

58:10-23.11 ET AL.

LEGISLATIVE HISTORY CHECKLIST

NJSA 58:10-23.11 et al. ("Spill Compensation And Control Act")

Laws of 1976 Chapter 141

Bill No. A1903

Sponsor(s) Newman

Date Introduced May 17, 1976

Committee: Assembly Agriculture & Environment

Senate -

Amended during passage Yes No Amendments during passage denoted by asterisks. Substituted for S1796 (see note below)

Date of passage: Assembly Nov. 23, 1976

Senate Dec. 14, 1976

Date of approval January 6, 1977

Following statements are attached if available:

Sponsor statement Yes No

Committee Statement: Assembly Yes No

Senate Yes No

Fiscal Note Yes No

Veto message Yes No

Message on signing Yes No

Following were printed:

Reports Yes No

Hearings Yes No

974.90 N.J. Legislature, Senate, Committee on Energy and Environment, P777 Public hearing on S-1409 and A-1903, held June 2, 1976. 1976a

The original bills for S1409 and A1903 were identical. We are enclosing the Senate and Assembly committee statements on S1409 and the Assembly Reprint, which shows amendments by both houses. As explained in the sponsor's statement to S1796 (enclosed), S1796 is identical to the Assembly Reprint of S1409. The same sponsor's statement indicates S1796 is identical to A1903 but does not indicate which version of A1903. It appears to be identical to the OCR.

10/4/76 JUN 1977

"Spill Compensation bill OKd by Byrne," Trenton Evening Times, page 28, January 7, 1977, published as: Trenton Times."

"The Cleanup Fund," Trenton Evening Times, page 99, October 14, 1979, published as: Sunday Times Advertiser.

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ASSEMBLY, No. 1903

STATE OF NEW JERSEY

INTRODUCED MAY 17, 1976

By Assemblymen NEWMAN, DOYLE, LEFANTE, HAMILTON,
BARBOUR and KOZLOSKI

Referred to Committee on Agriculture and Environment

AN ACT prohibiting the discharge of petroleum and other hazardous substances, providing for the cleanup and removal of any such discharge, establishing a spill compensation fund, providing for the raising of revenues therefor, all in order to protect the economy and environment of this State, supplementing Title 58 of the Revised Statutes and repealing sections 1 through 10 of the "New Jersey Water Quality Improvement Act of 1971," approved June 1, 1971 (P. L. 1971, c. 173; C. 58:10-23.1 et seq.).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Spill Com-
2 pensation and Control Act."

1 2. The Legislature finds and declares: that New Jersey's lands
2 and waters constitute a unique and delicately balanced resource;
3 that the protection and preservation of these lands and waters
4 promotes the health, safety and welfare of the people of this State;
5 that the tourist and recreation industry dependent on clean waters
6 and beaches is vital to the economy of this State; that the State is
7 the trustee, for the benefit of its citizens, of all natural resources
8 within its jurisdiction; and that the storage and transfer of
9 petroleum products and other hazardous substances between
10 vessels, between facilities and vessels, and between facilities,
11 whether onshore or offshore, is a hazardous undertaking and
12 imposes risks of damage to persons and property within this State.

3 The Legislature finds and declares that the discharge of petro-
14 leum products and other hazardous substances within or outside
15 the jurisdiction of this State constitutes a threat to the economy
16 and environment of this State. The Legislature intends by the

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

17 passage of this act to exercise the powers of this State to control
 18 the transfer and storage of hazardous substances and to provide
 19 liability for damage sustained within this State as a result of any
 20 discharge of said substances, by requiring the prompt containment
 21 and removal of such pollution and substances, and to provide a fund
 22 for swift and adequate compensation to resort businesses and
 23 other persons damaged by such discharge.

1 3. Unless the context clearly indicates otherwise, the following
 2 terms shall have the following meanings:

3 a. "Administrator" means the chief executive of the New Jersey
 4 Spill Compensation Fund;

5 b. "Barrel" means 42 United States gallons or 159.09 liters or
 6 an appropriate equivalent measure***[.]*** **set by the director for*
 6A *hazardous substances which are other than fluid or which are not*
 6B *commonly measured by the barrel;**

7 c. "Board" means a board of arbitration convened by the
 8 administrator to settle disputed disbursements from the fund;

9 d. "Cleanup and removal costs" means all costs associated with
 10 a discharge incurred by the State or its political subdivisions or
 11 their agents **or any person with written approval from the depart-*
 11A *ment** in the (1) removal or attempted removal of hazardous
 12 substances or, (2) taking of reasonable measures to prevent or
 13 mitigate damages to the public health, safety, or welfare, including
 14 but not limited to, public and private property, shorelines, beaches,
 15 surface waters, water columns and bottom sediments, soils and
 16 other affected property, including wildlife and other natural
 17 resources;

18 e. "Commissioner" means the Commissioner of Environmental
 19 Protection;

20 f. "Department" means the Department of Environmental
 21 Protection;

22 g. "Director" means the Director of the Division of Taxation in
 23 the Department of the Treasury;

24 h. "Discharge" means ***[the]** **any** intentional or uninten-
 25 tional **action or omission resulting in the** releasing, spilling,
 25A leaking, pumping, pouring, emitting, emptying or dumping of
 25B hazardous substance into the waters of the State or onto lands
 26 from which it might flow or drain into said waters, or into waters
 27 *of the jurisdiction of the State when damag*
 28 the lands, waters or natural resources within the jurisdiction of
 29 the State;

- 30 i. "Fund" means the New Jersey Spill Compensation Fund;
- 31 j. "Hazardous substances" means such elements and compounds,
 32 including petroleum products, which are defined as such by the
 33 department, after public hearing, and which shall be consistent to
 34 the maximum extent possible with the list of hazardous substances
 35 adopted by the Federal Environmental Protection Agency pursuant
 36 to section 311 of the Federal Water Pollution Control Act Amend-
 37 ments of 1972 (P. L. 92-500, 33 U. S. C. 1251 et seq.)***[.]***
- 37A *; *provided, however, that sewage and sewage sludge shall not be*
 37B *considered as hazardous substances for the purposes of this act;**
- 38 k. "Major facility" includes but is not limited to any refinery,
 39 storage or transfer terminal, pipeline, deep water port, drilling
 40 platform or any appurtenance related to any of the preceding
 41 that is used or is capable of being used to refine, produce, store,
 42 handle, transfer, process or transport hazardous substances.
 43 A vessel shall be considered a major facility only when hazardous
 44 substances are transferred between vessels. Facilities with total
 45 **combined** above-ground or buried storage capacity of less than
 46 400,000 gallons are not major facilities for the purposes of this act.
- 47 l. "Natural resources" means all land, fish, shellfish, wildlife,
 48 biota, air, waters and other such resources owned, managed, held
 49 in trust or otherwise controlled by the State;
- 50 m. "Owner" or "operator" means with respect to a vessel, any
 51 person owning, operating or chartering by demise such vessel;
 52 with respect to any major facility, any person owning such facility,
 53 or operating it by lease, contract or other form of agreement; with
 54 respect to abandoned or derelict major facilities, the person who
 55 owned or operated such facility immediately prior to such abandon-
 56 ment, or the owner at the time of discharge;
- 57 n. "Person" means public or private corporations, companies,
 58 associations, societies, firms, partnerships, joint stock companies,
 59 individuals, the United States, the State of New Jersey and any
 60 of its political subdivisions or agents;
- 61 **[o.** "Person in charge" means the individual immediately
 62 responsible for the operation of a major facility and, in the case
 63 of a vessel, the master and pilot of such vessel;**]***
- 64 **[p.]** **o.* "Petroleum" means oil or petroleum of any kind
 65 and in any form including, but not limited to, oil, petroleum, fuel
 66 oil, oil sludge, oil refuse, oil mixed with other wastes and crude oils;
- 67 **[p.]** **p.* "Taxpayer" means the owner or operator of a
 68 major facility subject to the tax provisions of this act;

69 ***[r.]*** *q.* "Tax period" means every calendar month on the
70 basis of which the taxpayer is required to report under this act;

71 ***[s.]*** *r.* "Transfer" means unloading or offloading between
72 *major* facilities and vessels or vessels and *major* facilities, and
73 from vessel to vessel or *major* facility to *major* facility, except
73A for fueling or refueling operations;

74 ***[t.]*** *s.* "Vessel" means every description of watercraft or
75 other contrivance that is practically capable of being used as a
76 means of commercial transportation of hazardous substances upon
77 the water, whether or not self-propelled;

78 ***[u.]*** *t.* "Waters" means the ocean and its estuaries to the
79 seaward limit of the State's jurisdiction, all springs, streams and
80 bodies of surface or groundwater, whether natural or artificial,
81 within the boundaries of this State***[.]*** *;* *

82 *u.* "Act of God" means an act exclusively occasioned by an
83 unanticipated grave natural disaster without the interference of
84 any human agency.*

1 4. The discharge of hazardous substances is prohibited. This
2 section shall not apply to discharges of hazardous substances pur-
3 suant to and in compliance with the conditions of a Federal or State
4 permit.

1 5. Each owner or operator of a major facility shall submit to the
2 department the following information:

3 a. The number of barrels or another measurement of the storage
4 capacity of the facility;

5 b. Average daily throughput of the facility;

6 c. A primary and contingency cleanup and removal plan which
7 includes, but is not limited to, an inventory of;

8 (1) The storage and transfer capacity of the facility;

9 (2) The containment and removal equipment, including, but not
10 limited to, vehicles, vessels, pumps, skimmers, booms, chemicals,
11 and communication devices, to which the facility has access ***[within**
12 1 hour of a discharge whether]**]*** through direct ownership or by
13 contract or membership in a discharge cleanup organization recog-
14 nized by the department*, as well as the time lapse following a
14A discharge which precedes such access*;

15 (3) The trained personnel which are required and available
16 ***[within 1 hour of a discharge]*** to operate such containment and
17 removal equipment *and the time lapse following a discharge which
17A precedes such availability*;

18 (4) All equipment and trained personnel used or employed in
19 any capacity at the facility to prevent discharges of hazardous
20 substances;

21 (5) The terms of agreement and operation plan of any discharge
22 cleanup organization to which the owner or operator of the facility
23 belongs;

24 (6) The type and amount of hazardous substances transferred,
25 refined, processed or stored at the facility;

26 d. The steps taken to insure prevention of a discharge;

27 e. The source, nature of, and conditions of financial responsi-
28 bility, established by any one, or a combination of the following;

29 (1) Insurance;

30 (2) Qualification as a self-insurer;

31 (3) Surety bonds payable to the fund***[.]*** *;*

32 **f. The department shall promulgate rules and regulations, as*
33 *provided in section 21 of this act, establishing standards for the*
34 *availability of preventative, cleanup and removal procedures, per-*
35 *sonnel and equipment at any major facility as well as requiring the*
36 *formulation of cleanup and removal plans for each major facility,*
37 *where such plans are not required by existing Federal statute, rule*
38 *or regulation. Compliance with such standards and plans shall*
39 *not be deemed a defense in addition to the defenses enumerated in*
40 *subsection d. of section 8 of this act.**

1 6. Any person responsible for causing a discharge shall immedi-
2 ately notify the department. Failure to so notify shall make
3 persons liable to the penalty provisions of section 22 of this act.

1 7. Whenever any hazardous substance is discharged, the depart-
2 ment shall act to remove or arrange for the removal of such dis-
3 charge, unless it determines such removal will be done properly
4 and expeditiously by the owner or operator of the **major** facility
5 or any other source from which the discharge occurs.

6 Removal of hazardous substances and actions to minimize
7 damage from discharges shall, to the greatest extent possible, be in
8 accordance with the National Contingency Plan for removal of oil
9 and hazardous substances established pursuant to section 311 (c)
10 (2) of the Federal Water Pollution Control Act Amendments of
11 1972 (P. L. 92-500, 33 U. S. C. 1251 et seq.).

12 Whenever the department acts to remove a discharge or contracts
13 to secure prospective removal services, it is authorized to draw
14 upon the money available in the fund. Such moneys shall be used
15 to pay promptly for all cleanup costs incurred by the department
16 in removing or in minimizing damage caused by such discharge.

17 Nothing in this section is intended to preclude removal and
18 cleanup operations by any person threatened by such discharges,
19 provided such persons coordinate and obtain approval for such

20 actions with ongoing State or Federal operations. No action taken
 21 by any person to contain or remove a discharge shall be construed
 22 as an admission of liability for said discharge. No person who
 23 renders assistance in containing or removing a discharge shall be
 24 liable for any civil damages to third parties resulting solely from
 25 acts or omissions of such person in rendering such assistance except
 26 for acts or omissions of gross negligence or willful misconduct.
 27 In the course of cleanup operations, no person shall discharge
 28 any detergent into the waters of this State without prior authoriza-
 29 tion of the commissioner.

1 8. a. ***[**Any owner or operator of a major facility or vessel which
 2 has discharged a hazardous substance**]*** **The fund** shall be strictly
 3 liable, without regard to fault, for all **cleanup and removal costs*
 4 *and for all** direct and indirect damages no matter by whom
 4A sustained, including but not limited to:

5 (1) The cost of restoring, repairing, or replacing any real or
 6 personal property damaged or destroyed by a discharge, any income
 7 lost from the time such property is damaged to the time such
 8 property is restored, repaired or replaced, and any reduction in
 9 value of such property caused by such discharge by comparison
 10 with its value prior thereto;

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

13 (3) Loss of income or impairment of earning capacity due to
 14 damage to real or personal property, including natural resources
 15 destroyed or damaged by a discharge***[**, if a claimant derives at
 16 least 50% of his earnings from activities related to real or personal
 17 property or natural resources damaged or destroyed by such
 18 discharge;**]*** *; *provided that such loss or impairment exceeds 10%*
 18A *of the amount which claimant derives, based upon income or busi-*
 18B *ness records, exclusive of other sources of income, from activities*
 18C *related to the particular real or personal property or natural*
 18D *resources damaged or destroyed by such discharge during the week,*
 18E *month or year for which the claim is filed;**

19 (4) Loss of tax revenue by the State or local governments for
 20 a period of 1 year due to damage to real or personal property
 21 proximately resulting from a discharge***[.]*** *;*

22 **(5) Interest on loans obtained or other obligations incurred*
 23 *by a claimant for the purpose of ameliorating the adverse effects*
 24 *of a discharge pending the payment of a claim in full as provided*
 25 *by this act.*

26 *b. The damages which may be recovered by the fund, without*
 27 *regard to fault, subject to the defenses enumerated in subsection*
 28 *d. of this section, against the owner or operator of a major facility*
 29 *or vessel, shall not exceed \$50,000,000.00 for each major facility*
 30 *or \$150.00 per gross ton for each vessel, except that such maximum*
 31 *limitation shall not apply and the owner or operator shall be liable*
 32 *for the full amount of such damages if it can be shown that such*
 33 *discharge was the result of (1) gross negligence or willful mis-*
 34 *conduct, within the knowledge and privity of the owner, operator*
 35 *or person in charge, or (2) a gross or willful violation of applicable*
 36 *safety, construction or operating standards or regulations.*
 37 *Damages which may be recovered from, or by, any other person*
 38 *shall be limited to those authorized by common or statutory law.**

39 ***[b.]*** **c.* Any person who has discharged a hazardous sub-*
 40 *stance shall be strictly liable, without regard to fault, for all cleanup*
 41 *and removal costs.*

42 ***[c.]*** **d.* An act *or omission* caused solely by war, *[which*
 43 *does not include states of insurrection or civil strife,]* **sabotage,*
 44 *governmental negligence, God, or a third party or a combination*
 45 *thereof** shall be the only *[defense]* **defenses** which may be
 46 raised by *[a person]* **any owner or operator of a major facility*
 47 *or vessel** responsible for a discharge in any action arising under
 48 the provisions of this act. **For the purposes of this act, no em-*
 49 *ployee or agent of such owner or operator shall be considered as*
 50 *a third party. Any other person shall have available to him any*
 51 *defense authorized by common or statutory law.***

1 9. a. There is hereby levied upon each owner or operator of one
 2 or more major facilities a tax to insure compensation for cleanup
 3 costs and damages associated with any discharge of hazardous
 4 substances **to be paid by the transferee**. The tax shall be
 5 **[determined by the director as]* **measured by the *number of***
 6 *barrels of hazardous substances transferred to the major facility,*
 7 *provided, however, that the same barrel*, including any products*
 8 *derived therefrom,** subject to multiple transfers from or between
 9 major facilities shall be taxed only once at the point of the first
 10 transfer.

11 b. The tax shall be **[\$0.02]* **\$0.01** per barrel transferred until
 12 the balance in the fund equals or exceeds **[\$50,000,000.00]*
 13 **\$25,000,000.00**. In each fiscal year following any year in which
 14 the balance of the fund equals or exceeds **[\$50,000,000.00]*
 15 **\$25,000,000.00**, no tax shall be levied unless (1) the current
 16 balance in the fund is less than **[\$30,000.00]* **\$20,000,000.00** or

17 (2) pending claims against the fund exceed *~~[\$25,000,000.00.]~~*
 18 *50% of the existing balance of the fund. The provisions of the
 19 foregoing notwithstanding, should claims paid from the fund not
 20 exceed \$5,000,000.00 within 3 years after the tax is first levied, the
 21 tax shall be \$0.01 per barrel transferred until the balance in the
 22 fund equals or exceeds \$18,000,000.00, and thereafter shall not be
 23 levied unless: (1) the current balance in the fund is less than
 24 \$15,000,000.00 or (2) pending claims against the fund exceed 50%
 24A of the existing balance of the fund. In the event of either such
 24B occurrence and upon certification thereof by the State Treasurer,
 24C the director shall within 10 days of the date of such certification
 24D relevy the excise tax, which shall take effect on the first day of
 24E the month following such relevy. In the event of a major discharge
 24F or series of discharges resultting in claims against the fund exceed-
 25G ing the existing balance of the fund, the tax shall be levied at the
 24H rate of \$0.04 per barrel transferred until the balance in the fund
 24I equals pending claims against the fund; provided, however, that
 24J the rate may be set at less than \$0.04 per barrel transferred if the
 24K administrator determines that the revenue produced by such lower
 24L rate shall be sufficient to pay outstanding claims against the fund
 24M within 1 year of such levy. Should the fund exceed \$18,000,000.00
 24N or \$25,000,000.00, as herein provided, as a result of such interest,
 24O the administrator and the commissioner shall report to the
 24P Legislature and the Governor concerning the options for the use
 24Q of such interest.*

24R c. *(1)* Every taxpayer shall on or before the twentieth day of
 24S the month following the close of each tax period render a return
 24T under oath to the director on such forms as may be prescribed by the
 24U director indicating the number of barrels of hazardous substances
 24V transferred *~~[from]~~* *to* his *major* facility during the tax
 24W period and at said time shall pay the full amount of the tax due.
 24X (2) Every owner or operator of a major facility or vessel which
 24Y transfers a hazardous substance, as defined in this act, *and who is
 24Z subject to the tax under subsection a.* shall within *~~[10]~~* *20*
 24AA days after *the first* such transfer *in any fiscal year* register
 24BB with the director on such form as shall be prescribed by him.

25 d. If a return required by this act is not filed, or if a return when
 26 filed is incorrect or insufficient in the opinion of the director, the
 27 amount of tax due shall be determined by the director from such
 28 information as may be available. Notice of such determination
 29 shall be given to the taxpayer liable for the payment of the tax.

30 Such determination shall finally and irrevocably fix the tax unless
31 the person against whom it is assessed, within 30 days after receiv-
32 ing notice of such determination, shall apply to the director for a
33 hearing, or unless the director on his own motion shall redetermine
34 the same. After such hearing the director shall give notice of his
35 determination to the person to whom the tax is assessed.

36 e. Any taxpayer who shall fail to file his return when due or to
37 pay any tax when the same becomes due, as herein provided, shall
38 be subject to such penalties and interest as provided in the "State
39 Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised
40 Statutes. If the Division of Taxation determines that the failure
41 to comply with any provision of this ***[act]*** *section** was excus-
42 able under the circumstances, it may remit such part or all of the
43 penalty as shall be appropriate under such circumstances.

44 f. (1) Any person failing to file a return, failing to pay the tax,
45 or filing or causing to be filed, or making or causing to be made,
46 or giving or causing to be given any return, certificate, affidavit,
47 representation, information, testimony or statement required or
48 authorized by this act, or rules or regulations adopted hereunder
49 which is willfully false, or failing to keep any records required
50 by this act or rules and regulations adopted hereunder, shall, in
51 addition to any other penalties herein or elsewhere prescribed, be
52 guilty of a misdemeanor.

53 (2) The certificate of the director to the effect that a tax has not
54 been paid, that a return has not been filed, that information has
55 not been supplied or that inaccurate information has been supplied
56 pursuant to the provisions of this act or rules or regulations
57 adopted hereunder shall be presumptive evidence thereof.

58 g. In addition to the other powers granted to the director in this
59 ***[act]*** *section**, he is hereby authorized and empowered:

60 (1) To delegate to any officer or employee of his division such of
61 his powers and duties as he may deem necessary to carry out
62 efficiently the provisions of this ***[act]*** *section**, and the person
63 or persons to whom such power has been delegated shall possess
64 and may exercise all of said powers and perform all of the duties
65 delegated by the director;

66 (2) To prescribe and distribute all necessary forms for the
67 implementation of this ***[act]*** *section**.

68 h. The tax imposed by this ***[act]*** *section** shall be governed
69 in all respects by the provisions of the "State Tax Uniform
70 Procedure Law," Subtitle 9 of Title 54 of the Revised Statutes,
71 except only to the extent that a specific provision of this ***[act]***
72 *section** may be in conflict therewith.

1 10. The New Jersey Spill Compensation Fund is hereby estab-
2 lished as a nonlapsing, revolving fund in the Department of the
3 Treasury to carry out the purposes of this act. The fund shall be
4 credited with all taxes and penalties related to this act. Interest
5 received on moneys in the fund shall be credited to the fund.

1 11. a. The State Treasurer shall appoint and supervise an ad-
2 ministrator of the fund. The administrator shall be the chief execu-
3 tive of the fund and shall have the following powers and duties:

4 (1) To represent the State in meetings with the alleged dis-
5 charger and claimants concerning liability for the discharge and
6 the amount of the claims;

7 (2) To determine if boards of arbitration are needed to settle
8 particular claims;

9 (3) To administer boards of arbitration;

10 (4) To certify the amount of claims and names of claimants
11 to the State Treasurer.

1 12. Claims shall be filed with the administrator not later than
2 *~~2~~* *1* *~~years~~* *year* after the date of discovery of damage
3 nor later than 6 years after the date of the incident which caused
4 the damage. The administrator shall prescribe appropriate forms
5 and procedures for such claims, which shall include a provision
6 requiring the claimant to make a sworn verification of the claim
7 to the best of his knowledge. *~~Each person's damage claims~~
8 arising from one incident shall be stated in one form. Damages
9 not included in the claim at the time compensation is made shall
10 be deemed waived.* *Any person who knowingly gives or causes
11 to be given any false information as a part of any such claim shall,
12 in addition to any other penalties herein or elsewhere prescribed, be
13 guilty of a misdemeanor.* Upon receipt of any claim, the
14 administrator shall as soon as practicable inform all affected
15 parties of the claim.

1 13. The administrator shall attempt to promote and arrange a
2 settlement between the claimant and the person responsible for
3 the discharge. If the source of the discharge can be determined
4 and liability is conceded, the claimant and the alleged discharger
5 may agree to a settlement which shall be final and binding upon
6 the parties and which will waive all recourse against the fund.

1 14. If the source of the discharge is unknown or cannot be de-
2 termined, the claimant and the administrator shall attempt to
3 arrange a settlement of any claim against the fund. The adminis-
4 trator is authorized to enter and certify payment of such settlement

5 subject to such proof and procedures contained in regulations
6 promulgated by the administrator.

1 15. a. Boards of arbitration shall be convened by the adminis-
2 trator when persons alleged to have caused the discharge, the
3 administrator or other persons contest the validity or amount of
4 damage claims or cleanup and removal costs presented to the fund
5 for payment. If the source of discharge is not known, any person
6 may contest such claims presented for payment to the fund.

7 b. In the discretion of the administrator, a board of arbitration
8 may consist of three persons or a single neutral person. In the
9 case of three-person boards, one person shall be chosen by the per-
10 son alleged to have caused the discharge, one person shall be chosen
11 by the claimant, and one person shall be chosen by the first two
12 to serve as chairman. If the two arbitrators cannot agree upon,
13 select, and name the neutral arbitrator after their appointment,
14 the administrator shall request the American Arbitration Associa-
15 tion to utilize its procedures to select the neutral arbitrator. If
16 the source of the discharge is unknown or liability is not conceded,
17 the administrator shall request the American Arbitration Associa-
18 tion to utilize its procedures to select the neutral arbitrator and
19 an arbitrator normally selected by the absent or unknown person.
20 Representation by any party on the board shall not be considered
21 as any admission of liability for such discharges. In the case of a
22 one-person board, such neutral arbitrator may, in the discretion
23 of the administrator, be selected by the administrator, by agree-
24 ment of the affected parties or by utilization of the procedures of
25 the American Arbitration Association*; *provided, however, that*
25A *the administrator or any regular employee of the administrator*
25B *or the department shall not act as an arbitrator*.*

26 (1) Arbitrators shall be designated by their principals within
27 30 calendar days after the administrator notifies the principals of
28 claims against the fund arising from a discharge.

29 (2) Should either party fail to name an arbitrator within the
30 designated time, then the administrator shall request the American
31 Arbitration Association to utilize its procedures to select that
32 arbitrator. The two arbitrators thus chosen shall select the neutral
33 arbitrator required by this section.

34 c. One board of arbitration may be convened to hear and deter-
35 mine all claims arising from or related to a common discharge.

36 d. The boards shall have the power to order testimony under
37 oath and may subpoena attendance and testimony of witnesses and
38 the production of such documentary materials pertinent to the

39 issues presented to the board for determination. Each person ap-
40 pearing before the board shall have the right to counsel.

41 e. All costs and expenses approved by the administrator at-
42 tributable to the employment of any arbitrator shall be payable
43 from the fund.

44 f. All decisions of the boards of arbitration shall be in writing
45 with notification to all appropriate parties, and shall be rendered
46 within 60 calendar days of the final appointment of the board
47 unless the parties otherwise agree in writing to an extension.

48 g. Determinations made by the board shall be final. Any action
49 for judicial review shall be filed in the Appellate Division of the
50 Superior Court within 30 days of the filing of the decision with
51 the administrator.

52 h. No sooner than 30 days after the determination of the arbi-
53 trators, nor more than 60 days thereafter, the arbitrators shall
54 certify all claims settled or arbitrated to the administrator who,
55 in turn, shall certify the amount of the award and the name of
56 the claimant to the treasurer who shall pay the award from the
57 fund. *~~【No claim shall be paid while any judicial proceeding for~~
58 ~~the review of the arbitrators' decision is pending.】*~~ In any case in
59 which the person responsible for the discharge seeks judicial re-
60 view, *reasonable* attorneys' fees and costs shall be awarded to
61 the claimant if the decision of the board is affirmed.

1 16. Moneys in the New Jersey Spill Compensation Fund shall be
2 disbursed by the administrator for the following purposes and no
3 others:

4 (1) Costs incurred under section 7 of this act;

5 (2) Damages as defined in section 8 of this act;

6 (3) *~~【The sum of not more than \$200,000.00 annually】*~~ *Such*
7 *sums as may be necessary* for research on the prevention and the
8 effects of spills of hazardous substances on the marine environment
9 and on the development of improved cleanup and removal opera-
9A tions *as may be appropriated by the Legislature; provided, how-*
9B *ever, that such sums shall not exceed the amount of interest which*
9C *is credited to the fund*;

10 (4) Such sums as may be necessary for the boards, general ad-
11 ministration of the fund, equipment and personnel costs of the
12 department and any other State agency related to the enforcement
13 of this act*~~【.】*~~ *as may be appropriated by the Legislature*;

13A *(5) Such sums as may be appropriated by the Legislature for*
13B *research and demonstration programs concerning the causes and*
13C *abatement of ocean pollution; provided, however, that such sums*

13d shall not exceed the amount of interest which is credited to the
13e fund.*

14 The Treasurer may invest and reinvest any moneys in said fund
15 in legal obligations of the United States, this State or any of its
16 political subdivisions. Any income or interest derived from such
17 investment shall be included in the fund.

1 17. The Department of the Public Advocate may act to assert
2 such claims as are alleged against the fund by persons who in the
3 opinion of the Public Advocate, may be better represented as a
4 class in recovery of damage or cleanup costs provided by this act.
5 All moneys recovered for this class from the fund shall be dis-
6 tributed by the Department of the Treasury after certification by
7 the administrator. Failure by the Department of Public Advocate
8 to act on behalf of such class shall in no way prejudice the claims
9 to be asserted by such class or individuals under the provisions
10 of this act.

1 18. Payment of any cleanup costs or damages by the fund arising
2 from a single incident shall be conditioned upon the administrator
3 acquiring by subrogation all rights of the claimant to recovery of
4 such costs or damages from the discharger **or other responsible*
5 *party**. The administrator shall then seek satisfaction from the
6 discharger **or other responsible party** in the Superior Court if
7 the discharger **or other responsible party** does not reimburse
8 the fund. In any such suit, **except as provided by subsection d. of*
9 *section 8 of this act,** the administrator need prove only that an
10 unlawful discharge occurred which was the responsibility of the
11 **[alleged]** discharger **or other responsible party**. The admin-
12 istrator is hereby authorized and empowered to compromise and
13 settle the amount sought for costs and damages from the
14 **[alleged]** discharger **or other responsible party** and any
15 penalty arising under this act.

1 19. In the event that the total awards for a specific occurrence
2 exceed the current balance of the fund, the immediate award shall
3 be paid on a prorated basis, and all claimants paid on a prorated
4 basis shall be paid, as determined by the administrator, a pro rata
5 share of all funds received by the fund until the total amount of
6 the proven damages is paid to the claimant or claimants. The ad-
7 ministrator may also provide through regulation to fix the priority
8 for the payment of claims based on extreme hardship.

1 20. Any claims for costs of cleanup, civil penalties or damages
2 by the State, and any claim for damages by any injured person,

3 may be brought directly against the bond, the insurer, or any other
4 person providing evidence of financial responsibility.

1 21. The commissioner, the State Treasurer and the director,
2 respectively, are authorized to adopt, amend, repeal, and enforce
3 such rules and regulations pursuant to the Administrative Pro-
4 cedure Act, P. L. 1968, c. 410 (C. 52:14B-1 et seq.) as they may
5 deem necessary to accomplish their respective purposes and re-
6 sponsibilities under this act.

1 22. Any person *~~found in violation~~* *who knowingly gives or*
2 *causes to be given any false information as a part of, or in response*
3 *to, any claim made pursuant to this act for cleanup costs, removal*
4 *costs, direct damages or indirect damages resulting from a dis-*
5 *charge, or who otherwise violates any** of the provisions of this
6 act or any rule promulgated thereunder shall be liable to a penalty
7 of not more than *~~[\$10,000.00]~~* *\$25,000.00* for each offense, to
8 be collected in a summary proceeding under the "Penalty Enforce-
9 ment Law" (N. J. S. 2A:58-1 et seq.) or in a court of competent
10 jurisdiction wherein injunctive relief has been requested. The
11 Superior Court shall have jurisdiction to enforce said Penalty
12 Enforcement Law. If the violation is of a continuing nature each
13 day during which it continues shall constitute an additional,
14 separate and distinct offense.

1 23. Nothing in this act shall be deemed to preclude the pursuit of
2 any other civil or injunctive remedy by any person. The remedies
3 provided in this act are in addition to those provided by existing
4 statutory or common law, but no person who receives compensation
5 for damages or cleanup costs pursuant to any other State or Federal
6 law shall be permitted to receive compensation for the same
7 damages or cleanup costs under this act.

1 24. If any section, subsection, provision, clause or portion of
2 this act is adjudged unconstitutional or invalid by a court of
3 competent jurisdiction, the remainder of this act shall not be affected
4 thereby.

1 25. This act, being necessary for the general health, safety, and
2 welfare of the people of this State, shall be liberally construed to
3 effect its purposes.

1 *26. *The commissioner and administrator shall make an annual*
2 *report to the Legislature and Governor which shall describe the*
3 *quality and quantity of spills of hazardous substances, the costs*
4 *and damages paid by and recovered for the fund, and the economic*
5 *and environmental impact on the State as a result of the adminis-*
6 *tration of this act.*

1 27. *If the United States Congress enacts legislation providing*
2 *compensation for the discharge of petroleum and hazardous*
3 *products, the commissioner shall determine to what degree that*
4 *legislation provides the needed protection for our citizens, busi-*
5 *nesses and environment and shall make the appropriate recom-*
6 *mendations to the Legislature for amendments to this act.**

1 ***[26.]*** *28.* Sections 1 through 10 of P. L. 1971, c. 173
2 (C. 58:10-23.1 to 58:19-23.10) are repealed.

1 ***[27.]*** *29.* This act shall take effect on the first day of the
2 third month after enactment.

5 for damages or cleanup costs pursuant to any other State or Federal
6 law shall be permitted to receive compensation for the same
7 damages or cleanup costs under this act.

1 24. If any section, subsection, provision, clause or portion of
2 this act is adjudged unconstitutional or invalid by a court of
3 competent jurisdiction, the remainder of this act shall not be affected
4 thereby.

1 25. This act, being necessary for the general health, safety, and
2 welfare of the people of this State, shall be liberally construed to
3 effect its purposes.

1 26. Sections 1 through 10 of P. L. 1971, c. 173 (C. 58:10-23.1 to
2 58:19-23.10) are repealed.

1 27. This act shall take effect on the first day of the third month
2 after enactment.

The two bills were identical. *Original sponsor statements To*
S1409 +
A1903
SPONSOR'S STATEMENT

The threat of economic and environmental damage to the State's coastal resources and businesses may increase as a result of the development of offshore oil and gas and additional shipments of oil and other hazardous substances into the State and in coastal waters.

This bill, the "Spill Compensation and Control Act," is intended to provide more adequate protection for the resort industry and others threatened by direct or indirect losses resulting from spills of oil and other hazardous substances. The bill: (1) requires plans and procedures to prevent and contain spills; (2) establishes liability without fault for damages within the State resulting from spills caused by major facilities transporting or storing hazardous substances occurring both within and outside the State's jurisdiction; and (3) establishes a fund financed by a tax on transfers of hazardous substances for prompt payment of claims for direct and indirect damages caused by spills.

In order to protect against the occurrence of such spills, the Department of Environmental Protection is authorized to obtain from the owners and operators of major facilities engaged in the shipment, transfer or storage of hazardous substances information concerning the available procedures, equipment and personnel to protect against and remove spilled substances. Each facility is also required to maintain insurance or other guarantees of financial responsibility for damage caused by a spill.

In the event of a spill the person responsible is required to notify the department. Failure to provide such notification subjects the violator to penalties. The department is directed to take such measures needed to contain and remove spills unless it determines

that the person responsible for the spill is capable of containment and cleanup. All measures taken are to be consistent with Federal and State contingency plans; the use of any detergent to dissolve a spill is prohibited without the prior authorization of the Commissioner of Environmental Protection.

In order to facilitate prompt and adequate payment of claims for damage resulting from a spill, there is created in the Treasury the "New Jersey Spill Compensation Fund." The fund is to be financed by a 2-cent tax on each barrel of a hazardous substance transferred between major facilities, including refineries and pipelines, until the fund reaches \$50 million. The tax will terminate when the fund reaches the \$50 million level, but may be automatically reassessed if the fund is depleted by claims resulting from spills.

The fund is available to compensate for damages caused by a spill from a major facility or a vessel transporting hazardous substances including (1) costs of restoring or replacing property, including the income lost during the time of repair and any loss in value of the property; (2) costs of restoring or replacing natural resources such as fish, shellfish and wildlife; (3) loss of income or impairment to earning capacity if a claimant derives half or more of his income from activities related to damaged natural resources or property; and (4) loss of tax revenue by the State or local governments due to damage for a 1-year period. The liability of a major facility or vessel for such damages is to be imposed without limit and regardless of fault. In addition, any person who is responsible for a discharge is subject to liability without fault for the full extent of cleanup and removal costs.

The administrator of the fund is directed to promote and facilitate settlements directly between the alleged discharger and the claimant. If a settlement is not reached, the bill provides for prompt resolution of claims through arbitration and appellate review. Attorneys' fees may be imposed against alleged dischargers who unsuccessfully appeal arbitration determinations in order to promote the objective of prompt settlement of claims. The Public Advocate is authorized to represent those persons whose claims may be best asserted as a class. Upon payment of claims, the administrator of the fund is directed to seek recovery from the person responsible for the discharge.

In addition to the provisions for damages, the act makes any violator of its provisions subject to a penalty of \$10,000.00. This penalty may be imposed for each day of a violation which is continuing in nature.

ASSEMBLY AGRICULTURE AND ENVIRONMENT
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1903

STATE OF NEW JERSEY

DATED: NOVEMBER 8, 1976

In its original form, this bill would have provided for the establishment of a \$50,000,000.00 New Jersey Spill Compensation Fund, financed by a \$0.02 per barrel tax on hazardous substances transferred into this State, to be used to fund cleanup and removal costs and to provide compensation for direct and indirect damages resulting from spills of oil and other hazardous substances. This bill would also have imposed absolute, no-fault liability upon major facilities or vessels responsible for such discharges, with the exception that a discharger could use an act of war as the sole defense to liability for a discharge.

After considerable deliberation, the Assembly Committee on Agriculture and Environment adopted a number of substantial amendments to this bill. The purpose of these amendments is to minimize the adverse economic effects of a spill compensation fund while maximizing the protection provided thereby.

These amendments would (1) impose a maximum limit on discharger liability, with the fund remaining absolutely liable; (2) expand the defenses available to a discharger to include sabotage, governmental negligence, acts of God, and acts of third parties in addition to acts of war; (3) reduce the tax imposed from \$0.02 to \$0.01 per barrel of hazardous substance transferred, except in the event of a major discharge or discharges, where the tax would be imposed at the rate of up to \$0.04 until all pending claims were paid; (4) reduce the fund from \$50 million to \$18-25 million, depending on the amount of claims paid in the first 3 years; (5) require annual reports to the Legislature concerning the administration of the fund; (6) preclude the consideration of sewage and sewage sludge as hazardous substances for the purposes of taxation and spill compensation; (7) direct the Department of Environmental Protection to adopt rules and regulations concerning the availability of preventative, cleanup and removal procedures, personnel and equipment to be used by major facilities in the event of a discharge of a hazardous substance; (8) limit compensation for loss of income or impairment of earning to losses exceeding

10% of the income derived from real or personal property or natural resources damaged or destroyed by a discharge; (9) extend compensation to cover the cost of borrowing money to ameliorate the adverse effects of a discharge, pending the full payment of a claim for damages; (10) authorize the appropriation of interest which accrues to the fund in excess of \$18,000,000.00, or \$25,000,000.00, as the case may be, for research on the prevention and the effects of spills of hazardous substances and for research and demonstration programs concerning the causes and abatement of ocean pollution; (11) prohibit the administrator or any employee of the administrator or the department from acting as an arbitrator of claims pending against the fund; (12) increase and harmonize the penalties for claimants and dischargers for the giving of false information as a part of, or in response to, any claim made for damages as a result of a discharge; and (13) require the Commissioner of Environmental Protection, in the event of a Federal statute providing for spill compensation, to make recommendations to the Legislature concerning any necessary amendments to this act.

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 1409

with Senate committee amendment

STATE OF NEW JERSEY

DATED: JULY 21, 1976

This bill prohibits the discharge of petroleum and other hazardous substances, provides for the cleanup and removal of any such discharge, establishes a spill compensation fund to finance such cleanup and removal and to pay for damages caused by such discharge, specifies the circumstances under which the fund or the discharger is liable for such cleanup costs and damage payments, and provides for the raising of revenues for the fund through means of an excise tax on petroleum and other hazardous substances. The purpose of the bill is to protect the economy and environment of this State.

The bill, as amended by the committee, provides that the spill compensation fund shall be strictly liable, without regard to fault, for all cleanup and removal costs and for all direct and indirect damages no matter by whom sustained. The discharger shall also be strictly liable, without regard to fault, for all cleanup and removal costs, but liable only for damages which do not exceed \$50,000,000.00 for each major facility or \$150.00 per gross ton for each vessel, unless such discharge was the result of gross negligence or willful misconduct by the owner, operator or person in charge or was in violation of certain specified standards; in those cases, the discharger shall be liable for the full amount of such damages.

In its original form, the bill authorized a discharger to utilize an act of war as a legal defense in a liability action. Committee amendments further authorize a discharger to utilize the defenses of an act of sabotage, an act of governmental negligence, an act of God (as defined in the committee amendments) and an act of third parties.

The committee amendments reduce the tax from \$0.02 per barrel transferred to \$0.01 per barrel transferred, but add a provision for a tax of \$0.02 per barrel transferred for the duration of any period during which claims against the fund exceed the existing balance of the fund.

The tax imposed herein would continue to be levied until such time as the balance in the fund equals \$35,000,000.00, a figure which was

10% of the income derived from real or personal property or natural resources damaged or destroyed by a discharge; (9) extend compensation to cover the cost of borrowing money to ameliorate the adverse effects of a discharge, pending the full payment of a claim for damages; (10) authorize the appropriation of interest which accrues to the fund in excess of \$18,000,000.00, or \$25,000,000.00, as the case may be, for research on the prevention and the effects of spills of hazardous substances and for research and demonstration programs concerning the causes and abatement of ocean pollution; (11) prohibit the administrator or any employee of the administrator or the department from acting as an arbitrator of claims pending against the fund; (12) increase and harmonize the penalties for claimants and dischargers for the giving of false information as a part of, or in response to, any claim made for damages as a result of a discharge; and (13) require the Commissioner of Environmental Protection, in the event of a Federal statute providing for spill compensation, to make recommendations to the Legislature concerning any necessary amendments to this act.

ASSEMBLY AGRICULTURE AND ENVIRONMENT
COMMITTEE

STATEMENT TO
SENATE, No. 1409
[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: NOVEMBER 8, 1976

The Senate Energy and Environment Committee statement adequately explains the provisions of this bill as approved by the Senate. The Assembly Agriculture and Environment Committee, however, has made a number of additional amendments.

These amendments would (1) preclude the consideration of sewage and sewage sludge as hazardous substances for the purposes of taxation and spill compensation; (2) direct the Department of Environmental Protection to adopt rules and regulations concerning the availability of preventative, cleanup and removal procedures, personnel and equipment to be used by major facilities in the event of a discharge of a hazardous substance; (3) limit compensation for loss of income or impairment of earning to losses exceeding 10% of the income derived from real or personal property or natural resources damaged or destroyed by a discharge; (4) extend compensation to cover the cost of borrowing money to ameliorate the adverse effects of a discharge, pending the full payment of a claim for damages; (5) further reduce the ordinary level of the Fund from \$35 million to \$18-25 million, depending on the amount of claims paid in the first 3 years; but (6) increase the "emergency" tax rate from a flat \$0.02 to up to \$0.04 per barrel transferred in the event of a major discharge or discharges; (7) authorize the appropriation of interest which accrues to the Fund in excess of \$18,000,000.00, or \$25,000,000.00, as the case may be, for research on the prevention and the effects of spills of hazardous substances and for research and demonstration programs concerning the causes and abatement of ocean pollution; (8) prohibit the administrator or any employee of the administrator or the department from acting as an arbitrator of claims pending against the Fund; and (9) increase and harmonize the penalties for claimants and dischargers for the giving of false information as a part of, or in response to any claim made for damages pursuant to this act.

The purpose of these amendments is to minimize the adverse economic effects of the spill compensation fund while maximizing the protection provided thereby.

[ASSEMBLY REPRINT]
SENATE, No. 1409
[OFFICIAL COPY REPRINT]

with Assembly committee amendments adopted November 8, 1976

STATE OF NEW JERSEY

INTRODUCED APRIL 26, 1976

By Senators RUSSO, McGAHN, MERLINO, CAFIERO, BUEHLER,
BEADLESTON, HAGEDORN, PARKER and FAY

Referred to Committee on Energy and Environment

AN ACT prohibiting the discharge of petroleum and other hazardous substances, providing for the cleanup and removal of any such discharge, establishing a spill compensation fund, providing for the raising of revenues therefor, all in order to protect the economy and environment of this State, supplementing Title 58 of the Revised Statutes and repealing sections 1 through 10 of the "New Jersey Water Quality Improvement Act of 1971," approved June 1, 1971 (P. L. 1971, c. 173; C. 58:10-23.1 et seq.).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Spill
2 Compensation and Control Act."

1 2. The Legislature finds and declares: That New Jersey's lands
2 and waters constitute a unique and delicately balanced resource;
3 that the protection and preservation of these lands and waters
4 promotes the health, safety and welfare of the people of this State;
5 that the tourist and recreation industry dependent on clean waters
6 and beaches is vital to the economy of this State; that the State is
7 the trustee, for the benefit of its citizens, of all natural resources
8 within its jurisdiction; and that the storage and transfer of
9 petroleum products and other hazardous substances between
10 vessels, between facilities and vessels, and between facilities,
11 whether onshore or offshore, is a hazardous undertaking and im-
12 poses risks of damage to persons and property within this State.

13 The Legislature finds and declares that the discharge of
14 petroleum products and other hazardous substances within or
15 outside the jurisdiction of this State constitutes a threat to the

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

16 economy and environment of this State. The Legislature intends
 17 by the passage of this act to exercise the powers of this State to
 18 control the transfer and storage of hazardous substances and to
 19 provide liability for damage sustained within this State as a result
 20 of any discharge of said substances, by requiring the prompt
 21 containment and removal of such pollution and substances, and to
 22 provide a fund for swift and adequate compensation to resort
 23 businesses and other persons damaged by such discharge.

1 3. Unless the context clearly indicates otherwise, the following
 2 terms shall have the following meanings:

3 a. "Administrator" means the chief executive of the New Jersey
 4 Spill Compensation Fund;

5 b. "Barrel" means 42 United States gallons or 159.09 liters or
 6 an appropriate equivalent measure **[]** **set by the director for*
 6A *hazardous substances which are other than fluid or which are not*
 6B *commonly measured by the barrel;**

7 c. "Board" means a board of arbitration convened by the admini-
 8 strator to settle disputed disbursements from the fund;

9 d. "Cleanup and removal costs" means all costs associated with
 10 a discharge incurred by the State or its political subdivisions or
 11 their agents **or any person with written approval from the depart-*
 11A *ment** in the (1) removal or attempted removal or, (2) taking
 12 of reasonable measures to prevent or mitigate damages to the
 13 public health, safety, or welfare, including but not limited to, public
 14 and private property, shorelines, beaches, surface waters, water
 15 columns and bottom sediments, soils and other affected property,
 16 including wildlife and other natural resources;

17 e. "Commissioner" means the Commissioner of Environmental
 18 Protection;

19 f. "Department" means the Department of Environmental
 20 Protection;

21 g. "Director" means the Director of the Division of Taxation
 22 in the Department of the Treasury;

23 h. "Discharge" means **[the]** **any** intentional or uninten-
 24 tional **action or omission resulting in the** releasing, spilling,
 24A leaking, pumping, pouring, emitting, emptying or dumping of
 25 hazardous substances into the waters of the State or onto lands
 26 from which it might flow or drain into said waters, or into waters
 27 outside the jurisdiction of the State when damage may result to
 28 the lands, waters or natural resources within the jurisdiction of
 29 the State;

30 i. "Fund" means the New Jersey Spill Compensation Fund:

31 j. "Hazardous substances" means such elements and compounds,
 32 including petroleum products, which are defined as such by the
 33 *department, after public hearing, and which shall be consistent to*
 34 *the maximum extent possible with the list of hazardous substances*
 35 *adopted by the* Federal Environmental Protection Agency pur-
 35A suant to section 311 of the Federal Water Pollution Control Act
 35B Amendments of 1972 (P. L. 92-500, 33 U. S. C. 1251 et seq.) ***[.]*** *;
 35C ***provided, however, that sewage and sewage sludge shall not be*
 25D *considered as hazardous substances for the purposes of this act;***

36 k. "Major facility" includes but is not limited to any refinery,
 37 storage or transfer terminal, pipeline, deep water port, drilling
 38 platform or any appurtenance related to any of the preceding
 39 that is used or is capable of being used to refine, produce, store,
 40 handle, transfer, process or transport hazardous substances. A
 41 vessel shall be considered a major facility only when hazardous
 42 substances are transferred between vessels. Facilities with total
 43 *combined* above-ground or buried storage capacity of less than
 44 400,000 gallons are not major facilities for the purposes of this act.

45 l. "Natural resources" means all land, fish, shellfish, wildlife,
 46 biota, air, waters and other such resources owned, managed, held
 47 in trust or otherwise controlled by the State;

48 m. "Owner" or "operator" means with respect to a vessel, any
 49 person owning, operating or chartering by demise such vessel;
 50 with respect to any major facility, any person owning such facility,
 51 or operating it by lease, contract or other form of agreement; with
 52 respect to abandoned or derelict major facilities, the person who
 53 owned or operated such facility immediately prior to such abandon-
 54 ment, or the owner at the time of discharge;

55 n. "Person" means public or private corporations, companies,
 56 associations, societies, firms, partnerships, joint stock companies,
 57 individuals, the United States, the State of New Jersey, and any
 58 of its political subdivisions or agents;

59 **[o.]** "Person in charge" means the individual immediately
 60 responsible for the operation of a major facility and, in the case of
 61 a vessel, the master and pilot of such vessel;**]***

62 **[p.]** *o.* "Petroleum" means oil or petroleum of any kind
 63 and in any form including, but not limited to, oil, petroleum, fuel oil,
 64 oil sludge, oil refuse, oil mixed with other wastes and crude oils;

65 **[q.]** *p.* "Taxpayer" means the owner or operator of a
 66 major facility subject to the tax provisions of this act;

67 **[r.]** *q.* "Tax period" means every calendar month on the
 68 basis of which the taxpayer is required to report under this act;

69 **[s.]** *r.* "Transfer" means onloading or offloading between

70 *major* facilities and vessels or vessels and *major* facilities,
 71 and from vessel to vessel or *major* facility to *major* facility,
 71A except for fueling or refueling operations;

72 *t.* *s.* "Vessel" means every description of watercraft or
 73 other contrivance that is practically capable of being used as a
 74 means of commercial transportation of hazardous substances upon
 75 the water, whether or not self-propelled;

76 *u.* *t.* "Waters" means the ocean and its estuaries to the
 77 seaward limit of the State's jurisdiction, all springs, streams and
 78 bodies of surface or groundwater, whether natural or artificial,
 79 within the boundaries of this State*;*;

80 *u.* "Act of God" means an act exclusively occasioned by an
 81 unanticipated grave natural disaster without the interference of
 82 any human agency.*

1 4. The discharge of hazardous substances is prohibited. This
 2 section shall not apply to discharges of hazardous substances
 3 pursuant to and in compliance with the conditions of a Federal or
 4 State permit.

1 5. Each owner or operator of a major facility shall submit to the
 2 department the following information:

3 a. The number of barrels or another measurement of the storage
 4 capacity of the facility;

5 b. Average daily throughput of the facility;

6 c. A primary and contingency cleanup and removal plan which
 7 includes, but is not limited to, an inventory of;

8 (1) The storage and transfer capacity of the facility;

9 (2) The containment and removal equipment, including, but not
 10 limited to, vehicles, vessels, pumps, skimmers, booms, chemicals,
 11 and communication devices, to which the facility has access**[,
 12 within 1 hour of a discharge whether]** through direct ownership
 13 or by contract or membership in a discharge cleanup organization
 14 recognized by the department**, as well as the time lapse following
 14A a discharge which precedes such access**;

15 (3) The trained personnel which are required and available
 16 **[within 1 hour of a discharge]** to operate such containment and
 17 removal equipment **and the time lapse following a discharge
 17A which precedes such availability**;

18 (4) All equipment and trained personnel used or employed in
 19 any capacity at the facility to prevent discharges of hazardous
 20 substances;

21 (5) The terms of agreement and operation plan of any discharge
 22 cleanup organization to which the owner or operator of the facility
 23 belongs;

24 (6) The type and amount of hazardous substances transferred,
25 refined, processed or stored at the facility;

26 d. The steps taken to insure prevention of a discharge;

27 e. The source, nature of, and conditions of financial responsi-
28 bility, established by any one, or a combination of the following:

29 (1) Insurance;

30 (2) Qualification as a self-insurer;

31 (3) Surety bonds payable to the fund**[.]** **,****

32 ***f. The department shall promulgate rules and regulations, as*
33 *provided in section 21 of this act, establishing standards for the*
34 *availability of preventative, cleanup and removal procedures, per-*
35 *sonnel and equipment at any major facility as well as requiring the*
36 *formulation of cleanup and removal plans for each major facility,*
37 *where such plans are not required by existing federal statute, rule*
38 *or regulation. Compliance with such standards and plans shall not*
39 *be deemed a defense in addition to the defenses enumerated in sub-*
40 *section d. of section 8 of this act.***

1 6. Any person responsible for causing a discharge shall immedi-
2 ately notify the department. Failure to so notify shall make per-
3 sons liable to the penalty provisions of section 22 of this act.

1 7. Whenever any hazardous substance is discharged, the depart-
2 ment shall act to remove or arrange for the removal of such dis-
3 charge, unless it determines such removal will be done properly
4 and expeditiously by the owner or operator of the **major** facility
5 or any other source from which the discharge occurs.

6 Removal of hazardous substances and actions to minimize dam-
7 age from discharges shall, to the greatest extent possible, be in
8 accordance with the National Contingency Plan for removal of oil
9 and hazardous substances established pursuant to section 311 (c)
10 (2) of the Federal Water Pollution Control Act Amendments of
11 1972 (P. L. 92-500, 33 U. S. C. 1251 et seq.).

12 Whenever the department acts to remove a discharge or contracts
13 to secure prospective removal services, it is authorized to draw
14 upon the money available in the fund. Such moneys shall be used
15 to pay promptly for all cleanup costs incurred by the department
16 in removing or in minimizing damage caused by such discharge.

17 Nothing in this section is intended to preclude removal and
18 cleanup operations by any person threatened by such discharges,
19 provided such persons coordinate and obtain approval for such
20 actions with ongoing State or Federal operations. No action taken
21 by any person to contain or remove a discharge shall be construed
22 as an admission of liability for said discharge. No person who

23 renders assistance in containing or removing a discharge shall be
 24 liable for any civil damages to third parties resulting solely from
 25 acts or omissions of such person in rendering such assistance ex-
 26 cept for acts or omissions of gross negligence or willful misconduct.
 27 In the course of cleanup operations, no person shall discharge any
 28 detergent into the waters of this State without prior authorization
 29 of the commissioner.

1 8. a. *~~Any~~ owner or operator of a major facility or vessel which
 2 has discharged a hazardous substance~~]~~* *The fund** shall be
 3 strictly liable, without regard to fault, for all *cleanup and removal*
 4 *costs and for all** direct and indirect damages no matter by whom
 4A sustained, including but not limited to:

5 (1) The cost of restoring, repairing, or replacing any real or
 6 personal property damaged or destroyed by a discharge, any in-
 7 come lost from the time such property is damaged to the time such
 8 property is restored, repaired or replaced, and any reduction in
 9 value of such property caused by such discharge by comparison
 10 with its value prior thereto;

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

13 (3) Loss of income or impairment of earning capacity due to
 14 damage to real or personal property, including natural resources
 15 destroyed or damaged by a discharge~~]~~, if a claimant derives at
 16 least 50% of his earnings from activities related to real or personal
 17 property or natural resources damaged or destroyed by such dis-
 18 charge~~]~~*; ***provided that such loss or impairment exceeds 10%*
 18A *of the amount which claimant derives, based upon income or busi-*
 18B *ness records, exclusive of other sources of income, from activities*
 18C *related to the particular real or personal property or natural re-*
 18D *sources damaged or destroyed by such discharge during the week,*
 18E *month or year for which the claim is filed;***

19 (4) Loss of tax revenue by the State or local governments for
 20 a period of 1 year due to damage to real or personal property
 21 proximately resulting from a discharge~~]~~* **;

21A *** (5) Interest on loans obtained or other obligations incurred by*
 21B *a claimant for the purpose of ameliorating the adverse effects of a*
 21C *discharge pending the payment of a claim in full as provided by*
 21D *this act.***

22 **b. The damages which may be recovered ** by the fund**, with-*
 23 *out regard to fault, **subject to the defenses enumerated in sub-*
 24 *section d. of this section,** against the owner or operator of a*
 25 *major facility or vessel shall not exceed \$50,000,000.00 for each*
 26 *major facility or \$150.00 per gross ton for each vessel, except that*

27 such maximum limitations shall not apply and the owner or oper-
28 ator shall be liable for the full amount of such damages if it can be
29 shown that such discharge was the result of (1) gross negligence or
30 willful misconduct, within the knowledge and privity of the owner,
31 operator or person in charge, or (2) a gross or willful violation of
32 applicable safety, construction or operating standards or regula-
33 tions. Damages which may be recovered from**, or by,** any other
33A person shall be limited to those authorized by common or statutory
33B law.*

34 **[(b.)]** *c.* Any person who has discharged a hazardous sub-
35 stance shall be strictly liable, without regard to fault, for all cleanup
36 and removal costs.

37 **[(c.)]** *d.* An act *or omission* caused solely by war, **[(which**
38 does not include states of insurrection or civil strife,]**]** *sabotage,
39 *governmental negligence, G.I., or a third party or a combination*
40 *thereof** shall be the only **[(defense)]** *defenses* which may be
41 raised by **[(a person)]** *any owner or operator of a major facility
42 *or vessel** responsible for a discharge in any action arising under
43 the provisions of this act. ***For the purposes of this act, no em-*
44 *ployee or agent of such owner or operator shall be considered as a*
45 *third party.*** **Any other person shall have available to him any*
46 *defense authorized by common or statutory law.**

1 9. a. There is hereby levied upon each owner or operator of one
2 or more *major* facilities a tax to insure compensation for cleanup
3 costs and damages associated with any discharge of hazardous
4 substances **to be paid by the transferee**. The tax shall be
5 **[(determined by the director as)]** *measured by the number of*

6 barrels of hazardous substances transferred to the major facility,
7 provided, however, that the same barrel *, including any products
8 derived therefrom,* subject to multiple transfers from or between
9 facilities shall be taxed only once at the point of the first transfer.

10 b. The tax shall be **[(\$1.00)]** *\$2.01* per barrel transferred until
11 the balance in the fund equals or exceeds **[((\$50,000,000.00)]**
12 **[((\$35,000,000.00)]** *(\$35,000,000.00)*. In each fiscal year
13 following any year in which the balance of the fund equals or
14 exceeds **[((\$100,000,000.00)]** **[((\$35,000,000.00)]**
14A **[((\$25,000,000.00)]***, no tax shall be levied unless*: (1)* the current
15 balance in the fund is less than **[((\$30,000,000.00)]** *\$30,000,000.00*
16 or (2) pending claims against the fund exceed **[((\$25,000,000.00)]**
17 **50% of the existing balance of the fund. **The provisions of the*
18 *foregoing notwithstanding should claims paid from the fund not*
19 *exceed \$5,000,000.00 within five years after the tax is first levied, the*

20 tax shall be \$0.01 per barrel transferred until the balance in the
 21 fund equals or exceeds \$18,000,000.00, and thereafter shall not be
 21A levied unless: (1) the current balance in the fund is less than
 21B \$15,000,000.00 or (2) pending claims against the fund exceed 50%
 21C of the existing balance of the fund.** In the event of either such
 21D occurrence and upon certification thereof by the State Treasurer,
 21E the director shall within 10 days of the date of such certification
 21F relevy the excise tax, which shall take effect on the first day of the
 21G month following such relevy. In the event of a major discharge or
 21H or series of discharges resulting in claims against the fund exceed-
 21I ing the existing balance of the fund, the tax shall be levied at the
 22 rate of **[\$0.02]** **\$0.04** per barrel transferred until the
 22A balance in the fund equals pending claims against the fund. Interest
 22B received on moneys in the fund shall be credited to the fund**[.
 22C When]** **; provided, however, that the rate may be set at less
 22D than \$0.04 per barrel transferred if the administrator determines
 22E that the revenue produced by such lower rate shall be sufficient to
 22F pay outstanding claims against the fund within 1 year of such levy.
 23 Should the fund **[equals \$50,000,000.00]** **exceed \$18,000,000.00
 23A or \$25,000,000.00, as herein provided, as a result of such interest**,
 23B the administrator and the commissioner shall report to the Legis-
 23C lature and the Governor concerning the options for the use of
 23D **[those moneys in excess of \$50,000,000.00]** **such interest**.
 24 c. *(1)** Every taxpayer shall on or before the twentieth day of
 24A the month following the close of each tax period render a return
 24B under oath to the director on such forms as may be prescribed by
 24C the director indicating the number of barrels of hazardous sub-
 24D stances transferred *[from]* *to* his *major* facility during the
 24E tax period and at the said time shall pay the full amount of the
 24F tax due. *(2)** Every person who transfers a hazardous substance,
 24G as defined in this act, *and who is subject to the tax under subsec-
 24H tion a.* shall within *[10]* *20* days after *the first* such transfer
 24I *in any fiscal year* register with the director on such form as
 24J shall be prescribed by him.
 24K d. If a return required by this act is not filed, or if a return when
 25 filed is incorrect or insufficient in the opinion of the director, the
 26 amount of tax due shall be determined by the director from such
 27 information as may be available. Notice of such determination
 28 shall be given to the taxpayer liable for the payment of the tax.
 29 Such determination shall finally and irrevocably fix the tax unless
 30 the person against whom it is assessed, within 30 days after re-
 31 ceiving notice of such determination, shall apply to the director
 32 for a hearing, or unless the director on his own motion shall re-

33 determine the same. After such hearing the director shall give
34 notice of his determination to the person to whom the tax is as-
35 sessed.

36 e. Any taxpayer who shall fail to file his return when due or to
37 pay any tax when the same becomes due, as herein provided, shall
38 be subject to such penalties and interest as provided in the "State
39 Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised
40 Statutes. If the Division of Taxation determines that the failure
41 to comply with any provision of this **[act]** *section* was excus-
42 able under the circumstances, it may remit such part or all of the
43 penalty as shall be appropriate under such circumstances.

44 f. (1) Any person failing to file a return, failing to pay the tax,
45 or filing or causing to be filed, or making or causing to be made,
46 or giving or causing to be given any return, certificate, affidavit,
47 representation, information, testimony or statement required or
48 authorized by this act, or rules or regulations adopted hereunder
49 which is willfully false, or failing to keep any records required by
50 this act or rules and regulations adopted hereunder, shall, in ad-
51 dition to any other penalties herein or elsewhere prescribed, be
52 guilty of a misdemeanor.

53 (2) The certificate of the director to the effect that a tax has
54 not been paid, that a return has not been filed, that information
55 has not been supplied or that inaccurate information has been
56 supplied pursuant to the provisions of this act or rules or regula-
57 tions adopted hereunder shall be presumptive evidence thereof.

58 g. In addition to the other powers granted to the director in this
59 **[act]** *section*, he is hereby authorized and empowered;

60 (1) To delegate to any officer or employee of his division such
61 of his powers and duties as he may deem necessary to carry out
62 efficiently the provisions of this **[act]** *section*, and the person
63 or persons to whom such power has been delegated shall possess
64 and may exercise all of said powers and perform all of the duties
65 delegated by the director;

66 (2) To prescribe and distribute all necessary forms for the im-
67 plementation of this **[act]** *section*.

68 h. The tax imposed by this **[act]** *section* shall be governed
69 in all respects by the provisions of the "State Tax Uniform
70 Procedure Law," Subtitle 9 of Title 54 of the Revised Statutes,
71 except only to the extent that a specific provision of this **[act]**
72 *section* may be in conflict therewith.

1 10. The New Jersey Spill Compensation Fund is hereby estab-
2 lished as a nonlapsing, revolving fund in the Department of the

3 Treasury to carry out the purposes of this act. The fund shall be
4 credited with all taxes and penalties related to this act. Interest
5 received on moneys in the fund shall be credited to the fund.

1 11. The State Treasurer shall appoint and supervise an admin-
2 istrator of the fund. The administrator shall be the chief executive
3 of the fund and shall have the following powers and duties:

4 a. To represent the State in meetings with the alleged discharger
5 and claimants concerning liability for the discharge and the amount
6 of the claims;

7 b. To determine if boards of arbitration are needed to settle
8 particular claims;

9 c. To administer boards of arbitration;

10 d. To certify the amount of claims and names of claimants to
11 the State Treasurer.

1 12. Claims shall be filed with the administrator not later than
2 *~~2 years~~* *1 year* after the date of discovery of damage nor
3 later than 6 years after the date of the incident which caused the
4 damage. The administrator shall prescribe appropriate forms and
5 procedures for such claims, which shall include a provision requir-
6 ing the claimant to make a sworn verification of the claim to the
7 best of his knowledge. ***Any person who knowingly gives or
8 causes to be given any false information as a part of any such claim
9 shall, in addition to any other penalties herein or elsewhere pre-
10 scribed be guilty of a misdemeanor.*** *~~Each person's damage
11 claims arising from one incident shall be stated in one form.
12 Damages not included in the claim at the time compensation is made
13 shall be deemed waived.~~* Upon receipt of any claim, the admin-
14 istrator shall as soon as practicable inform all affected parties of
15 the claim.

1 13. The administrator shall attempt to promote and arrange a
2 settlement between the claimant and the person responsible for the
3 discharge. If the source of the discharge can be determined and
4 liability is conceded, the claimant and the alleged discharger may
5 agree to a settlement which shall be final and binding upon the
6 parties and which will waive all recourse against the fund.

1 14. If the source of the discharge is unknown or cannot be
2 determined, the claimant and the administrator shall attempt to
3 arrange a settlement of any claim against the fund. The administra-
4 tor is authorized to enter and certify payment of such settlement
5 subject to such proof and procedures contained in regulations
6 promulgated by the administrator.

1 15. a. Boards of arbitration shall be convened by the administrator
2 when persons alleged to have caused the discharge, the administra-
3 tor or other persons contest the validity or amount of damage claims
4 or cleanup and removal costs presented to the fund for payment.
5 If the source of discharge is not known, any person may contest
6 such claims presented for payment to the fund.

7 b. In the discretion of the administrator, a board of arbitration
8 may consist of three persons or a single neutral person. In the
9 case of three-person boards, one person shall be chosen by the
10 person alleged to have caused the discharge, one person shall be
11 chosen by the claimant, and one person shall be chosen by the first
12 two to serve as chairman. If the two arbitrators cannot agree
13 upon, select, and name the neutral arbitrator after their appoint-
14 ment, the administrator shall request the American Arbitration
15 Association to utilize its procedures to select the neutral arbitrator.
16 If the source of the discharge or liability is not conceded, the ad-
17 ministrator shall request the American Arbitration Association to
18 utilize its procedures to select the neutral arbitrator and an
19 arbitrator normally selected by the absent or unknown person.
20 Representation by any party on the board shall not be considered
21 as any admission of liability for such discharges. In the case of a
22 one-person board, such neutral arbitrator may, in the discretion of
23 the administrator, be selected by the administrator, by agreement
24 of the affected parties or by utilization of the procedures of the
25 American Arbitration Association**; *provided, however, that the*
25A *administrator or any regular employee of the administrator or the*
25B *department shall not act as an arbitrator**.*

26 (1) Arbitrators shall be designated by their principals within 30
27 calendar days after the administrator notifies the principals of
28 claims against the fund arising from a discharge.

29 (2) Should either party fail to name an arbitrator within the
30 designated time, then the administrator shall request the American
31 Arbitration Association to utilize its procedures to select that
32 arbitrator. The two arbitrators thus chosen shall select the neutral
33 arbitrator required by this section.

34 c. One board of arbitration may be convened to hear and deter-
35 mine all claims arising from or related to a common discharge.

36 d. The boards shall have the power to order testimony under
37 oath and may subpoena attendance and testimony of witnesses and
38 the production of such documentary materials pertinent to the
39 issues presented to the board for determination. Each person
40 appearing before the board shall have the right to counsel.

41 e. All costs and expenses approved by the administrator attrib-
42 utable to the employment of any arbitrator shall be payable from
43 the fund.

44 f. All decisions of the boards of arbitration shall be in writing
45 with notification to all appropriate parties, and shall be rendered
46 within 60 calendar days of the final appointment of the board unless
47 the parties otherwise agree in writing to an extension.

48 g. Determinations made by the board shall be final. Any action
49 for judicial review shall be filed in the Appellate Division of the
50 Superior Court within 30 days of the filing of the decision with the
51 administrator.

52 h. No sooner than 30 days after the determination of the arbi-
53 trators, nor more than 60 days thereafter, the arbitrators shall
54 certify all claims settled or arbitrated to the administrator who, in
55 turn, shall certify the amount of the award and the name of the
56 claimant to the State Treasurer who shall pay the award from the
57 fund. ***[No claim shall be paid while any judicial proceeding for**
58 **the review of the arbitrators' decision is pending.]*** In any case
59 in which the person responsible for the discharge seeks judicial
60 review, ***reasonable*** attorneys' fees and costs shall be awarded
61 to the claimant if the decision of the board is affirmed.

1 16. Moneys in the New Jersey Spill Compensation Fund shall be
2 disbursed by the administrator for the following purposes and no
3 others:

4 a. Costs incurred under section 7 of this act;

5 b. Damages as defined in section 8 of this act;

6 c. ***[The sum of not more than \$200,000.00 annually]*** **Such*
7 *sums as may be necessary** for research on the prevention and the
8 effects of spills of hazardous substances on the marine environment
9 and on the development of improved cleanup and removal opera-
9A tions **as may be appropriated by the Legislature* **;* provided,
9B *however, that such sums shall not exceed the amount of interest*
9C *which is credited to the fund,**;*

10 d. Such sums as may be necessary for the boards, general admin-
11 istration of the fund, equipment and personnel costs of the depart-
12 ment and any other State agency related to the enforcement of this
13 act **as may be appropriated by the Legislature* ****[.]** **;***

13A ***e. Such sums as may be appropriated by the Legislature for*
13B *research and demonstration programs concerning the causes and*
13C *abatement of ocean pollution; provided, however, that such sums*
13D *shall not exceed the amount of interest which is credited to the*
13E *fund.***

14 The State Treasurer may invest and reinvest any moneys in said
15 fund in legal obligations of the United States, this State or any of
16 its political subdivisions. Any income or interest derived from such
17 investment shall be included in the fund.

1 17. The Department of the Public Advocate may act to assert
2 such claims as are alleged against the fund by persons who in the
3 opinion of the Public Advocate, may be better represented as a
4 class in recovery of damage or cleanup costs provided by this act.
5 All moneys recovered for this class from the fund shall be distrib-
6 uted by the Department of the Treasury after certification by the
7 administrator. Failure by the Department of Public Advocate to
8 act on behalf of such class shall in no way prejudice the claims to
9 be asserted by such class or individuals under the provisions of this
10 act.

1 18. Payment of any cleanup costs or damages by the fund arising
2 from a single incident shall be conditioned upon the administrator
3 acquiring by subrogation all rights of the claimant to recovery of
4 such costs or damages from the discharger **or other responsible*
5 *party**. The administrator shall then seek satisfaction from the
6 discharger **or other responsible party** in the Superior Court if
7 the discharged **or other responsible party** does not reimburse
8 the fund. In any such suit, ***except as provided by subsection d.*
8A *of section 8 of this act,** the administrator need prove only that*
9 an unlawful discharge occurred which was the responsibility of the
10 **[alleged]* discharger *or other responsible party**. The admin-
11 istrator is hereby authorized and empowered to compromise and
12 settle the amount sought for costs and damages from the
13 **[alleged]* discharger *or other responsible party** and any
14 penalty arising under this act.

1 19. In the event that the total awards for a specific occurrence
2 exceed the current balance of the fund, the immediate award shall
3 be paid on a prorated basis, and all claimants paid on a prorated
4 basis shall be paid, as determined by the administrator, a pro rata
5 share of all funds received by the fund until the total amount of the
6 proven damages is paid to the claimant or claimants. The admin-
7 istrator may also provide through regulation to fix the priority for
8 the payment of claims based on extreme hardship.

1 20. Any claim for costs of cleanup, civil penalties or damages by
2 the State, and any claim for damages by any injured person, may
3 be brought directly against the bond, the insurer, or other per-
4 son providing evidence of financial responsibility.

1 21. The commissioner, the State Treasurer and the director,
2 respectively, are authorized to adopt, amend, repeal, and enforce
3 such rules and regulations pursuant to the Administrative Pro-
4 cedure Act, P. L. 1968, c. 410 (C. 52:14B-1 et seq.) as they may deem
5 necessary to accomplish their respective purposes and respon-
6 sibilities under this act.

1 22. Any person ***[found in violation]*** ***who knowingly gives*
2 *or causes to be given any false information as a part of, or in*
3 *response to any claim made pursuant to this act for cleanup costs,*
4 *removal costs, direct damages or indirect damages resulting from*
5 *a discharge, or who otherwise violates any*** of the provisions of
6 this act or any rule promulgated thereunder shall be liable to a
7 penalty of not more than **[\$10,000.00]** **\$25,000.00** for each
8 offense, to be collected in a summary proceeding under the "Penalty
9 Enforcement Law" (N. J. S. 2A:58-1 et seq.) or in a court of
10 competent jurisdiction wherein injunctive relief has been requested.
11 The Superior Court shall have jurisdiction to enforce said Penalty
12 Enforcement Law. If the violation is of a continuing nature each
13 day during which it continues shall constitute an additional,
14 separate and distinct offense.

1 23. Nothing in this act shall be deemed to preclude the pursuit of
2 any other civil or injunctive remedy by any person. The remedies
3 provided in this act are in addition to those provided by existing
4 statutory or common law, but no person who receives compensation
5 for damages or cleanup costs pursuant to any other State or
6 Federal law shall be permitted to receive compensation for the same
7 damages or cleanup costs under this act.

1 24. If any section, subsection, provision, clause or portion of
2 this act is adjudged unconstitutional or invalid by a court of
3 competent jurisdiction, the remainder of this act shall not be
4 affected thereby.

1 25. This act, being necessary for the general health, safety, and
2 welfare of the people of this State, shall be liberally construed to
3 effect its purposes.

1 **26. The commissioner and administrator shall make an annual*
2 *report to the Legislature and Governor which shall describe the*
3 *quality and quantity of spills of hazardous substances, the costs*
4 *and damages paid by and recovered for the fund, and the economic*
5 *and environmental impact on the State as a result of the adminis-*
6 *tration of this act.**

1 **27. If the United States Congress enacts legislation providing*
2 *compensation for the discharge of petroleum and hazardous*

3 *products, the commissioner shall determine to what degree that*
4 *legislation provides the needed protection for our citizens, busi-*
5 *nesses and environment and shall make the appropriate recom-*
6 *mendations to the Legislature for amendments to this act.**

1 ***[26.]*** *28.* Sections 1 through 10 of P. L. 1971, c. 173
2 (C. 58:10-2.1 to 58:19-23.10) are repealed.

1 ***[27.]*** *29.* This act shall take effect on the first day of the
2 third month after enactment.

1 24. If any section, subsection, provision, clause or portion of
 2 this act is adjudged unconstitutional or invalid by a court of
 3 competent jurisdiction, the remainder of this act shall not be af-
 4 fected thereby.

1 25. This act, being necessary for the general health, safety, and
 2 welfare of the people of this State, shall be liberally construed to
 3 effect its purposes.

1 26. The commissioner and administrator shall make an annual
 2 report to the Legislature and Governor which shall describe the
 3 quality and quantity of spills of hazardous substances, the costs
 4 and damages paid by and recovered for the fund, and the economic
 5 and environmental impact on the State as a result of the adminis-
 6 tration of this act.

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 2 compensation for the discharge of petroleum and hazardous
 3 products, the commissioner shall determine to what degree that
 4 legislation provides the needed protection for our citizens, busi-
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 2 to 58:19-23.10) are repealed.

1 29. This act shall take effect on the first day of the third month
 2 after enactment.

SPONSORS STATEMENT

This bill is identical to Senate Bill No. 1409 (with Assembly committee amendments) and to Assembly Bill No. 1903, which were the subject of joint public hearings last June by the Senate and Assembly committees on the environment. Senate Bill No. 1409 passed the Senate on August 12, 1976; the Assembly instead passed the bill originating there, Assembly Bill No. 1903, which is pending before the Senate.

The legislation, a product of joint effort in both Houses, prohibits the discharge of petroleum and other hazardous substances into New Jersey waters and provides for the cleanup of any such discharge and for a spill compensation fund. It addresses the dangers posed to the coastal environment by the imminence of offshore drilling.

51796 (1976)

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

JANUARY 6, 1977

FOR FURTHER INFORMATION

KATHY FORSYTH

Governor Brendan Byrne Thursday signed a bill establishing a \$25 million fund to pay clean-up costs and compensate for financial loss to individuals and businesses for any damages caused by a spill of oil or other hazardous substances.

The fund will be financed by a 1¢ per barrel tax on the transfer of oil or other hazardous substances between major facilities or handling hazardous substances.

Each facility subject to the bill, including refineries, tank farms, pipelines or other related systems, is required to submit specific plans providing for the prevention and clean-up of spills. The Department of Environmental Protection will promulgate regulations setting standards for the adequacy of such plan.

The bill, A-1903, was signed at the U.S. Coast Guard Station in Gloucester City. It was sponsored by Assemblyman Daniel Newman (D-Ocean).

Governor Byrne said "the measure was the most comprehensive spill control legislation in the nation."

"Its significance lies not only in the fact that it creates a fund to compensate victims of oil spills, because in a sense, no fund can fully compensate these victims," he said.

"The bill attacks the oil spill problem in a balanced way. It includes provisions for the preventing our environment as well as compensating for insults to that environment,"

The Governor said the bill does not "represent an anti feeling towards oil companies, or an anti feeling towards responsible development of our oil resources."

-more-

"I think that this bill and all of our actions will represent an anti feeling towards irresponsible people who insult our shores or who wish to go forward in an irrespsible way in the development, storage and supply of oil," he said.

"I hope that the liability portion of this bill will be the most unused piece of legislation that anybody ever enacted in New Jersey. I hope that the oil companies and those responsible for the transporation of oil will guard our coastline and our tourist and recreation industry as the fragile area and the fragile industry that it is," the Governor said.

The bill covers spills and discharges anywhere in New Jersey, including those which affect groundwater supplies, and also protects against any spills taking place outside the state which could cause damage in New Jersey.

Private individuals, businesses and municipalities will be entitled to payment from the fund for a wide range of damages, including restoration or replacement of real or personal property, loss of tax revenues up to one year, and loss or impairment of earning capacity.

Interest on the fund, when appropriate by the legislature, may be used for research and demonstration projects concerning all types of ocean pollution.
