substance or to anyone liable for cleanup and removal
41 costs pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g); (3)
42 the person performs a remediation of the property, or relies upon a
43 valid no further action letter from the department for a remediation
44 performed prior to acquisition, contamination is found that has
45 migrated from the property, and the person can demonstrate that the
46 offsite contamination originates from more than one property; and (4)

1 remediation of the offsite contamination will not reduce exposure of
2 the contaminants to the public or to the environment, or the
3 remediation of the offsite contamination will increase the exposure to
4 the contaminants. Only the person who is liable to clean up and
5 remove the contamination pursuant to section 8 of P.L.1976, c.141
6 (C.58:10-23.11g) and who does not have a defense to liability
7 pursuant to subsection d. of that section shall be liable for any
8 additional remediation costs or cleanup and removal costs necessary.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2444

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 3, 2004

The Assembly Environment and Solid Waste Committee favorably reports Assembly Bill No. 2444 with committee amendments.

This bill, as amended, would provide that a person who owns real property acquired on or after January 6, 1998, the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for the payment of natural resource damages, or for the restoration of natural resources on the site or off the site of the property in connection with the discharge of a hazardous substance at the site if: (1) the person acquired the real property after the discharge of that hazardous substance at the real property; (2) the person did not discharge the hazardous substance, is not in any way responsible for the hazardous substance, and is not a corporate successor to the discharger or to any person in any way responsible for the hazardous substance or to anyone liable for cleanup and removal costs pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g); and (3) the person performs a remediation of the property, or relies upon a valid no further action letter from the department for a remediation performed prior to acquisition.

The bill, as amended, would also provide that a person who owns real property acquired on or after the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.) would not be liable for cleanup and removal costs for the discharge of a hazardous substance that has migrated from the property if: (1) the person acquired the real property after the discharge of that hazardous substance at the real property; (2) the person did not discharge the hazardous substance, is not in any way responsible for the hazardous substance, and is not a corporate successor to the discharger or to any person in any way responsible for the hazardous substance or to anyone liable for cleanup and removal costs pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g); (3) the person performs a remediation of the property, or relies upon a valid no further action letter from the department for a remediation performed prior to acquisition, contamination is found that has migrated from the property, and the person can demonstrate that the

offsite contamination originates from more than one property; and (4) remediation of the offsite contamination will not reduce exposure of the contaminants to the public or to the environment, or the remediation of the offsite contamination will increase the exposure to the contaminants. Only the person who is liable to clean up and remove the contamination pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g) and who does not have a defense to liability pursuant to subsection d. of that section would be liable for any additional remediation costs or cleanup and removal costs necessary.

Finally, the bill, as amended, would provide that certain causes of action under the current law would not accrue until the completion of the remedial investigation of the contaminated site or sanitary landfill facility. Current law provides these causes of action would not accrue until the performance of the preliminary assessment, site investigation and remedial investigation, if necessary, of the contaminated site or sanitary landfill facility.

COMMITTEE AMENDMENTS

Committee amendments to the bill:

- 1) amend current law concerning the statute of limitations to provide that certain causes of action would not accrue until the completion of the remedial investigation; and
- 2) make technical corrections to the bill.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2444

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 18, 2004

The Senate Environment Committee favorably reports Assembly Bill No. 2444 (1R) with committee amendments.

This bill, as amended, would provide that a person who owns real property acquired on or after January 6, 1998, the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for the payment of natural resource damages, or for the restoration of natural resources on or off the property in connection with the discharge of a hazardous substance at the property if: (1) the person acquired the real property after the discharge of that hazardous substance at the real property; (2) the person did not discharge the hazardous substance, is not in any way responsible for the hazardous substance, and is not a corporate successor to the discharger or to any person in any way responsible for the hazardous substance or to anyone liable for cleanup and removal costs pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g); and (3) the person has not, by contract, using the term of art "natural resource damages," expressly assumed the liability for the payment of compensation for damage to, or loss of, natural resources, or for the restoration of natural resources, that were injured by a discharge of a hazardous substance at the property.

The bill, as amended, would also provide that a person who owns real property acquired on or after the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.) would not be liable for cleanup and removal costs for the discharge of a hazardous substance that has migrated from the property if: (1) the person acquired the real property after the discharge of that hazardous substance at the real property; (2) the person did not discharge the hazardous substance, is not in any way responsible for the hazardous substance, and is not a corporate successor to the discharger or to any person in any way responsible for the hazardous substance or to anyone liable for cleanup and removal costs pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g); (3) the person can demonstrate through the performance of a remedial investigation that the contamination identified on nearby or adjoining property, which is similar or identical to contamination on the

property, originates from more than one source; (4) the person can demonstrate through the performance of a remedial investigation that a remedial action for the contamination off the property is not necessary to limit the risk to the public health and the environment from that contamination; and (5) the person has not, by contract, voluntarily assumed the liability from the person liable for cleanup and removal costs, for addressing the risks to public health and the environment from a discharge of a hazardous substance on the property that has migrated from the property prior to that person's acquisition of the property. Only the person who is liable to clean up and remove the contamination pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g) and who does not have a defense to liability pursuant to subsection d. of that section would be liable for any additional remediation costs or cleanup and removal costs necessary.

The bill, as amended, would provide that a covenant not to sue, which is issued after the department issues a no further action letter, include a provision releasing the person from liability to the State for the restoration of natural resources in connection with the discharge on the property.

The bill would provide that certain causes of action under the current law would not accrue until the completion of the remedial investigation of the contaminated site or sanitary landfill facility. Current law provides these causes of action would not accrue until the performance of the preliminary assessment, site investigation and remedial investigation, if necessary, of the contaminated site or sanitary landfill facility.

As amended, this bill is identical to Senate Bill No. 1374 (1R) which was also released by the committee.

SENATE, No. 1374

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED MARCH 22, 2004

Sponsored by:

Senator HENRY P. MCNAMARA

District 40 (Bergen, Essex and Passaic)

SYNOPSIS

Provides liability protection for natural resource damages and offsite contamination to certain persons.

CURRENT VERSION OF TEXT

As introduced.



S1374 MCNAMARA

1 AN ACT concerning liability for contaminated property, and
2 supplementing P.L.1976, c.141 (C.58:10-23.11 et seq.).

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

6
7 1. a. The provisions of any other law, or any rule or regulation
8 adopted pursuant thereto to the contrary notwithstanding, a person,
9 who owns real property acquired on or after the effective date of
10 P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for the
11 payment of compensation for damage to, or the loss of, natural
12 resources, or for the restoration of natural resources on the site or off
13 the site of the property in connection with the discharge of a
14 hazardous substance at the site, pursuant to any statutory or civil
15 common law, to any person, or to the State, provided that:

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

18 (2) the person did not discharge the hazardous substance, is not in
19 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 cleanup
22 and removal costs pursuant to section 8 of P.L.1976, c.141 (C.58:10-
23 23.11g); and

24 (3) the person performs a remediation of the property, or relies
25 upon a valid no further action letter from the department for a
26 remediation performed prior to acquisition.

27 b. The provisions of any other law, or any rule or regulation
28 adopted pursuant thereto to the contrary notwithstanding, a person,
29 who owns real property acquired on or after the effective date of
30 P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for cleanup
31 and removal costs for the discharge of a hazardous substance that has
32 migrated from the property provided that:

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

35 (2) the person did not discharge the hazardous substance, is not in
36 any way responsible for the hazardous substance, and is not a
37 corporate successor to the discharger or to any person in any way
38 responsible for the hazardous substance or to anyone liable for cleanup
39 and removal costs pursuant to section 8 of P.L.1976, c.141 (C.58:10-
40 23.11g);

41 (3) the person performs a remediation of the property, or relies
42 upon a valid no further action letter from the department for a
43 remediation performed prior to acquisition, contamination is found
44 that has migrated from the property, and the person can demonstrate
45 that the offsite contamination originates from more than one property;
46 and

1 (4) remediation of the offsite contamination will not reduce
2 exposure of the contaminants to the public or to the environment, or
3 the remediation of the offsite contamination will increase the exposure
4 to the contaminants.

5 Only the person who is liable to clean up and remove the
6 contamination pursuant to section 8 of P.L.1976, c.141 (C.58:10-
7 23.11g) and who does not have a defense to liability pursuant to
8 subsection d. of that section shall be liable for any additional
9 remediation costs or cleanup and removal costs necessary.

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11 2. This act shall take effect immediately.

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14 STATEMENT

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16 This bill would provide that a person who owns real property
17 acquired on or after the effective date of P.L.1997, c.278
18 (C.58:10B-1.1 et al.) shall not be liable for the payment of natural
19 resource damages, or for the restoration of natural resources on the
20 site or off the site of the property in connection with the discharge of
21 a hazardous substance at the site if: (1) the person acquired the real
22 property after the discharge of that hazardous substance at the real
23 property; (2) the person did not discharge the hazardous substance, is
24 not in any way responsible for the hazardous substance, and is not a
25 corporate successor to the discharger or to any person in any way
26 responsible for the hazardous substance or to anyone liable for cleanup
27 and removal costs pursuant to section 8 of P.L.1976, c.141 (C.58:10-
28 23.11g); and (3) the person performs a remediation of the property, or
29 relies upon a valid no further action letter from the department for a
30 remediation performed prior to acquisition.

31 The bill would also provide that a person who owns real property
32 acquired on or after the effective date of P.L.1997, c.278
33 (C.58:10B-1.1 et al.) shall not be liable for cleanup and removal costs
34 for the discharge of a hazardous substance that has migrated from the
35 property if: (1) the person acquired the real property after the
36 discharge of that hazardous substance at the real property; (2) the
37 person did not discharge the hazardous substance, is not in any way
38 responsible for the hazardous substance, and is not a corporate
39 successor to the discharger or to any person in any way responsible for
40 the hazardous substance or to anyone liable for cleanup and removal
41 costs pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g); (3)
42 the person performs a remediation of the property, or relies upon a
43 valid no further action letter from the department for a remediation
44 performed prior to acquisition, contamination is found that has
45 migrated from the property, and the person can demonstrate that the
46 offsite contamination originates from more than one property; and (4)

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1 remediation of the offsite contamination will not reduce exposure of
2 the contaminants to the public or to the environment, or the
3 remediation of the offsite contamination will increase the exposure to
4 the contaminants. Only the person who is liable to clean up and
5 remove the contamination pursuant to section 8 of P.L.1976, c.141
6 (C.58:10-23.11g) and who does not have a defense to liability
7 pursuant to subsection d. of that section shall be liable for any
8 additional remediation costs or cleanup and removal costs necessary.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 1374

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 18, 2004

The Senate Environment Committee favorably reports Senate Bill No. 1374 with committee amendments.

This bill, as amended, would provide that a person who owns real property acquired on or after January 6, 1998, the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for the payment of natural resource damages, or for the restoration of natural resources on or off the property in connection with the discharge of a hazardous substance at the property if: (1) the person acquired the real property after the discharge of that hazardous substance at the real property; (2) the person did not discharge the hazardous substance, is not in any way responsible for the hazardous substance, and is not a corporate successor to the discharger or to any person in any way responsible for the hazardous substance or to anyone liable for cleanup and removal costs pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g); and (3) the person has not, by contract, using the term of art "natural resource damages," expressly assumed the liability for the payment of compensation for damage to, or loss of, natural resources, or for the restoration of natural resources, that were injured by a discharge of a hazardous substance at the property

The bill, as amended, would also provide that a person who owns real property acquired on or after the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.) would not be liable for cleanup and removal costs for the discharge of a hazardous substance that has migrated from the property if: (1) the person acquired the real property after the discharge of that hazardous substance at the real property; (2) the person did not discharge the hazardous substance, is not in any way responsible for the hazardous substance, and is not a corporate successor to the discharger or to any person in any way responsible for the hazardous substance or to anyone liable for cleanup and removal costs pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g); (3) the person can demonstrate through the performance of a remedial investigation that the contamination identified on nearby or adjoining property, which is similar or identical to contamination on the property, originates from more than one source; (4) the person can demonstrate through the performance of a remedial investigation that

a remedial action for the contamination off the property is not necessary to limit the risk to the public health and the environment from that contamination; and (5) the person has not, by contract, voluntarily assumed the liability from the person liable for cleanup and removal costs, for addressing the risks to public health and the environment from a discharge of a hazardous substance on the property that has migrated from the property prior to that person's acquisition of the property. Only the person who is liable to clean up and remove the contamination pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g) and who does not have a defense to liability pursuant to subsection d. of that section would be liable for any additional remediation costs or cleanup and removal costs necessary.

The bill, as amended, would provide that a covenant not to sue, which is issued after the department issues a no further action letter, include a provision releasing the person from liability to the State for the restoration of natural resources in connection with the discharge on the property.

Finally, the bill, as amended, would provide that certain causes of action under the current law would not accrue until the completion of the remedial investigation of the contaminated site or sanitary landfill facility. Current law provides these causes of action would not accrue until the performance of the preliminary assessment, site investigation and remedial investigation, if necessary, of the contaminated site or sanitary landfill facility.

As amended, this bill is identical to Assembly Bill No. 2444 (2R) which was also released by the committee.