

58:10-23.11f

LEGISLATIVE HISTORY CHECKLIST

NJSA 58:10-23.11f (Drinking water--contaminated--claims--  
spill compensation fund)

LAWS 1981 CHAPTER 25

Bill No. A2040

Sponsor(s) Gormley and Stewart

Date Introduced Sept. 22, 1980

Committee: Assembly Agriculture and Environment

Senate Energy and Environment

Amended during passage Yes  
according to Governor's recommendations

Amendments denoted by asterisks

Date of Passage: Assembly Oct. 16, 1980

Re-enacted 2-2-81

Senate Dec. 11, 1980

Re-enacted 2-2-81

Date of approval Feb. 9, 1981

Following statements are attached if available:

Sponsor statement Yes  No

Committee Statement: Assembly  No

Senate Yes  No

Fiscal Note  No

Veto Message Yes  No

Message on signing  No

Following were printed:

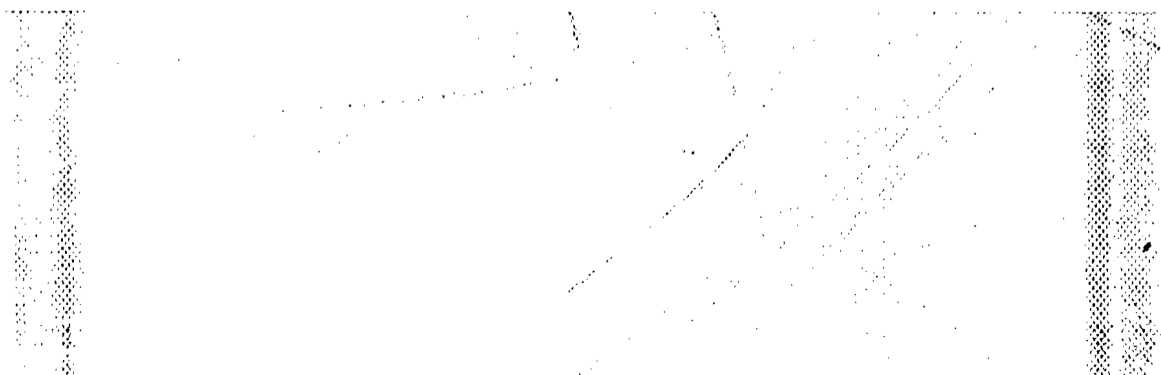
Reports  No

Hearings  No

Judicial opinion mentioned in Senate committee statement:

/ State Dept. of Environmental Protection v. Ventron  
(Super. Ct. Ch. Div., August 27, 1979)

6/22/81



25  
2-9-81  
[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 2040

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 22, 1980

By Assemblymen GORMLEY and STEWART

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

3 7. a. Whenever any hazardous substance is discharged, the de-  
4 partment may, in its discretion act to remove or arrange for the  
5 removal of such discharge or may direct the discharger to remove,  
6 or arrange for the removal of, such discharge. Any discharger  
7 who fails to comply with such a directive shall be liable to the  
8 department in an amount equal to three times the cost of such  
9 removal.

10 Removal of hazardous substances and actions to minimize  
11 damage from discharges shall, to the greatest extent possible, be in  
12 accordance with the National Contingency Plan for removal of oil  
13 and hazardous substances established pursuant to section 311 (c)  
14 (2) of the Federal Water Pollution Control Act Amendments of  
15 1972 (P. L. 92-500, 33 U. S. C. 1251 et seq.).

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

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

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

29 acts or omissions of such person in rendering such assistance except  
30 for acts or omissions of gross negligence or willful misconduct.  
31 In the course of cleanup operations, no person shall discharge  
32 any detergent into the waters of this State without prior authoriza-  
33 tion of the commissioner.

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

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

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

46 (a) explosiveness;

47 (b) high flammability;

48 (c) radioactivity;

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

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

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

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

72 c. If and to the extent that he determines that funds are available,  
73 the administrator shall approve and make payments for any cleanup

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

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

99 e. *Notwithstanding any other provisions of P. L. 1976, c. 141,*  
 100 *the administrator, upon the approval of the department \*after*  
 101 *considering, among any other relevant factors, its priorities for*  
 102 *spending funds pursuant to P. L. 1976, c. 141,\* and within the*  
 103 *limits of available funds, shall make payments for the restoration*  
 104 *or replacement of\*, or connection to an alternative water supply*  
 104A *for,\* any private \***[or public]**\* \*residential\* well \***[or other***  
 104B *potable water supply source]\* destroyed, contaminated, or im-*  
 104C *paired as a result of a discharge prior to the effective date of*  
 104D *P. L. 1976, c. 141\*, provided however total payments for said pur-*  
 104E *pose shall not exceed \$500,000.00 for the period between the effec-*  
 104F *tive date of the subsection (e) and January 1, 1983, and in any*  
 104G *calendar year thereafter\*.*

105 **[e.]** f. Any expenditures made by the administrator pursuant  
 106 to this act shall constitute a first priority claim and lien paramount  
 107 to all other claims and liens upon the revenues and all real and  
 108 personal property of the discharger, whether or not the discharger  
 109 is insolvent.

1 2. This act shall take effect immediately.

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## STATEMENT

The purpose of this bill is to permit property owners whose drinking water supply has been contaminated by a discharge of a hazardous substance to make a claim against the Spill Compensation Fund for restoration or replacement of that water supply source notwithstanding that the discharge may have occurred prior to the effective date of the "Spill Compensation Act." Since it often takes years for hazardous substances to leach into the soil deep enough to affect water sources and years for court actions to recover damages for irresponsible disposal of such substances, it is unreasonable to expect individuals to pay for replacement or restoration of their contaminated water supplies or use inconvenient and expensive alternative water supplies until they can be compensated for their loss by the responsible parties.

A2040 (1980)

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2040

STATE OF NEW JERSEY

DATED: NOVEMBER 24, 1980

This bill would permit property owners whose drinking water supply has been contaminated by a discharge of a hazardous substance to make a claim against the Spill Compensation Fund for restoration or replacement of that water supply source, notwithstanding that the discharge may have occurred prior to the effective date of the "Spill Compensation and Control Act," (P. L. 1976, c. 141). As a result of a recent judicial opinion, that act has been held to be prospective, rather than retroactive. With respect to claims for cleanup and removal of discharges of hazardous substances, the Legislature has already provided, through the enactment of P. L. 1979, c. 346, that P. L. 1976, c. 141 be applied retroactively, subject to certain limitations. This bill would provide such retroactivity with respect to potable water supply damage claims, provided that funds are available therefor, and that the payment of these claims is approved by the Department of Environmental Protection.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

January 22, 1981

ASSEMBLY BILL NO. 2040

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Assembly Bill No. 2040 with my recommendations for amendment.

This bill would permit property owners whose drinking water supply has been contaminated by a discharge of a hazardous substance to make a claim against the Spill Compensation Fund for restoration or replacement of that water supply source notwithstanding that the discharge may have occurred prior to the effective date of the "Spill Compensation Act" (P.L. 1976, c.141).

The immediate purpose of the bill is to assist homeowners in Jackson Township whose wells have been contaminated by toxic wastes from a nearby landfill. I believe these homeowners and others similarly situated should receive such governmental aid to cope with these health hazards.

This bill as passed, however, would permit claims by public or private water purveyors which could deplete the Fund and leave nothing to recompense single-family homeowners. Claims on the Fund have been so great that since October of this year, the Fund has been in a statutory deficit position--pending reasonable claims have exceeded Fund balances. The Department of Treasury has been working with the Department of Environmental Protection on a controlled spending basis to enable continuing cleanup of the two most urgent spills, while also assuring adequate funds for sizeable obligations already incurred. At this time, a new responsibility should not be imposed on the Fund unless balances are first allowed to accrue to a prudent level or new funding is provided.

I would suggest amendments in order to match the reach of A-2040 with the resources of the Fund. The amendments would limit the Fund availability to private residential wells and limit payments to \$500,000 per year. These changes would direct this new Fund assistance to Jackson Township and similar cases. A technical change also would require the Department of Environmental Protection to consider its cleanup spending priorities.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

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Accordingly, I am returning Assembly Bill No. 2040 and recommend it be amended as follows:

Page 3, Section 1, Line 100: after "department" insert "after considering, among any other relevant factors, its priorities for spending funds pursuant to P.L. 1976, c.141,"

Page 3, Section 1, Line 102: after "of" insert ", or connection to an alternative water supply for,"

Page 3, Section 1, Line 102: after "private" delete "or public" and insert "residential"

Page 3, Section 1, Lines 102 and 103: after "well" delete "or other potable water supply source"

Page 3, Section 1, Line 104: delete "." and insert ", provided however total payments for said purpose shall not exceed \$500,000 for the period between the effective date of the subsection (e) and January 1, 1983, and in any calendar year thereafter."

Respectfully,

/s/ Brendan Byrne

Attest:

/s/ Harold L. Hodes

CHIEF OF STAFF, SECRETARY