

58:10-23.11K1

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(Hazardous  
substance  
discharge  
emergencies--recovery  
of costs)

LAWS OF: 1991

CHAPTER: 85

Bill No: S1928

Sponsor(s): Lesniak

Date Introduced: Pre-filed

Committee: Assembly: Energy & Environment

Senate: Environmental Quality

Amended during passage: Yes Amendments during passage  
denoted by asterisks.

Date of Passage: Assembly: October 4, 1990

Senate: March 8, 1990

Date of Approval: April 4, 1991

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

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Handwritten notes and stamps, including a circular stamp and illegible text.

P.L.1991, CHAPTER 85. *approved April 4, 1991*  
1990 Senate No. 1928 (*First Reprint*)

AN ACT authorizing <sup>1</sup>[municipalities to provide, by ordinance, for the recovery of costs incurred in responding to emergencies caused by hazardous substance discharges] certain local units to recover costs incurred in certain emergency response actions, and amending and supplementing P.L.1976, c.141<sup>1</sup> .

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

<sup>1</sup>[1. As used in this act:

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

"Hazardous substance" means a substance defined as such pursuant to section 3 of the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11b).

"Local government unit" means any municipality, or any office, agency, division, or instrumentality thereof.

"Volunteer organization" means a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad.]<sup>1</sup>

<sup>1</sup>[2. The governing body of a municipality may, by ordinance, provide that:

a. Any person responsible for causing or allowing an unauthorized discharge of a hazardous substance that requires emergency action by a local government unit or volunteer organization in order to protect the public health, safety, or welfare, or the environment, shall be liable, jointly and severally, to each such unit or organization for the necessary and reasonable additional or extraordinary costs incurred in investigating, mitigating, minimizing, removing, and abating the discharge.

b. A local government unit or volunteer organization responding to an emergency caused by the discharge of a hazardous substance shall keep a detailed record of the costs attributable thereto, and certify that record to the governing

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:

<sup>1</sup> Assembly AEE committee amendments adopted September 10, 1990.

body of the municipality within which the discharge occurred.

c. Any recovery of costs for investigating, mitigating, minimizing, removing, and abating a discharge shall be credited to the appropriate funds of each local government unit or volunteer organization from which moneys were expended in responding to the emergency caused by the discharge of a hazardous substance.]<sup>1</sup>

<sup>1</sup>1. (New section) If a local unit files a claim pursuant to section 12 of P.L.1976, c.141 (C. 58:10-23.11k) seeking to recover cleanup, removal and related costs incurred as a result of an emergency response action, including costs related to the prevention, containment, or mitigation of a discharge, the administrator shall approve or deny the claim for reimbursable costs incurred pursuant to an emergency response action, without regard to the requirements of sections 13, 14, or 15 of P.L.1976, c.141, within 120 days of the filing of a completed claim, including all supportive information or documentation required by the administrator; provided, however, that the local unit shall obtain the approval of the department prior to initiating cleanup or removal, including prevention, containment or mitigation, activities. If the administrator fails to approve, in whole or in part, or deny the claim within the 120-day period, all costs in the claim shall be deemed approved. If the administrator denies the claim or approves only part of the costs claimed, the local unit shall not be precluded from seeking recovery of the costs denied by the administrator under any other provision of statutory law or in accordance with any remedies available under the common law.1

<sup>1</sup>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. "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 department for the indemnification and legal defense of contractors pursuant to subsection a. of section 7 of this act, subject to the appropriation by law of moneys from the General Fund to the fund to defray these costs;

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. "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 this act;

l. "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.

A facility shall not be considered a major facility for the purpose of this act 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.

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 3 k. shall not be considered petroleum or a petroleum product for the purposes of this act, 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 this act;

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

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 cleanup, 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.<sup>1</sup>

(cf: P.L.1986, c.143, s.1)

13. Section 8 of P.L.1976, c.141 (C.58:10-23.11f) is amended to read as follows:

8. a. Whenever any hazardous substance is discharged, the department may, in its discretion, act to remove or arrange for the removal of such discharge or may direct the discharger to remove, or arrange for the removal of, such discharge. If the discharge occurs at any hazardous or solid waste disposal facility, the department may order the facility closed for the duration of the removal operations. The department may monitor the discharger's compliance with any such directive. Any discharger who fails to comply with such a directive shall be liable to the department in an amount equal to three times the cost of such removal, and shall be subject to the revocation or suspension of any license or permit he holds authorizing him to operate a hazardous or solid waste disposal facility.

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

Whenever the department acts to remove a discharge or contracts to secure prospective removal services, it is authorized to draw upon the money available in the fund. Such money shall be used to pay promptly for all cleanup costs incurred by the

department in removing or in minimizing damage caused by such discharge.

The department may agree to defend and indemnify a contractor against claims, causes of action, demands, costs, or judgments made against a contractor arising as a direct result of the contractor's provision of hazardous substance cleanup or mitigation services pursuant to a contract with the department. This legal defense and indemnification shall not apply to claims, causes of action, demands, costs, or judgments which are proven to have arisen from gross negligence, willful misconduct, fraud, intentional tort, bad faith, or criminal misconduct, or to claims for punitive or exemplary damage. The department shall agree to provide legal defense and indemnification to a contractor only if it determines that adequate environmental liability insurance is not available or not available at a reasonable cost to the contractor. The department shall agree to provide legal defense and indemnification to a contractor pursuant to terms and limitations which it deems appropriate. Any agreement by the department to defend or indemnify a contractor shall not bar the department from the exercise of any available legal remedies for the enforcement of the contract between the department and the contractor, the recovery of damages to which the department may be entitled resulting from a contractor's failure to perform the contract, or for the recovery of funds expended for the defense of a contractor if the defense was undertaken in response to a claim or cause of action brought against the contractor which is proven to have arisen from gross negligence, willful misconduct, fraud, intentional tort, bad faith, or criminal misconduct. No person other than a contractor shall have the right to enforce any agreement for defense and indemnification between a contractor and the department. The department shall not enter into an agreement to provide legal defense and indemnification to a contractor after January 1, 1990. For the purposes of this subsection, "contractor" means a person providing services to mitigate or clean up a discharge or release or threatened discharge or release of a hazardous substance in this State pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) or the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L.96-510 (42 U.S.C. §9601 et seq.).

Nothing in this section is intended to preclude removal and cleanup operations by any person threatened by such discharges, provided such persons coordinate and obtain approval for such actions with ongoing State or federal operations. No action taken by any person to contain or remove a discharge shall be construed as an admission of liability for said discharge. No person who renders assistance in containing or removing a discharge shall be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance, except for acts or omissions of gross negligence or willful

misconduct. In the course of cleanup operations, no person shall discharge any detergent into the waters of this State without prior authorization of the commissioner.

b. Notwithstanding any other provisions of P.L.1976, c.141 (C.58:10-23.11 et seq.), the department, subject to the approval of the administrator with regard to the availability of funds therefor, or a local unit as part of an emergency response action and with the approval of the department, may remove or arrange for the removal of any hazardous substance which:

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

(2) Has not been discharged, if the department determines that such substance is not satisfactorily stored or contained and said substance possesses any one or more of the following characteristics:

(a) Explosiveness;

(b) High flammability;

(c) Radioactivity;

(d) Chemical properties which in combination with any discharged hazardous substance at the same storage facility would create a substantial risk of imminent damage to public health or safety or an imminent and severe damage to the environment;

(e) Is stored in a container from which its discharge is imminent as a result of contact with a hazardous substance which has already been discharged and such additional discharge would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment; or

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

(3) Has been discharged prior to the effective date of P.L.1976, c.141.

c. If and to the extent that he determines that funds are available, the administrator shall approve and make payments for any cleanup and removal costs incurred by the department for the removal of a hazardous substance other than petroleum as authorized by subsection b. of this section; provided that in determining the availability of funds, the administrator shall not include as available funds revenues realized or to be realized from the tax on the transfer of petroleum, to the extent that such revenues result from a tax levied at a rate in excess of \$0.01



per barrel, pursuant to subsection 9b. of P.L.1976, c.141 (C.58:10-23.11h), unless the administrator determines that the sum of claims paid by the fund on behalf of petroleum discharges or removals plus pending reasonable claims against the fund on behalf of petroleum discharges or removals is greater than 30% of the sum of all claims paid by the fund plus all pending reasonable claims against the fund.

d. The administrator may only approve and make payments for any cleanup and removal costs incurred by the department for the removal of a hazardous substance discharged prior to the effective date of P.L.1976, c.141. pursuant to subsection b. of this section, if, and to the extent that, he determines that adequate funds from another source are not or will not be available; and provided further, with regard to the cleanup and removal costs incurred for discharges which occurred prior to the effective date of P.L.1976, c.141, the administrator may not during any one-year period pay more than \$18,000,000.00 in total or more than \$3,000,000.00 for any discharge or related set or series of discharges.

e. Notwithstanding any other provisions of P.L.1976, c.141, the administrator, after considering, among any other relevant factors, the department's priorities for spending funds pursuant to P.L.1976, c.141, and within the limits of available funds, shall make payments for the restoration or replacement of, or connection to an alternative water supply for, any private residential well destroyed, contaminated, or impaired as a result of a discharge prior to the effective date of P.L.1976, c.141; provided, however, total payments for said purpose shall not exceed \$500,000.00 for the period between the effective date of this subsection e. and January 1, 1983, and in any calendar year thereafter.

f. Any expenditures made by the administrator pursuant to this act shall constitute, in each instance, a debt of the discharger to the fund. The debt shall constitute a lien on all property owned by the discharger when a notice of lien, incorporating a description of the property of the discharger subject to the cleanup and removal and an identification of the amount of cleanup, removal and related costs expended from the fund, is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment or order docket the name and address of the discharger and the amount of the lien as set forth in the notice of lien. Upon entry by the clerk, the lien, to the amount committed by the administrator for cleanup and removal, shall attach to the revenues and all real and personal property of the discharger, whether or not the discharger is insolvent.

The notice of lien filed pursuant to this subsection which affects the property of a discharger subject to the cleanup and removal of a discharge shall create a lien with priority over all other claims or liens which are or have been filed against the

property, except if the property comprises six dwelling units or less and is used exclusively for residential purposes, this notice of lien shall not affect any valid lien, right or interest in the property filed in accordance with established procedure prior to the filing of this notice of lien. The notice of lien filed pursuant to this subsection which affects any property of a discharger, other than the property subject to the cleanup and removal, shall have priority from the day of the filing of the notice of the lien over all other claims and liens filed against the property, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this subsection.<sup>1</sup>

(cf: P.L.1987, c.415, s. 1)

<sup>1</sup>4. Section 8 of P.L.1976. c.141 (C.58:10-23.11g) is amended to read as follows:

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

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

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

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

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

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

b. The damages which may be recovered by the fund, without regard to fault, subject to the defenses enumerated in subsection d. of this section against the owner or operator of a major facility or vessel, shall not exceed \$50,000,000.00 for each major facility or \$150.00 per gross ton for each vessel, except that such maximum limitation shall not apply and the owner or operator

shall be liable, jointly and severally, for the full amount of such damages if it can be shown that such discharge was the result of (1) gross negligence or willful misconduct, within the knowledge and privity of the owner, operator or person in charge, or (2) a gross or willful violation of applicable safety, construction or operating standards or regulations. Damages which may be recovered from, or by, any other person shall be limited to those authorized by common or statutory law.

c. Any person who has discharged a hazardous substance, or is in any way responsible for any hazardous substance [which the department has removed or is removing pursuant to subsection b. of section 7 of this act] , shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. Such person shall also be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the department or a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141 (C.58:10-23.11f).

d. An act or omission caused solely by war, sabotage, or God, or a combination thereof, shall be the only defenses which may be raised by any owner or operator of a major facility or vessel responsible for a discharge in any action arising under the provisions of this act.<sup>1</sup>

(cf: P.L.1979, c.346, s.5)

<sup>1</sup>5. Section 16 of P.L.1976, c.141 (C.58:10-23.11o) is amended to read as follows:

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

(1) Costs incurred under section 7 of P.L.1976, c.141 (C.58:10-23.11f);

(2) Damages as defined in section 8 of P.L.1976, c.141 (C.58:10-23.11g);

(3) Such sums as may be necessary for research on the prevention and the effects of spills of hazardous substances on the marine environment and on the development of improved cleanup and removal operations as may be appropriated by the Legislature; provided, however, that such sums shall not exceed the amount of interest which is credited to the fund;

(4) Such sums as may be necessary for the boards, general administration of the fund, equipment and personnel costs of the department and any other State agency related to the enforcement of P.L.1976, c.141, including any costs incurred by the department pursuant to P.L.1990, c.78 or pursuant to any other law designed to prevent the discharge of a hazardous substance, as may be appropriated by the Legislature;

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

shall not exceed the amount of interest which is credited to the fund;

(6) Such sums as may be requested by the commissioner, up to a limit of \$400,000.00 per year, to cover the costs associated with the administration of the "Environmental Cleanup Responsibility Act," P.L.1983, c.330 (C.13:1K-6 et seq.);

(7) Costs attributable to the department's obligation to defend and indemnify a contractor pursuant to subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f), subject to the appropriation by law of moneys from the General Fund to the fund to defray these costs;

(8) Administrative costs incurred by the department to implement the provisions of P.L.1977, c.74 (C.58:10A-1 et seq.), as amended and supplemented by P.L.1990, c.28, on a timely basis, except that the amounts used for this purpose shall not exceed \$2,000,000. Any moneys disbursed by the department from the fund for this purpose shall be repaid to the fund in equal amounts from the penalties collected by the department pursuant to P.L.1977, c.74 and P.L.1990, c.28, in annual installments beginning July 1, 1991 and annually thereafter until the full amount is repaid according to a schedule of repayments determined by the State Treasurer;

(9) Such sums as may be necessary to reimburse a local unit for costs incurred in an emergency response action taken to prevent, contain, mitigate, cleanup or remove a discharge of a hazardous substance.

The Treasurer may invest and reinvest any moneys in said fund in legal obligations of the United States, this State or any of its political subdivisions. Any income or interest derived from such investment shall be included in the fund.<sup>1</sup>

(cf: P.L.1990, c.78, s.18)

<sup>1</sup>6. Section 18 of P.L.1976, c.141 (C.58:10-23.11q) is amended to read as follows:

18. Payment of any cleanup costs or damages by the fund arising from a single incident shall be conditioned upon the administrator acquiring by subrogation all rights of the claimant to recovery of such costs or damages from the discharger or other responsible party. The administrator shall then seek satisfaction from the discharger or other responsible party in the Superior Court if the discharger or other responsible party does not reimburse the fund. In any such suit, except as provided by subsection d. of section 8 of [this act] P.L.1976, c.141 (C.58:10-23.11g.), the administrator need prove only that an unlawful discharge occurred which was the responsibility of the discharger or other responsible party or that a hazardous substance was removed pursuant to subsection b. of section 7 of P.L.1976, c.141 (C.58:10-23.11f) for which the person was in any way responsible. The administrator is hereby authorized and empowered to compromise and settle the amount sought for costs

and damages from the discharger or other responsible party and any penalty arising under this act.<sup>1</sup>

(P.L.1976, c.141, s.18)

17. (New section) Within one year of the effective date of this act, the administrator shall submit a status report on the implementation of the claims procedures established pursuant to section 1 P.L. . c. (C. ) (pending in the Legislature as this bill) to the Assembly Energy and Environment Committee and the Senate Environmental Quality Committee, or their successors. The report shall include all claims made by local government units during the year, the amount of the claims, and how and the period within which the claims were settled. The report shall evaluate the procedures established for processing claims by local units pursuant to section 1 of P.L. , c. (C. ) (pending in the Legislature as this bill), and may include such recommendations for changes thereto as the department may deem appropriate.<sup>1</sup>

<sup>1</sup>[3.] 8.<sup>1</sup> This act shall take effect immediately.

### ENVIRONMENT

Provides for the payment of monies from the New Jersey Spill Compensation Fund to local units for certain emergency response actions.

SENATE, No. 1928

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel  
PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Senator LESNIAK

1 AN ACT authorizing municipalities to provide, by ordinance, for  
2 the recovery of costs incurred in responding to emergencies  
3 caused by hazardous substance discharges.

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

7 1. As used in this act:

8 "Discharge" means any intentional or unintentional action or  
9 omission resulting in the releasing, spilling, leaking, pumping,  
10 pouring, emitting, emptying or dumping of a hazardous substance  
11 into the air or waters or onto the lands of the State, or into the  
12 air or waters outside the jurisdiction of the State, when damage  
13 may result to the lands, waters, air, or natural resources within  
14 the jurisdiction of the State.

15 "Hazardous substance" means a substance defined as such  
16 pursuant to section 3 of the "Spill Compensation and Control  
17 Act," P.L.1976, c.141 (C.58:10-23.11b).

18 "Local government unit" means any municipality, or any  
19 office, agency, division, or instrumentality thereof.

20 "Volunteer organization" means a duly incorporated volunteer  
21 fire, ambulance, first aid, emergency, or rescue company or  
22 squad.

23 2. The governing body of a municipality may, by ordinance,  
24 provide that:

25 a. Any person responsible for causing or allowing an  
26 unauthorized discharge of a hazardous substance that requires  
27 emergency action by a local government unit or volunteer  
28 organization in order to protect the public health, safety, or  
29 welfare, or the environment, shall be liable, jointly and severally,  
30 to each such unit or organization for the necessary and  
31 reasonable additional or extraordinary costs incurred in  
32 investigating, mitigating, minimizing, removing, and abating the  
33 discharge.

34 b. A local government unit or volunteer organization  
35 responding to an emergency caused by the discharge of a  
36 hazardous substance shall keep a detailed record of the costs  
37 attributable thereto, and certify that record to the governing  
38 body of the municipality within which the discharge occurred.

39 c. Any recovery of costs for investigating, mitigating,  
40 minimizing, removing, and abating a discharge shall be credited  
41 to the appropriate funds of each local government unit or

1 volunteer organization from which moneys were expended in  
2 responding to the emergency caused by the discharge of a  
3 hazardous substance.

4 3. This act shall take effect immediately.

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6

7

SPONSOR'S STATEMENT

8

9 This bill would authorize a municipality to adopt an ordinance  
10 permitting the municipality and appropriate local agencies and  
11 authorized volunteer organizations to recover the necessary and  
12 reasonable additional or extraordinary costs incurred in  
13 responding to an emergency caused by the discharge of a  
14 hazardous substance from the person or persons who caused the  
15 discharge.

16 An emergency response to the spill of a hazardous substance  
17 often may require the use of expensive and unique materials and  
18 equipment, which is an expenditure of funds that some emergency  
19 response agencies or organizations cannot readily replace. If  
20 these funds are not replaced, the ability of local government and  
21 authorized volunteer organizations to respond to more typical  
22 emergencies may be imperiled. This bill would provide the means  
23 for replacing those expended funds.

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25

26

ENVIRONMENT

27

28 Authorizes municipalities to provide by ordinance for recovery of  
29 costs incurred in responding to hazardous substance discharge  
30 emergencies.

SENATE ENVIRONMENTAL QUALITY COMMITTEE

STATEMENT TO

SENATE, No. 1928

STATE OF NEW JERSEY

DATED: JANUARY 18, 1990

The Senate Environmental Quality Committee favorably reports Senate Bill No. 1928.

This bill would authorize a municipality to adopt an ordinance permitting the municipality and appropriate local agencies and authorized volunteer organizations to recover the necessary and reasonable additional or extraordinary costs incurred in responding to an emergency caused by the discharge of a hazardous substance from the person or persons who caused the discharge.

An emergency response to the spill of a hazardous substance often may require the use of expensive and unique materials and equipment, which is an expenditure of funds that some emergency response agencies or organizations cannot readily replace. If these funds are not replaced, the ability of local government and authorized volunteer organizations to respond to more typical emergencies may be imperiled. This bill would provide the means for replacing those expended funds.

This bill was prefiled for the 1990 session and has been technically reviewed.

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ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 1928

with committee amendments

STATE OF NEW JERSEY

DATED: AUGUST 6, 1990

The Assembly Energy and Environment Committee favorably reports Senate Bill No. 1928.

Senate Bill No. 1928, with committee amendments, amends the "Spill Compensation and Control Act," to require that the administrator of the spill fund approve or deny a local unit's claim for cleanup, removal, and related costs, including the costs of preventive, containment or mitigation actions, incurred as a result of an emergency response action in response to the discharge of a hazardous substance, or to prevent a discharge from occurring. The administrator is required to approve or deny a completed claim within 120 days. If the administrator fails to approve or deny the claim within that time it will be deemed approved. If the administrator of the fund awards only part of a claim or denies the claim, the local unit may seek to recover the remaining costs by means of any other remedies available under statutory or common law.

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.

Current law does not provide a time-frame within which the spill fund must certify the amount and reasonableness of a claim.

Senate Bill No. 1928, as released, is identical to the Assembly Committee Substitute for Assembly Bill Nos. 3217 and 3746.