

58: 10-23. 11f

LEGISLATIVE HISTORY CHECKLIST

(Hazardous waste facility - permits closing while removing hazardous waste)

NJSA 58:10-23.11f

LAWS 1982

CHAPTER 122

Bill No. A889

Sponsor(s) Bennett

Date Introduced February 8, 1982

Committee: Assembly ---

Senate Energy and Environment

Amended during passage Yes No

Date of Passage: Assembly February 22, 1982

Senate July 12, 1982

Date of approval Sept. 1, 1982

Following statements are attached if available:

Sponsor statement Yes No

Committee Statement: Assembly Yes No

Senate Yes No

Fiscal Note Yes No

Veto Message Yes No

Message on signing Yes No

Following were printed:

Reports Yes No

Hearings Yes No

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CHAPTER 122 LAWS OF N. J. 1982
APPROVED 9-1-82

ASSEMBLY, No. 889

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 8, 1982

By Assemblyman BENNETT

(Without Reference)

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

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

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

3 7. a. Whenever any hazardous substance is discharged, the
4 department may, in its discretion act to remove or arrange for the
5 removal of such discharge or may direct the discharger to remove,
6 or arrange for the removal of, such discharge. *If the discharge*
7 *occurs at any hazardous or solid waste disposal facility, the depart-*
8 *ment may order the facility closed for the duration of the removal*
9 *operations. The department may monitor the discharger's compli-*
10 *ance with any such directive.* Any discharger who fails to comply
11 with such a directive shall be liable to the department in an amount
12 equal to three times the cost of such removal, *and shall be subject*
13 *to the revocation or suspension of any license or permit he holds*
14 *authorizing him to operate a hazardous or solid waste disposal*
15 *facility.*

16 Removal of hazardous substances and actions to minimize dam-
17 age from discharges shall, to the greatest extent possible, be in
18 accordance with the National Contingency Plan for removal of oil
19 and hazardous substances established pursuant to section 311 (c)
20 (2) of the Federal Water Pollution Control Act Amendments of
21 1972 (P. L. 92-500, 33 U. S. C. 1251 et seq.).

22 Whenever the department acts to remove a discharge or contracts

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 printed in italics *thus* is new matter.

23 to secure prospective removal services, it is authorized to draw
24 upon the money available in the fund. Such moneys shall be used
25 to pay promptly for all cleanup costs incurred by the department
26 in removing or in minimizing damage caused by such discharge.

27 Nothing in this section is intended to preclude removal and
28 ~~cleanup operations~~ by any ~~person threatened~~ by such discharges,
29 provided such persons coordinate and obtain approval for such
30 actions with ongoing State or federal operations. No action taken
31 by any person to contain or remove a discharge shall be construed
32 as an admission of liability for said discharge. No person who
33 renders assistance in continuing or removing a discharge shall be
34 liable for any civil damages to third parties resulting solely from
35 acts or omissions of such person in rendering such assistance except
36 for acts or omissions of gross negligence or willful misconduct. In
37 the course of cleanup operations, no person shall discharge any
38 detergent into the waters of this State without prior authorization
39 of the commissioner.

40 b. Notwithstanding any other provisions of P. L. 1976, c. 141
41 (C. 58:10-23.11 et seq.), the department, after notifying the ad-
42 ministrator and subject to the approval of the administrator with
43 regard to the availability of funds therefor, may remove or arrange
44 for the removal of any hazardous substance which:

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

48 (2) Has not been discharged if the department determines that
49 such substance is not satisfactorily stored or contained and said
50 substance possesses any one or more of the following charac-
51 teristics:

52 (a) explosiveness;

53 (b) high flammability;

54 (c) radioactivity;

55 (d) chemical properties which in combination with any dis-
56 charged hazardous substance at the same storage facility would
57 create a substantial risk of imminent damage to public health
58 or safety or an imminent and severe damage to the environ-
59 ment;

60 (e) is stored in a container from which its discharge is im-
61 minent as a result of contact with a hazardous substance which
62 has already been discharged and such additional discharge
63 would create a substantial risk of imminent damage to public
64 health or safety or imminent and severe damage to the en-
65 vironment; or

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

74 (3) Has been discharged prior to the effective date of [the act
75 to which this act is amendatory] *P. L. 1976, c. 141*, if such discharge
76 poses a substantial risk of imminent damage to the public health
77 or safety or imminent and severe damage to the environment.

78 c. If and to the extent that he determines that funds are available,
79 the administrator shall approve and make payments for any cleanup
80 and removal costs incurred by the department for the removal of
81 a hazardous substance other than petroleum as authorized by sub-
82 section b. of this section: provided that in determining the avail-
83 ability of funds, the administrator shall not include as available
84 funds revenues realized or to be realized from the tax on the trans-
85 fer of petroleum to the extent that such revenues result from a
86 tax levied at a rate in excess of \$0.01 per barrel, pursuant to sub-
87 section 9b. of [the act to which this act is amendatory] *P. L. 1976,*
88 *c. 141 (C. 58:10-23.11h)*, unless the administrator determines that
89 the sum of claims paid by the fund on behalf of petroleum discharges
90 or removals plus pending reasonable claims against the fund on
91 behalf of petroleum discharges or removals is greater than 30% of
92 the sum of all claims paid by the fund plus all pending, reasonable
93 claims against the fund.

94 d. The administrator may only approve and make payments for
95 any cleanup and removal costs incurred by the department for the
96 removal of a hazardous substance discharged prior to the effective
97 date of [the act to which this act is amendatory] *P. L. 1976, c. 141*,
98 pursuant to subsection b. of this section, if, and to the extent that,
99 he determines that adequate funds from another source are not or
100 will not be available; and further provided, with regard to the
101 cleanup and removal costs incurred for discharges which occurred
102 prior to the effective date of [the act to which this act is amenda-
103 tory] *P. L. 1976, c. 141*, the administrator may not during any 1
104 year period pay more than \$3,000,000.00 in total or more than
105 \$1,500,000.00 for any discharge or related set or series of discharges.

106 e. Notwithstanding any other provisions of *P. L. 1976, c. 141*, the
107 administrator, upon the approval of the department after consider-
108 ing, among any other relevant factors, its priorities for spending

109 funds pursuant to P. L. 1976, c. 141, and within the limits of avail-
110 able funds, shall make payments for the restoration or replacement
111 of, or connection to an alternative water supply for, any private
112 residential well destroyed, contaminated, or impaired as a result
113 of a discharge prior to the effective date of P. L. 1976, c. 141, pro-
114 vided however total payments for said purpose shall not exceed
115 \$500,000.00 for the period between the effective date of [the] *this*
116 subsection [(e)] and January 1, 1983, and in any calendar year
117 thereafter.

118 f. Any expenditures made by the administrator pursuant to this
119 act shall constitute a first priority claim and lien paramount to all
120 other claims and liens upon the revenues and all real and personal
121 property of the discharger, whether or not the discharger is in-
122 solvent.

1 2. This act shall take effect immediately.

STATEMENT

This bill amends the "Spill Compensation and Control Act" to provide that in the instance of a discharge of hazardous substances occurring at a hazardous or solid waste facility, the Department of Environmental Protection may order the facility closed while the discharge is being removed. This bill also provides that if the owner of a solid or hazardous waste facility does not comply with the department's directives concerning the removal and cleanup of a discharge, he shall be liable for the revocation or suspension of any permits or licenses he holds authorizing him to operate such a facility, in addition to the treble damages currently provided by law. Finally, this bill authorizes the department to monitor all operations involving the removal of a discharge of hazardous substances.

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 889

STATE OF NEW JERSEY

DATED: JUNE 21, 1982

Assembly Bill No. 889 would amend the "Spill Compensation and Control Act" to authorize the Department of Environmental Protection to close down a hazardous or solid waste facility while a discharge of hazardous substances occurring at the facility is being cleaned up. The bill also provides that, if the owner of a facility does not comply with the department's directives to remove and cleanup a hazardous discharge, the department may revoke or suspend any license or permit held by that owner. Finally, Assembly Bill No. 889 authorizes the department to monitor all operations involving the removal of a hazardous discharge.

RELEASE: IMMEDIATELY

CONTACT: PAUL WOLCOTT

WEDNESDAY, SEPTEMBER 1, 1982

Governor Thomas H. Kean today signed bills that could send violators of hazardous waste laws to jail and that give the Department of Environmental Protection closer jurisdiction over hazardous waste disposal sites. Signing the bills fulfilled a pledge Kean made last year during his election campaign to see that tougher laws govern those who deal with toxic wastes.

One bill, A-889, sponsored by Assemblyman John O. Bennett (R-Monmouth), amends the Spill Compensation and Control Act to give the DEP authority to close a hazardous or solid waste disposal facility while clean-up of a spill proceeds. It further allows the Department to suspend or revoke any other permits or licenses held by the owner of such a facility if the owner fails to comply with DEP directives on a clean-up.

The other, A-1204, sponsored by Assemblyman Raymond J. Lesniak (D-Union), makes it a criminal offense to knowingly or recklessly transport hazardous waste to any place not authorized by the DEP. The bill also makes it a crime to falsify statements on hazardous waste transportation manifests. It sets penalties for restitution at a maximum of \$100,000 for each offense.

"New Jersey cannot afford to be lenient with those who would poison our air and water through carelessness or conscious neglect," Kean said. "I pledged during my campaign to take measures to tighten controls over the disposal of toxic wastes. Today's action is an important step in that direction."

Under the provisions of Bennett's bill, the DEP will have, for the first time, the power to close a hazardous waste disposal site that has experienced a spill or discharge until clean-up of the problem is complete. The Department will also be able to place pressure on landfill and disposal site owners through its new power to control other aspects of the company's operations unless there is cooperation in the clean-up.

By extending responsibility for proper transport and disposal of toxic wastes to corporate officials, Lesniak's bill is expected to make companies more responsive to State laws governing waste disposal.

"Hazardous wastes threaten all the people of our State," Kean said. "We must support those who dispose of them in a responsible manner and prosecute those who do not.

"Placing substantial criminal penalties on the improper disposal of toxic and hazardous substances puts those who generate, transport and dispose of those materials on notice that we will not tolerate actions which threaten the health and safety of our residents," the Governor said.

Both Bennett and Lesniak hailed the bill signing as important progress toward controlling the spreading danger of toxic wastes in the State.

"It's time that people who pollute our environment realize that we will send them to jail before we will allow our air and water to be degraded," Lesniak said. "Those who recklessly and heedlessly discard these poisonous materials destroy resources that belong to all the people. From now on, those who generate and transport those wastes will have to share in the responsibility of seeing that they are properly disposed of."

Bennett noted that the State will now have needed controls over landfill operators who have, in the past, ignored DEP directives on the clean-up of toxic waste spills.

"Now we have some effective controls over those who dispose of these wastes," Bennett said. "With the DEP now able to impose broad sanctions on a company that has been careless in its disposal practices, it will be in the businessman's own best interest to comply closely with State regulations.

"We can't wait for those who deal in hazardous wastes to police themselves. It is important that we move to ensure that our environment is protected for future generations."

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