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P.L. 2005, CHAPTER 348, *approved January 12, 2006*
Senate, No. 2612 (*Second Reprint*)

1 AN ACT concerning protection from contribution suits, and amending
2 and supplementing¹ 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 7 of P.L.1976, c.141 (C.58:10-23.11f) is amended to
8 read as follows:

9 7. a. (1) Whenever any hazardous substance is discharged, the
10 department may, in its discretion, act to clean up and remove or
11 arrange for the cleanup and removal of the discharge or may direct the
12 discharger to clean up and remove, or arrange for the cleanup and
13 removal of, the discharge. If the discharge occurs at any hazardous
14 waste facility or solid waste facility, the department may order the
15 hazardous waste facility or solid waste facility closed for the duration
16 of the cleanup and removal operations. The department may monitor
17 the discharger's compliance with any such directive. Any discharger
18 who fails to comply with such a directive shall be liable to the
19 department in an amount equal to three times the cost of such cleanup
20 and removal, and shall be subject to the revocation or suspension of
21 any license issued or permit held authorizing that person to operate
22 a hazardous waste facility or solid waste facility.

23 (2) (a) Whenever one or more dischargers or persons cleans up and
24 removes a discharge of a hazardous substance, those dischargers and
25 persons shall have a right of contribution against all other dischargers
26 and persons in any way responsible for a discharged hazardous
27 substance or other persons who are liable for the cost of the cleanup
28 and removal of that discharge of a hazardous substance. In an action
29 for contribution, the contribution plaintiffs need prove only that a
30 discharge occurred for which the contribution defendant or defendants
31 are liable pursuant to the provisions of subsection c. of section 8 of
32 P.L.1976, c.141 (C.58:10-23.11g), and the contribution defendant
33 shall have only the defenses to liability available to parties pursuant to
34 subsection d. of section 8 of P.L.1976, c.141 (C.58:10-23.11g). In
35 resolving contribution claims, a court may allocate the costs of cleanup
36 and removal among liable parties using such equitable factors as the
37 court determines are appropriate. Nothing in this subsection shall
38 affect the right of any party to seek contribution pursuant to any other
39 statute or under common law.

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 Senate SEN committee amendments adopted June 16, 2005.

² Senate floor amendments adopted December 8, 2005.

1 **(b) A person who has discharged a hazardous substance or is in any**
2 **way responsible for the discharge of a hazardous substance who has**
3 **resolved ¹[their] his¹ liability to the State for cleanup and removal**
4 **costs ¹, including ²[natural resource damages, in¹] the payment of**
5 **compensation for damage to, or the loss of, natural resources, or for**
6 **the restoration of natural resources, and (i) has received a no further**
7 **action letter from the State, or (ii) has entered into² an administrative**
8 **or judicially approved settlement ²with the State², shall not be liable**
9 **for claims for contribution regarding matters addressed in the**
10 **settlement ²or the no further action letter, as the case may be². The**
11 **settlement shall not release any other person from liability for cleanup**
12 **and removal costs who is not a party to the settlement, but shall**
13 **reduce the potential liability of any other discharger or person in any**
14 **way responsible for a discharged hazardous substance at the site that**
15 **is the subject of the ²no further action letter or the² settlement by the**
16 **amount of the ²no further action letter or the² settlement.**

17 (3) In an action for contribution taken pursuant to this subsection,
18 a contribution plaintiff may file a claim with the court for treble
19 damages. A contribution plaintiff may be granted an award of treble
20 damages by the court from one or more contribution defendants only
21 upon a finding by the court that: (a) the contribution defendant is a
22 person who was named on or subject to a directive issued by the
23 department, who failed or refused to comply with such a directive, and
24 who is subject to contribution pursuant to this subsection; (b) the
25 contribution plaintiff gave 30 days' notice to the contribution
26 defendant of the plaintiff's intention to seek treble damages pursuant
27 to this subsection and gave the contribution defendant an opportunity
28 to participate in the cleanup; (c) the contribution defendant failed or
29 refused to enter into a settlement agreement with the contribution
30 plaintiff; and (d) the contribution plaintiff entered into an agreement
31 with the department to remediate the site. Notwithstanding the
32 foregoing requirements, any authorization to seek treble damages
33 made by the department prior to the effective date of P.L.1997, c.278
34 (C.58:10B-1.1 et al.) shall remain in effect, provided that the
35 department or the contribution plaintiff gave notice to the contribution
36 defendant of the plaintiff's request to the department for authorization
37 to seek treble damages.

38 A contribution defendant from whom treble damages is sought in
39 a contribution action shall not be assessed treble damages by any court
40 where the contribution defendant, for good cause shown, failed or
41 refused to enter the settlement agreement with the contribution
42 plaintiff or where principles of fundamental fairness will be violated.
43 One third of an award of treble damages in a contribution action
44 pursuant to this paragraph shall be paid to the department, which sum
45 shall be deposited in the New Jersey Spill Compensation Fund. The
46 other two thirds of the treble damages award shall be shared by the

1 contribution plaintiffs in the proportion of the responsibility for the
2 cost of the cleanup and removal that the contribution plaintiffs have
3 agreed to with the department or in an amount as has been agreed to
4 by those parties.

5 Cleanup and removal of hazardous substances and actions to
6 minimize damage from discharges shall, to the greatest extent possible,
7 be in accordance with the National Contingency Plan for cleanup and
8 removal of oil and hazardous substances established pursuant to
9 section 311(c)(2) of the federal Water Pollution Control Act
10 Amendments of 1972 (Pub.L.92-500, 33U.S.C. s.1251 et seq.).

11 Whenever the department acts to clean up and remove a discharge
12 or contracts to secure prospective cleanup and removal services, it is
13 authorized to draw upon the money available in the fund. Such money
14 shall be used to pay promptly for all cleanup and removal costs
15 incurred by the department in cleaning up, in removing or in
16 minimizing damage caused by such discharge. Nothing in this section
17 is intended to preclude removal and cleanup operations by any person
18 threatened by such discharges, provided such persons coordinate and
19 obtain approval for such actions with ongoing State or federal
20 operations. No action taken by any person to contain or clean up and
21 remove a discharge shall be construed as an admission of liability for
22 said discharge. No person who renders assistance in containing or
23 cleaning up and removing a discharge shall be liable for any civil
24 damages to third parties resulting solely from acts or omissions of such
25 person in rendering such assistance, except for acts or omissions of
26 gross negligence or willful misconduct. In the course of cleanup or
27 removal operations, no person shall discharge any detergent into the
28 waters of this State without prior authorization of the commissioner.

29 b. Notwithstanding any other provisions of P.L.1976, c.141
30 (C.58:10-23.11 et seq.), the department, subject to the approval of the
31 administrator with regard to the availability of funds therefor, or a
32 local unit as a part of an emergency response action and with the
33 approval of the department, may clean up and remove or arrange for
34 the cleanup and removal of any hazardous substance which:

35 (1) Has not been discharged from a grounded or disabled vessel, if
36 the department determines that such cleanup and removal is necessary
37 to prevent an imminent discharge of such hazardous substance; or

38 (2) Has not been discharged, if the department determines that such
39 substance is not satisfactorily stored or contained and said substance
40 possesses any one or more of the following characteristics:

41 (a) Explosiveness;

42 (b) High flammability;

43 (c) Radioactivity;

44 (d) Chemical properties which in combination with any discharged
45 hazardous substance at the same storage facility would create a
46 substantial risk of imminent damage to public health or safety or an

1 imminent and severe damage to the environment;

2 (e) Is stored in a container from which its discharge is imminent as
3 a result of contact with a hazardous substance which has already been
4 discharged and such additional discharge would create a substantial
5 risk of imminent damage to public health or safety or imminent and
6 severe damage to the environment; or

7 (f) High toxicity and is stored or being transported in a container or
8 motor vehicle, truck, rail car or other mechanized conveyance from
9 which its discharge is imminent as a result of the significant
10 deterioration or the precarious location of the container, motor
11 vehicle, truck, rail car or other mechanized conveyance, and such
12 discharge would create a substantial risk of imminent damage to public
13 health or safety or imminent and severe damage to the environment;
14 or

15 (3) Has been discharged prior to the effective date of P.L.1976,
16 c.141.

17 c. If and to the extent that he determines that funds are available,
18 the administrator shall approve and make payments for any cleanup
19 and removal costs incurred by the department for the cleanup and
20 removal of a hazardous substance other than petroleum as authorized
21 by subsection b. of this section; provided that in determining the
22 availability of funds, the administrator shall not include as available
23 funds revenues realized or to be realized from the tax on the transfer
24 of petroleum, to the extent that such revenues result from a tax levied
25 at a rate in excess of \$0.01 per barrel, pursuant to subsection b. of
26 section 9 of P.L.1976, c.141 (C.58:10-23.11h), unless the
27 administrator determines that the sum of claims paid by the fund on
28 behalf of petroleum discharges or cleanup and removals plus pending
29 reasonable claims against the fund on behalf of petroleum discharges
30 or cleanup and removals is greater than 30% of the sum of all claims
31 paid by the fund plus all pending reasonable claims against the fund.

32 d. The administrator may only approve and make payments for any
33 cleanup and removal costs incurred by the department for the cleanup
34 and removal of a hazardous substance discharged prior to the effective
35 date of P.L.1976, c.141, pursuant to subsection b. of this section, if,
36 and to the extent that, he determines that adequate funds from another
37 source are not or will not be available; and provided further, with
38 regard to the cleanup and removal costs incurred for discharges which
39 occurred prior to the effective date of P.L.1976, c.141, the
40 administrator may not during any one-year period pay more than
41 \$18,000,000 in total or more than \$3,000,000 for any discharge or
42 related set or series of discharges.

43 e. Notwithstanding any other provisions of P.L.1976, c.141, the
44 administrator, after considering, among any other relevant factors, the
45 department's priorities for spending funds pursuant to P.L.1976, c.141,
46 and within the limits of available funds, shall make payments for the

1 restoration or replacement of, or connection to an alternative water
2 supply for, any private residential well destroyed, contaminated, or
3 impaired as a result of a discharge prior to the effective date of
4 P.L.1976, c.141; provided, however, total payments for said purpose
5 shall not exceed \$500,000 for the period between the effective date of
6 this subsection e. and January 1, 1983, and in any calendar year
7 thereafter.

8 f. Any expenditures made by the administrator pursuant to this act
9 shall constitute, in each instance, a debt of the discharger to the fund.
10 The debt shall constitute a lien on all property owned by the discharger
11 when a notice of lien, incorporating a description of the property of
12 the discharger subject to the cleanup and removal and an identification
13 of the amount of cleanup, removal and related costs expended from
14 the fund, is duly filed with the clerk of the Superior Court. The clerk
15 shall promptly enter upon the civil judgment or order docket the name
16 and address of the discharger and the amount of the lien as set forth
17 in the notice of lien. Upon entry by the clerk, the lien, to the amount
18 committed by the administrator for cleanup and removal, shall attach
19 to the revenues and all real and personal property of the discharger,
20 whether or not the discharger is insolvent.

21 The notice of lien filed pursuant to this subsection which affects the
22 property of a discharger subject to the cleanup and removal of a
23 discharge shall create a lien with priority over all other claims or liens
24 which are or have been filed against the property, except if the
25 property comprises six dwelling units or less and is used exclusively
26 for residential purposes, this notice of lien shall not affect any valid
27 lien, right or interest in the property filed in accordance with
28 established procedure prior to the filing of this notice of lien. The
29 notice of lien filed pursuant to this subsection which affects any
30 property of a discharger, other than the property subject to the cleanup
31 and removal, shall have priority from the day of the filing of the notice
32 of the lien over all other claims and liens filed against the property, but
33 shall not affect any valid lien, right, or interest in the property filed in
34 accordance with established procedure prior to the filing of a notice of
35 lien pursuant to this subsection.

36 g. In the event a vessel discharges a hazardous substance into the
37 waters of the State, the cleanup and removal and related costs
38 resulting from that discharge that constitute a maritime lien on the
39 discharging vessel pursuant to 33 U.S.C. s.1321 or any other law, may
40 be recovered by the Department of Environmental Protection in an
41 action in rem brought in the district court of the United States. An
42 impoundment of a vessel resulting from this action shall continue until:

43 (1) the claim against the owner or operator of the vessel for the
44 cleanup and removal and related costs of the discharge is satisfied;

45 (2) the owner or operator of the vessel, or a representative of the

1 owner or operator, provides evidence of financial responsibility as
 2 provided in section 2 of P.L.1991, c.58 (C.58:10-23.11g2) and
 3 satisfactorily guarantees that these costs will be paid; or

4 (3) the impoundment is otherwise vacated by a court order. The
 5 remedy provided in this subsection is in addition to any other remedy
 6 or enforcement power that the department may have under any other
 7 law.

8 Any action brought by the State pursuant to this subsection and any
 9 impoundment of a vessel resulting therefrom shall not subject the State
 10 to be in any way liable for a subsequent or continued discharge of a
 11 hazardous substance from that vessel.

12 (cf: P.L.1997, c.278, s.28)

13
 14 ¹2. (New section) ²[For] At least 30 days prior to its agreement
 15 to² any administrative or judicially approved settlement entered into
 16 pursuant ²to² P.L.1976, c.141 (C.58:10-23.11 et seq.), ²or at least 30
 17 days prior to the issuance of any no further action letter issued
 18 pursuant to P.L.1993, c.139 (C.58:10B-1 et seq.),² on or after the
 19 effective date of P.L. , c. (C.) (now in the Legislature as this bill),
 20 the Department of Environmental Protection shall publish in the New
 21 Jersey Register and on the New Jersey Department of Environmental
 22 Protection's website ²[.]² the name of the case, the names of the
 23 parties to the settlement ²or the no further action letter, as the case
 24 may be² , the location of the property on which the discharge
 25 occurred, and a summary of the terms of the settlement ²or the no
 26 further action letter² , including the amount of any monetary payments
 27 made or to be made. The Department of Environmental Protection
 28 shall provide written notice of the settlement ²or of the no further
 29 action letter² , which shall include the information listed above, to all
 30 other parties in the case and to any other potentially responsible
 31 parties ²of whom the department has notice at the time of the
 32 publication² .¹

33
 34 ¹[2.] ³.¹ This act shall take effect on the 90th day after the date of
 35 enactment.

36
 37
 38
 39
 40 Provides protection from contribution suits to parties who settle under
 41 the Spill Act or who receive a no further action letter.

SENATE, No. 2612

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED JUNE 9, 2005

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

SYNOPSIS

Provides protection from contribution suits to parties who settle under the Spill Act.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning protection from contribution suits, and amending
2 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 7 of P.L.1976, c.141 (C.58:10-23.11f) is amended to
8 read as follows:

9 7. a. (1) Whenever any hazardous substance is discharged, the
10 department may, in its discretion, act to clean up and remove or
11 arrange for the cleanup and removal of the discharge or may direct the
12 discharger to clean up and remove, or arrange for the cleanup and
13 removal of, the discharge. If the discharge occurs at any hazardous
14 waste facility or solid waste facility, the department may order the
15 hazardous waste facility or solid waste facility closed for the duration
16 of the cleanup and removal operations. The department may monitor
17 the discharger's compliance with any such directive. Any discharger
18 who fails to comply with such a directive shall be liable to the
19 department in an amount equal to three times the cost of such cleanup
20 and removal, and shall be subject to the revocation or suspension of
21 any license issued or permit held authorizing that person to operate
22 a hazardous waste facility or solid waste facility.

23 (2) (a) Whenever one or more dischargers or persons cleans up
24 and removes a discharge of a hazardous substance, those dischargers
25 and persons shall have a right of contribution against all other
26 dischargers and persons in any way responsible for a discharged
27 hazardous substance or other persons who are liable for the cost of the
28 cleanup and removal of that discharge of a hazardous substance. In an
29 action for contribution, the contribution plaintiffs need prove only that
30 a discharge occurred for which the contribution defendant or
31 defendants are liable pursuant to the provisions of subsection c. of
32 section 8 of P.L.1976, c.141 (C.58:10-23.11g), and the contribution
33 defendant shall have only the defenses to liability available to parties
34 pursuant to subsection d. of section 8 of P.L.1976, c.141
35 (C.58:10-23.11g). In resolving contribution claims, a court may
36 allocate the costs of cleanup and removal among liable parties using
37 such equitable factors as the court determines are appropriate.
38 Nothing in this subsection shall affect the right of any party to seek
39 contribution pursuant to any other statute or under common law.

40 (b) A person who has discharged a hazardous substance or is in
41 any way responsible for the discharge of a hazardous substance who
42 has resolved their liability to the State for cleanup and removal costs
43 in an administrative or judicially approved settlement, shall not be

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 liable for claims for contribution regarding matters addressed in the
2 settlement. The settlement shall not release any other person from
3 liability for cleanup and removal costs who is not a party to the
4 settlement, but shall reduce the potential liability of any other
5 discharger or person in any way responsible for a discharged
6 hazardous substance at the site that is the subject of the settlement by
7 the amount of the settlement.

8 (3) In an action for contribution taken pursuant to this subsection,
9 a contribution plaintiff may file a claim with the court for treble
10 damages. A contribution plaintiff may be granted an award of treble
11 damages by the court from one or more contribution defendants only
12 upon a finding by the court that: (a) the contribution defendant is a
13 person who was named on or subject to a directive issued by the
14 department, who failed or refused to comply with such a directive, and
15 who is subject to contribution pursuant to this subsection; (b) the
16 contribution plaintiff gave 30 days' notice to the contribution
17 defendant of the plaintiff's intention to seek treble damages pursuant
18 to this subsection and gave the contribution defendant an opportunity
19 to participate in the cleanup; (c) the contribution defendant failed or
20 refused to enter into a settlement agreement with the contribution
21 plaintiff; and (d) the contribution plaintiff entered into an agreement
22 with the department to remediate the site. Notwithstanding the
23 foregoing requirements, any authorization to seek treble damages
24 made by the department prior to the effective date of P.L.1997, c.278
25 (C.58:10B-1.1 et al.) shall remain in effect, provided that the
26 department or the contribution plaintiff gave notice to the contribution
27 defendant of the plaintiff's request to the department for authorization
28 to seek treble damages.

29 A contribution defendant from whom treble damages is sought in
30 a contribution action shall not be assessed treble damages by any court
31 where the contribution defendant, for good cause shown, failed or
32 refused to enter the settlement agreement with the contribution
33 plaintiff or where principles of fundamental fairness will be violated.
34 One third of an award of treble damages in a contribution action
35 pursuant to this paragraph shall be paid to the department, which sum
36 shall be deposited in the New Jersey Spill Compensation Fund. The
37 other two thirds of the treble damages award shall be shared by the
38 contribution plaintiffs in the proportion of the responsibility for the
39 cost of the cleanup and removal that the contribution plaintiffs have
40 agreed to with the department or in an amount as has been agreed to
41 by those parties.

42 Cleanup and removal of hazardous substances and actions to
43 minimize damage from discharges shall, to the greatest extent possible,
44 be in accordance with the National Contingency Plan for cleanup and
45 removal of oil and hazardous substances established pursuant to
46 section 311(c)(2) of the federal Water Pollution Control Act

1 Amendments of 1972 (Pub.L.92-500, 33U.S.C. s.1251 et seq.).

2 Whenever the department acts to clean up and remove a discharge
3 or contracts to secure prospective cleanup and removal services, it is
4 authorized to draw upon the money available in the fund. Such money
5 shall be used to pay promptly for all cleanup and removal costs
6 incurred by the department in cleaning up, in removing or in
7 minimizing damage caused by such discharge. Nothing in this section
8 is intended to preclude removal and cleanup operations by any person
9 threatened by such discharges, provided such persons coordinate and
10 obtain approval for such actions with ongoing State or federal
11 operations. No action taken by any person to contain or clean up and
12 remove a discharge shall be construed as an admission of liability for
13 said discharge. No person who renders assistance in containing or
14 cleaning up and removing a discharge shall be liable for any civil
15 damages to third parties resulting solely from acts or omissions of such
16 person in rendering such assistance, except for acts or omissions of
17 gross negligence or willful misconduct. In the course of cleanup or
18 removal operations, no person shall discharge any detergent into the
19 waters of this State without prior authorization of the commissioner.

20 b. Notwithstanding any other provisions of P.L.1976, c.141
21 (C.58:10-23.11 et seq.), the department, subject to the approval of the
22 administrator with regard to the availability of funds therefor, or a
23 local unit as a part of an emergency response action and with the
24 approval of the department, may clean up and remove or arrange for
25 the cleanup and removal of any hazardous substance which:

26 (1) Has not been discharged from a grounded or disabled vessel,
27 if the department determines that such cleanup and removal is
28 necessary to prevent an imminent discharge of such hazardous
29 substance; or

30 (2) Has not been discharged, if the department determines that
31 such substance is not satisfactorily stored or contained and said
32 substance possesses any one or more of the following characteristics:

33 (a) Explosiveness;

34 (b) High flammability;

35 (c) Radioactivity;

36 (d) Chemical properties which in combination with any discharged
37 hazardous substance at the same storage facility would create a
38 substantial risk of imminent damage to public health or safety or an
39 imminent and severe damage to the environment;

40 (e) Is stored in a container from which its discharge is imminent as
41 a result of contact with a hazardous substance which has already been
42 discharged and such additional discharge would create a substantial
43 risk of imminent damage to public health or safety or imminent and
44 severe damage to the environment; or

45 (f) High toxicity and is stored or being transported in a container
46 or motor vehicle, truck, rail car or other mechanized conveyance from

1 which its discharge is imminent as a result of the significant
2 deterioration or the precarious location of the container, motor
3 vehicle, truck, rail car or other mechanized conveyance, and such
4 discharge would create a substantial risk of imminent damage to public
5 health or safety or imminent and severe damage to the environment;
6 or

7 (3) Has been discharged prior to the effective date of P.L.1976,
8 c.141.

9 c. If and to the extent that he determines that funds are available,
10 the administrator shall approve and make payments for any cleanup
11 and removal costs incurred by the department for the cleanup and
12 removal of a hazardous substance other than petroleum as authorized
13 by subsection b. of this section; provided that in determining the
14 availability of funds, the administrator shall not include as available
15 funds revenues realized or to be realized from the tax on the transfer
16 of petroleum, to the extent that such revenues result from a tax levied
17 at a rate in excess of \$0.01 per barrel, pursuant to subsection b. of
18 section 9 of P.L.1976, c.141 (C.58:10-23.11h), unless the
19 administrator determines that the sum of claims paid by the fund on
20 behalf of petroleum discharges or cleanup and removals plus pending
21 reasonable claims against the fund on behalf of petroleum discharges
22 or cleanup and removals is greater than 30% of the sum of all claims
23 paid by the fund plus all pending reasonable claims against the fund.

24 d. The administrator may only approve and make payments for any
25 cleanup and removal costs incurred by the department for the cleanup
26 and removal of a hazardous substance discharged prior to the effective
27 date of P.L.1976, c.141, pursuant to subsection b. of this section, if,
28 and to the extent that, he determines that adequate funds from another
29 source are not or will not be available; and provided further, with
30 regard to the cleanup and removal costs incurred for discharges which
31 occurred prior to the effective date of P.L.1976, c.141, the
32 administrator may not during any one-year period pay more than
33 \$18,000,000 in total or more than \$3,000,000 for any discharge or
34 related set or series of discharges.

35 e. Notwithstanding any other provisions of P.L.1976, c.141, the
36 administrator, after considering, among any other relevant factors, the
37 department's priorities for spending funds pursuant to P.L.1976, c.141,
38 and within the limits of available funds, shall make payments for the
39 restoration or replacement of, or connection to an alternative water
40 supply for, any private residential well destroyed, contaminated, or
41 impaired as a result of a discharge prior to the effective date of
42 P.L.1976, c.141; provided, however, total payments for said purpose
43 shall not exceed \$500,000 for the period between the effective date of
44 this subsection e. and January 1, 1983, and in any calendar year
45 thereafter.

46 f. Any expenditures made by the administrator pursuant to this act

1 shall constitute, in each instance, a debt of the discharger to the fund.
2 The debt shall constitute a lien on all property owned by the discharger
3 when a notice of lien, incorporating a description of the property of
4 the discharger subject to the cleanup and removal and an identification
5 of the amount of cleanup, removal and related costs expended from
6 the fund, is duly filed with the clerk of the Superior Court. The clerk
7 shall promptly enter upon the civil judgment or order docket the name
8 and address of the discharger and the amount of the lien as set forth
9 in the notice of lien. Upon entry by the clerk, the lien, to the amount
10 committed by the administrator for cleanup and removal, shall attach
11 to the revenues and all real and personal property of the discharger,
12 whether or not the discharger is insolvent. The notice of lien filed
13 pursuant to this subsection which affects the property of a discharger
14 subject to the cleanup and removal of a discharge shall create a lien
15 with priority over all other claims or liens which are or have been filed
16 against the property, except if the property comprises six dwelling
17 units or less and is used exclusively for residential purposes, this notice
18 of lien shall not affect any valid lien, right or interest in the property
19 filed in accordance with established procedure prior to the filing of this
20 notice of lien. The notice of lien filed pursuant to this subsection
21 which affects any property of a discharger, other than the property
22 subject to the cleanup and removal, shall have priority from the day of
23 the filing of the notice of the lien over all other claims and liens filed
24 against the property, but shall not affect any valid lien, right, or
25 interest in the property filed in accordance with established procedure
26 prior to the filing of a notice of lien pursuant to this subsection.

27 g. In the event a vessel discharges a hazardous substance into the
28 waters of the State, the cleanup and removal and related costs
29 resulting from that discharge that constitute a maritime lien on the
30 discharging vessel pursuant to 33 U.S.C. s.1321 or any other law, may
31 be recovered by the Department of Environmental Protection in an
32 action in rem brought in the district court of the United States. An
33 impoundment of a vessel resulting from this action shall continue until:

34 (1) the claim against the owner or operator of the vessel for the
35 cleanup and removal and related costs of the discharge is satisfied;

36 (2) the owner or operator of the vessel, or a representative of the
37 owner or operator, provides evidence of financial responsibility as
38 provided in section 2 of P.L.1991, c.58 (C.58:10-23.11g2) and
39 satisfactorily guarantees that these costs will be paid; or

40 (3) the impoundment is otherwise vacated by a court order. The
41 remedy provided in this subsection is in addition to any other remedy
42 or enforcement power that the department may have under any other
43 law.

44 Any action brought by the State pursuant to this subsection and any
45 impoundment of a vessel resulting therefrom shall not subject the State

1 to be in any way liable for a subsequent or continued discharge of a
2 hazardous substance from that vessel.
3 (cf: P.L.1997, c.278, s.28)

4

5 2. This act shall take effect on the 90th day after the date of
6 enactment.

7

8

9

STATEMENT

10

11 This bill would provide to any person who enters into a settlement
12 with the Department of Environmental Protection or enters into a
13 judicially approved settlement, protection from contribution claims for
14 cleanup and removal costs pursuant to the "Spill Compensation and
15 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.) regarding
16 matters addressed in the settlement. The bill also provides that the
17 settlement would not provide protection from contribution claims for
18 any other person who is not a party to the settlement, but would
19 reduce the amount of potential liability of other responsible parties by
20 the amount of the settlement.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 2612

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 16, 2005

The Senate Environment Committee favorably reports Senate Bill No. 2612 with committee amendments.

This bill would provide to any person protection from contribution claims 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.), who enters into a settlement with the Department of Environmental Protection or enters into a judicially approved settlement to resolve their liability to the State for cleanup and removal costs, regarding matters addressed in the settlement. The bill also provides that the settlement would not provide protection from contribution claims for any other person who is not a party to the settlement, but would reduce the amount of potential liability of other responsible parties by the amount of the settlement.

The committee amendments would provide that the settlement include that the person resolved their liability to the State for cleanup and removal costs including natural resource damages. Further, committee amendments would require that for any settlement entered into after the effective date of the bill, the Department of Environmental Protection publish a notice in the New Jersey Register and make available on the Department of Environmental Protection's website, the name of the case that has been settled, the name of the party settling the case, and a summary of the terms of the settlement including the amount of any monetary payment. The Department of Environmental Protection shall also be required to provide notice of the settlement to all other parties in the case and to any other potentially responsible parties.

ASSEMBLY, No. 2262

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED FEBRUARY 9, 2004

Sponsored by:
Assemblyman REED GUSCIORA
District 15 (Mercer)

SYNOPSIS

Provides protection from contribution suits to parties who settle under the Spill Act.

CURRENT VERSION OF TEXT

As introduced.



A2262 GUSCIORA

2

1 AN ACT concerning protection from contribution suits, and amending
2 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 7 of P.L.1976, c.141 (C.58:10-23.11f) is amended to
8 read as follows:

9 7. a. (1) Whenever any hazardous substance is discharged, the
10 department may, in its discretion, act to clean up and remove or
11 arrange for the cleanup and removal of the discharge or may direct the
12 discharger to clean up and remove, or arrange for the cleanup and
13 removal of, the discharge. If the discharge occurs at any hazardous
14 waste facility or solid waste facility, the department may order the
15 hazardous waste facility or solid waste facility closed for the duration
16 of the cleanup and removal operations. The department may monitor
17 the discharger's compliance with any such directive. Any discharger
18 who fails to comply with such a directive shall be liable to the
19 department in an amount equal to three times the cost of such cleanup
20 and removal, and shall be subject to the revocation or suspension of
21 any license issued or permit held authorizing that person to operate
22 a hazardous waste facility or solid waste facility.

23 (2) (a) Whenever one or more dischargers or persons cleans up
24 and removes a discharge of a hazardous substance, those dischargers
25 and persons shall have a right of contribution against all other
26 dischargers and persons in any way responsible for a discharged
27 hazardous substance or other persons who are liable for the cost of the
28 cleanup and removal of that discharge of a hazardous substance. In an
29 action for contribution, the contribution plaintiffs need prove only that
30 a discharge occurred for which the contribution defendant or
31 defendants are liable pursuant to the provisions of subsection c. of
32 section 8 of P.L.1976, c.141 (C.58:10-23.11g), and the contribution
33 defendant shall have only the defenses to liability available to parties
34 pursuant to subsection d. of section 8 of P.L.1976, c.141
35 (C.58:10-23.11g). In resolving contribution claims, a court may
36 allocate the costs of cleanup and removal among liable parties using
37 such equitable factors as the court determines are appropriate.
38 Nothing in this subsection shall affect the right of any party to seek
39 contribution pursuant to any other statute or under common law.

40 (b) A person who has discharged a hazardous substance or is in
41 any way responsible for the discharge of a hazardous substance who
42 has resolved their liability to the State for cleanup and removal costs
43 in an administrative or judicially approved settlement, shall not be

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 liable for claims for contribution regarding matters addressed in the
2 settlement. The settlement shall not release any other person from
3 liability for cleanup and removal costs who is not a party to the
4 settlement, but shall reduce the potential liability of any other
5 discharger or person in any way responsible for a discharged
6 hazardous substance at the site that is the subject of the settlement by
7 the amount of the settlement.

8 (3) In an action for contribution taken pursuant to this subsection,
9 a contribution plaintiff may file a claim with the court for treble
10 damages. A contribution plaintiff may be granted an award of treble
11 damages by the court from one or more contribution defendants only
12 upon a finding by the court that: (a) the contribution defendant is a
13 person who was named on or subject to a directive issued by the
14 department, who failed or refused to comply with such a directive, and
15 who is subject to contribution pursuant to this subsection; (b) the
16 contribution plaintiff gave 30 days' notice to the contribution
17 defendant of the plaintiff's intention to seek treble damages pursuant
18 to this subsection and gave the contribution defendant an opportunity
19 to participate in the cleanup; (c) the contribution defendant failed or
20 refused to enter into a settlement agreement with the contribution
21 plaintiff; and (d) the contribution plaintiff entered into an agreement
22 with the department to remediate the site. Notwithstanding the
23 foregoing requirements, any authorization to seek treble damages
24 made by the department prior to the effective date of P.L.1997, c.278
25 (C.58:10B-1.1 et al.) shall remain in effect, provided that the
26 department or the contribution plaintiff gave notice to the contribution
27 defendant of the plaintiff's request to the department for authorization
28 to seek treble damages.

29 A contribution defendant from whom treble damages is sought in
30 a contribution action shall not be assessed treble damages by any court
31 where the contribution defendant, for good cause shown, failed or
32 refused to enter the settlement agreement with the contribution
33 plaintiff or where principles of fundamental fairness will be violated.
34 One third of an award of treble damages in a contribution action
35 pursuant to this paragraph shall be paid to the department, which sum
36 shall be deposited in the New Jersey Spill Compensation Fund. The
37 other two thirds of the treble damages award shall be shared by the
38 contribution plaintiffs in the proportion of the responsibility for the
39 cost of the cleanup and removal that the contribution plaintiffs have
40 agreed to with the department or in an amount as has been agreed to
41 by those parties.

42 Cleanup and removal of hazardous substances and actions to
43 minimize damage from discharges shall, to the greatest extent possible,
44 be in accordance with the National Contingency Plan for cleanup and
45 removal of oil and hazardous substances established pursuant to
46 section 311(c)(2) of the federal Water Pollution Control Act

1 Amendments of 1972 (Pub.L.92-500, 33 U.S.C. s. 1251 et seq.).

2 Whenever the department acts to clean up and remove a discharge
3 or contracts to secure prospective cleanup and removal services, it is
4 authorized to draw upon the money available in the fund. Such money
5 shall be used to pay promptly for all cleanup and removal costs
6 incurred by the department in cleaning up, in removing or in
7 minimizing damage caused by such discharge. Nothing in this
8 section is intended to preclude removal and cleanup operations by any
9 person threatened by such discharges, provided such persons
10 coordinate and obtain approval for such actions with ongoing State or
11 federal operations. No action taken by any person to contain or clean
12 up and remove a discharge shall be construed as an admission of
13 liability for said discharge. No person who renders assistance in
14 containing or cleaning up and removing a discharge shall be liable for
15 any civil damages to third parties resulting solely from acts or
16 omissions of such person in rendering such assistance, except for acts
17 or omissions of gross negligence or willful misconduct. In the course
18 of cleanup or removal operations, no person shall discharge any
19 detergent into the waters of this State without prior authorization of
20 the commissioner.

21 b. Notwithstanding any other provisions of P.L.1976, c.141
22 (C.58:10-23.11 et seq.), the department, subject to the approval of the
23 administrator with regard to the availability of funds therefor, or a
24 local unit as a part of an emergency response action and with the
25 approval of the department, may clean up and remove or arrange for
26 the cleanup and removal of any hazardous substance which:

27 (1) Has not been discharged from a grounded or disabled vessel,
28 if the department determines that such cleanup and removal is
29 necessary to prevent an imminent discharge of such hazardous
30 substance; or

31 (2) Has not been discharged, if the department determines that
32 such substance is not satisfactorily stored or contained and said
33 substance possesses any one or more of the following characteristics:

34 (a) Explosiveness;

35 (b) High flammability;

36 (c) Radioactivity;

37 (d) Chemical properties which in combination with any discharged
38 hazardous substance at the same storage facility would create a
39 substantial risk of imminent damage to public health or safety or an
40 imminent and severe damage to the environment;

41 (e) Is stored in a container from which its discharge is imminent as
42 a result of contact with a hazardous substance which has already been
43 discharged and such additional discharge would create a substantial
44 risk of imminent damage to public health or safety or imminent and
45 severe damage to the environment; or

46 (f) High toxicity and is stored or being transported in a container

1 or motor vehicle, truck, rail car or other mechanized conveyance from
2 which its discharge is imminent as a result of the significant
3 deterioration or the precarious location of the container, motor
4 vehicle, truck, rail car or other mechanized conveyance, and such
5 discharge would create a substantial risk of imminent damage to public
6 health or safety or imminent and severe damage to the environment;
7 or

8 (3) Has been discharged prior to the effective date of P.L.1976,
9 c.141.

10 c. If and to the extent that he determines that funds are available,
11 the administrator shall approve and make payments for any cleanup
12 and removal costs incurred by the department for the cleanup and
13 removal of a hazardous substance other than petroleum as authorized
14 by subsection b. of this section; provided that in determining the
15 availability of funds, the administrator shall not include as available
16 funds revenues realized or to be realized from the tax on the transfer
17 of petroleum, to the extent that such revenues result from a tax levied
18 at a rate in excess of \$0.01 per barrel, pursuant to subsection b. of
19 section 9 of P.L.1976, c.141 (C.58:10-23.11h), unless the
20 administrator determines that the sum of claims paid by the fund on
21 behalf of petroleum discharges or cleanup and removals plus pending
22 reasonable claims against the fund on behalf of petroleum discharges
23 or cleanup and removals is greater than 30% of the sum of all claims
24 paid by the fund plus all pending reasonable claims against the fund.

25 d. The administrator may only approve and make payments for any
26 cleanup and removal costs incurred by the department for the cleanup
27 and removal of a hazardous substance discharged prior to the effective
28 date of P.L.1976, c.141, pursuant to subsection b. of this section, if,
29 and to the extent that, he determines that adequate funds from another
30 source are not or will not be available; and provided further, with
31 regard to the cleanup and removal costs incurred for discharges which
32 occurred prior to the effective date of P.L.1976, c.141, the
33 administrator may not during any one-year period pay more than
34 \$18,000,000 in total or more than \$3,000,000 for any discharge or
35 related set or series of discharges.

36 e. Notwithstanding any other provisions of P.L.1976, c.141, the
37 administrator, after considering, among any other relevant factors, the
38 department's priorities for spending funds pursuant to P.L.1976, c.141,
39 and within the limits of available funds, shall make payments for the
40 restoration or replacement of, or connection to an alternative water
41 supply for, any private residential well destroyed, contaminated, or
42 impaired as a result of a discharge prior to the effective date of
43 P.L.1976, c.141; provided, however, total payments for said purpose
44 shall not exceed \$500,000 for the period between the effective date of
45 this subsection e. and January 1, 1983, and in any calendar year
46 thereafter.

1 f. Any expenditures made by the administrator pursuant to this act
2 shall constitute, in each instance, a debt of the discharger to the fund.
3 The debt shall constitute a lien on all property owned by the discharger
4 when a notice of lien, incorporating a description of the property of
5 the discharger subject to the cleanup and removal and an identification
6 of the amount of cleanup, removal and related costs expended from
7 the fund, is duly filed with the clerk of the Superior Court. The clerk
8 shall promptly enter upon the civil judgment or order docket the name
9 and address of the discharger and the amount of the lien as set forth
10 in 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 discharger,
13 whether or not the discharger is insolvent. The notice of lien filed
14 pursuant to this subsection which affects the property of a discharger
15 subject to the cleanup and removal of a discharge shall create a lien
16 with priority over all other claims or liens which are or have been filed
17 against the property, except if the property comprises six dwelling
18 units or less and is used exclusively for residential purposes, this notice
19 of lien shall not affect any valid lien, right or interest in the property
20 filed in accordance with established procedure prior to the filing of this
21 notice of lien. The notice of lien filed pursuant to this subsection
22 which affects any property of a discharger, other than the property
23 subject to the cleanup and removal, shall have priority from the day of
24 the filing of the notice of the lien over all other claims and liens filed
25 against the property, but shall not affect any valid lien, right, or
26 interest in the property filed in accordance with established procedure
27 prior to the filing of a notice of lien pursuant to this subsection. g .

28 In the event a vessel discharges a hazardous substance into the
29 waters of the State, the cleanup and removal and related costs
30 resulting from that discharge that constitute a maritime lien on the
31 discharging vessel pursuant to 33 U.S.C. s.1321 or any other law, may
32 be recovered by the Department of Environmental Protection in an
33 action in rem brought in the district court of the United States. An
34 impoundment of a vessel resulting from this action shall continue until:

35 (1) the claim against the owner or operator of the vessel for the
36 cleanup and removal and related costs of the discharge is satisfied;

37 (2) the owner or operator of the vessel, or a representative of the
38 owner or operator, provides evidence of financial responsibility as
39 provided in section 2 of P.L.1991, c.58 (C.58:10-23.11g2) and
40 satisfactorily guarantees that these costs will be paid; or

41 (3) the impoundment is otherwise vacated by a court order. The
42 remedy provided in this subsection is in addition to any other remedy
43 or enforcement power that the department may have under any other
44 law.

45 Any action brought by the State pursuant to this subsection and any
46 impoundment of a vessel resulting therefrom shall not subject the State

1 to be in any way liable for a subsequent or continued discharge of a
2 hazardous substance from that vessel.
3 (cf: P.L.1997, c.278, s.28)

4

5 2. This act shall take effect 90 days from the date of enactment.

6

7

8 STATEMENT

9

10 This bill would provide protection from contribution claims
11 pursuant to the "Spill Compensation and Control Act," P.L.1976,
12 c.141 (C.58:10-23.11 et seq.) for cleanup and removal costs to any
13 person who enters into a settlement with the department or enters into
14 a judicially approved settlement, regarding matters addressed in the
15 settlement. The bill also provides that the settlement would not
16 provide protection from contribution claims for any other person who
17 is not a party to the settlement, but would reduce the amount of
18 potential liability of other responsible parties by the amount of the
19 settlement.

STATEMENT TO

[First Reprint]

SENATE, No. 2612

with Senate Floor Amendments
(Proposed By Senator SMITH)

ADOPTED: DECEMBER 8, 2005

This amendment would clarify that protection from contribution suits would apply upon the resolution of a person's liability to the State under the "Spill Compensation and Control Act" pursuant to a no further action letter as well as pursuant to a settlement agreement. The amendments would also replace the term "natural resource damages" with "the payment of compensation for damage to, or the loss of, natural resources, or for the restoration of natural resources" for statutory consistency. Finally, the amendments would require that notice of the proposed settlement or no further action letter be provided at least 30 days before the State's agreement or issuance, and that written notice be provided to only those potentially responsible parties of whom the State has notice.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2262

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 3, 2004

The Assembly Environment and Solid Waste Committee favorably reports Assembly Bill No. 2262 with committee amendments.

This bill would provide to any person who enters into a settlement with the Department of Environmental Protection or enters into a judicially approved settlement, protection from contribution claims 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.) regarding matters addressed in the settlement. The bill also provides that the settlement would not provide protection from contribution claims for any other person who is not a party to the settlement, but would reduce the amount of potential liability of other responsible parties by the amount of the settlement.

The committee amendments make a technical correction to the effective date of the bill.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2262

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 5, 2006

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2262 (1R), with committee amendments.

Assembly Bill No. 2262 (1R), as amended, provides protection from contribution claims 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.), to any person who enters into a settlement with the Department of Environmental Protection or enters into a judicially approved settlement to resolve the person's liability to the State for cleanup and removal costs, regarding matters addressed in the settlement or the no further action letter. The bill also provides that a settlement or no further action letter will not provide protection from contribution claims for any other person who is not a party to the settlement or no further action letter, but will reduce the amount of potential liability of other responsible parties by the amount of the settlement or the no further action letter.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note.

COMMITTEE AMENDMENTS:

The amendments put a no further action letter on much the same status as a settlement. The amendments require that for any settlement or no further action letter entered into after the effective date of the bill, the Department of Environmental Protection shall publish a notice in the New Jersey Register and make available on the Department of Environmental Protection's website at least 30 days before entry or issuance, the name of the case, the name of the parties to the settlement or no further action letter, and a summary of the terms of the settlement or the no further action letter including the amount of any monetary payment. The amendments require the Department of Environmental Protection to provide notice of the settlement or no further action letter to all other parties in the case and to any other potentially responsible parties of whom the State has notice.

The amendments would also replace the term "natural resource damages" with "the payment of compensation for damage to, or the loss of, natural resources, or for the restoration of natural resources" for statutory consistency.