

58:10-23.11b

LEGISLATIVE HISTORY CHECKLIST
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(Oil Spill Rapid Response Act)

NJSA: 58:10-23.11b

LAWS OF: 1995 **CHAPTER:** 16

BILL NO: S843

SPONSOR(S): Kryllos

DATE INTRODUCED: March 15, 1994

COMMITTEE: **ASSEMBLY:** Environment

SENATE: Natural Resources

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Second reprint enacted denoted by superscript numbers

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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

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COMMITTEE STATEMENT: **ASSEMBLY:** Yes

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[SECOND REPRINT]

SENATE, No. 843

STATE OF NEW JERSEY

INTRODUCED MARCH 15, 1994

By Senators KYRILLOS and MCGREEVEY

1 AN ACT concerning certain discharges of petroleum, and
2 amending P.L.1976, c.141 and P.L.1977, c.74.

3

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

6 ²[1. This act shall be known and may be cited as the "Oil Spill
7 Rapid Response and Cleanup Act."]²

8 ²[2.] 1.2 Section 3 of P.L.1976, c.141 (C.58:10-23.11b) is
9 amended to read as follows:

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

12 [a.] "Act of God" means an act exclusively occasioned by an
13 unanticipated, grave natural disaster without the interference of
14 any human agency;

15 "Administrator" means the chief executive of the New Jersey
16 Spill Compensation Fund;

17 [b.] "Barrel" means 42 United States gallons or 159.09 liters or
18 an appropriate equivalent measure set by the director for
19 hazardous substances which are other than fluid or which are not
20 commonly measured by the barrel;

21 [c.] "Board" means a board of arbitration convened by the
22 administrator to settle disputed disbursements from the fund;

23 [d.] "Cleanup and removal costs" means all costs associated
24 with a discharge, incurred by the State or its political
25 subdivisions or their agents or any person with written approval
26 from the department in the: (1) removal or attempted removal of
27 hazardous substances, or (2) taking of reasonable measures to
28 prevent or mitigate damage to the public health, safety, or
29 welfare, including, but not limited to, public and private
30 property, shorelines, beaches, surface waters, water columns and
31 bottom sediments, soils and other affected property, including
32 wildlife and other natural resources, and shall include costs
33 incurred by the State for the indemnification and legal defense of
34 contractors pursuant to sections 1 through 11 of P.L.1991, c.373
35 (C.58:10-23.11f8 et seq.);

36 [e.] "Commissioner" means the Commissioner of
37 Environmental Protection;

38 [f.] "Department" means the Department of Environmental
39 Protection;

40 [g.] "Director" means the Director of the Division of Taxation
41 in the Department of the Treasury;

42 [h.] "Discharge" means any intentional or unintentional action

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SNT committee amendments adopted March 21, 1994.

² Assembly AEN committee amendments adopted September 19, 1994.

1 or omission resulting in the releasing, spilling, leaking, pumping,
2 pouring, emitting, emptying or dumping of hazardous substances
3 into the waters or onto the lands of the State, or into waters
4 outside the jurisdiction of the State when damage may result to
5 the lands, waters or natural resources within the jurisdiction of
6 the State;

7 [i.] "Emergency response action" means those activities
8 conducted by a local unit to clean up, remove, prevent, contain,
9 or mitigate a discharge that poses an immediate threat to the
10 environment or to the public health, safety, or welfare;

11 "Fair market value" means the invoice price of the hazardous
12 substances transferred, including transportation charges; but
13 where no price is so fixed, "fair market value" shall mean the
14 market price as of the close of the nearest day to the transfer,
15 paid for similar hazardous substances, as shall be determined by
16 the taxpayer pursuant to rules of the director;

17 [j.] "Fund" means the New Jersey Spill Compensation Fund;

18 [k.] "Hazardous substances" means the "environmental
19 hazardous substances" on the environmental hazardous substance
20 list adopted by the department pursuant to section 4 of P.L.1983,
21 c.315 (C.34:5A-4); such elements and compounds, including
22 petroleum products, which are defined as such by the department,
23 after public hearing, and which shall be consistent to the
24 maximum extent possible with, and which shall include, the list of
25 hazardous substances adopted by the federal Environmental
26 Protection Agency pursuant to section 311 of the federal Water
27 Pollution Control Act Amendments of 1972, Pub.L.92-500, as
28 amended by the Clean Water Act of 1977, Pub.L.95-217 (33
29 U.S.C.§1251 et seq.); the list of toxic pollutants designated by
30 Congress or the EPA pursuant to section 307 of that act; and the
31 list of hazardous substances adopted by the federal
32 Environmental Protection Agency pursuant to section 101 of the
33 "Comprehensive Environmental Response, Compensation and
34 Liability Act of 1980," Pub.L.96-510 (42 U.S.C.§9601 et seq.);
35 provided, however, that sewage and sewage sludge shall not be
36 considered as hazardous substances for the purposes of ¹[this act]
37 P.L.1976, c.141 (C.58:10-23.11 et seq.)¹;

38 [l.] "Local unit" means any county or municipality, or any
39 agency or other instrumentality thereof, or a duly incorporated
40 volunteer fire, ambulance, first aid, emergency, or rescue
41 company or squad.

42 "Major facility" includes, but is not limited to, any refinery,
43 storage or transfer terminal, pipeline, deep-water port, drilling
44 platform or any appurtenance related to any of the preceding
45 that is used or is capable of being used to refine, produce, store,
46 handle, transfer, process or transport hazardous substances. [A
47 vessel shall be considered a major facility only when hazardous
48 substances are transferred between vessels] "Major facility"
49 shall include a vessel only when that vessel is engaged in a
50 transfer of hazardous substances between it and another vessel,
51 and in any event shall not include a vessel used solely for
52 activities directly related to recovering, containing, cleaning up
53 or removing discharges of petroleum in the surface waters of the
54 State, including training, research, and other activities

1 directly related to spill response.

2 A facility shall not be considered a major facility for the
3 purpose of ¹[this act] P.L.1976, c.141¹ unless it has total
4 combined aboveground or buried storage capacity of:

5 (1) 20,000 gallons or more for hazardous substances which are
6 other than petroleum or petroleum products, or

7 (2) 200,000 gallons or more for hazardous substances of all
8 kinds.

9 In determining whether a facility is a major facility for the
10 purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.), any
11 underground storage tank at the facility used solely to store
12 heating oil for on-site consumption shall not be considered when
13 determining the combined storage capacity of the facility.

14 For the purposes of this definition, "storage capacity" shall
15 mean only that total combined capacity which is dedicated to,
16 used for or intended to be used for storage of hazardous
17 substances of all kinds. Where appropriate to the nature of the
18 facility, storage capacity may be determined by the intended or
19 actual use of open land or unenclosed space as well as by the
20 capacities of tanks or other enclosed storage spaces;

21 [m.] "Natural resources" means all land, fish, shellfish,
22 wildlife, biota, air, waters and other such resources owned,
23 managed, held in trust or otherwise controlled by the State;

24 [n.] "Owner" or "operator" means, with respect to a vessel,
25 any person owning, operating or chartering by demise such vessel;
26 with respect to any major facility, any person owning such
27 facility, or operating it by lease, contract or other form of
28 agreement; with respect to abandoned or derelict major
29 facilities, the person who owned or operated such facility
30 immediately prior to such abandonment, or the owner at the time
31 of discharge;

32 [o.] "Person" means public or private corporations, companies,
33 associations, societies, firms, partnerships, joint stock companies,
34 individuals, the United States, the State of New Jersey and any of
35 its political subdivisions or agents;

36 [p.] "Petroleum" or "petroleum products" means oil or
37 petroleum of any kind and in any form, including, but not limited
38 to, oil, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil
39 refuse, oil mixed with other wastes, crude oils, and substances or
40 additives to be utilized in the refining or blending of crude
41 petroleum or petroleum stock in this State; however, any
42 compound designated by specific chemical name on the list of
43 hazardous substances adopted by the department pursuant to
44 [subsection 3k.] this section shall not be considered petroleum or
45 a petroleum product for the purposes of ¹[this act] P.L.1976,
46 c.141¹, unless such compound is to be utilized in the refining or
47 blending of crude petroleum or petroleum stock in this State;

48 [q.] "Taxpayer" means the owner or operator of a major
49 facility subject to the tax provisions of ¹[this act] P.L.1976,
50 c.141¹;

51 [r.] "Tax period" means every calendar month on the basis of
52 which the taxpayer is required to report under ¹[this act]
53 P.L.1976, c.141¹;

54 [s.] "Transfer" means unloading or offloading between major

1 facilities and vessels, or vessels and major facilities, and from
 2 vessel to vessel or major facility to major facility, except for
 3 fueling or refueling operations and except that with regard to the
 4 movement of hazardous substances other than petroleum, it shall
 5 also include any onloading of or offloading from a major facility;

6 [t.] "Vessel" means every description of watercraft or other
 7 contrivance that is practically capable of being used as a means
 8 of commercial transportation of hazardous substances upon the
 9 water, whether or not self-propelled;

10 [u.] "Waters" means the ocean and its estuaries to the seaward
 11 limit of the State's jurisdiction, all springs, streams and bodies of
 12 surface or groundwater, whether natural or artificial, within the
 13 boundaries of this State [;

14 v. "Act of God" means an act exclusively occasioned by an
 15 unanticipated, grave natural disaster without the interference of
 16 any human agency;

17 w. "Emergency response action" means those activities
 18 conducted by a local unit to clean up, remove, prevent, contain,
 19 or mitigate a discharge that poses an immediate threat to the
 20 environment or to the public health, safety, or welfare;

21 x. "Local unit" means any county or municipality, or any
 22 agency or other instrumentality thereof, or a duly incorporated
 23 volunteer fire, ambulance, first aid, emergency, or rescue
 24 company or squad].

25 (cf: P.L.1992, c.147, s.1)

26 ²[3.] ² Section 4 of P.L.1976, c.141 (C.58:10-23.11c) is
 27 amended to read as follows:

28 4. The discharge of hazardous substances is prohibited. This
 29 section shall not apply to discharges of hazardous substances
 30 pursuant to and in compliance with the conditions of a Federal or
 31 State permit , or to any discharge of petroleum to the surface
 32 waters of the State that occurs as a result of the process of
 33 recovering, containing, cleaning up or removing a discharge of
 34 petroleum in the surface waters of the State and that is
 35 undertaken in compliance with the instructions of a federal
 36 on-scene coordinator or of the commissioner or the
 37 commissioner's designee .

38 (cf: P.L.1976, c.141, s.4)

39 ²[4.] ² Section 6 of P.L.1977, c.74 (C.58:10A-6) is amended
 40 to read as follows:

41 6. a. It shall be unlawful for any person to discharge any
 42 pollutant, except [in conformity] as provided pursuant to
 43 subsections d. and p. of this section, or when the discharge
 44 conforms with a valid New Jersey Pollutant Discharge
 45 Elimination System permit that has been issued by the
 46 commissioner pursuant to [this act] P.L.1977, c.74 (C.58:10A-1 et
 47 seq.) or a valid National Pollutant Discharge Elimination System
 48 permit issued by the administrator pursuant to the Federal Act,
 49 as the case may be.

50 b. It shall be unlawful for any person to build, install, modify
 51 or operate any facility for the collection, treatment or discharge
 52 of any pollutant, except after approval by the department
 53 pursuant to regulations adopted by the commissioner.

54 c. The commissioner is hereby authorized to grant, deny,

1 modify, suspend, revoke, and reissue NJPDES permits in
2 accordance with ¹[this act] P.L.1977, c.74¹ , and with regulations
3 to be adopted by him. The commissioner may reissue, with or
4 without modifications, an NPDES permit duly issued by the
5 federal government as the NJPDES permit required by ¹[this act]
6 P.L.1977, c.74¹ .

7 d. The commissioner may, by regulation, exempt the following
8 categories of discharge, in whole or in part, from the requirement
9 of obtaining a permit under ¹[this act] P.L.1977, c.74¹ ; provided,
10 however, that an exemption afforded under this section shall not
11 limit the civil or criminal liability of any discharger nor exempt
12 any discharger from approval or permit requirements under any
13 other provision of law:

14 (1) Additions of sewage, industrial wastes or other materials
15 into a publicly owned sewage treatment works which is regulated
16 by pretreatment standards;

17 (2) Discharges of any pollutant from a marine vessel or other
18 discharges incidental to the normal operation of marine vessels;

19 (3) Discharges from septic tanks, or other individual waste
20 disposal systems, sanitary landfills, and other means of land
21 disposal of wastes;

22 (4) Discharges of dredged or fill materials into waters for
23 which the State could not be authorized to administer the section
24 404 program under section 404(g) of the "Federal Water Pollution
25 Control Act Amendments of 1972," as amended by the "Clean
26 Water Act of 1977" (33 U.S.C. § 1344) and implementing
27 regulations;

28 (5) Nonpoint source discharges;

29 (6) Uncontrolled nonpoint source discharges composed entirely
30 of storm water runoff when these discharges are uncontaminated
31 by any industrial or commercial activity unless these particular
32 storm water runoff discharges have been identified by the
33 administrator or the department as a significant contributor of
34 pollution;

35 (7) Discharges conforming to a national contingency plan for
36 removal of oil and hazardous substances, published pursuant to
37 section 311(c)(2) of the Federal Act.

38 e. The commissioner shall not issue any permit for:

39 (1) The discharge of any radiological, chemical or biological
40 warfare agent or high-level radioactive waste into the waters of
41 this State;

42 (2) Any discharge which the United States Secretary of the
43 Army, acting through the Chief of Engineers, finds would
44 substantially impair anchorage or navigation;

45 (3) Any discharge to which the administrator has objected in
46 writing pursuant to the Federal Act;

47 (4) Any discharge which conflicts with an areawide plan
48 adopted pursuant to law.

49 f. A permit issued by the department or a delegated local
50 agency ¹[, under this act] pursuant to P.L.1977, c.74¹ shall
51 require the permittee:

52 (1) To achieve effluent limitations based upon guidelines or
53 standards established pursuant to the Federal Act or ¹[this act] to
54 P.L.1977, c.74¹, together with such further discharge

1 restrictions and safeguards against unauthorized discharge as may
2 be necessary to meet water quality standards, areawide plans
3 adopted pursuant to law, or other legally applicable requirements;

4 (2) Where appropriate, to meet schedules for compliance with
5 the terms of the permit and interim deadlines for progress or
6 reports of progress towards compliance;

7 (3) To insure that all discharges are consistent at all times
8 with the terms and conditions of the permit and that no pollutant
9 will be discharged more frequently than authorized or at a level
10 in excess of that which is authorized by the permit;

11 (4) To submit application for a new permit in the event of any
12 contemplated facility expansion or process modification that
13 would result in new or increased discharges or, if these would not
14 violate effluent limitations or other restrictions specified in the
15 permit, to notify the commissioner, or delegated local agency, of
16 such new or increased discharges;

17 (5) To install, use and maintain such monitoring equipment and
18 methods, to sample in accordance with such methods, to maintain
19 and retain such records of information from monitoring
20 activities, and to submit to the commissioner, or to the delegated
21 local agency, reports of monitoring results for surface waters, as
22 may be stipulated in the permit, or required by the commissioner
23 or delegated local agency pursuant to paragraph (9) of this
24 subsection, or as the commissioner or the delegated local agency
25 may prescribe for ground water. Significant indirect users, major
26 industrial dischargers, and local agencies, other than those
27 discharging only stormwater or noncontact cooling water, shall,
28 however, report their monitoring results for discharges to surface
29 waters monthly to the commissioner, or the delegated local
30 agency. Discharge monitoring reports for discharges to surface
31 waters shall be signed by the highest ranking official having
32 day-to-day managerial and operational responsibilities for the
33 discharging facility, who may, in his absence, authorize another
34 responsible high ranking official to sign a monthly monitoring
35 report if a report is required to be filed during that period of
36 time. The highest ranking official shall, however, be liable in all
37 instances for the accuracy of all the information provided in the
38 monitoring report; provided, however, that the highest ranking
39 official may file, within seven days of his return, amendments to
40 the monitoring report to which he was not a signatory. The
41 highest ranking official having day-to-day managerial and
42 operational responsibilities for the discharging facility of a local
43 agency shall be the highest ranking licensed operator of the
44 municipal treatment works in those instances where a licensed
45 operator is required by law to operate the facility. In those
46 instances where a local agency has contracted with another
47 entity to operate a municipal treatment works, the highest
48 ranking official who signs the discharge monitoring report shall
49 be an employee of the contract operator and not of the local
50 agency. Notwithstanding that an employee of a contract operator
51 is the official who signs the discharge monitoring report, the
52 local agency, as the permittee, shall remain liable for compliance
53 with all permit conditions. In those instances where the highest
54 ranking official having day-to-day managerial and operational

1 responsibilities for a discharging facility of a local agency does
2 not have the responsibility to authorize capital expenditures and
3 hire personnel, a person having that responsibility, or a person
4 designated by that person, shall submit to the department, along
5 with the discharge monitoring report, a certification that that
6 person has received and reviewed the discharge monitoring
7 report. The person submitting the certification to the
8 department shall not be liable for the accuracy of the
9 information on the discharge monitoring report due to the
10 submittal of the certification. Whenever a local agency has
11 contracted with another entity to operate the municipal
12 treatment works, the person submitting the certification shall be
13 an employee of the permittee and not of the contract operator.
14 The filing of amendments to a monitoring report in accordance
15 with this paragraph shall not be considered a late filing of a
16 report for purposes of subsection d. of section 6 of P.L.1990, c.28
17 (C.58:10A-10.1), or for purposes of determining a significant
18 noncomplier;

19 (6) At all times, to maintain in good working order and operate
20 as effectively as possible, any facilities or systems of control
21 installed to achieve compliance with the terms and conditions of
22 the permit;

23 (7) To limit concentrations of heavy metal, pesticides, organic
24 chemicals and other contaminants in the sludge in conformance
25 with the land-based sludge management criteria established by
26 the department in the Statewide Sludge Management Plan
27 adopted pursuant to the "Solid Waste Management Act,"
28 P.L.1970, c.39 (C.13:1E-1 et seq.) or established pursuant to the
29 Federal Water Pollution Control Act Amendments of 1972 (33
30 U.S.C. § 1251 et seq.), or any regulations adopted pursuant
31 thereto;

32 (8) To report to the department or delegated local agency, as
33 appropriate, any exceedance of an effluent limitation that causes
34 injury to persons, or damage to the environment, or poses a
35 threat to human health or the environment, within two hours of
36 its occurrence, or of the permittee becoming aware of the
37 occurrence. Within 24 hours thereof, or of an exceedance, or of
38 becoming aware of an exceedance, of an effluent limitation for a
39 toxic pollutant, a permittee shall provide the department or
40 delegated local agency with such additional information on the
41 discharge as may be required by the department or delegated
42 local agency, including an estimate of the danger posed by the
43 discharge to the environment, whether the discharge is
44 continuing, and the measures taken, or being taken, to remediate
45 the problem and any damage to the environment, and to avoid a
46 repetition of the problem;

47 (9) Notwithstanding the reporting requirements stipulated in a
48 permit for discharges to surface waters, a permittee shall be
49 required to file monthly reports with the commissioner or
50 delegated local agency if the permittee:

51 (a) in any month commits a serious violation or fails to submit
52 a completed discharge monitoring report and does not contest, or
53 unsuccessfully contests, the assessment of a civil administrative
54 penalty therefor; or

1 (b) exceeds an effluent limitation for the same pollutant at the
2 same discharge point source by any amount for four out of six
3 consecutive months.

4 The commissioner or delegated local agency may restore the
5 reporting requirements stipulated in the permit if the permittee
6 has not committed any of the violations identified in this
7 paragraph for six consecutive months;

8 (10) To report to the department or delegated local agency, as
9 appropriate, any serious violation within 30 days of the violation,
10 together with a statement indicating that the permittee
11 understands the civil administrative penalties required to be
12 assessed for serious violations, and explaining the nature of the
13 serious violation and the measures taken to remedy the cause or
14 prevent a recurrence of the serious violation.

15 g. The commissioner and a local agency shall have a right of
16 entry to all premises in which a discharge source is or might be
17 located or in which monitoring equipment or records required by
18 a permit are kept, for purposes of inspection, sampling, copying
19 or photographing.

20 h. In addition, any permit issued for a discharge from a
21 municipal treatment works shall require the permittee:

22 (1) To notify the commissioner or local agency in advance of
23 the quality and quantity of all new introductions of pollutants
24 into a facility and of any substantial change in the pollutants
25 introduced into a facility by an existing user of the facility,
26 except for such introductions of nonindustrial pollutants as the
27 commissioner or local agency may exempt from this notification
28 requirement when ample capacity remains in the facility to
29 accommodate new inflows. The notification shall estimate the
30 effects of the changes on the effluents to be discharged into the
31 facility.

32 (2) To establish an effective regulatory program, alone or in
33 conjunction with the operators of sewage collection systems, that
34 will assure compliance and monitor progress toward compliance
35 by industrial users of the facilities with user charge and cost
36 recovery requirements of the Federal Act or State law and
37 toxicity standards adopted pursuant to ¹[this act] P.L.1977,
38 c.74¹ and pretreatment standards.

39 (3) As actual flows to the facility approach design flow or
40 design loading limits, to submit to the commissioner or local
41 agency for approval, a program which the permittee and the
42 persons responsible for building and maintaining the contributory
43 collection system shall pursue in order to prevent overload of the
44 facilities.

45 i. (1) All local agencies shall prescribe terms and conditions,
46 consistent with applicable State and federal law, or requirements
47 adopted pursuant thereto by the department, upon which
48 pollutants may be introduced into treatment works, and shall
49 have the authority to exercise the same right of entry,
50 inspection, sampling, and copying, and to impose the same
51 remedies, fines and penalties, and to recover costs and
52 compensatory damages as authorized pursuant to subsection a. of
53 section 10 of P.L.1977, c.74 (C.58:10A-10) and section 6 of
54 P.L.1990, c.28 (C.58:10A-10.1), with respect to users of such

1 works, as are vested in the commissioner by ¹[this act] P.L.1977,
2 c.74¹ , or by any other provision of State law, except that a local
3 agency, except as provided in P.L.1991, c.8 (C.58:10-10.4 et
4 seq.), may not impose civil administrative penalties, and shall
5 petition the county prosecutor or the Attorney General for a
6 criminal prosecution under that section. Terms and conditions
7 shall include limits for heavy metals, pesticides, organic
8 chemicals and other contaminants in industrial wastewater
9 discharges based upon the attainment of land-based sludge
10 management criteria established by the department in the
11 Statewide Sludge Management Plan adopted pursuant to the
12 "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et
13 seq.) or established pursuant to the Federal Water Pollution
14 Control Act Amendments of 1972 (33 U.S.C.§1251 et seq.), or any
15 regulations adopted pursuant thereto.

16 (2) Of the amount of any penalty assessed and collected
17 pursuant to an action brought by a local agency in accordance
18 with section 10 of P.L.1977, c.74 or section 6 of P.L.1990, c.28
19 (C.58:10A-10.1), 10% shall be deposited in the "Wastewater
20 Treatment Operators' Training Account," established in
21 accordance with section 13 of P.L.1990, c.28 (C.58:10A-14.5),
22 and used to finance the cost of training operators of municipal
23 treatment works. The remainder shall be used by the local
24 agency solely for enforcement purposes, and for upgrading
25 municipal treatment works.

26 j. In reviewing permits submitted in compliance with ¹[this
27 act] P.L.1977, c.74¹ and in determining conditions under which
28 such permits may be approved, the commissioner shall encourage
29 the development of comprehensive regional sewerage planning or
30 facilities, which serve the needs of the regional community,
31 conform to the adopted area-wide water quality management
32 plan for that region, and protect the needs of the regional
33 community for water quality, aquifer storage, aquifer recharge,
34 and dry weather based stream flows.

35 k. No permit may be issued, renewed, or modified by the
36 department or a delegated local agency so as to relax any water
37 quality standard or effluent limitation until the applicant, or
38 permit holder, as the case may be, has paid all fees, penalties or
39 fines due and owing pursuant to P.L.1977, c.74, or has entered
40 into an agreement with the department establishing a payment
41 schedule therefor; except that if a penalty or fine is contested,
42 the applicant or permit holder shall satisfy the provisions of this
43 section by posting financial security as required pursuant to
44 paragraph (5) of subsection d. of section 10 of P.L.1977, c.74
45 (C.58:10A-10). The provisions of this subsection with respect to
46 penalties or fines shall not apply to a local agency contesting a
47 penalty or fine.

48 l. Each permitted facility or municipal treatment works, other
49 than one discharging only stormwater or non-contact cooling
50 water, shall be inspected by the department at least once a year;
51 except that each permitted facility discharging into the
52 municipal treatment works of a delegated local agency, other
53 than a facility discharging only stormwater or non-contact
54 cooling water, shall be inspected by the delegated local agency at

1 least once a year. Except as hereinafter provided, an inspection
2 required under this subsection shall be conducted within six
3 months following a permittee's submission of an application for a
4 permit, permit renewal, or, in the case of a new facility or
5 municipal treatment works, issuance of a permit therefor, except
6 that if for any reason, a scheduled inspection cannot be made the
7 inspection shall be rescheduled to be performed within 30 days of
8 the originally scheduled inspection or, in the case of a temporary
9 shutdown, of resumed operation. Exemption of stormwater
10 facilities from the provisions of this subsection shall not apply to
11 any permitted facility or municipal treatment works discharging
12 or receiving stormwater runoff having come into contact with a
13 hazardous discharge site on the federal National Priorities List
14 adopted by the United States Environmental Protection Agency
15 pursuant to the "Comprehensive Environmental Response,
16 Compensation, and Liability Act," Pub.L.96-510 (42
17 U.S.C.A. §9601 et seq.), or any other hazardous discharge site
18 included by the department on the master list for hazardous
19 discharge site cleanups adopted pursuant to section 2 of P.L.1982,
20 c.202 (C.58:10-23.16). Inspections shall include:

21 (1) A representative sampling of the effluent for each
22 permitted facility or municipal treatment works, except that in
23 the case of facilities or works that are not major facilities or
24 significant indirect users, sampling pursuant to this paragraph
25 shall be conducted at least once every three years;

26 (2) An analysis of all collected samples by a State owned and
27 operated laboratory, or a certified laboratory other than one that
28 has been or is being used by the permittee, or that is directly or
29 indirectly owned, operated or managed by the permittee;

30 (3) An evaluation of the maintenance record of the
31 permittee's treatment equipment;

32 (4) An evaluation of the permittee's sampling techniques;

33 (5) A random check of written summaries of test results,
34 prepared by the certified laboratory providing the test results,
35 for the immediately preceding 12-month period, signed by a
36 responsible official of the certified laboratory, certifying the
37 accuracy of the test results; and

38 (6) An inspection of the permittee's sample storage facilities
39 and techniques if the sampling is normally performed by the
40 permittee.

41 The department may inspect a facility required to be inspected
42 by a delegated local agency pursuant to this subsection. Nothing
43 in this subsection shall require the department to conduct more
44 than one inspection per year.

45 m. The facility or municipal treatment works of a permittee
46 identified as a significant noncomplier shall be subject to an
47 inspection by the department, or the delegated local agency, as
48 the case may be, which inspection shall be in addition to the
49 requirements of subsection l. of this section. The inspection shall
50 be conducted within 60 days of receipt of the discharge
51 monitoring report that initially results in the permittee being
52 identified as a significant noncomplier. The inspection shall
53 include a random check of written summaries of test results,
54 prepared by the certified laboratory providing the test results,

1 for the immediately preceding 12-month period, signed by a
2 responsible official of the certified laboratory, certifying the
3 accuracy of the test results. A copy of each summary shall be
4 maintained by the permittee. The inspection shall be for the
5 purpose of determining compliance. The department or delegated
6 local agency is required to conduct only one inspection per year
7 pursuant to this subsection, and is not required to make an
8 inspection hereunder if an inspection has been made pursuant to
9 subsection l. of this section within six months of the period within
10 which an inspection is required to be conducted under this
11 subsection.

12 n. To assist the commissioner in assessing a municipal
13 treatment works' NJPDES permit in accordance with paragraph
14 (3) of subsection b. of section 7 of P.L.1977, c.74 (C.58:10A-7), a
15 delegated local agency shall perform a complete analysis that
16 includes a complete priority pollutant analysis of the discharge
17 from, and inflow to, the municipal treatment works. The analysis
18 shall be performed by a delegated local agency as often as the
19 priority pollutant scan is required under the permit, but not less
20 than once a year, and shall be based upon data acquired in the
21 priority pollutant scan and from applicable sludge quality analysis
22 reports. The results of the analysis shall be included in a report
23 to be attached to the annual report required to be submitted to
24 the commissioner by the delegated local agency.

25 o. Except as otherwise provided in section 3 of P.L.1963, c.73
26 (C.47:1A-3), any records, reports or other information obtained
27 by the commissioner or a local agency pursuant to this section or
28 section 5 of P.L.1972, c.42 (C.58:11-53), including any
29 correspondence relating thereto, shall be available to the public;
30 however, upon a showing satisfactory to the commissioner by any
31 person that the making public of any record, report or
32 information, or a part thereof, other than effluent data, would
33 divulge methods or processes entitled to protection as trade
34 secrets, the commissioner or local agency shall consider such
35 record, report, or information, or part thereof, to be confidential,
36 and access thereto shall be limited to authorized officers or
37 employees of the department, the local agency, and the federal
38 government.

39 p. The provisions of this section shall not apply to a discharge
40 of petroleum to the surface waters of the State that occurs as a
41 result of the process of recovering, containing, cleaning up or
42 removing a discharge of petroleum in the surface waters of the
43 State and that is undertaken in compliance with the instructions
44 of a federal on-scene coordinator or of the commissioner or the
45 commissioner's designee.

46 (cf: P.L.1993, c.23, s.1)

47 ²[5.] 4.2 This act shall take effect immediately.

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52 Facilitates rapid response to, and cleanup of, oil spills.

1 purpose of determining compliance. The department or delegated
2 local agency is required to conduct only one inspection per year
3 pursuant to this subsection, and is not required to make an
4 inspection hereunder if an inspection has been made pursuant to
5 subsection l. of this section within six months of the period within
6 which an inspection is required to be conducted under this
7 subsection.

8 n. To assist the commissioner in assessing a municipal
9 treatment works' NJPDES permit in accordance with paragraph
10 (3) of subsection b. of section 7 of P.L.1977, c.74 (C.58:10A-7), a
11 delegated local agency shall perform a complete analysis that
12 includes a complete priority pollutant analysis of the discharge
13 from, and inflow to, the municipal treatment works. The analysis
14 shall be performed by a delegated local agency as often as the
15 priority pollutant scan is required under the permit, but not less
16 than once a year, and shall be based upon data acquired in the
17 priority pollutant scan and from applicable sludge quality analysis
18 reports. The results of the analysis shall be included in a report
19 to be attached to the annual report required to be submitted to
20 the commissioner by the delegated local agency.

21 o. Except as otherwise provided in section 3 of P.L.1963, c.73
22 (C.47:1A-3), any records, reports or other information obtained
23 by the commissioner or a local agency pursuant to this section or
24 section 5 of P.L.1972, c.42 (C.58:11-53), including any
25 correspondence relating thereto, shall be available to the public;
26 however, upon a showing satisfactory to the commissioner by any
27 person that the making public of any record, report or
28 information, or a part thereof, other than effluent data, would
29 divulge methods or processes entitled to protection as trade
30 secrets, the commissioner or local agency shall consider such
31 record, report, or information, or part thereof, to be confidential,
32 and access thereto shall be limited to authorized officers or
33 employees of the department, the local agency, and the federal
34 government.

35 p. The provisions of this section shall not apply to a discharge
36 of petroleum to the surface waters of the State that occurs as a
37 result of the process of recovering, containing, cleaning up or
38 removing a discharge of petroleum in the surface waters of the
39 State and that is undertaken in compliance with the instructions
40 of a federal on-scene coordinator or of the commissioner or the
41 commissioner's designee.

42 (cf: P.L.1993, c.23, s.1)

43 5. This act shall take effect immediately.

44

45

46 SPONSORS' STATEMENT

47

48 This bill clarifies that the prohibitions against a discharge of
49 hazardous substances in the "Spill Compensation and Control
50 Act," P.L.1976, c.141, and against the non-permitted discharge
51 of a pollutant in the "Water Pollution Control Act," P.L.1977,
52 c.74, do not apply to a discharge that occurs as a result of the
53 process of recovering, containing, cleaning up or removing an oil
54 spill, when the discharge is undertaken in compliance with the

1 instructions of a federal on-scene coordinator or of the
2 commissioner of the Department of Environmental Protection
3 and Energy or the commissioner's designee.

4 Although the "Spill Act" already contains an exemption from
5 liability for most actions of emergency responders, and the DEPE
6 has adopted regulations pursuant to the "Water Pollution Control
7 Act" to exempt cleanup activities, this bill creates a complete
8 statutory exemption from the provisions of either of these acts
9 for any discharge that results from the described actions
10 undertaken to clean up an oil spill and that is undertaken in
11 compliance with the instructions of a federal on-scene
12 coordinator or appropriate State official. The bill thus allows
13 responders to proceed with minor discharges that are a necessary
14 part of the oil spill cleanup process without fear of violating
15 State discharge prevention and cleanup laws.

16 The bill also specifies that a vessel used solely for activities
17 directly related to recovering, containing, cleaning up or
18 removing an oil spill is not a "major facility" for the purposes of
19 the "Spill Act," and thus is not subject to the regulatory
20 requirements placed on major facilities.

21 The bill makes certain technical amendments to clarify the
22 meaning of the amended sections of law.

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27 "Oil Spill Rapid Response and Cleanup Act."

ASSEMBLY ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 843

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 1994

The Assembly Environment and Energy Committee favorably reports Senate Bill No. 843 (1R) with committee amendments.

This bill provides for rapid response to, and cleanup of, oil spills by allowing responders to proceed with minor discharges that are a necessary part of the oil spill cleanup process without fear of violating State discharge prevention and cleanup laws.

In the course of cleaning up an oil spill, the separation of water from the recovered oil requires a return of the excess water to the area of the spill. The returned water cannot be rendered entirely free of oil and therefore could be interpreted as a discharge in violation of State law.

Although the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), already contains an exemption from liability for most actions of emergency responders, and the Department of Environmental Protection has adopted regulations pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), to exempt certain discharges occurring during cleanup activities from permit requirements, this bill creates a complete statutory exemption from the provisions of either of these acts for any discharge that results from the described actions undertaken to clean up an oil spill and that is undertaken in compliance with the instructions of a federal on-scene coordinator or appropriate State official.

Specifically, the bill clarifies that the prohibitions against a discharge of hazardous substances in the "Spill Compensation and Control Act," and against the non-permitted discharge of a pollutant in the "Water Pollution Control Act," do not apply to a discharge that occurs as a result of the process of recovering, containing, cleaning up or removing an oil spill, when the discharge is undertaken in compliance with the instructions of a federal on-scene coordinator or of the Commissioner of the Department of Environmental Protection or the commissioner's designee.

The bill also specifies that a vessel used solely for activities directly related to recovering, containing, cleaning up or removing an oil spill is not a "major facility" for the purposes of the "Spill Compensation and Control Act," and thus is not subject to the regulatory requirements placed on major facilities.

Finally, the bill makes certain technical amendments to clarify the meaning of the amended sections of law.

The committee amendments made technical corrections to the bill. The bill as amended and reported by the committee is identical to Assembly Bill No. 1831 (1R) of 1994.

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ASSEMBLY AEN COMMITTEE

AMENDMENTS

to

Senate Bill No. 843 (1R)

(Sponsored by Senators KYRILLOS and McGREEVEY)

ADOPTED
SEP 19 1994

OMIT SECTION 1 IN ITS ENTIRETY

RENUMBER SECTIONS 2 THROUGH 5 AS SECTIONS 1
THROUGH 4

REPLACE SYNOPSIS TO READ:

Facilitates rapid response to, and cleanup of, oil spills.

SENATE NATURAL RESOURCES, TRADE AND
ECONOMIC DEVELOPMENT COMMITTEE

STATEMENT TO

SENATE, No. 843

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 21, 1994

The Senate Natural Resources, Trade and Economic Development Committee favorably reports Senate Bill No. 843, with Senate committee amendments.

Senate Bill No.843, as amended, clarifies that the prohibitions against a discharge of hazardous substances in the "Spill Compensation and Control Act," P.L.1976, c.141, and against the non-permitted discharge of a pollutant in the "Water Pollution Control Act," P.L.1977, c.74, do not apply to a discharge that occurs as a result of the process of recovering, containing, cleaning up or removing an oil spill, when the discharge is undertaken in compliance with the instructions of a federal on-scene coordinator or of the commissioner of the Department of Environmental Protection and Energy or the commissioner's designee.

Although the "Spill Act" already contains an exemption from liability for most actions of emergency responders, and the DEPE, at N.J.A.C.7:14A-3.1(b)(3), has exempted certain discharges occurring during cleanup activities from the permit requirement of the "Water Pollution Control Act," this bill creates a complete statutory exemption from the provisions of either of these acts for any discharge that results from the described actions undertaken to clean up an oil spill and that is undertaken in compliance with the instructions of a federal on-scene coordinator or appropriate State official. The bill thus allows responders to proceed with discharges that are a necessary part of the oil spill cleanup process without fear of violating State discharge prevention and cleanup laws.

The bill also specifies that a vessel used solely for activities directly related to recovering, containing, cleaning up or removing an oil spill is not a "major facility" for the purposes of the "Spill Act," and thus is not subject to the regulatory requirements placed on major facilities.

The bill makes certain technical amendments to clarify the meaning of the amended sections of law.

The committee amended the bill to clarify references to the "Spill Compensation and Control Act" and to the "Water Pollution Control Act" in the amended sections.

SENATE SNT COMMITTEE

AMENDMENTS

to

Senate, No. 843
(Sponsored by Senator Kyrillos)

ADOPTED
MAR 21 1994

REPLACE SECTION 2 TO READ:

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

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

[a.] "Act of God" means an act exclusively occasioned by an unanticipated, grave natural disaster without the interference of any human agency;

"Administrator" means the chief executive of the New Jersey Spill Compensation Fund:

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

[c.] "Board" means a board of arbitration convened by the administrator to settle disputed disbursements from the fund:

[d.] "Cleanup and removal costs" means all costs associated with a discharge, incurred by the State or its political subdivisions or their agents or any person with written approval from the department in the: (1) removal or attempted removal of hazardous substances, or (2) taking of reasonable measures to prevent or mitigate damage to the public health, safety, or welfare, including, but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property, including wildlife and other natural resources, and shall include costs incurred by the State for the indemnification and legal defense of contractors pursuant to sections 1 through 11 of P.L.1991, c.373 (C.58:10-23.11f8 et seq.);

[e.] "Commissioner" means the Commissioner of Environmental Protection;

[f.] "Department" means the Department of Environmental Protection;

[g.] "Director" means the Director of the Division of Taxation in the Department of the Treasury;

[h.] "Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substances into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State;

[i.] "Emergency response action" means those activities conducted by a local unit to clean up, remove, prevent, contain, or mitigate a discharge that poses an immediate threat to the environment or to the public health, safety, or welfare;

"Fair market value" means the invoice price of the hazardous substances transferred, including transportation charges; but where no price is so fixed, "fair market value" shall mean the market price as of the close of the nearest day to the transfer, paid for similar hazardous substances, as shall be determined by the taxpayer pursuant to rules of the director:

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

[k.] "Hazardous substances" means the "environmental hazardous substances" on the environmental hazardous substance list adopted by the department pursuant to section 4 of P.L.1983. c.315 (C.34:5A-4); such elements and compounds, including petroleum products, which are defined as such by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 311 of the federal Water Pollution Control Act Amendments of 1972, Pub.L.92-500, as amended by the Clean Water Act of 1977, Pub.L.95-217 (33 U.S.C. §1251 et seq.); the list of toxic pollutants designated by Congress or the EPA pursuant to section 307 of that act; and the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 101 of the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L.96-510 (42 U.S.C. §9601 et seq.); provided, however, that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of ¹[this act] P.L.1976. c.141 (C.58:10-23.11 et seq.)¹:

[l.] "Local unit" means any county or municipality, or any agency or other instrumentality thereof, or a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad.

"Major facility" includes, but is not limited to, any refinery, storage or transfer terminal, pipeline, deep-water port, drilling platform or any appurtenance related to any of the preceding that is used or is capable of being used to refine, produce, store, handle, transfer, process or transport hazardous substances. [A vessel shall be considered a major facility only when hazardous substances are transferred between vessels] "Major facility" shall include a vessel only when that vessel is engaged in a transfer of hazardous substances between it and another vessel, and in any event shall not

include a vessel used solely for activities directly related to recovering, containing, cleaning up or removing discharges of petroleum in the surface waters of the State, including training, research, and other activities directly related to spill response.

A facility shall not be considered a major facility for the purpose of ¹[this act] P.L.1976, c.141¹ unless it has total combined aboveground or buried storage capacity of:

- (1) 20,000 gallons or more for hazardous substances which are other than petroleum or petroleum products, or
- (2) 200,000 gallons or more for hazardous substances of all kinds.

In determining whether a facility is a major facility for the purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.), any underground storage tank at the facility used solely to store heating oil for on-site consumption shall not be considered when determining the combined storage capacity of the facility.

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

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

[n.] "Owner" or "operator" means, with respect to a vessel, any person owning, operating or chartering by demise such vessel; with respect to any major facility, any person owning such facility, or operating it by lease, contract or other form of agreement; with respect to abandoned or derelict major facilities, the person who owned or operated such facility immediately prior to such abandonment, or the owner at the time of discharge;

[o.] "Person" means public or private corporations, companies, associations, societies, firms, partnerships, joint stock companies, individuals, the United States, the State of New Jersey and any of its political subdivisions or agents;

[p.] "Petroleum" or "petroleum products" means oil or petroleum of any kind and in any form, including, but not limited to, oil, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, and substances or additives to be utilized in the refining or blending of crude petroleum or petroleum stock in this State; however, any compound designated by specific chemical name on the list of hazardous substances adopted by the department pursuant to [subsection 3k.] this section shall not be considered petroleum or a petroleum product for the purposes of ¹[this act] P.L.1976, c.141¹, unless such compound is to be utilized in the refining or blending of crude petroleum or petroleum stock in this State;

[q.] "Taxpayer" means the owner or operator of a major facility subject to the tax provisions of ¹[this act] P.L.1976, c.141¹;

[r.] "Tax period" means every calendar month on the basis of which the taxpayer is required to report under ¹[this act] P.L.1976, c.141¹;

[s.] "Transfer" means onloading or offloading between major facilities and vessels, or vessels and major facilities, and from vessel to vessel or major facility to major facility, except for fueling or refueling operations and except that with regard to the movement of hazardous substances other than petroleum, it shall also include any onloading of or offloading from a major facility;

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

[u.] "Waters" means the ocean and its estuaries to the seaward limit of the State's jurisdiction, all springs, streams and bodies of surface or groundwater, whether natural or artificial, within the boundaries of this State [;

v. "Act of God" means an act exclusively occasioned by an unanticipated, grave natural disaster without the interference of any human agency;

w. "Emergency response action" means those activities conducted by a local unit to clean up, remove, prevent, contain, or mitigate a discharge that poses an immediate threat to the environment or to the public health, safety, or welfare;

x. "Local unit" means any county or municipality, or any agency or other instrumentality thereof, or a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad].

(cf: P.L.1992, c.147, s.1)

REPLACE SECTION 4 TO READ:

4. Section 6 of P.L.1977, c.74 (C.58:10A-6) is amended to read as follows:

6. a. It shall be unlawful for any person to discharge any pollutant, except [in conformity] as provided pursuant to subsections d. and p. of this section, or when the discharge conforms with a valid New Jersey Pollutant Discharge Elimination System permit that has been issued by the commissioner pursuant to [this act] P.L.1977, c.74 (C.58:10A-1 et seq.) or a valid National Pollutant Discharge Elimination System permit issued by the administrator pursuant to the Federal Act, as the case may be.

b. It shall be unlawful for any person to build, install, modify or operate any facility for the collection, treatment or discharge of any pollutant, except after approval by the department pursuant to regulations adopted by the commissioner.

c. The commissioner is hereby authorized to grant, deny, modify, suspend, revoke, and reissue NJPDES permits in accordance with ¹[this act] P.L.1977, c.74¹, and with regulations to be adopted by him. The commissioner may reissue, with or without modifications, an NPDES permit duly issued by the federal government as the NJPDES permit required by ¹[this act] P.L.1977, c.74¹.

d. The commissioner may, by regulation, exempt the following categories of discharge, in whole or in part, from the requirement of obtaining a permit under ¹[this act] P.L.1977, c.74¹ ; provided, however, that an exemption afforded under this section shall not limit the civil or criminal liability of any discharger nor exempt any discharger from approval or permit requirements under any other provision of law:

(1) Additions of sewage, industrial wastes or other materials into a publicly owned sewage treatment works which is regulated by pretreatment standards;

(2) Discharges of any pollutant from a marine vessel or other discharges incidental to the normal operation of marine vessels;

(3) Discharges from septic tanks, or other individual waste disposal systems, sanitary landfills, and other means of land disposal of wastes;

(4) Discharges of dredged or fill materials into waters for which the State could not be authorized to administer the section 404 program under section 404(g) of the "Federal Water Pollution Control Act Amendments of 1972," as amended by the "Clean Water Act of 1977" (33 U.S.C. § 1344) and implementing regulations;

(5) Nonpoint source discharges;

(6) Uncontrolled nonpoint source discharges composed entirely of storm water runoff when these discharges are uncontaminated by any industrial or commercial activity unless these particular storm water runoff discharges have been identified by the administrator or the department as a significant contributor of pollution;

(7) Discharges conforming to a national contingency plan for removal of oil and hazardous substances, published pursuant to section 311(c)(2) of the Federal Act.

e. The commissioner shall not issue any permit for:

(1) The discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste into the waters of this State;

(2) Any discharge which the United States Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage or navigation;

(3) Any discharge to which the administrator has objected in writing pursuant to the Federal Act;

(4) Any discharge which conflicts with an areawide plan adopted pursuant to law.

f. A permit issued by the department or a delegated local agency ¹[, under this act] pursuant to P.L.1977, c.74¹ shall require the permittee:

(1) To achieve effluent limitations based upon guidelines or standards established pursuant to the Federal Act or ¹[this act] to P.L.1977, c.74¹ , together with such further discharge restrictions and safeguards against unauthorized discharge as may be necessary to meet water quality standards, areawide plans adopted pursuant to law, or other legally applicable requirements;

(2) Where appropriate, to meet schedules for compliance with the terms of the permit and interim deadlines for progress or reports of progress towards compliance;

(3) To insure that all discharges are consistent at all times with the terms and conditions of the permit and that no pollutant will be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit;

(4) To submit application for a new permit in the event of any contemplated facility expansion or process modification that would result in new or increased discharges or, if these would not violate effluent limitations or other restrictions specified in the permit, to notify the commissioner, or delegated local agency, of such new or increased discharges;

(5) To install, use and maintain such monitoring equipment and methods, to sample in accordance with such methods, to maintain and retain such records of information from monitoring activities, and to submit to the commissioner, or to the delegated local agency, reports of monitoring results for surface waters, as may be stipulated in the permit, or required by the commissioner or delegated local agency pursuant to paragraph (9) of this subsection, or as the commissioner or the delegated local agency may prescribe for ground water. Significant indirect users, major industrial dischargers, and local agencies, other than those discharging only stormwater or noncontact cooling water, shall, however, report their monitoring results for discharges to surface waters monthly to the commissioner, or the delegated local agency. Discharge monitoring reports for discharges to surface waters shall be signed by the highest ranking official having day-to-day managerial and operational responsibilities for the discharging facility, who may, in his absence, authorize another responsible high ranking official to sign a monthly monitoring report if a report is required to be filed during that period of time. The highest ranking official shall, however, be liable in all instances for the accuracy of all the information provided in the monitoring report; provided, however, that the highest ranking official may file, within seven days of his return, amendments to the monitoring report to which he was not a signatory. The highest ranking official having day-to-day managerial and operational responsibilities for the discharging facility of a local agency shall be the highest ranking licensed operator of the municipal treatment works in those instances where a licensed operator is required by law to operate the facility. In those instances where a local agency has contracted with another entity to operate a municipal treatment works, the highest ranking official who signs the discharge monitoring report shall be an employee of the contract operator and not of the local agency. Notwithstanding that an employee of a contract operator is the official who signs the discharge monitoring report, the local agency, as the permittee, shall remain liable for compliance with all permit conditions. In those instances where the highest ranking official having day-to-day managerial and operational responsibilities for a discharging facility of a local agency does not have the responsibility to authorize capital expenditures and hire personnel, a person having that responsibility,

or a person designated by that person, shall submit to the department, along with the discharge monitoring report, a certification that that person has received and reviewed the discharge monitoring report. The person submitting the certification to the department shall not be liable for the accuracy of the information on the discharge monitoring report due to the submittal of the certification. Whenever a local agency has contracted with another entity to operate the municipal treatment works, the person submitting the certification shall be an employee of the permittee and not of the contract operator. The filing of amendments to a monitoring report in accordance with this paragraph shall not be considered a late filing of a report for purposes of subsection d. of section 6 of P.L.1990, c.28 (C.58:10A-10.1), or for purposes of determining a significant noncomplier;

(6) At all times, to maintain in good working order and operate as effectively as possible, any facilities or systems of control installed to achieve compliance with the terms and conditions of the permit;

(7) To limit concentrations of heavy metal, pesticides, organic chemicals and other contaminants in the sludge in conformance with the land-based sludge management criteria established by the department in the Statewide Sludge Management Plan adopted pursuant to the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or established pursuant to the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. § 1251 et seq.), or any regulations adopted pursuant thereto;

(8) To report to the department or delegated local agency, as appropriate, any exceedance of an effluent limitation that causes injury to persons, or damage to the environment, or poses a threat to human health or the environment, within two hours of its occurrence, or of the permittee becoming aware of the occurrence. Within 24 hours thereof, or of an exceedance, or of becoming aware of an exceedance, of an effluent limitation for a toxic pollutant, a permittee shall provide the department or delegated local agency with such additional information on the discharge as may be required by the department or delegated local agency, including an estimate of the danger posed by the discharge to the environment, whether the discharge is continuing, and the measures taken, or being taken, to remediate the problem and any damage to the environment, and to avoid a repetition of the problem;

(9) Notwithstanding the reporting requirements stipulated in a permit for discharges to surface waters, a permittee shall be required to file monthly reports with the commissioner or delegated local agency if the permittee:

(a) in any month commits a serious violation or fails to submit a completed discharge monitoring report and does not contest, or unsuccessfully contests, the assessment of a civil administrative penalty therefor; or

(b) exceeds an effluent limitation for the same pollutant at the same discharge point source by any amount for four out of six consecutive months.

The commissioner or delegated local agency may restore the reporting requirements stipulated in the permit if the permittee has not committed any of the violations identified in this paragraph for six consecutive months;

(10) To report to the department or delegated local agency, as appropriate, any serious violation within 30 days of the violation, together with a statement indicating that the permittee understands the civil administrative penalties required to be assessed for serious violations, and explaining the nature of the serious violation and the measures taken to remedy the cause or prevent a recurrence of the serious violation.

g. The commissioner and a local agency shall have a right of entry to all premises in which a discharge source is or might be located or in which monitoring equipment or records required by a permit are kept, for purposes of inspection, sampling, copying or photographing.

h. In addition, any permit issued for a discharge from a municipal treatment works shall require the permittee:

(1) To notify the commissioner or local agency in advance of the quality and quantity of all new introductions of pollutants into a facility and of any substantial change in the pollutants introduced into a facility by an existing user of the facility, except for such introductions of nonindustrial pollutants as the commissioner or local agency may exempt from this notification requirement when ample capacity remains in the facility to accommodate new inflows. The notification shall estimate the effects of the changes on the effluents to be discharged into the facility.

(2) To establish an effective regulatory program, alone or in conjunction with the operators of sewage collection systems, that will assure compliance and monitor progress toward compliance by industrial users of the facilities with user charge and cost recovery requirements of the Federal Act or State law and toxicity standards adopted pursuant to ¹[this act] P.L.1977, c.74¹ and pretreatment standards.

(3) As actual flows to the facility approach design flow or design loading limits, to submit to the commissioner or local agency for approval, a program which the permittee and the persons responsible for building and maintaining the contributory collection system shall pursue in order to prevent overload of the facilities.

i. (1) All local agencies shall prescribe terms and conditions, consistent with applicable State and federal law, or requirements adopted pursuant thereto by the department, upon which pollutants may be introduced into treatment works, and shall have the authority to exercise the same right of entry, inspection, sampling, and copying, and to impose the same remedies, fines and penalties, and to recover costs and compensatory damages as authorized pursuant to subsection a. of section 10 of P.L.1977, c.74 (C.58:10A-10) and section 6 of P.L.1990, c.28 (C.58:10A-10.1), with respect to users of such works, as are vested in the commissioner by ¹[this act] P.L.1977, c.74¹ . or by any other provision of State law, except that a local agency, except as provided in

P.L.1991, c.8 (C.58:10-10.4 et seq.), may not impose civil administrative penalties, and shall petition the county prosecutor or the Attorney General for a criminal prosecution under that section. Terms and conditions shall include limits for heavy metals, pesticides, organic chemicals and other contaminants in industrial wastewater discharges based upon the attainment of land-based sludge management criteria established by the department in the Statewide Sludge Management Plan adopted pursuant to the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or established pursuant to the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. § 1251 et seq.) or any regulations adopted pursuant thereto.

(2) Of the amount of any penalty assessed and collected pursuant to an action brought by a local agency in accordance with section 10 of P.L.1977, c.74 or section 6 of P.L.1990, c.28 (C.58:10A-10.1), 10% shall be deposited in the "Wastewater Treatment Operators' Training Account," established in accordance with section 13 of P.L.1990, c.28 (C.58:10A-14.5), and used to finance the cost of training operators of municipal treatment works. The remainder shall be used by the local agency solely for enforcement purposes, and for upgrading municipal treatment works.

j. In reviewing permits submitted in compliance with ¹[this act] P.L.1977, c.74¹ and in determining conditions under which such permits may be approved, the commissioner shall encourage the development of comprehensive regional sewerage planning or facilities, which serve the needs of the regional community, conform to the adopted area-wide water quality management plan for that region, and protect the needs of the regional community for water quality, aquifer storage, aquifer recharge, and dry weather based stream flows.

k. No permit may be issued, renewed, or modified by the department or a delegated local agency so as to relax any water quality standard or effluent limitation until the applicant, or permit holder, as the case may be, has paid all fees, penalties or fines due and owing pursuant to P.L.1977, c.74, or has entered into an agreement with the department establishing a payment schedule therefor; except that if a penalty or fine is contested, the applicant or permit holder shall satisfy the provisions of this section by posting financial security as required pursuant to paragraph (5) of subsection d. of section 10 of P.L.1977, c.74 (C.58:10A-10). The provisions of this subsection with respect to penalties or fines shall not apply to a local agency contesting a penalty or fine.

l. Each permitted facility or municipal treatment works, other than one discharging only stormwater or non-contact cooling water, shall be inspected by the department at least once a year; except that each permitted facility discharging into the municipal treatment works of a delegated local agency, other than a facility discharging only stormwater or non-contact cooling water, shall be inspected by the delegated local agency at least once a year. Except as hereinafter provided, an inspection required under this subsection shall be conducted within six

months following a permittee's submission of an application for a permit, permit renewal, or, in the case of a new facility or municipal treatment works, issuance of a permit therefor, except that if for any reason, a scheduled inspection cannot be made the inspection shall be rescheduled to be performed within 30 days of the originally scheduled inspection or, in the case of a temporary shutdown, of resumed operation. Exemption of stormwater facilities from the provisions of this subsection shall not apply to any permitted facility or municipal treatment works discharging or receiving stormwater runoff having come into contact with a hazardous discharge site on the federal National Priorities List adopted by the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act," Pub.L.96-510 (42 U.S.C.A. §9601 et seq.), or any other hazardous discharge site included by the department on the master list for hazardous discharge site cleanups adopted pursuant to section 2 of P.L.1982, c.202 (C.58:10-23.16). Inspections shall include:

(1) A representative sampling of the effluent for each permitted facility or municipal treatment works, except that in the case of facilities or works that are not major facilities or significant indirect users, sampling pursuant to this paragraph shall be conducted at least once every three years:

(2) An analysis of all collected samples by a State owned and operated laboratory, or a certified laboratory other than one that has been or is being used by the permittee, or that is directly or indirectly owned, operated or managed by the permittee:

(3) An evaluation of the maintenance record of the permittee's treatment equipment:

(4) An evaluation of the permittee's sampling techniques:

(5) A random check of written summaries of test results, prepared by the certified laboratory providing the test results, for the immediately preceding 12-month period, signed by a responsible official of the certified laboratory, certifying the accuracy of the test results; and

(6) An inspection of the permittee's sample storage facilities and techniques if the sampling is normally performed by the permittee.

The department may inspect a facility required to be inspected by a delegated local agency pursuant to this subsection. Nothing in this subsection shall require the department to conduct more than one inspection per year.

m. The facility or municipal treatment works of a permittee identified as a significant noncomplier shall be subject to an inspection by the department, or the delegated local agency, as the case may be, which inspection shall be in addition to the requirements of subsection l. of this section. The inspection shall be conducted within 60 days of receipt of the discharge monitoring report that initially results in the permittee being identified as a significant noncomplier. The inspection shall include a random check of written summaries of test results, prepared by the certified laboratory providing the test results,

for the immediately preceding 12-month period, signed by a responsible official of the certified laboratory, certifying the accuracy of the test results. A copy of each summary shall be maintained by the permittee. The inspection shall be for the purpose of determining compliance. The department or delegated local agency is required to conduct only one inspection per year pursuant to this subsection, and is not required to make an inspection hereunder if an inspection has been made pursuant to subsection l. of this section within six months of the period within which an inspection is required to be conducted under this subsection.

n. To assist the commissioner in assessing a municipal treatment works' NJPDES permit in accordance with paragraph (3) of subsection b. of section 7 of P.L.1977, c.74 (C.58:10A-7), a delegated local agency shall perform a complete analysis that includes a complete priority pollutant analysis of the discharge from, and inflow to, the municipal treatment works. The analysis shall be performed by a delegated local agency as often as the priority pollutant scan is required under the permit, but not less than once a year, and shall be based upon data acquired in the priority pollutant scan and from applicable sludge quality analysis reports. The results of the analysis shall be included in a report to be attached to the annual report required to be submitted to the commissioner by the delegated local agency.

o. Except as otherwise provided in section 3 of P.L.1963, c.73 (C.47:1A-3), any records, reports or other information obtained by the commissioner or a local agency pursuant to this section or section 5 of P.L.1972, c.42 (C.58:11-53), including any correspondence relating thereto, shall be available to the public; however, upon a showing satisfactory to the commissioner by any person that the making public of any record, report or information, or a part thereof, other than effluent data, would divulge methods or processes entitled to protection as trade secrets, the commissioner or local agency shall consider such record, report, or information, or part thereof, to be confidential, and access thereto shall be limited to authorized officers or employees of the department, the local agency, and the federal government.

p. The provisions of this section shall not apply to a discharge of petroleum to the surface waters of the State that occurs as a result of the process of recovering, containing, cleaning up or removing a discharge of petroleum in the surface waters of the State and that is undertaken in compliance with the instructions of a federal on-scene coordinator or of the commissioner or the commissioner's designee.

(cf: P.L.1993, c.23, s.1)

1 purpose of determining compliance. The department or delegated
2 local agency is required to conduct only one inspection per year
3 pursuant to this subsection, and is not required to make an
4 inspection hereunder if an inspection has been made pursuant to
5 subsection l. of this section within six months of the period within
6 which an inspection is required to be conducted under this
7 subsection.

8 n. To assist the commissioner in assessing a municipal
9 treatment works' NJPDES permit in accordance with paragraph
10 (3) of subsection b. of section 7 of P.L.1977, c.74 (C.58:10A-7), a
11 delegated local agency shall perform a complete analysis that
12 includes a complete priority pollutant analysis of the discharge
13 from, and inflow to, the municipal treatment works. The analysis
14 shall be performed by a delegated local agency as often as the
15 priority pollutant scan is required under the permit, but not less
16 than once a year, and shall be based upon data acquired in the
17 priority pollutant scan and from applicable sludge quality analysis
18 reports. The results of the analysis shall be included in a report
19 to be attached to the annual report required to be submitted to
20 the commissioner by the delegated local agency.

21 o. Except as otherwise provided in section 3 of P.L.1963, c.73
22 (C.47:1A-3), any records, reports or other information obtained
23 by the commissioner or a local agency pursuant to this section or
24 section 5 of P.L.1972, c.42 (C.58:11-53), including any
25 correspondence relating thereto, shall be available to the public;
26 however, upon a showing satisfactory to the commissioner by any
27 person that the making public of any record, report or
28 information, or a part thereof, other than effluent data, would
29 divulge methods or processes entitled to protection as trade
30 secrets, the commissioner or local agency shall consider such
31 record, report, or information, or part thereof, to be confidential.
32 and access thereto shall be limited to authorized officers or
33 employees of the department, the local agency, and the federal
34 government.

35 p. The provisions of this section shall not apply to a discharge
36 of petroleum to the surface waters of the State that occurs as a
37 result of the process of recovering, containing, cleaning up or
38 removing a discharge of petroleum in the surface waters of the
39 State and that is undertaken in compliance with the instructions
40 of a federal on-scene coordinator or of the commissioner or the
41 commissioner's designee.

42 (cf: P.L.1993, c.23, s.1)

43 5. This act shall take effect immediately.

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46 STATEMENT

47

48 This bill clarifies that the prohibitions against a discharge of
49 hazardous substances in the "Spill Compensation and Control
50 Act," P.L.1976, c.141, and against the non-permitted discharge
51 of a pollutant in the "Water Pollution Control Act," P.L.1977,
52 c.74, do not apply to a discharge that occurs as a result of the
53 process of recovering, containing, cleaning up or removing an oil
54 spill, when the discharge is undertaken in compliance with the

1 instructions of a federal on-scene coordinator or of the
2 commissioner of the Department of Environmental Protection
3 and Energy or the commissioner's designee.

4 Although the "Spill Act" already contains an exemption from
5 liability for most actions of emergency responders, and the DEPE
6 has adopted regulations pursuant to the "Water Pollution Control
7 Act" to exempt cleanup activities, this bill creates a complete
8 statutory exemption from the provisions of either of these acts
9 for any discharge that results from the described actions
10 undertaken to clean up an oil spill and that is undertaken in
11 compliance with the instructions of a federal on-scene
12 coordinator or appropriate State official. The bill thus allows
13 responders to proceed with minor discharges that are a necessary
14 part of the oil spill cleanup process without fear of violating
15 State discharge prevention and cleanup laws.

16 The bill also specifies that a vessel used solely for activities
17 directly related to recovering, containing, cleaning up or
18 removing an oil spill is not a "major facility" for the purposes of
19 the "Spill Act," and thus is not subject to the regulatory
20 requirements placed on major facilities.

21 The bill makes certain technical amendments to clarify the
22 meaning of the amended sections of law.

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27 "Oil Spill Rapid Response and Cleanup Act."

ASSEMBLY ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1831

with committee amendments

STATE OF NEW JERSEY

DATED: AUGUST 15, 1994

The Assembly Environment and Energy Committee favorably reports Assembly Bill No. 1831, with committee amendments.

This bill provides for rapid response to, and cleanup of, oil spills by allowing responders to proceed with minor discharges that are a necessary part of the oil spill cleanup process without fear of violating State discharge prevention and cleanup laws.

In the course of cleaning up an oil spill, the separation of water from the recovered oil requires a return of the excess water to the area of the spill. The returned water cannot be rendered entirely free of oil and therefore could be interpreted as a discharge in violation of State law.

Although the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), already contains an exemption from liability for most actions of emergency responders, and the Department of Environmental Protection has adopted regulations pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), to exempt certain discharges occurring during cleanup activities from permit requirements, this bill creates a complete statutory exemption from the provisions of either of these acts for any discharge that results from the described actions undertaken to clean up an oil spill and that is undertaken in compliance with the instructions of a federal on-scene coordinator or appropriate State official.

Specifically, the bill clarifies that the prohibitions against a discharge of hazardous substances in the "Spill Compensation and Control Act," and against the non-permitted discharge of a pollutant in the "Water Pollution Control Act," do not apply to a discharge that occurs as a result of the process of recovering, containing, cleaning up or removing an oil spill, when the discharge is undertaken in compliance with the instructions of a federal on-scene coordinator or of the Commissioner of the Department of Environmental Protection or the commissioner's designee.

The bill also specifies that a vessel used solely for activities directly related to recovering, containing, cleaning up or removing an oil spill is not a "major facility" for the purposes of the "Spill Compensation and Control Act," and thus is not subject to the regulatory requirements placed on major facilities.

Finally, the bill makes certain technical amendments to clarify the meaning of the amended sections of law.

The committee amendments made technical corrections to the bill.

ASSEMBLY AEN COMMITTEE

AMENDMENTS

to

Assembly Bill No. 1831

(Sponsored by Assemblymen CORODEMUS and IMPREVEDUTO)



OMIT SECTION 1 IN ITS ENTIRETY

REPLACE SECTION 2 TO READ:

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

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

[a.] "Act of God" means an act exclusively occasioned by an unanticipated, grave natural disaster without the interference of any human agency;

"Administrator" means the chief executive of the New Jersey Spill Compensation Fund;

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

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

[d.] "Cleanup and removal costs" means all costs associated with a discharge, incurred by the State or its political subdivisions or their agents or any person with written approval from the department in the: (1) removal or attempted removal of hazardous substances, or (2) taking of reasonable measures to prevent or mitigate damage to the public health, safety, or welfare, including, but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property, including wildlife and other natural resources, and shall include costs incurred by the State for the indemnification and legal defense of contractors pursuant to sections 1 through 11 of P.L.1991, c.373 (C.58:10-23.11f8 et seq.);

[e.] "Commissioner" means the Commissioner of Environmental Protection;

[f.] "Department" means the Department of Environmental Protection;

[g.] "Director" means the Director of the Division of Taxation in the Department of the Treasury;

[h.] "Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substances into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State;

(i.) "Emergency response action" means those activities conducted by a local unit to clean up, remove, prevent, contain, or mitigate a discharge that poses an immediate threat to the environment or to the public health, safety, or welfare;

"Fair market value" means the invoice price of the hazardous substances transferred, including transportation charges; but where no price is so fixed, "fair market value" shall mean the market price as of the close of the nearest day to the transfer, paid for similar hazardous substances, as shall be determined by the taxpayer pursuant to rules of the director;

(j.) "Fund" means the New Jersey Spill Compensation Fund;

(k.) "Hazardous substances" means the "environmental hazardous substances" on the environmental hazardous substance list adopted by the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4); such elements and compounds, including petroleum products, which are defined as such by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 311 of the federal Water Pollution Control Act Amendments of 1972, Pub.L.92-500, as amended by the Clean Water Act of 1977, Pub.L.95-217 (33 U.S.C.§1251 et seq.); the list of toxic pollutants designated by Congress or the EPA pursuant to section 307 of that act; and the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 101 of the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L.96-510 (42 U.S.C.§9601 et seq.); provided, however, that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of ¹[this act] P.L.1976, c.141 (C.58:10-23.11 et seq.)¹;

(l.) "Local unit" means any county or municipality, or any agency or other instrumentality thereof, or a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad.

"Major facility" includes, but is not limited to, any refinery, storage or transfer terminal, pipeline, deep-water port, drilling platform or any appurtenance related to any of the preceding that is used or is capable of being used to refine, produce, store, handle, transfer, process or transport hazardous substances. [A vessel shall be considered a major facility only when hazardous substances are transferred between vessels] "Major facility" shall include a vessel only when that vessel is engaged in a transfer of hazardous substances between it and another vessel, and in any event shall not include a vessel used solely for activities directly related to recovering, containing, cleaning up or removing discharges of petroleum in the surface waters of the State, including training, research, and other activities directly related to spill response.

A facility shall not be considered a major facility for the purpose of ¹[this act] P.L.1976, c.141¹ unless it has total combined aboveground or buried storage capacity of:

(1) 20,000 gallons or more for hazardous substances which are other than petroleum or petroleum products, or

(2) 200,000 gallons or more for hazardous substances of all kinds.

In determining whether a facility is a major facility for the purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.), any underground storage tank at the facility used solely to store heating oil for on-site consumption shall not be considered when determining the combined storage capacity of the facility.

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

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

[n.] "Owner" or "operator" means, with respect to a vessel, any person owning, operating or chartering by demise such vessel; with respect to any major facility, any person owning such facility, or operating it by lease, contract or other form of agreement; with respect to abandoned or derelict major facilities, the person who owned or operated such facility immediately prior to such abandonment, or the owner at the time of discharge;

[o.] "Person" means public or private corporations, companies, associations, societies, firms, partnerships, joint stock companies, individuals, the United States, the State of New Jersey and any of its political subdivisions or agents;

[p.] "Petroleum" or "petroleum products" means oil or petroleum of any kind and in any form, including, but not limited to, oil, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, and substances or additives to be utilized in the refining or blending of crude petroleum or petroleum stock in this State; however, any compound designated by specific chemical name on the list of hazardous substances adopted by the department pursuant to [subsection 3k.] this section shall not be considered petroleum or a petroleum product for the purposes of ¹[this act] P.L.1976, c.141¹, unless such compound is to be utilized in the refining or blending of crude petroleum or petroleum stock in this State;

[q.] "Taxpayer" means the owner or operator of a major facility subject to the tax provisions of ¹[this act] P.L.1976, c.141¹;

[r.] "Tax period" means every calendar month on the basis of which the taxpayer is required to report under ¹[this act] P.L.1976, c.141¹;

[s.] "Transfer" means onloading or offloading between major facilities and vessels, or vessels and major facilities, and from vessel to vessel or major facility to major facility, except for fueling or refueling operations and except that with regard to the movement of hazardous substances other than petroleum, it shall also include any onloading of or offloading from a major facility;

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

[u.] "Waters" means the ocean and its estuaries to the seaward limit of the State's jurisdiction, all springs, streams and bodies of surface or groundwater, whether natural or artificial, within the boundaries of this State [;

v. "Act of God" means an act exclusively occasioned by an unanticipated, grave natural disaster without the interference of any human agency;

w. "Emergency response action" means those activities conducted by a local unit to clean up, remove, prevent, contain, or mitigate a discharge that poses an immediate threat to the environment or to the public health, safety, or welfare;

x. "Local unit" means any county or municipality, or any agency or other instrumentality thereof, or a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad).

(cf: P.L.1992, c.147, s.1)

RENUMBER SECTION 3 AS SECTION 2

REPLACE SECTION 4 TO READ:

¹[4] ³¹. Section 6 of P.L.1977, c.74 (C.58:10A-6) is amended to read as follows:

6. a. It shall be unlawful for any person to discharge any pollutant, except [in conformity] as provided pursuant to subsections d. and p. of this section. or when the discharge conforms with a valid New Jersey Pollutant Discharge Elimination System permit that has been issued by the commissioner pursuant to [this act] P.L.1977, c.74 (C.58:10A-1 et seq.) or a valid National Pollutant Discharge Elimination System permit issued by the administrator pursuant to the Federal Act, as the case may be.

b. It shall be unlawful for any person to build, install, modify or operate any facility for the collection, treatment or discharge of any pollutant, except after approval by the department pursuant to regulations adopted by the commissioner.

c. The commissioner is hereby authorized to grant, deny, modify, suspend, revoke, and reissue NJPDES permits in accordance with ¹[this act] P.L.1977, c.74¹, and with regulations to be adopted by him. The commissioner may reissue, with or without modifications, an NPDES permit duly issued by the federal government as the NJPDES permit required by ¹[this act] P.L.1977, c.74¹.

d. The commissioner may, by regulation, exempt the following categories of discharge, in whole or in part, from the requirement of obtaining a permit under ¹[this act] P.L.1977, c.74¹; provided, however, that an exemption afforded under this section shall not limit the civil or criminal liability of any discharger nor exempt any discharger from approval or permit requirements under any other provision of law:

(1) Additions of sewage, industrial wastes or other materials into a publicly owned sewage treatment works which is regulated by pretreatment standards;

(2) Discharges of any pollutant from a marine vessel or other discharges incidental to the normal operation of marine vessels;

(3) Discharges from septic tanks, or other individual waste disposal systems, sanitary landfills, and other means of land disposal of wastes;

(4) Discharges of dredged or fill materials into waters for which the State could not be authorized to administer the section 404 program under section 404(g) of the "Federal Water Pollution Control Act Amendments of 1972," as amended by the "Clean Water Act of 1977" (33 U.S.C. § 1344) and implementing regulations;

(5) Nonpoint source discharges;

(6) Uncontrolled nonpoint source discharges composed entirely of storm water runoff when these discharges are uncontaminated by any industrial or commercial activity unless these particular storm water runoff discharges have been identified by the administrator or the department as a significant contributor of pollution;

(7) Discharges conforming to a national contingency plan for removal of oil and hazardous substances, published pursuant to section 311(c)(2) of the Federal Act.

e. The commissioner shall not issue any permit for:

(1) The discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste into the waters of this State;

(2) Any discharge which the United States Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage or navigation;

(3) Any discharge to which the administrator has objected in writing pursuant to the Federal Act;

(4) Any discharge which conflicts with an areawide plan adopted pursuant to law.

f. A permit issued by the department or a delegated local agency, ¹[under this act] pursuant to P.L.1977, c.74¹ shall require the permittee:

(1) To achieve effluent limitations based upon guidelines or standards established pursuant to the Federal Act or ¹[this act] to P.L.1977, c.74¹, together with such further discharge restrictions and safeguards against unauthorized discharge as may be necessary to meet water quality standards, areawide plans adopted pursuant to law, or other legally applicable requirements;

(2) Where appropriate, to meet schedules for compliance with the terms of the permit and interim deadlines for progress or reports of progress towards compliance;

(3) To insure that all discharges are consistent at all times with the terms and conditions of the permit and that no pollutant will be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit;

(4) To submit application for a new permit in the event of any contemplated facility expansion or process modification that would result in new or increased discharges or, if these would not violate effluent limitations or other restrictions specified in the permit, to notify the commissioner, or delegated local agency, of such new or increased discharges;

(5) To install, use and maintain such monitoring equipment and methods, to sample in accordance with such methods, to maintain and retain such records of information from monitoring activities, and to submit to the commissioner, or to the delegated local agency, reports of monitoring results for surface waters, as may be stipulated in the permit, or required by the commissioner or delegated local agency pursuant to paragraph (9) of this subsection, or as the commissioner or the delegated local agency may prescribe for ground water. Significant indirect users, major industrial dischargers, and local agencies, other than those discharging only stormwater or noncontact cooling water, shall, however, report their monitoring results for discharges to surface waters monthly to the commissioner, or the delegated local agency. Discharge monitoring reports for discharges to surface waters shall be signed by the highest ranking official having day-to-day managerial and operational responsibilities for the discharging facility, who may, in his absence, authorize another responsible high ranking official to sign a monthly monitoring report if a report is required to be filed during that period of time. The highest ranking official shall, however, be liable in all instances for the accuracy of all the information provided in the monitoring report; provided, however, that the highest ranking official may file, within seven days of his return, amendments to the monitoring report to which he was not a signatory. The highest ranking official having day-to-day managerial and operational responsibilities for the discharging facility of a local agency shall be the highest ranking licensed operator of the municipal treatment works in those instances where a licensed operator is required by law to operate the facility. In those instances where a local agency has contracted with another entity to operate a municipal treatment works, the highest ranking official who signs the discharge monitoring report shall be an employee of the contract operator and not of the local agency. Notwithstanding that an employee of a contract operator is the official who signs the discharge monitoring report, the local agency, as the permittee, shall remain liable for compliance with all permit conditions. In those instances where the highest ranking official having day-to-day managerial and operational responsibilities for a discharging facility of a local agency does not have the responsibility to authorize capital expenditures and hire personnel, a person having that responsibility, or a person designated by that person, shall submit to the department, along with the discharge monitoring report, a certification that that person has received and reviewed the discharge monitoring report. The person submitting the certification to the department shall not be liable for the accuracy of the information on the discharge monitoring report due to the submittal of the certification. Whenever a local agency has contracted with another entity to operate the municipal treatment works, the person submitting the certification shall be an employee of the permittee and not of the contract operator. The filing of amendments to a monitoring report in accordance

with this paragraph shall not be considered a late filing of a report for purposes of subsection d. of section 6 of P.L.1990, c.28 (C.58:10A-10.1), or for purposes of determining a significant noncomplier;

(6) At all times, to maintain in good working order and operate as effectively as possible, any facilities or systems of control installed to achieve compliance with the terms and conditions of the permit;

(7) To limit concentrations of heavy metal, pesticides, organic chemicals and other contaminants in the sludge in conformance with the land-based sludge management criteria established by the department in the Statewide Sludge Management Plan adopted pursuant to the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or established pursuant to the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. § 1251 et seq.), or any regulations adopted pursuant thereto;

(8) To report to the department or delegated local agency, as appropriate, any exceedance of an effluent limitation that causes injury to persons, or damage to the environment, or poses a threat to human health or the environment, within two hours of its occurrence, or of the permittee becoming aware of the occurrence. Within 24 hours thereof, or of an exceedance, or of becoming aware of an exceedance, of an effluent limitation for a toxic pollutant, a permittee shall provide the department or delegated local agency with such additional information on the discharge as may be required by the department or delegated local agency, including an estimate of the danger posed by the discharge to the environment, whether the discharge is continuing, and the measures taken, or being taken, to remediate the problem and any damage to the environment, and to avoid a repetition of the problem;

(9) Notwithstanding the reporting requirements stipulated in a permit for discharges to surface waters, a permittee shall be required to file monthly reports with the commissioner or delegated local agency if the permittee:

(a) in any month commits a serious violation or fails to submit a completed discharge monitoring report and does not contest, or unsuccessfully contests, the assessment of a civil administrative penalty therefor; or

(b) exceeds an effluent limitation for the same pollutant at the same discharge point source by any amount for four out of six consecutive months.

The commissioner or delegated local agency may restore the reporting requirements stipulated in the permit if the permittee has not committed any of the violations identified in this paragraph for six consecutive months;

(10) To report to the department or delegated local agency, as appropriate, any serious violation within 30 days of the violation, together with a statement indicating that the permittee understands the civil administrative penalties required to be assessed for serious violations, and explaining the nature of the serious violation and the measures taken to remedy the cause or prevent a recurrence of the serious violation.

g. The commissioner and a local agency shall have a right of entry to all premises in which a discharge source is or might be located or in which monitoring equipment or records required by a permit are kept, for purposes of inspection, sampling, copying or photographing.

h. In addition, any permit issued for a discharge from a municipal treatment works shall require the permittee:

(1) To notify the commissioner or local agency in advance of the quality and quantity of all new introductions of pollutants into a facility and of any substantial change in the pollutants introduced into a facility by an existing user of the facility, except for such introductions of nonindustrial pollutants as the commissioner or local agency may exempt from this notification requirement when ample capacity remains in the facility to accommodate new inflows. The notification shall estimate the effects of the changes on the effluents to be discharged into the facility.

(2) To establish an effective regulatory program, alone or in conjunction with the operators of sewage collection systems, that will assure compliance and monitor progress toward compliance by industrial users of the facilities with user charge and cost recovery requirements of the Federal Act or State law and toxicity standards adopted pursuant to ¹[this act] P.L.1977, c.74¹ and pretreatment standards.

(3) As actual flows to the facility approach design flow or design loading limits, to submit to the commissioner or local agency for approval, a program which the permittee and the persons responsible for building and maintaining the contributory collection system shall pursue in order to prevent overload of the facilities.

i. (1) All local agencies shall prescribe terms and conditions, consistent with applicable State and federal law, or requirements adopted pursuant thereto by the department, upon which pollutants may be introduced into treatment works, and shall have the authority to exercise the same right of entry, inspection, sampling, and copying, and to impose the same remedies, fines and penalties, and to recover costs and compensatory damages as authorized pursuant to subsection a. of section 10 of P.L.1977, c.74 (C.58:10A-10) and section 6 of P.L.1990, c.28 (C.58:10A-10.1), with respect to users of such works, as are vested in the commissioner by ¹[this act] P.L.1977, c.74¹, or by any other provision of State law, except that a local agency, except as provided in P.L.1991, c.8 (C.58:10-10.4 et seq.), may not impose civil administrative penalties, and shall petition the county prosecutor or the Attorney General for a criminal prosecution under that section. Terms and conditions shall include limits for heavy metals, pesticides, organic chemicals and other contaminants in industrial wastewater discharges based upon the attainment of land-based sludge management criteria established by the department in the Statewide Sludge Management Plan adopted pursuant to the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or established pursuant to the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. § 1251 et seq.), or any regulations adopted pursuant thereto.

(2) Of the amount of any penalty assessed and collected pursuant to an action brought by a local agency in accordance with section 10 of P.L.1977, c.74 or section 6 of P.L.1990, c.28 (C.58:10A-10.1), 10% shall be deposited in the "Wastewater Treatment Operators' Training Account," established in accordance with section 13 of P.L.1990, c.28 (C.58:10A-14.5), and used to finance the cost of training operators of municipal treatment works. The remainder shall be used by the local agency solely for enforcement purposes, and for upgrading municipal treatment works.

j. In reviewing permits submitted in compliance with ¹[this act] P.L.1977, c.74¹ and in determining conditions under which such permits may be approved, the commissioner shall encourage the development of comprehensive regional sewerage planning or facilities, which serve the needs of the regional community, conform to the adopted area-wide water quality management plan for that region, and protect the needs of the regional community for water quality, aquifer storage, aquifer recharge, and dry weather based stream flows.

k. No permit may be issued, renewed, or modified by the department or a delegated local agency so as to relax any water quality standard or effluent limitation until the applicant, or permit holder, as the case may be, has paid all fees, penalties or fines due and owing pursuant to P.L.1977, c.74, or has entered into an agreement with the department establishing a payment schedule therefor; except that if a penalty or fine is contested, the applicant or permit holder shall satisfy the provisions of this section by posting financial security as required pursuant to paragraph (5) of subsection d. of section 10 of P.L.1977, c.74 (C.58:10A-10). The provisions of this subsection with respect to penalties or fines shall not apply to a local agency contesting a penalty or fine.

l. Each permitted facility or municipal treatment works, other than one discharging only stormwater or non-contact cooling water, shall be inspected by the department at least once a year; except that each permitted facility discharging into the municipal treatment works of a delegated local agency, other than a facility discharging only stormwater or non-contact cooling water, shall be inspected by the delegated local agency at least once a year. Except as hereinafter provided, an inspection required under this subsection shall be conducted within six months following a permittee's submission of an application for a permit, permit renewal, or, in the case of a new facility or municipal treatment works, issuance of a permit therefor, except that if for any reason, a scheduled inspection cannot be made the inspection shall be rescheduled to be performed within 30 days of the originally scheduled inspection or, in the case of a temporary shutdown, of resumed operation. Exemption of stormwater facilities from the provisions of this subsection shall not apply to any permitted facility or municipal treatment works discharging or receiving stormwater runoff having come into contact with a hazardous discharge site on the federal National Priorities List adopted by the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response,

Compensation, and Liability Act," Pub.L.96-510 (42 U.S.C.A. §9601 et seq.), or any other hazardous discharge site included by the department on the master list for hazardous discharge site cleanups adopted pursuant to section 2 of P.L.1982, c.202 (C.58:10-23.16). Inspections shall include:

(1) A representative sampling of the effluent for each permitted facility or municipal treatment works, except that in the case of facilities or works that are not major facilities or significant indirect users, sampling pursuant to this paragraph shall be conducted at least once every three years;

(2) An analysis of all collected samples by a State owned and operated laboratory, or a certified laboratory other than one that has been or is being used by the permittee, or that is directly or indirectly owned, operated or managed by the permittee;

(3) An evaluation of the maintenance record of the permittee's treatment equipment;

(4) An evaluation of the permittee's sampling techniques;

(5) A random check of written summaries of test results, prepared by the certified laboratory providing the test results, for the immediately preceding 12-month period, signed by a responsible official of the certified laboratory, certifying the accuracy of the test results; and

(6) An inspection of the permittee's sample storage facilities and techniques if the sampling is normally performed by the permittee.

The department may inspect a facility required to be inspected by a delegated local agency pursuant to this subsection. Nothing in this subsection shall require the department to conduct more than one inspection per year.

m. The facility or municipal treatment works of a permittee identified as a significant noncomplier shall be subject to an inspection by the department, or the delegated local agency, as the case may be, which inspection shall be in addition to the requirements of subsection l. of this section. The inspection shall be conducted within 60 days of receipt of the discharge monitoring report that initially results in the permittee being identified as a significant noncomplier. The inspection shall include a random check of written summaries of test results, prepared by the certified laboratory providing the test results, for the immediately preceding 12-month period, signed by a responsible official of the certified laboratory, certifying the accuracy of the test results. A copy of each summary shall be maintained by the permittee. The inspection shall be for the purpose of determining compliance. The department or delegated local agency is required to conduct only one inspection per year pursuant to this subsection, and is not required to make an inspection hereunder if an inspection has been made pursuant to subsection l. of this section within six months of the period within which an inspection is required to be conducted under this subsection.

n. To assist the commissioner in assessing a municipal treatment works' NJPDES permit in accordance with paragraph (3) of subsection b. of section 7 of P.L.1977, c.74 (C.58:10A-7), a

delegated local agency shall perform a complete analysis that includes a complete priority pollutant analysis of the discharge from, and inflow to, the municipal treatment works. The analysis shall be performed by a delegated local agency as often as the priority pollutant scan is required under the permit, but not less than once a year, and shall be based upon data acquired in the priority pollutant scan and from applicable sludge quality analysis reports. The results of the analysis shall be included in a report to be attached to the annual report required to be submitted to the commissioner by the delegated local agency.

o. Except as otherwise provided in section 3 of P.L.1983, c.73 (C.47:1A-3), any records, reports or other information obtained by the commissioner or a local agency pursuant to this section or section 5 of P.L.1972, c.42 (C.58:11-53), including any correspondence relating thereto, shall be available to the public; however, upon a showing satisfactory to the commissioner by any person that the making public of any record, report or information, or a part thereof, other than effluent data, would divulge methods or processes entitled to protection as trade secrets, the commissioner or local agency shall consider such record, report, or information, or part thereof, to be confidential, and access thereto shall be limited to authorized officers or employees of the department, the local agency, and the federal government.

p. The provisions of this section shall not apply to a discharge of petroleum to the surface waters of the State that occurs as a result of the process of recovering, containing, cleaning up or removing a discharge of petroleum in the surface waters of the State and that is undertaken in compliance with the instructions of a federal on-scene coordinator or of the commissioner or the commissioner's designee.

(cf: P.L.1993, c.23, s.1)

RENUMBER SECTION 5 AS SECTION 4

REPLACE SYNOPSIS TO READ:

Facilitates rapid response to, and cleanup of, oil spills.