

LEGISLATIVE HISTORY CHECKLIST
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(Groundwater cleanups--
simplification)

NJSA: 58:10A-7.2

LAWS OF: 1993 **CHAPTER:** 351

BILL NO: A1215

SPONSOR(S) Singer and others

DATE INTRODUCED: March 30, 1992

COMMITTEE: **ASSEMBLY:** Energy and Hazardous Waste
SENATE: Environment

AMENDED DURING PASSAGE: Yes Amendments during passage
 Second reprint enacted denoted by superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** June 11, 1992
SENATE: December 7, 1993

DATE OF APPROVAL: December 29, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

[SECOND REPRINT]
ASSEMBLY, No. 1215

STATE OF NEW JERSEY

INTRODUCED MARCH 30, 1992

By Assemblyman SINGER, Assemblywoman WRIGHT
and Assemblyman Cottrell

1 AN ACT concerning groundwater ²[corrective] remedial² actions
2 and supplementing P.L.1977, c.74 (C.58:10A-1 et seq.) ¹[and
3 P.L.1975, c.291 (C.40:55D-1 et seq.)] ²and P.L.1975, c.291
4 (C.40:55D-1 et seq.)² .¹
5

6 BE IT ENACTED *by the Senate and General Assembly of the*
7 *State of New Jersey:*

8 ²1. a. An application for a permit issued by the Department
9 of Environmental Protection pursuant to P.L.1977, c.74
10 (C.58:10A-1 et seq.) for the discharge of groundwater to surface
11 water involving a groundwater remedial action necessitated by a
12 discharge from an underground storage tank containing petroleum
13 products or a groundwater remedial action involving petroleum
14 products, shall contain, in addition to a properly filled application
15 form:

16 (1) such documentation or other information on the permit
17 application as may be prescribed by the department on a
18 checklist made available to a prospective applicant;

19 (2) if the discharge from the proposed groundwater remedial
20 action is located within a wastewater service district or area of a
21 local public entity, a certified statement that a request, dated at
22 least 60 days prior to the filing of the permit application, had
23 been made to the local public entity to discharge the groundwater
24 into the wastewater collection or treatment facilities of that
25 entity, and that no reply has been received from that entity, or a
26 written statement by the local public entity, dated not more than
27 60 days prior to the filing of the permit application with the
28 department, that the entity has approved or rejected a written
29 request by the applicant to discharge the treated groundwater
30 into the wastewater collection or treatment facilities of that
31 entity. Notwithstanding that a local public entity has approved
32 the request to discharge groundwater into its facilities, the
33 department may approve the applicant's permit to discharge the
34 groundwater to surface water upon a finding that it is in the
35 public interest;

36 (3) a certified statement that a copy of the completed
37 application form along with a consent request, as prescribed in
38 subsection b. of this section, have been filed with the clerk of
39 the municipality in which the site of the proposed groundwater
40 remedial action is located, and setting forth the date of the filing
41 with the host municipality, which filing shall be made prior to, or
42 concurrent with, the filing of the application with the
43 department; and

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 ¹by is new matter.

Matter enclosed in superscript 2 hereinafter has been adopted as follows.

Assembly AEH committee amendments adopted June 3, 1992.

Senate SIN committee amendments adopted June 24, 1993.

1 (4) within the pinelands area, documentation from the
2 Pinelands Commission that the application is consistent with the
3 requirements of the "Pinelands Protection Act," P.L.1979, c.111
4 (C.13:18A-1 et seq.) or any regulations promulgated pursuant
5 thereto and section 502 of the "National Parks and Recreation
6 Act of 1978" (Pub.L. 95-625).

7 b. The department shall prescribe the form and content of a
8 request for consent filed with a municipality pursuant to
9 paragraph (3) of subsection a. of this section. The municipal
10 consent request shall be limited to an identification of all
11 municipal approvals with which the applicant is required to
12 comply, the status of any applications filed therefor, and whether
13 or not the municipality consents to the application and the
14 specific reasons therefor. The request for consent form shall also
15 advise that documentation and other information relating to the
16 application have been filed and are available for review at the
17 department. A municipality receiving a request for consent form
18 shall have 30 days from the date of receipt of a copy of the
19 application and request for consent form to file with the
20 department the information requested, and its consent of, or
21 objections to, the application. Municipal consent or objection to
22 a groundwater remedial action shall be by resolution of the
23 governing body of the municipality unless the governing body has,
24 by resolution, delegated such authority to a qualified officer or
25 entity thereof, in which case the endorsement shall be signed by
26 the designated officer or official of the entity. Notwithstanding
27 that a municipality objects to a permit application or fails to file
28 a consent or objection to the permit application, the department
29 may approve the applicant's permit application to discharge
30 groundwater to surface water.

31 c. An application pursuant to subsection a. of this section shall
32 be deemed complete, for the purposes of departmental review,
33 within 30 days of the filing of the application with the
34 department unless the department notifies the applicant, in
35 writing, prior to expiration of the 30 days that the application has
36 failed to satisfy one or more of the items identified in subsection
37 a. of this section. If an application is determined to be complete,
38 the department shall review and take final action on the
39 completed application within 60 days from commencement of the
40 review, or, if the parties mutually agree to a 30 day extension,
41 within 90 days therefrom. The review period for a completed
42 application shall commence immediately upon termination of the
43 30-day period, or upon determination by the department that the
44 application is complete, whichever occurs first. If the
45 department fails to take final action on a permit application for a
46 general permit in the time frames set forth in this subsection,
47 that general permit shall be deemed to have been approved by the
48 department. The department shall review an application for a
49 permit pursuant to subsection a. of this section and shall take
50 action on that application pursuant to the time frames set forth
51 in this subsection, notwithstanding that all of the municipal
52 approvals have not been obtained, unless such approvals would
53 materially affect the terms and conditions of the permit, except
54 that in such instances the department may condition its

1 approval of the application on the necessary municipal approvals
2 being subject to the terms and conditions of the application.

3 d. The department may issue a general permit for the
4 discharge of groundwater to surface water pursuant to a
5 groundwater remedial action of discharged petroleum products as
6 provided in subsection a. of this section.

7 e. (1) The department may not require a municipal consent of
8 a treatment works application for a groundwater remedial action
9 for which a permit application is submitted pursuant to
10 subsection a. of this section.

11 (2) If a completed application for a treatment works approval
12 for a groundwater remedial action is filed with the department at
13 the same time as an application for a general permit therefor,
14 the department shall concurrently review the two applications,
15 except that the review of the application for the treatment works
16 approval for a groundwater remedial action shall not be subject
17 to the time frames set forth in subsection c. of this section.

18 f. The provisions of this section shall apply to applications
19 filed on or after the effective date of this act, except that the
20 Department of Environmental Protection may implement any of
21 the provisions of this section prior to that date.

22 g. The department may, in accordance with the
23 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
24 et seq.), adopt rules and regulations to implement the provisions
25 of this act.

26 h. For purposes of this section:

27 "General permit" means a permit issued by the department for
28 similar discharges.

29 "Groundwater remedial action" means the removal or
30 abatement of one or more pollutants in a groundwater source.

31 "Local public entity" means a sewerage authority established
32 pursuant to P.L.1946, c.138 (C.40:14A-1 et seq.), a municipal
33 authority established pursuant to P.L.1957, c.183 (C.40:14B-1
34 et seq.), the Passaic Valley Sewerage Commissioners continued
35 pursuant to R.S.58:14-2, a joint meeting established pursuant to
36 R.S.40:63-68 et seq. or a local unit authorized to operate a
37 sewerage facility pursuant to N.J.S.40A:26A-1 et seq., or any
38 predecessor act.

39 "Underground storage tank" shall have the same meaning as in
40 section 2 of P.L.1986, c.102 (C.58:10A-22), except that as used
41 herein underground storage tanks shall include:

42 (1) farm underground storage tanks of 1,100 gallons or less
43 capacity used for storing motor fuel for noncommercial purposes;

44 (2) underground storage tanks used to store heating oil for
45 on-site consumption in a nonresidential building with a capacity
46 of 2,000 gallons or less; and

47 (3) underground storage tanks used to store heating oil for
48 on-site consumption in a residential building.²

49 ¹[2.] ²[1.1] ^{2.2} a. A permittee shall be entitled to an
50 affirmative defense against liability for any penalty assessable
51 pursuant to section 10 of P.L.1977, c.74 (C.58:10A-10) or section
52 6 of P.L.1990, c.28 (C.58:10A-10.1) for a violation of an effluent
53 limitation of a permit issued pursuant to P.L.1977, c.74
54 (C.58:10A-1 et seq.), which violation:

1 (1) occurs in the course of a permitted groundwater
2 ²[corrective] remedial² action;

3 (2) is the first violation of that permit limitation; and

4 (3) involves an exceedance of a permit limitation that could
5 not reasonably have been anticipated by the permittee, unless it
6 is established by a preponderance of the evidence that the
7 violation was the result of a negligent act or omission of the
8 permittee.

9 Demonstration that an act or omission of a person performing
10 groundwater ²[corrective] remedial² action accorded with
11 generally accepted ²[corrective] remedial² action practices, and
12 utilized the best technology reasonably available to the permittee
13 ²for the approved remedial action² at the time of the action,
14 shall create a rebuttable presumption that the act or omission
15 was not negligent.

16 b. An affirmative defense claim filed pursuant to subsection a.
17 of this section shall be denied by the Department of
18 Environmental Protection or a delegated local agency, as defined
19 in section 3 of P.L.1977, c.74 (C.58:10A-3), as
20 appropriate, if:

21 (1) the equipment used in the ²[corrective] remedial² action
22 had not been properly maintained or was not being properly
23 operated at the time of the violation, and the failure to properly
24 maintain or operate the equipment was the proximate cause of
25 the exceedance;

26 (2) the permittee fails, as required by law or rule or
27 regulation, to provide in a prompt manner to the department or a
28 delegated local agency:

29 (a) notification of the violation; and

30 (b) written information on the nature and extent of the permit
31 exceedance and, if known, the reasons therefor;

32 (3) the permittee fails to take immediate measures, upon first
33 becoming aware of the violation, to terminate the violation and
34 to abate any adverse consequences therefrom; or

35 (4) the permittee fails to file with the department or
36 delegated local agency a ²[corrective] remedial² action protocol,
37 setting forth the procedures to be followed to prevent a
38 recurrence of the exceedance.

39 c. A determination by the department or delegated local
40 agency on an affirmative defense claim made pursuant to
41 subsection a. of this section shall be considered final agency
42 action on the matter for purposes of the "Administrative
43 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and
44 paragraph (5) of subsection d. of section 10 of P.L.1977, c.74
45 (C.58:10A-10). ²[Final agency action shall be subject only to
46 review by the Appellate Division of the Superior Court.]²

47 d. If the department approves an affirmative defense claim
48 filed pursuant to subsection a. of this section, the permit
49 exceedance shall not be considered a violation for the purposes of
50 designating a person as a significant noncomplier under section 6
51 of P.L.1990, c.28 (C.58:10A-10.1).

52 e. Nothing in this ²[act] section² shall be construed to limit
53 the authority of the department to adopt regulations or permit
54 conditions for groundwater ²[corrective] remedial² actions

1 that exempt a violation for which an affirmative defense claim
2 may be filed pursuant to the provisions of this section, or for
3 exceedances of one or more permit parameters occurring during
4 the start-up phase of a ²[corrective] remedial² action, as defined
5 in a permit.

6 As used in this section "groundwater ²[corrective] remedial²
7 action" means the removal or abatement of one or more
8 pollutants in a groundwater source.

9 ¹[3. a. The siting of a structure or equipment required for a
10 groundwater corrective action approved by the Department of
11 Environmental Protection pursuant to P.L.1977, c.74 (C.58:10A-1
12 et seq.), shall be deemed to be essential to the continuation of an
13 existing structure or use of a property, including a nonconforming
14 use, or to the development of a property, as authorized in the
15 zoning ordinance of a municipality. A groundwater corrective
16 action subject to this section, including any structure or
17 equipment required in connection therewith, shall, therefore, be
18 deemed to be an accessory use or structure to any structure or
19 use authorized by the development regulations of a municipality;
20 shall be a permitted use in all zoning or use districts of a
21 municipality; and shall not require a use variance pursuant to
22 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70).

23 b. A municipality may, by ordinance, adopt reasonable
24 standards for the siting of a structure or equipment required for a
25 groundwater corrective action subject to subsection a. of this
26 section. The standards may include specification of the duration
27 of time allowed for the removal from a site of all structures or
28 equipment used in the corrective action upon expiration of the
29 term of the discharge permit or completion of the corrective
30 action, whichever shall be sooner. Nothing in this subsection
31 shall be deemed to authorize a municipality to require site plan
32 review by a municipal agency for a groundwater corrective
33 action, but an ordinance establishing siting standards may provide
34 penalties and may authorize the municipality to seek injunctive
35 relief for violations of the ordinance.

36 As used in this section, "groundwater corrective action" means
37 the removal or abatement of pollutants in groundwater, and
38 includes de-watering activities performed in connection with the
39 removal or replacement of underground storage tanks, as defined
40 in section 2 of P.L.1986, c.102 (C.58:10A-22), except that as used
41 herein underground storage tanks shall include:

42 (1) farm underground storage tanks of 1,100 gallons or less
43 capacity used for storing motor fuel for noncommercial purposes;

44 (2) underground storage tanks used to store heating oil for
45 on-site consumption in a nonresidential building with a capacity
46 of 2,000 gallons or less; and

47 (3) underground storage tanks used to store heating oil for
48 on-site consumption in a residential building.¹

49 ²3. a. The siting of a structure or equipment required for a
50 groundwater remedial action approved by the Department of
51 Environmental Protection pursuant to P.L.1977, c.74 (C.58:10A-1
52 et seq.), shall be deemed to be essential to the continuation of an
53 existing structure or use of a property, including a nonconforming
54 use, or to the development of a property, as authorized in the

1 zoning ordinance of a municipality. A groundwater remedial
2 action subject to this section, including any structure or
3 equipment required in connection therewith, shall, therefore, be
4 deemed to be an accessory use or structure to any structure or
5 use authorized by the development regulations of a municipality;
6 shall be a permitted use in all zoning or use districts of a
7 municipality; and shall not require a use variance pursuant to
8 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70).

9 b. A municipality may, by ordinance, adopt reasonable
10 standards for the siting of a structure or equipment required for a
11 groundwater remedial action subject to subsection a. of this
12 section. The standards may include specification of the duration
13 of time allowed for the removal from a site of all structures or
14 equipment used in the remedial action upon expiration of the
15 term of the discharge permit or completion of the remedial
16 action, whichever shall be sooner. Nothing in this subsection
17 shall be deemed to authorize a municipality to require site plan
18 review by a municipal agency for a groundwater remedial action,
19 but an ordinance establishing siting standards may provide
20 penalties and may authorize the municipality to seek injunctive
21 relief for violations of the ordinance.

22 As used in this section, "groundwater remedial action" means
23 the removal or abatement of pollutants in groundwater, and
24 includes de-watering activities performed in connection with the
25 removal or replacement of underground storage tanks, as defined
26 in section 2 of P.L.1986, c.102 (C.58:10A-22), except that as used
27 herein underground storage tanks shall include:

28 (1) farm underground storage tanks of 1,100 gallons or less
29 capacity used for storing motor fuel for noncommercial purposes;

30 (2) underground storage tanks used to store heating oil for
31 on-site consumption in a nonresidential building with a capacity
32 of 2,000 gallons or less; and

33 (3) underground storage tanks used to store heating oil for
34 on-site consumption in a residential building.²

35 ¹[4. If, for any of the reasons set forth in subsection c. of
36 section 57 of P.L.1975, c.291 (C.40:55D-70), a variance is
37 required under that subsection c. for the siting of a structure or
38 equipment to be used in a groundwater corrective action subject
39 to section 3 of this act, a variance for the corrective action shall
40 be deemed necessary to avoid exceptional and undue hardship on
41 an owner, lessee or developer of a property for which a variance
42 application is made; however, a zoning ordinance may authorize
43 the zoning board to establish reasonable terms and conditions for
44 issuance of a subsection c. variance. The zoning board shall
45 review and take final action on an application for a subsection c.
46 variance for a groundwater corrective action at the next meeting
47 of the zoning board occurring not less than 20 days following the
48 filing of an application therefor, unless the zoning board
49 determines that the application lacks information indicated on a
50 checklist adopted by ordinance and made available to the
51 applicant, and the applicant has been notified, in writing, of the
52 specific deficiencies prior to expiration of the 20-day period.]¹

53 ²4. If, for any of the reasons set forth in subsection c. of
54 section 57 of P.L.1975, c.291 (C.40:55D-70), a variance is

1 required under that subsection c. for the siting of a structure or
2 equipment to be used in a groundwater remedial action subject
3 to section 3 of P.L. , c. (C.)(now before the Legislature as
4 this bill), a variance for the remedial action shall be deemed
5 necessary to avoid exceptional and undue hardship on an owner,
6 lessee or developer of a property for which a variance application
7 is made; however, a zoning ordinance may authorize the zoning
8 board of adjustment or planning board, as appropriate, to
9 establish reasonable terms and conditions for issuance of a
10 subsection c. variance. The zoning board of adjustment or
11 planning board, as appropriate, shall review and take final action
12 on an application for a subsection c. variance for a groundwater
13 corrective action at the next meeting of the zoning board of
14 adjustment or planning board, as appropriate, occurring not less
15 than 20 days following the filing of an application therefor, unless
16 the zoning board of adjustment or planning board, as appropriate,
17 determines that the application lacks information indicated on a
18 checklist adopted by ordinance and made available to the
19 applicant, and the applicant has been notified, in writing, of the
20 specific deficiencies prior to expiration of the 20-day period.²

21 ¹[5.] ²[2.1] 5.² This act shall take effect ¹[30 days following
22 enactment, and shall apply to applications filed on and after that
23 date] ²[immediately¹] 30 days following enactment, and shall
24 apply to applications filed on and after that date².

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Simplifies application review processes for groundwater cleanups.

1 b. A municipality may, by ordinance, adopt reasonable
2 standards for the siting of a structure or equipment required for a
3 groundwater corrective action subject to subsection a. of this
4 section. The standards may include specification of the duration
5 of time allowed for the removal from a site of all structures or
6 equipment used in the corrective action upon expiration of the
7 term of the discharge permit or completion of the corrective
8 action, whichever shall be sooner. Nothing in this subsection
9 shall be deemed to authorize a municipality to require site plan
10 review by a municipal agency for a groundwater corrective
11 action, but an ordinance establishing siting standards may provide
12 penalties and may authorize the municipality to seek injunctive
13 relief for violations of the ordinance.

14 As used in this section, "groundwater corrective action" means
15 the removal or abatement of pollutants in groundwater, and
16 includes de-watering activities performed in connection with the
17 removal or replacement of underground storage tanks, as defined
18 in section 2 of P.L.1986, c.102 (C.58:10A-22), except that as used
19 herein underground storage tanks shall include:

20 (1) farm underground storage tanks of 1,100 gallons or less
21 capacity used for storing motor fuel for noncommercial purposes;

22 (2) underground storage tanks used to store heating oil for
23 on-site consumption in a nonresidential building with a capacity
24 of 2,000 gallons or less; and

25 (3) underground storage tanks used to store heating oil for
26 on-site consumption in a residential building.

27 4. If, for any of the reasons set forth in subsection c. of
28 section 57 of P.L.1975, c.291 (C.40:55D-70), a variance is
29 required under that subsection c. for the siting of a structure or
30 equipment to be used in a groundwater corrective action subject
31 to section 3 of this act, a variance for the corrective action shall
32 be deemed necessary to avoid exceptional and undue hardship on
33 an owner, lessee or developer of a property for which a variance
34 application is made; however, a zoning ordinance may authorize
35 the zoning board to establish reasonable terms and conditions for
36 issuance of a subsection c. variance. The zoning board shall
37 review and take final action on an application for a subsection c.
38 variance for a groundwater corrective action at the next meeting
39 of the zoning board occurring not less than 20 days following the
40 filing of an application therefor, unless the zoning board
41 determines that the application lacks information indicated on a
42 checklist adopted by ordinance and made available to the
43 applicant, and the applicant has been notified, in writing, of the
44 specific deficiencies prior to expiration of the 20-day period.

45 5. This act shall take effect 30 days following enactment, and
46 shall apply to applications filed on and after that date.

47

48 *SPONSORS* STATEMENT

49

50 This bill seeks to simplify State and local processes for the
51 approval of permit applications and wastewater treatment plans
52 for groundwater corrective actions. This bill is designed to
53 accelerate the rate of cleanup of the contaminated groundwater
54 sources in the State by removing certain unnecessary regulatory

1 impediments thereto, without, however, sacrificing critical
2 environmental protections.

3 Section 1 of the bill amends the local endorsement and
4 comment processes for discharge permit applications filed with
5 the Department of Environmental Protection (DEP) for
6 groundwater corrective actions involving petroleum products,
7 which actions necessitate discharges to surface waters. Among
8 other things, this section:

9 (1) stipulates the issues to be addressed in the local
10 endorsement or comments, and limits the time-frame for filing
11 comments or an endorsement;

12 (2) requires DEP to proceed with the review of a completed
13 application even though the applicant has not received all local
14 approvals;

15 (3) authorizes DEP to delay approval of a permit application
16 until local approvals have been received only if the approval
17 would affect the terms or conditions of DEP approval; and

18 (4) in the case of an application for a general permit, requires
19 DEP to conduct a concurrent review of general permit and
20 treatment works applications for the discharge of treated
21 groundwater to surface waters.

22 Section 2 of the bill entitles a permittee under P.L.1977, c.74
23 (C.58:10A-1 et seq.) to an affirmative defense against liability
24 for any penalty assessable under section 10 of that act
25 (C.58:10A-10) or section 6 of P.L.1990, c.28 (C.58:10A-10.1) if
26 the violation:

27 (1) occurs in the course of a groundwater corrective action;

28 (2) is the first violation of that permit limitation; and

29 (3) involves an exceedance of a permit limitation that could
30 not reasonably have been anticipated by the permittee, unless the
31 violation was the result of a negligent act or omission by the
32 permittee, or the permittee fails to satisfy additional
33 requirements set forth in the section. The section also contains a
34 definition of negligence. This proposed exemption from liability,
35 which is patterned after the "upset" provisions of section 7 of
36 P.L.1990, c.28 (C.58:10A-10.2), is made necessary by the
37 difficulties of ascertaining, with reasonable certainty, the precise
38 nature or mix of pollutants in a groundwater source, including
39 pollutants that may be activated by the cleanup action. The
40 assessment of penalties against a contractor who exercises due
41 diligence in a cleanup operation only serves to discourage
42 groundwater cleanup actions.

43 Sections 3 and 4 of the bill establish groundwater cleanup
44 activities as accessory uses to any existing land use authorized in
45 a municipality. Groundwater cleanup activities, and structures or
46 equipment needed therefor, would not, as a result, be subject to
47 site plan or use variance approvals, though they would have to
48 comply with any siting requirements adopted by a municipality
49 and would remain subject to "c" variance reviews. The purpose
50 of these sections is, again, to facilitate the cleanup of polluted
51 groundwater sources.

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55 Simplifies application review processes for groundwater cleanups

ASSEMBLY ENERGY AND HAZARDOUS WASTE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1215

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 1, 1992

The Assembly Energy and Hazardous Waste Committee favorably reports Assembly Bill No. 1215, with Assembly committee amendments.

As amended, the bill would entitle a permittee under P.L.1977, c.74 (C.58:10A-1 et seq.) to an affirmative defense against liability for any penalty assessable under section 10 of that act (C.58:10A-10) or section 6 of P.L.1990, c.28 (C.58:10A-10.1) if the violation:

- (1) occurs in the course of a groundwater corrective action;
- (2) is the first violation of that permit limitation; and
- (3) involves an exceedance of a permit limitation that could not reasonably have been anticipated by the permittee, unless the violation was the result of a negligent act or omission by the permittee, or the permittee fails to satisfy additional requirements set forth in the section. The section also contains a definition of negligence.

An affirmative defense claim would be denied if:

- (1) the equipment used in the corrective action was the proximate cause of the exceedance and had not been properly maintained or operated;
- (2) the permittee fails to provide the required notification of the violation and written information concerning the nature of the permit exceedance;
- (3) the permittee fails to take immediate measures to terminate the violation and abate any adverse consequences therefrom; or
- (4) the permittee fails to file with the department a corrective action protocol.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

[FIRST REPRINT]
ASSEMBLY, No. 1215

with committee amendments.

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STATE OF NEW JERSEY

DATED: JUNE 24, 1993

The Senate Environment Committee favorably reports Assembly Bill No. 1215 [1R] with committee amendments.

This bill, as amended by the committee, seeks to simplify State and local processes for the approval of permit applications and wastewater treatment plans for groundwater remedial actions. This bill is designed to accelerate the rate of cleanup of the contaminated groundwater sources in the State by removing certain unnecessary regulatory impediments thereto, without, however sacrificing critical environmental protections.

Section 1 of the bill is limited to New Jersey Pollutant Discharge Elimination System permits for discharges to surface water involving groundwater remedial actions necessitated by the discharge of petroleum products from underground storage tanks or otherwise. This section provides that the permit application is to contain (1) all information required on a checklist by the department, (2) documentation that the local wastewater facility has either approved or denied the discharge of groundwater into its system, or has failed to respond, (3) a certified statement that a municipal consent request has been delivered to the relevant municipality, and (4) documentation from the Pinelands Commission that the permit is consistent with their regulations.

This section provides that the department may issue the permit if the municipality fails to timely respond or even if it objects to the permit. The department may also issue the permit to discharge to surface water, if it is in the public interest, even if a wastewater system is willing to accept the discharged groundwater. The section establishes a time frame for declaring the permit complete for review and sets a deadline for that review. If the department fails to act on an application for a general permit during that time frame, the permit is to be deemed approved.

Section 1 also eliminates the need for a municipal treatment works consent where the permittee would otherwise need that consent for these remedial actions, authorizes the department to issue general permits for these types of activities, requires the department to review the permit application notwithstanding that municipal approvals may not as yet have been received, and allows treatment works applications to be reviewed coterminously with discharge permits.

Section 2 would entitle a permittee under the "Water Pollution Control Act" to an affirmative defense against liability for any penalty assessable under section 10 of that act (C.58:10A-10) or section 6 of P.L.1990, c.28 (C.58:10A-10.1) if the violation:

- (1) occurs in the course of a groundwater corrective action;
- (2) is the first violation of that permit limitation; and

(3) involves an exceedance of a permit limitation that could not reasonably have been anticipated by the permittee, unless the violation was the result of a negligent act or omission by the permittee, or the permittee fails to satisfy additional requirements set forth in the section. The section also contains a definition of negligence.

An affirmative defense claim would be denied if:

(1) the equipment used in the corrective action was the proximate cause of the exceedance and had not been properly maintained or operated;

(2) the permittee fails to provide the required notification of the violation and written information concerning the nature of the permit exceedance;

(3) the permittee fails to take immediate measures to terminate the violation and abate any adverse consequences therefrom; or

(4) the permittee fails to file with the department a corrective action protocol.

Sections 3 and 4 of the bill establish groundwater cleanup activities as accessory uses to any existing land use authorized in a municipality. Groundwater cleanup activities, and structures or equipment needed therefor, would not, as a result, be subject to site plan or use variance approvals, though they would have to comply with any siting requirements adopted by a municipality and would remain subject to "c" variance reviews. The purpose of these sections is, again, to facilitate the cleanup of polluted groundwater sources.

The committee amendments added the provisions in sections 1, 3, and 4 of the bill.

As amended by committee, this bill is identical to Senate Bill No. 2165 with committee amendments.

LEGISLATIVE FISCAL ESTIMATE TO

[FIRST REPRINT]

ASSEMBLY, No. 1215

STATE OF NEW JERSEY

DATED: August 5, 1992

Assembly Bill No. 1215 (1R) of 1992 entitles a groundwater discharge permittee under the "Water Pollution Control Act" to initiate an affirmative defense against liability for any penalty assessable under section 10 of that act or under section 6 of the "Clean Water Enforcement Act" if the violation meets certain criteria specified by the bill. The bill essentially is aimed at limiting penalty liability for contractors who are removing or repairing leaking underground storage tanks on an emergency basis.

The Office of Legislative Services cannot estimate the amount of assessable penalty monies that would not be collected as a result of the bill's enactment because it has not been provided with pertinent data from the Department of Environmental Protection and Energy from which a reliable estimate could be based. However, since the types of discharge situations and parties affected by the bill are relatively limited, any subsequent reduction in fine revenue collections would not significantly affect the amount of fine monies that are currently collected and allocated to the General Fund, counties (under the County Environmental Health Act), local environmental commissions, and the department's water enforcement operations.

In FY 1991, total assessed fines for water resources violations were \$43,743,044, of which \$9,232,355 was actually collected. In FY 1992 (as of March 31, 1992), these amounts total \$6,145,837 assessed and \$12,229,958 collected. Of the collected amounts, the General Fund received \$2.5 million, up to \$1.5 million is allocated to counties and local environmental commissions, and the balance is used by the department to support its water enforcement operations. The difference in the ratio of assessed and collected amounts between FY 1991 and FY 1992 is largely the result of statutory changes brought about by the enactment of the "Clean Water Enforcement Act" and recent policy changes implemented by the department.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.