

58:10-23.11b

LEGISLATIVE HISTORY CHECKLIST

NJSA 58:10-23.11b (Spill Compensation and Control Act--
amendments)

LAWS OF 1979 CHAPTER 346

Bill No. A3542

Sponsor(s) Lesniak

Date Introduced July 16, 1979

Committee: Assembly Agriculture and Environment

Senate Revenue, Finance and Appropriations

Amended during passage Yes ~~xxx~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly Dec. 17, 1979

Senate Jan. 3, 1980

Date of approval Jan. 23, 1980

Following statements are attached if available:

Sponsor statement Yes ~~xxx~~

Committee Statement: Assembly Yes ~~xxx~~

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 NJ. Legislature. Assembly. Agriculture and Environment
P777 Committee.
1979a Public hearing on A3542, held 10-10-79. Trenton, 1979.

974.90 NJ. Hazardous Waste Advisory Commission.
P777 Report...January, 1980. Trenton, 1980.
1980

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ASSEMBLY, No. 3542

STATE OF NEW JERSEY

INTRODUCED JULY 16, 1979

By Assemblyman LESNIAK

Referred to Committee on Agriculture and Environment

AN ACT to amend the "Spill Compensation and Control Act,"
approved January 6, 1977 (P. L. 1976, c. 141).

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

1 1. Section 3 of P. L. 1976, c. 141 (C. 58:10-23.11b) is amended to
2 read as follows:

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

5 a. "Administrator" means the chief executive of the New Jersey
6 Spill Compensation Fund;

7 b. "Barrel" means 42 United States gallons or 159.09 liters or
8 an appropriate equivalent measure set by the director for hazard-
9 ous substances which are other than fluid or which are not com-
10 monly measured by the barrel;

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

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

22 e. "Commissioner" means the Commissioner of Environmental
23 Protection;

24 f. "Department" means the Department of Environmental
25 Protection;

26 g. "Director" means the Director of the Division of Taxation in
27 the Department of the Treasury;

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

28 h. "Discharge" means any intentional or unintentional action
 29 or omission resulting in the releasing, spilling, leaking, pumping,
 30 pouring, emitting, emptying or dumping of hazardous substance
 31 into the waters of the State or onto lands from which it might
 32 flow or drain into said waters, or into waters outside the juris-
 33 diction of the State when damage may result to the lands, waters
 34 or natural resources within the jurisdiction of the State;

35 i. "Fair market value" means the invoice price of the hazardous
 36 substances transferred including transportation charges; but where
 37 no price is so fixed, "fair market value" shall mean the market
 38 price as of the close of the nearest day to the transfer paid for
 39 similar hazardous substances as shall be determined by the tax-
 40 payer pursuant to rules of the director.

41 **[i.]** j. "Fund" means the New Jersey Spill Compensation Fund;

42 **[j.]** k. "Hazardous substances" means such elements and com-
 43 pounds, including petroleum products, which are defined as such
 44 by the department, after public hearing, and which shall be con-
 45 sistent to the maximum extent possible with, *and which shall*
 46 *include*, the list of hazardous substances adopted by the Federal
 47 Environmental Protection Agency pursuant to Section 311 of the
 48 Federal Water Pollution Control Act Amendments of 1972 *as*
 49 *amended by the Clean Water Act of 1977* (**[P. L. 92-500,]** 33 U.S.C.
 50 1251 et seq.) *and the list of toxic pollutants designated by Congress*
 51 *or the EPA pursuant to Section 307 of that act*; provided, however
 52 that sewage and sewage sludge shall not be considered as haz-
 53 arduous substances for the purposes of this act:

54 **[k.]** l. "Major facility" includes but is not limited to any
 55 refinery, storage or transfer terminal, pipeline, deep water port,
 56 drilling platform or any appurtenance related to any of the pre-
 57 ceding that is used or is capable of being used to refine, produce,
 58 store, handle, transfer, process or transport hazardous substances.
 59 A vessel shall be considered a major facility only when hazardous
 60 substances are transferred between vessels. **[Facilities with total**
 61 **combined above-ground or buried storage capacity of less than**
 62 **400,000 gallons are not major facilities for the purposes of this**
 63 **act.]**

64 *A facility shall not be considered a major facility for the purpose*
 65 *of this act unless it has total combined above-ground or buried*
 66 *storage capacity of—*

67 (1) *50,000 gallons or more for hazardous substances which are*
 68 *other than petroleum or petroleum products, or*

69 (2) *400,000 gallons or more for hazardous substances of all kinds.*

70 For the purposes of this definition, "storage capacity" shall
71 mean only that capacity which is dedicated to, used for or intended
72 to be used for storage of hazardous substances. Where appropriate
73 to the nature of the facility, storage capacity may be determined
74 by the intended or actual use of open land or unenclosed space as
75 well as by the capacities of tanks or other enclosed storage spaces.

76 [l.] m. "Natural resources" means all land, fish, shellfish, wild-
77 life, biota, air, waters and other such resources owned, managed,
78 held in trust or otherwise controlled by the State;

79 [m.] n. "Owner" or "operator" means with respect to a vessel,
80 any person owning, operating or chartering by demise such vessel;
81 with respect to any major facility, any person owning such facility,
82 or operating it by lease, contract or other form of agreement; with
83 respect to abandoned or derelict major facilities, the person who
84 owned or operated such facility immediately prior to such abandon-
85 ment, or the owner at the time of discharge;

86 [n.] o. "Person" means public or private corporations, com-
87 panies, associations, societies, firms, partnerships, joint stock com-
88 panies, individuals, the United States, the State of New Jersey
89 and any of its political subdivisions or agents;

90 [o.] p. "Petroleum" *or "petroleum products"* means oil or
91 petroleum of any kind and in any form including, but not limited
92 to, oil, petroleum, *gasoline, kerosene,* fuel oil, oil sludge, oil ref-
93 use, oil mixed with other wastes and crude oils; however, any com-
94 pound designated by specific chemical name to the list of hazardous
95 substances adopted by the department pursuant to subsection 3(k)
96 shall not be considered petroleum or a petroleum product for the
96A purposes of this act.

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

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

101 [r.] s. "Transfer" means unloading or offloading between major
102 facilities and vessels or vessels and major facilities, and from
103 vessel to vessel or major facility to major facility, except for fueling
104 or refueling operations and except that with regard to the move-
105 ment of hazardous substances other than petroleum, it shall also
106 include any unloading of or offloading from a major facility;

107 [s.] t. "Vessel" means every description of water craft or other
108 contrivance that is practically capable of being used as a means
109 of commercial transportation of hazardous substances upon the
110 water, whether or not self-propelled;

111 [t.] u. "Waters" means the ocean and its estuaries to the sea-
 112 ward limit of the State's jurisdiction, all springs, streams and
 113 bodies of surface or groundwater, whether natural or artificial,
 114 within the boundaries of this State[.].

115 [u. "Act of God" means an act exclusively occasioned by an
 116 unanticipated grave natural disaster without the interference of
 117 any human agency.]

1 *2. Section 5 of P. L. 1976, c. 141 (C. 58:10-23.11d) is amended
 2 to read as follows:

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

5 a. The number of barrels or another measurement of the storage
 6 capacity of the facility;

7 b. Average daily throughput of the facility;

8 c. A primary and contingency cleanup and removal plan which
 9 includes, but is not limited to, an inventory of:

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

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

17 (3) The trained personnel which are required and available to
 18 operate such containment and removal equipment and the time
 19 lapse following a discharge which proceeds such availability;

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

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

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

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

29 e. The source, nature of, and conditions of financial responsi-
 30 bility[.], established by any one, or a combination of the following;

31 (1) Insurance;

32 (2) Qualification as a self-insurer;

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

34 f. The department shall promulgate rules and regulations, as
 35 provided in section 21 of this act, establishing standards for the
 36 availability of preventative, cleanup and removal procedures, per-

37 sonnel and equipment at any major facility *with a total combined*
 38 *above-ground or buried storage capacity of 500,000 gallons or more,*
 39 *as well as requiring the formulation of cleanup and removal plans*
 40 *for each such major facility, where such plans are not required by*
 41 *existing Federal statute, rule or regulation. Compliance with such*
 42 *standards and plans shall not be deemed a defense in addition to*
 43 *the defenses enumerated in subsection d. of section 8 of this act.*

1 3. Section 6 of P. L. 1976, c. 141 (C. 58:10-23.11e) is amended
 2 to read as follows:

3 6. Any person **[responsible]** *who may be subject to liability for*
 4 **[causing]** *a discharge which occurred prior to or after the effective*
 5 *date of the act of which this act is amendatory shall immediately*
 6 *notify the department. Failure to so notify shall make persons*
 7 *liable to the penalty provisions of section 22 of this act.**

1 ***[2.]*** ***4.*** Section 7 of P. L. 1976, c. 141 (C. 58:10-23.11f.) is
 2 amended to read as follows:

3 7. a. Whenever any hazardous substance is discharged, the de-
 4 partment **[shall]** *may in its discretion act to remove or arrange for*
 5 *the removal of such discharge *or may direct the discharger to*
 6 *remove, or arrange for the removal of, such discharge***[,** unless it*
 7 *determines such removal will be done properly and expeditiously*
 8 *by the owner or operator of the major facility or any source from*
 8A *which the discharge occurs]. *Any discharger who fails to comply*
 8B *with such a directive shall be liable to the department in an amount*
 8C *equal to three times the cost of such removal.**

9 Removal of hazardous substances and actions to minimize
 10 damage from discharges shall, to the greatest extent possible, be in
 11 accordance with the National Contingency Plan for removal of oil
 12 and hazardous substances established pursuant to section 311 (c)
 13 (2) of the Federal Water Pollution Control Act Amendments of
 14 1972 (P. L. 92-500, 33 U. S. C. 1251 et seq.).

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

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

27 liable for any civil damages to third parties resulting solely from
 28 acts or omissions of such person in rendering such assistance except
 29 for acts or omissions of gross negligence or willful misconduct.
 30 In the course of cleanup operations, no person shall discharge
 31 any detergent into the waters of this State without prior authoriza-
 32 tion of the commissioner.

33 *b. Notwithstanding any other provisions of P. L. 1976, c. 141*
 34 *(C. 58:10-23.11 et seq.), the department, after notifying the ad-*
 35 *ministrator and subject to the approval of the administrator*[,]**
 36 *with regard to the availability of funds therefor, may remove or*
 37 *arrange for the removal of any hazardous substance which:*

38 *(1) Has not been discharged from a grounded or disabled vessel*
 39 *if the department determines that such removal is necessary to*
 40 *prevent an imminent discharge of such hazardous substance;*

41 *(2) Has not been discharged if the department determines that*
 42 *such substance is not satisfactorily stored or contained and said*
 43 *substance possesses any one or more of the following characteris-*
 44 *tics:*

45 *(a) explosiveness;*

46 *(b) high flammability;*

47 *(c) radioactivity;*

48 *(d) chemical properties which in combination with any dis-*
 49 *charged hazardous substance at the same storage facility would*
 50 *create a substantial risk of imminent damage to public health*
 51 *or safety or an imminent and severe damage to the environ-*
 52 *ment;*

53 *(e) is stored in a container from which its discharge is im-*
 54 *minent as a result of contact with a hazardous substance which*
 55 *has already been discharged and such additional discharge*
 56 *would create a substantial risk of imminent damage to public*
 57 *health or safety or imminent and severe damage to the en-*
 58 *vironment; or*

59 *(f) high toxicity and is stored or being transported in a*
 60 *container or motor vehicle, truck, railcar or other mechanized*
 61 *conveyance form which its discharge is imminent as a result*
 62 *of the significant deterioration or the precarious location of*
 63 *the container, motor vehicle, truck, railcar or other mechanized*
 64 *conveyance, and such discharge would create a substantial*
 65 *risk of imminent damage to public health or safety or imminent*
 66 *and severe damage to the environment*[,]**; or*

67 *(3) Has been discharged prior to the effective date of the act to*
 68 *which this act is amendatory, if such discharge poses a substantial*
 69 *risk of imminent damage to the public health or safety or imminent*
 70 *and severe damage to the environment.*

71 c. If and to the extent that he determines that funds are available,
 72 the administrator shall approve and make payments for any cleanup
 73 and removal costs incurred by the department for the removal of
 74 a hazardous substance other than petroleum as authorized by sub-
 75 section b. of this section; provided that in determining the avail-
 76 ability of funds, the administrator shall not include as available
 77 funds revenues realized or to be realized from the tax on the trans-
 78 fer of petroleum to the extent that such revenues result from a
 79 tax levied at a rate in excess of \$0.01 per barrel, pursuant to sub-
 80 section 9b. of the act to which this act is amendatory, unless the
 81 administrator determines that the sum of claims paid by the fund
 82 on behalf of petroleum discharges or removals plus pending reason-
 83 able claims against the fund on behalf of petroleum discharges or
 84 removals is greater than 30% of the sum of all claims paid by the
 85 fund plus all pending, reasonable claims against the fund.

86 d. The administrator may only approve and make payments for
 87 any cleanup and removal costs incurred by the department for the
 88 removal of a hazardous substance discharged prior to the effective
 89 date of the act to which this act is amendatory, pursuant to subsec-
 90 tion b. of this section, if, and to the extent that, he determines that
 91 adequate funds from another source are not or will not be avail-
 92 able; and further provided, with regard to the cleanup and removal
 93 costs incurred for discharges which occurred prior to the effective
 94 date of the act to which this act is amendatory, the administrator
 95 may not during any 1 year period pay more than *~~[\$2,500,000.00]~~*
 96 *\$3,000,000.00* in total or more than *~~[\$1,000,000.00]~~*
 97 *\$1,500,000.00* for any discharge or related set or series of dis-
 97A charges.

98 e. Any expenditures made by the administrator pursuant to this
 99 act shall constitute a first priority claim and lien paramount to all
 100 other claims and liens upon the revenues and all real and personal
 101 property of the discharger, whether or not the discharger is in-
 102 solvent.

1 *~~[3.]~~* *5.* Section 8 of P. L. 1976, c. 141 (C. 58:10-23.11g) is
 2 amended to read as follows:

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

6 (1) The cost of restoring, repairing, or replacing any real or
 7 personal property damaged or destroyed by a discharge, any income
 8 lost from the time such property is damaged to the time such
 9 property is restored, repaired or replaced, and any reduction in

10 value of such property caused by such discharge by comparison
11 with its value prior thereto;

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

14 (3) Loss of income or impairment of earning capacity due to
15 damage to real or personal property, including natural resources
16 destroyed or damaged by a discharge; provided that such loss or
17 impairment exceeds 10% of the amount which claimant derives,
18 based upon income or business records, exclusive of other sources
19 of income, from activities related to the particular real or personal
20 property or natural resources damaged or destroyed by such dis-
21 charge during the week, month or year for which the claim is filed;

22 (4) Loss of tax revenue by the State or local governments for
23 a period of 1 year due to damage to real or personal property
24 proximately resulting from a discharge;

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

29 b. The damages which may be recovered by the fund, without
30 regard to fault¹, subject to the defenses enumerated in subsection
31 d. of this section,² *subject to the defenses enumerated in subsec-*
32 *tion d. of this section** against the owner or operator of a major
33 facility or vessel, shall not exceed \$50,000,000.00 for each major
34 facility or \$150.00 per gross ton for each vessel, except that such
35 maximum limitation shall not apply and the owner or operator shall
36 be liable, *jointly and severally*, for the full amount of such damages
37 if it can be shown that such discharge was the result of (1) gross
38 negligence or willful misconduct, within the knowledge and privity
39 of the owner, operator or person in charge, or (2) a gross or willful
40 violation of applicable safety, construction or operating standards
41 or regulations. Damages which may be recovered from, or by, any
42 other person shall be limited to those authorized by common or
42a statutory law.

43 c. Any person who has discharged a hazardous substance *or is*
44 *in any way responsible for any hazardous substance which the*
45 *department has removed or is removing pursuant to subsection b.*
46 *of section 7 of this act shall be strictly liable, jointly and severally,*
47 without regard to fault, for all cleanup and removal costs.

48 ¹d. An act or omission caused solely by war, sabotage, govern-
49 mental negligence, God, or a third party or a combination thereof
50 shall be the only defenses which may be raised by any owner or
51 operator of a major facility or vessel responsible for a discharge

52 in any action arising under the provisions of this act. For the
 53 purposes of this act, no employee or agent of such owner or
 54 operator shall be considered as a third party. Any other person
 55 shall have available to him any defense authorized by common or
 56 statutory law.】

57 *d. *An act or omission caused solely by war, sabotage, or God,*
 58 *or a combination thereof, shall be the only defenses which may be*
 59 *raised by any owner or operator of a major facility or vessel re-*
 60 *sponsible for a discharge in any action arising under the provisions*
 61 *of this act.**

1 *【4.】* *6.* Section 9 of P. L. 1976, c. 141 (C. 58:10-23.11h) is
 2 amended to read as follows:

3 9. a. There is hereby levied upon each owner or operator of one
 4 or more major facilities a tax to insure compensation for cleanup
 5 costs and damages associated with any discharge of hazardous
 6 substances to be paid by the transferee; provided, however, that
 7 in the case of a major facility which operates as a public storage
 8 terminal for hazardous substances owned by others, the owner of
 9 the hazardous substance transferred to such major facility or his
 10 authorized agent shall be considered to be the transferee **or trans-*
 11 *feror, as the case may be** for the purposes of this section and shall
 12 be deemed to be a taxpayer for purposes of this act. Where such
 13 person has failed to file a return or pay the tax imposed by this act
 14 within 60 days after the due date thereof, the director shall forth-
 15 with take appropriate steps to collect same from the owner of the
 16 hazardous substance. In the event the director is not successful in
 17 collecting said tax then on notice to the owner or operator of the
 18 public storage terminal of said fact said owner of operator shall
 19 not release any hazardous substance owned by the taxpayer. The
 20 director may forthwith proceed to satisfy any tax liability of the
 21 taxpayer by seizing, selling or otherwise disposing of said hazard-
 22 ous substance to satisfy the taxpayer's tax liability and to take any
 23 further steps permitted by law for its collection. For the purposes
 24 of this act public storage terminal shall mean a public or privately
 25 owned major facility operated for public use which is used for the
 26 storage or transfer of hazardous substances. The tax shall be
 27 measured by the number of barrels *or the fair market value, as the*
 28 *case may be*, of hazardous substances transferred to the major fa-
 29 cility, provided, however, that the same barrel, including any prod-
 30 ucts derived therefrom, subject to multiple transfers from or be-
 31 tween major facilities shall be taxed only once at the point of the
 32 first transfer*【; provided, however, that in the case of the transfer
 33 of hazardous substances other than petroleum, each transfer

34 whether between major facilities or to or from a major facility shall
 35 be subject to tax]*. When a hazardous substance other than pe-
 36 troleum *which has not been previously taxed* is transferred from
 37 a major in-State facility to a facility which is not a major facility,
 38 the transferor shall be liable for tax payment for said transfer.

39 b. The tax shall be \$0.01 per barrel transferred and in the case
 40 of the transfer of hazardous substances other than petroleum, the
 41 tax shall be the greater of \$0.01 per barrel or ~~*[0.1%]*~~ *0.4%* of
 42 the fair market value of the product, until the balance in the fund
 43 equals or exceeds ~~[\$25,000,000.00]~~ \$50,000,000.00*: provided, how-
 43A ever, that with respect to transfers of hazardous substances other
 43B than petroleum which are in mixtures containing any precious
 43C metal or metals, the tax shall be the greater of \$0.01 per barrel or
 43D 0.4% of the fair market value of the predominant hazardous sub-
 43E stance of the mixture. For the purposes of this section, precious
 43F metals shall mean gold, silver, platinum, palladium, iridium, rho-
 43G dium, and ruthenium*. In each fiscal year following any year in
 44 which the balance of the fund equals or exceeds ~~[\$25,000,000.00]~~
 45 \$50,000,000.00, no tax shall be levied unless (1) the current balance
 46 in the fund is less than ~~[\$20,000,000.00]~~ \$40,000,000.00 or (2) pend-
 47 ing claims against the fund exceed 50% of the existing balance
 48 of the fund. The provisions of the foregoing notwithstanding,
 49 should claims paid from or pending against the fund not exceed
 50 \$5,000,000.00 within 3 years after the tax is first levied, the tax
 51 shall be \$0.01 per barrel transferred *or 0.4% of the fair market
 52 value of the product, as the case may be,* until the balance
 53 in the fund equals or ~~*[exceeds]*~~ *exceeds* ~~[\$18,000,000.00]~~
 54 \$36,000,000.00, and thereafter shall not be levied unless: (1) the
 55 current balance in the fund is less than ~~[\$15,000,000.00]~~
 56 \$30,000,000.00 or (2) pending claims against the fund exceed 50%
 56A of the existing balance of the fund. In the event of either such
 57 occurrence and upon certification thereof by the State Treasurer,
 57A the director shall within 10 days of the date of such certification
 57B relevy the excise tax, which shall take effect on the first day of the
 57C month following such relevy. *With respect to the tax imposed
 57D upon the transfer of hazardous substances which are other than
 57E petroleum or petroleum products, if the revenues from such tax
 57F exceed \$7,000,000.00 during any calendar year, such excess shall be
 57G refunded or credited to the taxpayers who paid such tax during
 58 the calendar year. The refund or credit shall be based upon the
 58A amount of taxes paid by each taxpayer on transfers of hazardous
 58B substances which are other than petroleum or petroleum products
 58C for the calendar year in proportion to all taxes paid by all taxpayers

58D on such transfers during said year; provided, however, that if at
 58E the end of the calendar year the increased tax rate as authorized
 58F by this subsection or subsection i. is in effect, no refund or credit
 58G shall be allowed for such calendar year; and further, provided that
 59 no refund or credit shall be allowed for a calendar year if by reason
 59A of such refund or credit a condition would occur which would au-
 59B thorize the imposition of the tax at the higher rate authorized in
 59C this subsection or subsection i. However, a partial refund or credit
 59D shall be allowed to the extent that such a condition would not oc-
 59E cur.* In the event of a major discharge or series of discharges
 60 *of petroleum or petroleum products* resulting in claims against
 61 the fund exceeding the existing balance of the fund, the tax shall
 62 be levied at the rate of \$0.04 per barrel transferred until the
 63 balance in the fund equals 150% of pending claims against the
 64 fund; provided, however, that the rate may be set at less than
 65 \$0.04 per barrel transferred if the administrator determines that
 66 the revenue produced by such lower rate shall be sufficient to
 67 pay outstanding claims against the fund within 1 year of such
 68 levy. *In the event of a major discharge or series of discharges of
 68A hazardous substances other than petroleum or petroleum products
 68B resulting in claims against the fund exceeding the existing balance
 68C of the fund, the tax shall be levied at the rate of the greater of \$0.04
 68D per barrel transferred, or 0.8% of the fair market value of such
 68E hazardous substance, until the balance in the fund equals 150% of
 68F pending claims against the fund; provided, however, that the rate
 68G may be set at less than \$0.04 per barrel transferred or 0.8% of the
 69 fair market value of such hazardous substance if the administrator
 69A determines that the revenue produced by such lower rate shall be
 69B sufficient to pay outstanding claims against the fund within 1 year
 69C of such levy.* Interest *~~received~~* *received* on moneys in the
 69D fund shall be credited to the fund. Should the fund exceed
 70 ~~[\$18,000,000.00]~~ \$36,000,000.00 or ~~[\$25,000,000.00]~~ \$50,000,000.00,
 71 as herein provided, as a result of such interest, the administrator
 72 and the commissioner shall report to the Legislature and the Gov-
 73 ernor concerning the options for the use of such interest.

74 c. (1) Every taxpayer and owner or operator of a public storage
 75 terminal for hazardous substances shall on or before the twentieth
 76 day of the month following the close of each tax period render a
 77 return under oath to the director on such forms as may be pre-
 78 scribed by the director indicating the number of barrels of hazar-
 79 dous substances transferred ~~[to the major facility during the tax~~
 80 ~~period]~~ and where appropriate, the fair market value of the
 81 hazardous substances transferred to or from the major facility,

82 and at said time the taxpayer shall pay the full amount of the
83 tax due.

84 (2) Every taxpayer or owner or operator of a major facility or
85 vessel which transfers a hazardous substance, as defined in this
86 act, and who is subject to the tax under subsection a. shall within
87 20 days after the first such transfer in any fiscal year register with
88 the director on such form as shall be prescribed by him.

89 d. If a return required by this act is not filed, or if a return when
90 filed is incorrect or insufficient in the opinion of the director, the
91 amount of tax due shall be determined by the director from such
92 information as may be available. Notice of such determination
93 shall be given to the taxpayer liable for the payment of the tax.
94 Such determination shall finally and irrevocably fix the tax unless
95 the person against whom it is assessed, within 30 days after receiv-
96 ing notice of such determination, shall apply to the director for a
97 hearing, or unless the director on his own motion shall redetermine
98 the same. After such hearing the director shall give notice of his
99 determination to the person to whom the tax is assessed.

100 e. Any taxpayer who shall fail to file his return when due or to
101 pay any tax when the same becomes due, as herein provided, shall
102 be subject to such penalties and interest as provided in the "State
103 Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised
104 Statutes. If the Division of Taxation determines that the failure
105 to comply with any provision of this section was excusable under
106 the circumstances, it may remit such part or all of the penalty as
107 shall be appropriate under such circumstances.

108 f. (1) Any person failing to file a return, failing to pay the tax,
109 or filing or causing to be filed, or making or causing to be made,
110 or giving or causing to be given any return, certificate, affidavit,
111 representation, information, testimony or statement required or
112 authorized by this act, or rules or regulations adopted hereunder
113 which is willfully false, or failing to keep any records required
114 by this act or rules and regulations adopted hereunder, shall, in
115 addition to any other penalties herein or elsewhere prescribed, be
116 guilty of a misdemeanor.

117 (2) The certificate of the director to the effect that a tax has not
118 been paid, that a return has not been filed, that information has
119 not been supplied or that inaccurate information has been supplied
120 pursuant to the provisions of this act or rules or regulations
121 adopted hereunder shall be presumptive evidence thereof.

122 g. In addition to the other powers granted to the director in this
123 section, he is hereby authorized and empowered:

124 (1) To delegate to any officer or employee of his division such of
 125 his powers and duties as he may deem necessary to carry out
 126 efficiently the provisions of this section, and the person or persons
 127 to whom such power has been delegated shall possess and may
 128 exercise all of said powers and perform all of the duties delegated
 129 by the director;

130 (2) To prescribe and distribute all necessary forms for the
 131 implementation of this section.

132 b. The tax imposed by this "[section]" *act* shall be governed
 133 in all respects by the provisions of the "State Tax Uniform Pro-
 134 cedure Law," Subtitle 9 of Title 54 of the Revised Statutes, except
 135 only to the extent that a specific provision of this "[section]" *act*
 136 may be in conflict therewith.

137 i. *Notwithstanding any other provisions of this section, the*
 138 *Treasurer may order the director to levy the tax on all hazardous*
 139 *substances other than petroleum at a specified rate greater than*
 140 *\$0.01 per barrel or "[0.1%]" *0.4%* of the fair market value of*
 141 *the product, whichever is greater, but in no event to exceed the*
 142 *greater of \$0.04 per barrel or "[0.4%]" *0.6%* of the fair market*
 143 *value of the product, if any as long as the administrator determines*
 143a *the following:*

144 (1) *That pending, reasonable claims against the fund for hazar-*
 145 *dous substances other than petroleum exceed 70% of the existing*
 146 *balance of the fund, and*

147 (2) *That the sum of the claims paid by the fund on behalf of*
 148 *discharges or removals of hazardous substances other than petro-*
 149 *leum plus pending, reasonable claims against the fund on behalf*
 150 *of discharges or hazardous substances other than petroleum is*
 151 *equal to or greater than 70% of all claims paid by the fund plus*
 152 *all pending, reasonable claims against the fund.*

153 **The provisions of this subsection shall not preclude the impo-*
 154 *sition of the tax at the higher rate authorized under subsection b.*
 155 *of this section.*

1 7. Section 22 of P. L. 1976, c. 141 (C. 58:10-23.11u) is amended
 2 to read as follows:

3 22. a. Any person who knowingly gives or causes to be given any
 4 false information as a part of, or in response to, any claim made
 5 pursuant to this act for cleanup costs, removal costs, direct damages
 6 or indirect damages resulting from a discharge, or who otherwise
 7 violates any of the provisions of this act or any rule promulgated
 8 thereunder shall be liable to a penalty of not more than \$25,000.00
 9 for each offense, to be collected in a summary proceeding under
 10 the "Penalty Enforcement Law," (N. J. S. 2A:58-1 et seq.) or in a

11 court of competent jurisdiction wherein injunctive relief has been
12 requested. The Superior Court shall have jurisdiction to enforce
13 said Penalty Enforcement Law. If the violation is of a continuing
14 nature each day during which it continues shall constitute an addi-
15 tional, separate and distinct offense.

16 *b. If any person violates any of the provisions of this act, the*
17 *department may institute civil action in the Superior Court for*
18 *injunctive relief to prohibit and prevent the continuation of the*
19 *violation or violations and said court may proceed in a summary*
20 *manner.**

1 **[4.]* *8.* This act shall take effect immediately*, and shall be*
2 *applicable to transfers of hazardous substances other than pe-*
3 *troleum or petroleum products on and after April 1, 1980*.*

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137 i. Notwithstanding any other provisions of this section, the
138 Treasurer may order the director to levy the tax on all hazardous
139 substances other than petroleum at a specified rate greater than
140 \$0.01 per barrel or 0.1% of the fair market value of the product,
141 whichever is greater, but in no event to exceed the greater of \$0.04
142 per barrel or 0.1% of the fair market value of the product, if and
143 as long as the administrator determines the following:

144 (1) That pending, reasonable claims against the fund for hazar-
145 dous substances other than petroleum exceed 70% of the existing
146 balance of the fund, and

147 (2) That the sum of the claims paid by the fund on behalf of
148 discharges or removals of hazardous substances other than petro-
149 leum plus pending, reasonable claims against the fund on behalf
150 of discharges or hazardous substances other than petroleum is
151 equal to or greater than 70% of all claims paid by the fund plus
152 all pending, reasonable claims against the fund.

1 4. This act shall take effect immediately.

STATEMENT

This bill would amend the scope of authority of the Department of Environmental Protection to cleanup discharges of hazardous substances into the environment and would increase the liability of the Spill Compensation Fund to pay for the cleanup of such discharges. Further, the bill would distinguish between the petroleum and chemical industries for tax purposes.

The following significant amendments to the Spill Compensation and Control Act would be made:

Section 3.

The definition of "fair market value" would be added to the law. Under the proposed amendments the treasurer would be able to assess an increase in the tax on a non-petroleum hazardous substance based upon the fair market of the substance rather than at a rate of one cent per barrel, whichever is greater.

The definition of "major facility" would be amended to decrease the storage capacity requirement for non-petroleum hazardous substances. Under present law all facilities with a total capacity of more than 400,000 gallons are major facilities. Under the proposed amendment there would be two categories of facilities:

(1) Facilities with a capacity of 50,000 gallons or more for hazardous substances other than petroleum products and

(2) Facilities with a storage capacity of 400,000 gallons or more for all hazardous substances.

The definition of "transfer" would be expanded to state that with regard to transfer of hazardous substances other than petroleum the transfer would include the on-loading or off-loading to or from a major facility. Under present law the tax is imposed only on transfers between major facilities.

Section 7.

This section would be amended to give the DEP the discretion to act to remove a discharge. Under present law the DEP is required to act to remove a discharge unless they determine that the discharger will do so in an expeditious manner.

Other amendments would expand and clarify the scope of authority of DEP to respond to certain critical situations:

Section 7, as amended, would provide that the DEP after notifying the administrator of the Spill Fund and subject to his approval with regard to the availability of funds for cleanup could remove or arrange for the removal of a hazardous substance in three specific categories:

(1) Where a substance has not been discharged from a grounded or disabled vessel if the department determines that such removal were necessary to prevent an imminent discharge of the hazardous substance.

(2) Where a substance has not yet been discharged, if the department determines that such substance is not satisfactorily stored or contained and that the substance possesses any one or more of the following characteristics: (a) explosiveness, (b) high flammability, (c) radioactivity, (d) chemical properties which in combination with a hazardous substance already discharged at the same facility would create a substantial risk of imminent danger to public health or safety or an imminent and severe damage to the environment, (e) where a substance is stored in a container from which its discharge is imminent because another hazardous substance has already been discharged and is corroding the container of the stored hazardous substance where the additional discharge would create a substantial risk of imminent damage to the public health or safety or an imminent and severe damage to the environment, or (f) where the substance is of high toxicity and is being stored in a container or being transported in a vehicle or railcar from which its discharge is imminent as a result of the significant deterioration or the precarious location of the container or the truck or railcar and where such discharge would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment.

(3) Where a substance has been discharged prior to the effective date of the original act, if such discharge poses a substantial risk of imminent damage to the public health or safety or imminent and severe damage to the environment. While the department could arrange for the cleanup and removal of these ancient source discharges the bill would contain a limitation on funds expended for ancient source discharges. Under the amendments there would be a cap of \$2.5 million in total and no more and \$1 million for a discharge or related set of discharges from ancient sources during any 1 year. This section also contains a limitation on the availability of funds for the cleanup of non-petroleum substances based upon a computation of the amount of money which has been spent for the discharge of hazardous substances and the amount of money which could be spent for pending reasonable claims against the fund.

Section 8.

This section would be amended to specifically provide for joint and several liability of dischargers for cleanup and removal costs and for damages from spills of hazardous substances. This section also has been amended to remove the defenses to strict liability which exists under the present law.

Section 9.

This section would be amended to provide that transfers of hazardous substances other than petroleum would be subject to a tax when transferred between major facilities or to or from a major facility. Under present law transfers of all hazardous substances are only taxed at the first transfer in the State between major facilities. Petroleum transfers still be subject only to tax on first transfer and only between major facilities.

This section would also be amended to create two different levels of taxation for petroleum and non-petroleum hazardous substances. Petroleum would continue to be taxed at a rate of one cent per barrel transferred. The transfer of non-petroleum hazardous substances would be taxed at a rate of \$0.01 per barrel or 0.1% of the fair market value of the product whichever is greater. Other amendments would increase the level of the fund from \$25 million to \$50 million per year to increase the amount of money available for cleanup and would allow the level of the escalator tax to remain in effect until the balance of the fund equals 150% of the pending claims against the fund rather than 100% of the pending claims as the law now provides.

ASSEMBLY AGRICULTURE AND ENVIRONMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3542

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 17, 1979

The purposes of this bill are to increase the size of the Spill Compensation Fund to more adequately deal with discharges of hazardous substances, to provide greater parity between the respective contributions of the petroleum industry and chemical industry into the fund, to strengthen the authority of the Department of Environmental Protection in dealing with hazardous discharges, and to open the fund to ancient or imminent spills which pose a threat to the public health and safety.

The major elements of the bill as amended are as follows:

1. A provision that hazardous substances other than petroleum may be taxed at the rate of \$.01 per barrel, or .4% of their fair market value, whichever is greater;
2. A provision amending the definition of "major facility" to reduce the storage capacity required for non-petroleum hazardous substances from 400,000 gallons to 50,000 gallons, except that the existing 400,000 gallons definition will be retained for the cleanup and removal plans, personnel, and equipment required pursuant to subsection f. of section 5.;
3. A provision that requires any person who may be liable for a discharge to notify the department thereof;
4. A provision that the department may direct a discharger to cleanup and remove a spill, and subjects any discharger who fails to observe such a directive to treble damages;
5. A provision that permits the department to use the fund to clean up "imminent spills," and "ancient" spills, up to \$3,000,000.00 per year or up to \$1,500,000.00 per spill;
6. A provision that removes the defenses of governmental negligence and third party from the list of defenses that may be raised by a discharger in a court action;

7. A provision that imposes a \$7,000,000.00 cap per calendar year on the fund, with provisions for pro rata refund or credit to taxpayers of all moneys collected in excess of such cap;

8. Provisions for separate accelerators for the chemical and petroleum industries so as to ensure that chemical spill claims trigger the chemical "accelerator," and petroleum spill claims trigger the petroleum "accelerator;";

9. A provision for injunctive relief;

10. A provision requiring the DEP to incorporate the EPA list of hazardous substances into the State list.
