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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** Yes

"Codey increases liability, penalties for tanker spills," 11-1-2005 Courier Post, p.A1

"New law raises cost of oil spills to vessel owners," 11-1-2005 Asbury Park Press, p.A3

"New law increases ship owners liability for spills," 11-1-2005 The Times p.A6

"Codey holds owners liable for spills," 11-1-2005 The Record, p.A3

IS 11/20/07

P.L. 2005, CHAPTER 238, *approved October 31, 2005*  
Assembly, No. 3643

1 ANACT concerning liability for the discharge of hazardous substances,  
2 and amending P.L.1976, c.141.

3

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

6

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

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

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

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

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

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

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

35 b. The damages which may be recovered by the fund, without  
36 regard to fault, subject to the defenses enumerated in subsection d. of  
37 this section against the owner or operator of a major facility or vessel,  
38 shall not exceed \$50,000,000.00 for each major facility or **[\$150.00]**  
39 \$1,200 per gross ton for each vessel, except that such maximum  
40 limitation shall not apply and the owner or operator shall be liable,  
41 jointly and severally, for the full amount of such damages if it can be

**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.**

1 shown that such discharge was the result of (1) gross negligence or  
2 willful misconduct, within the knowledge and privity of the owner,  
3 operator or person in charge, or (2) a gross or willful violation of  
4 applicable safety, construction or operating standards or regulations.  
5 Damages which may be recovered from, or by, any other person shall  
6 be limited to those authorized by common or statutory law.

7 c. (1) Any person who has discharged a hazardous substance, or is  
8 in any way responsible for any hazardous substance, shall be strictly  
9 liable, jointly and severally, without regard to fault, for all cleanup and  
10 removal costs no matter by whom incurred. Such person shall also be  
11 strictly liable, jointly and severally, without regard to fault, for all  
12 cleanup and removal costs incurred by the department or a local unit  
13 pursuant to subsection b. of section 7 of P.L.1976, c.141  
14 (C.58:10-23.11f).

15 (2) In addition to the persons liable pursuant to this subsection, in  
16 the case of a discharge of a hazardous substance from a vessel into the  
17 waters of the State, the owner or operator of a refinery, storage,  
18 transfer, or pipeline facility to which the vessel was en route to deliver  
19 the hazardous substance who, by contract, agreement, or otherwise,  
20 was scheduled to assume ownership of the discharged hazardous  
21 substance, and any other person who was so scheduled to assume  
22 ownership of the discharged hazardous substance, shall be strictly  
23 liable, jointly and severally, without regard to fault, for all cleanup and  
24 removal costs if the owner or operator of the vessel did not have the  
25 evidence of financial responsibility required pursuant to section 2 of  
26 P.L.1991, c.58 (C.58:10-23.11g2).

27 Where a person is liable for cleanup and removal costs as provided  
28 in this paragraph, any expenditures made by the administrator for that  
29 cleanup and removal shall constitute a debt of that person to the fund.  
30 The debt shall constitute a lien on all property owned by that person  
31 when a notice of lien identifying the nature of the discharge and the  
32 amount of the cleanup, removal and related costs expended from the  
33 fund is duly filed with the clerk of the Superior Court. The clerk shall  
34 promptly enter upon the civil judgment or order docket the name and  
35 address of the liable person and the amount of the lien as set forth in  
36 the notice of lien. Upon entry by the clerk, the lien, to the amount  
37 committed by the administrator for cleanup and removal, shall attach  
38 to the revenues and all real and personal property of the liable person,  
39 whether or not that person is insolvent.

40 For the purpose of determining priority of this lien over all other  
41 claims or liens which are or have been filed against the property of an  
42 owner or operator of a refinery, storage, transfer, or pipeline facility,  
43 the lien on the facility to which the discharged hazardous substance  
44 was en route shall have priority over all other claims or liens which are  
45 or have been filed against the property. The notice of lien filed  
46 pursuant to this paragraph which affects any property of a person

1 liable pursuant to this paragraph other than the property of an owner  
2 or operator of a refinery, storage, transfer, or pipeline facility to which  
3 the discharged hazardous substance was en route, shall have priority  
4 from the day of the filing of the notice of the lien over all claims and  
5 liens filed against the property, but shall not affect any valid lien, right,  
6 or interest in the property filed in accordance with established  
7 procedure prior to the filing of a notice of lien pursuant to this  
8 paragraph.

9 To the extent that a person liable pursuant to this paragraph is not  
10 otherwise liable pursuant to paragraph (1) of this subsection, or under  
11 any other provision of law or under common law, that person may  
12 bring an action for indemnification for costs paid pursuant to this  
13 paragraph against any other person who is strictly liable pursuant to  
14 paragraph (1) of this subsection.

15 Nothing in this paragraph shall be construed to extend or negate the  
16 right of any person to bring an action for contribution that may exist  
17 under P.L.1976, c.141, or any other act or under common law.

18 (3) In addition to the persons liable pursuant to this subsection, any  
19 person who owns real property acquired on or after September 14,  
20 1993 on which there has been a discharge prior to the person's  
21 acquisition of that property and who knew or should have known that  
22 a hazardous substance had been discharged at the real property, shall  
23 be strictly liable, jointly and severally, without regard to fault, for all  
24 cleanup and removal costs no matter by whom incurred. Such person  
25 shall also be strictly liable, jointly and severally, without regard to  
26 fault, for all cleanup and removal costs incurred by the department or  
27 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141  
28 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter  
29 liability of any person who acquired real property prior to September  
30 14, 1993.

31 d. (1) In addition to those defenses provided in this subsection, an  
32 act or omission caused solely by war, sabotage, or God, or a  
33 combination thereof, shall be the only defenses which may be raised by  
34 any owner or operator of a major facility or vessel responsible for a  
35 discharge in any action arising under the provisions of this act.

36 (2) A person, including an owner or operator of a major facility,  
37 who owns real property acquired on or after September 14, 1993 on  
38 which there has been a discharge, shall not be liable for cleanup and  
39 removal costs or for any other damages to the State or to any other  
40 person for the discharged hazardous substance pursuant to subsection  
41 c. of this section or pursuant to civil common law, if that person can  
42 establish by a preponderance of the evidence that subparagraphs (a)  
43 through (d) apply, or if applicable, subparagraphs (a) through (e)  
44 apply:

45 (a) the person acquired the real property after the discharge of that  
46 hazardous substance at the real property;

1 (b) (i) at the time the person acquired the real property, the person  
2 did not know and had no reason to know that any hazardous substance  
3 had been discharged at the real property, or (ii) the person acquired  
4 the real property by devise or succession, except that any other funds  
5 or property received by that person from the deceased real property  
6 owner who discharged a hazardous substance or was in any way  
7 responsible for a hazardous substance, shall be made available to  
8 satisfy the requirements of P.L.1976, c.141, or (iii) the person  
9 complies with the provisions of subparagraph (e) of paragraph (2) of  
10 this subsection;

11 (c) the person did not discharge the hazardous substance, is not in  
12 any way responsible for the hazardous substance, and is not a  
13 corporate successor to the discharger or to any person in any way  
14 responsible for the hazardous substance or to anyone liable for cleanup  
15 and removal costs pursuant to this section;

16 (d) the person gave notice of the discharge to the department upon  
17 actual discovery of that discharge.

18 To establish that a person had no reason to know that any  
19 hazardous substance had been discharged for the purposes of this  
20 paragraph (2), the person must have undertaken, at the time of  
21 acquisition, all appropriate inquiry into the previous ownership and  
22 uses of the property. For the purposes of this paragraph (2), all  
23 appropriate inquiry shall mean the performance of a preliminary  
24 assessment, and site investigation, if the preliminary assessment  
25 indicates that a site investigation is necessary, as defined in section 23  
26 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with  
27 rules and regulations promulgated by the department defining these  
28 terms.

29 Nothing in this paragraph (2) shall be construed to alter liability of  
30 any person who acquired real property prior to September 14, 1993;  
31 and

32 (e) For the purposes of this subparagraph the person must have (i)  
33 acquired the property subsequent to a hazardous substance being  
34 discharged on the site and which discharge was discovered at the time  
35 of acquisition as a result of the appropriate inquiry, as defined in this  
36 paragraph (2), (ii) performed, following the effective date of P.L.1997,  
37 c.278, a remediation of the site or discharge consistent with the  
38 provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied  
39 upon a valid no further action letter from the department for a  
40 remediation performed prior to acquisition, or obtained approval of a  
41 remedial action workplan by the department after the effective date of  
42 P.L.1997, c.278 and continued to comply with the conditions of that  
43 workplan, and (iii) established and maintained all engineering and  
44 institutional controls as may be required pursuant to sections 35 and  
45 36 of P.L.1993, c.139. A person who complies with the provisions of  
46 this subparagraph by actually performing a remediation of the site or

1 discharge as set forth in (ii) above shall be issued, upon application, a  
2 no further action letter by the department. A person who complies  
3 with the provisions of this subparagraph either by receipt of a no  
4 further action letter from the department following the effective date  
5 of P.L.1997, c.278, or by relying on a previously issued no further  
6 action letter shall not be liable for any further remediation including  
7 any changes in a remediation standard or for the subsequent discovery  
8 of a hazardous substance, at the site, or emanating from the site, if the  
9 remediation was for the entire site, and the hazardous substance was  
10 discharged prior to the person acquiring the property.  
11 Notwithstanding any other provisions of this subparagraph, a person  
12 who complies with the provisions of this subparagraph only by virtue  
13 of the existence of a previously issued no further action letter shall  
14 receive no liability protections for any discharge which occurred  
15 during the time period between the issuance of the no further action  
16 letter and the property acquisition. Compliance with the provisions of  
17 this subparagraph (e) shall not relieve any person of any liability for a  
18 discharge that is off the site of the property covered by the no further  
19 action letter, for a discharge that occurs at that property after the  
20 person acquires the property, for any actions that person negligently  
21 takes that aggravates or contributes to a discharge of a hazardous  
22 substance, for failure to comply in the future with laws and  
23 regulations, or if that person fails to maintain the institutional or  
24 engineering controls on the property or to otherwise comply with the  
25 provisions of the no further action letter.

26 (3) Notwithstanding the provisions of paragraph (2) of this  
27 subsection to the contrary, if a person who owns real property obtains  
28 actual knowledge of a discharge of a hazardous substance at the real  
29 property during the period of that person's ownership and  
30 subsequently transfers ownership of the property to another person  
31 without disclosing that knowledge, the transferor shall be strictly liable  
32 for the cleanup and removal costs of the discharge and no defense  
33 under this subsection shall be available to that person.

34 (4) Any federal, State, or local governmental entity which acquires  
35 ownership of real property through bankruptcy, tax delinquency,  
36 abandonment, escheat, eminent domain, condemnation or any  
37 circumstance in which the governmental entity involuntarily acquires  
38 title by virtue of its function as sovereign, or where the governmental  
39 entity acquires the property by any means for the purpose of  
40 promoting the redevelopment of that property, shall not be liable,  
41 pursuant to subsection c. of this section or pursuant to common law,  
42 to the State or to any other person for any discharge which occurred  
43 or began prior to that ownership. This paragraph shall not provide any  
44 liability protection to any federal, State or local governmental entity  
45 which has caused or contributed to the discharge of a hazardous  
46 substance. This paragraph shall not provide any liability protection to

1 any federal, State, or local government entity that acquires ownership  
2 of real property by condemnation or eminent domain where the real  
3 property is being remediated in a timely manner at the time of the  
4 condemnation or eminent domain action.

5 (5) A person, including an owner or operator of a major facility,  
6 who owns real property acquired prior to September 14, 1993 on  
7 which there has been a discharge, shall not be liable for cleanup and  
8 removal costs or for any other damages to the State or to any other  
9 person for the discharged hazardous substance pursuant to subsection  
10 c. of this section or pursuant to civil common law, if that person can  
11 establish by a preponderance of the evidence that subparagraphs (a)  
12 through (d) apply:

13 (a) the person acquired the real property after the discharge of that  
14 hazardous substance at the real property;

15 (b) (i) at the time the person acquired the real property, the person  
16 did not know and had no reason to know that any hazardous substance  
17 had been discharged at the real property, or (ii) the person acquired  
18 the real property by devise or succession, except that any other funds  
19 or property received by that person from the deceased real property  
20 owner who discharged a hazardous substance or was in any way  
21 responsible for a hazardous substance, shall be made available to  
22 satisfy the requirements of P.L.1976, c.141;

23 (c) the person did not discharge the hazardous substance, is not in  
24 any way responsible for the hazardous substance, and is not a  
25 corporate successor to the discharger or to any person in any way  
26 responsible for the hazardous substance or to anyone liable for cleanup  
27 and removal costs pursuant to this section;

28 (d) the person gave notice of the discharge to the department upon  
29 actual discovery of that discharge.

30 To establish that a person had no reason to know that any  
31 hazardous substance had been discharged for the purposes of this  
32 paragraph (5), the person must have undertaken, at the time of  
33 acquisition, all appropriate inquiry on the previous ownership and uses  
34 of the property based upon generally accepted good and customary  
35 standards.

36 Nothing in this paragraph (5) shall be construed to alter liability of  
37 any person who acquired real property on or after September 14,  
38 1993.

39 e. Neither the fund nor the Sanitary Landfill Contingency Fund  
40 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be  
41 liable for any damages incurred by any person who is relieved from  
42 liability pursuant to subsection d. or f. of this section for a remediation  
43 that involves the use of engineering controls but the fund and the  
44 Sanitary Landfill Contingency Fund shall be liable for any remediation  
45 that involves only the use of institutional controls if after a valid no  
46 further action letter has been issued the department orders additional



1 remediation except that the fund and the Sanitary Landfill Contingency  
2 Fund shall not be liable for any additional remediation that is required  
3 to remove an institutional control.

4 f. Notwithstanding any other provision of this section, a person,  
5 who owns real property acquired on or after the effective date of  
6 P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for any  
7 cleanup and removal costs or damages, under this section or pursuant  
8 to any other statutory or civil common law, to any person, other than  
9 the State and the federal government, harmed by any hazardous  
10 substance discharged on that property prior to acquisition, and any  
11 migration off that property related to that discharge, provided all the  
12 conditions of this subsection are met:

13 (1) the person acquired the real property after the discharge of that  
14 hazardous substance at the real property;

15 (2) the person did not discharge the hazardous substance, is not in  
16 any way responsible for the hazardous substance, and is not a  
17 corporate successor to the discharger or to any person in any way  
18 responsible for the hazardous substance or to anyone liable for a  
19 discharge pursuant to this section;

20 (3) the person gave notice of the discharge to the department upon  
21 actual discovery of that discharge;

22 (4) within 30 days after acquisition of the property, the person  
23 commenced a remediation of the discharge, including any migration,  
24 pursuant to a department oversight document executed prior to  
25 acquisition, and the department is satisfied that remediation was  
26 completed in a timely and appropriate fashion; and

27 (5) Within ten days after acquisition of the property, or within 30  
28 days after the expiration of the period or periods allowed for the right  
29 of redemption pursuant to tax foreclosure law, the person agrees in  
30 writing to provide access to the State for remediation and related  
31 activities, as determined by the State.

32 The provisions of this subsection shall not relieve any person of any  
33 liability:

34 (1) for a discharge that occurs at that property after the person  
35 acquired the property;

36 (2) for any actions that person negligently takes that aggravates or  
37 contributes to the harm inflicted upon any person;

38 (3) if that person fails to maintain the institutional or engineering  
39 controls on the property or to otherwise comply with the provisions  
40 of a no further action letter or a remedial action workplan and a  
41 person is harmed thereby;

42 (4) for any liability to clean up and remove, pursuant to the  
43 department's regulations and directions, any hazardous substances that  
44 may have been discharged on the property or that may have migrated  
45 therefrom; and

46 (5) for that person's failure to comply in the future with laws and

1 regulations.

2 g. Nothing in the amendatory provisions to this section adopted  
3 pursuant to P.L.1997, c.278 shall be construed to remove any defense  
4 to liability that a person may have had pursuant to subsection e. of this  
5 section that existed prior to the effective date of P.L.1997, c.278.

6 h. Nothing in this section shall limit the requirements of any person  
7 to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).  
8 (cf: P.L.2003, c.224, s.1)

9

10 2. This act shall take effect 120 days after enactment.

11

12

13

STATEMENT

14

15 This bill would increase the limitation on liability pursuant to the  
16 "Spill Compensation and Control Act" for the owner or operator of a  
17 vessel from which a hazardous substance is discharged. Current law  
18 caps that liability at \$150 per gross ton for vessels. This bill would  
19 increase the limit on liability to \$1,200 per gross ton for vessels. The  
20 liability limitation has not been increased since 1976.

21

22

23

24

25 \_\_\_\_\_  
26 Increases liability limitation for owners or operators of vessels that  
discharge a hazardous substance.

# ASSEMBLY, No. 3643

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JANUARY 10, 2005

**Sponsored by:**

**Assemblyman DOUGLAS H. FISHER**

**District 3 (Salem, Cumberland and Gloucester)**

**Assemblyman JOHN J. BURZICHELLI**

**District 3 (Salem, Cumberland and Gloucester)**

**Co-Sponsored by:**

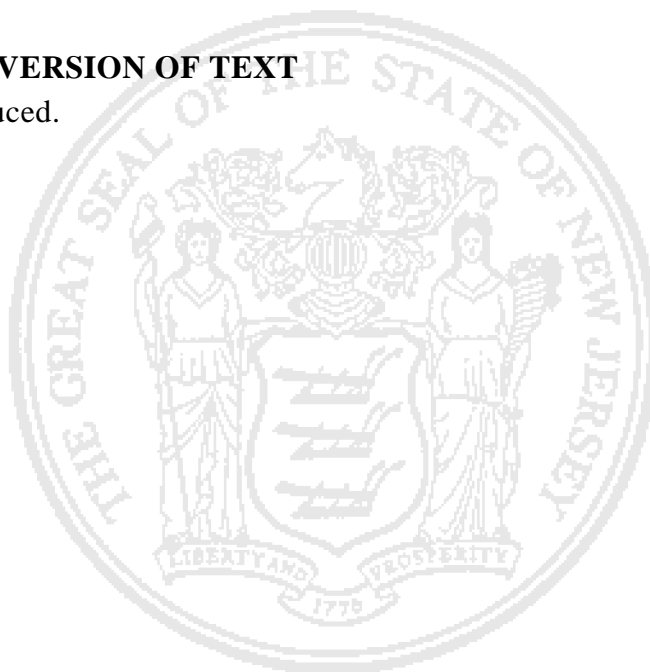
**Assemblymen Barnes, Diegnan, Egan, Van Drew, Morgan, Conaway,  
R.Smith, McKeon, Gordon, Chivukula, Senators Sweeney and Adler**

**SYNOPSIS**

Increases liability limitation for owners or operators of vessels that discharge a hazardous substance.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 7/1/2005)**

A3643 FISHER, BURZICHELLI

2

1 AN ACT concerning liability for the discharge of hazardous substances,  
2 and amending P.L.1976, c.141.

3

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

6

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

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

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

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

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

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

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

35 b. The damages which may be recovered by the fund, without  
36 regard to fault, subject to the defenses enumerated in subsection d. of  
37 this section against the owner or operator of a major facility or vessel,  
38 shall not exceed \$50,000,000.00 for each major facility or ~~[\$150.00]~~  
39 \$1,200 per gross ton for each vessel, except that such maximum  
40 limitation shall not apply and the owner or operator shall be liable,  
41 jointly and severally, for the full amount of such damages if it can be  
42 shown that such discharge was the result of (1) gross negligence or  
43 willful misconduct, within the knowledge and privity of the owner,

**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.**

1 operator or person in charge, or (2) a gross or willful violation of  
2 applicable safety, construction or operating standards or regulations.  
3 Damages which may be recovered from, or by, any other person shall  
4 be limited to those authorized by common or statutory law.

5 c. (1) Any person who has discharged a hazardous substance, or is  
6 in any way responsible for any hazardous substance, shall be strictly  
7 liable, jointly and severally, without regard to fault, for all cleanup and  
8 removal costs no matter by whom incurred. Such person shall also be  
9 strictly liable, jointly and severally, without regard to fault, for all  
10 cleanup and removal costs incurred by the department or a local unit  
11 pursuant to subsection b. of section 7 of P.L.1976, c.141  
12 (C.58:10-23.11f).

13 (2) In addition to the persons liable pursuant to this subsection, in  
14 the case of a discharge of a hazardous substance from a vessel into the  
15 waters of the State, the owner or operator of a refinery, storage,  
16 transfer, or pipeline facility to which the vessel was en route to deliver  
17 the hazardous substance who, by contract, agreement, or otherwise,  
18 was scheduled to assume ownership of the discharged hazardous  
19 substance, and any other person who was so scheduled to assume  
20 ownership of the discharged hazardous substance, shall be strictly  
21 liable, jointly and severally, without regard to fault, for all cleanup and  
22 removal costs if the owner or operator of the vessel did not have the  
23 evidence of financial responsibility required pursuant to section 2 of  
24 P.L.1991, c.58 (C.58:10-23.11g2).

25 Where a person is liable for cleanup and removal costs as provided  
26 in this paragraph, any expenditures made by the administrator for that  
27 cleanup and removal shall constitute a debt of that person to the fund.  
28 The debt shall constitute a lien on all property owned by that person  
29 when a notice of lien identifying the nature of the discharge and the  
30 amount of the cleanup, removal and related costs expended from the  
31 fund is duly filed with the clerk of the Superior Court. The clerk shall  
32 promptly enter upon the civil judgment or order docket the name and  
33 address of the liable person and the amount of the lien as set forth in  
34 the notice of lien. Upon entry by the clerk, the lien, to the amount  
35 committed by the administrator for cleanup and removal, shall attach  
36 to the revenues and all real and personal property of the liable person,  
37 whether or not that person is insolvent.

38 For the purpose of determining priority of this lien over all other  
39 claims or liens which are or have been filed against the property of an  
40 owner or operator of a refinery, storage, transfer, or pipeline facility,  
41 the lien on the facility to which the discharged hazardous substance  
42 was en route shall have priority over all other claims or liens which are  
43 or have been filed against the property. The notice of lien filed  
44 pursuant to this paragraph which affects any property of a person  
45 liable pursuant to this paragraph other than the property of an owner  
46 or operator of a refinery, storage, transfer, or pipeline facility to which

1 the discharged hazardous substance was en route, shall have priority  
2 from the day of the filing of the notice of the lien over all claims and  
3 liens filed against the property, but shall not affect any valid lien, right,  
4 or interest in the property filed in accordance with established  
5 procedure prior to the filing of a notice of lien pursuant to this  
6 paragraph.

7 To the extent that a person liable pursuant to this paragraph is not  
8 otherwise liable pursuant to paragraph (1) of this subsection, or under  
9 any other provision of law or under common law, that person may  
10 bring an action for indemnification for costs paid pursuant to this  
11 paragraph against any other person who is strictly liable pursuant to  
12 paragraph (1) of this subsection.

13 Nothing in this paragraph shall be construed to extend or negate the  
14 right of any person to bring an action for contribution that may exist  
15 under P.L.1976, c.141, or any other act or under common law.

16 (3) In addition to the persons liable pursuant to this subsection, any  
17 person who owns real property acquired on or after September 14,  
18 1993 on which there has been a discharge prior to the person's  
19 acquisition of that property and who knew or should have known that  
20 a hazardous substance had been discharged at the real property, shall  
21 be strictly liable, jointly and severally, without regard to fault, for all  
22 cleanup and removal costs no matter by whom incurred. Such person  
23 shall also be strictly liable, jointly and severally, without regard to  
24 fault, for all cleanup and removal costs incurred by the department or  
25 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141  
26 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter  
27 liability of any person who acquired real property prior to September  
28 14, 1993.

29 d. (1) In addition to those defenses provided in this subsection, an  
30 act or omission caused solely by war, sabotage, or God, or a  
31 combination thereof, shall be the only defenses which may be raised by  
32 any owner or operator of a major facility or vessel responsible for a  
33 discharge in any action arising under the provisions of this act.

34 (2) A person, including an owner or operator of a major facility,  
35 who owns real property acquired on or after September 14, 1993 on  
36 which there has been a discharge, shall not be liable for cleanup and  
37 removal costs or for any other damages to the State or to any other  
38 person for the discharged hazardous substance pursuant to subsection  
39 c. of this section or pursuant to civil common law, if that person can  
40 establish by a preponderance of the evidence that subparagraphs (a)  
41 through (d) apply, or if applicable, subparagraphs (a) through (e)  
42 apply:

43 (a) the person acquired the real property after the discharge of that  
44 hazardous substance at the real property;

45 (b) (i) at the time the person acquired the real property, the person  
46 did not know and had no reason to know that any hazardous substance

1 had been discharged at the real property, or (ii) the person acquired  
2 the real property by devise or succession, except that any other funds  
3 or property received by that person from the deceased real property  
4 owner who discharged a hazardous substance or was in any way  
5 responsible for a hazardous substance, shall be made available to  
6 satisfy the requirements of P.L.1976, c.141, or (iii) the person  
7 complies with the provisions of subparagraph (e) of paragraph (2) of  
8 this subsection;

9 (c) the person did not discharge the hazardous substance, is not in  
10 any way responsible for the hazardous substance, and is not a  
11 corporate successor to the discharger or to any person in any way  
12 responsible for the hazardous substance or to anyone liable for cleanup  
13 and removal costs pursuant to this section;

14 (d) the person gave notice of the discharge to the department upon  
15 actual discovery of that discharge.

16 To establish that a person had no reason to know that any  
17 hazardous substance had been discharged for the purposes of this  
18 paragraph (2), the person must have undertaken, at the time of  
19 acquisition, all appropriate inquiry into the previous ownership and  
20 uses of the property. For the purposes of this paragraph (2), all  
21 appropriate inquiry shall mean the performance of a preliminary  
22 assessment, and site investigation, if the preliminary assessment  
23 indicates that a site investigation is necessary, as defined in section 23  
24 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with  
25 rules and regulations promulgated by the department defining these  
26 terms.

27 Nothing in this paragraph (2) shall be construed to alter liability of  
28 any person who acquired real property prior to September 14, 1993;  
29 and

30 (e) For the purposes of this subparagraph the person must have (i)  
31 acquired the property subsequent to a hazardous substance being  
32 discharged on the site and which discharge was discovered at the time  
33 of acquisition as a result of the appropriate inquiry, as defined in this  
34 paragraph (2), (ii) performed, following the effective date of P.L.1997,  
35 c.278, a remediation of the site or discharge consistent with the  
36 provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied  
37 upon a valid no further action letter from the department for a  
38 remediation performed prior to acquisition, or obtained approval of a  
39 remedial action workplan by the department after the effective date of  
40 P.L.1997, c.278 and continued to comply with the conditions of that  
41 workplan, and (iii) established and maintained all engineering and  
42 institutional controls as may be required pursuant to sections 35 and  
43 36 of P.L.1993, c.139. A person who complies with the provisions of  
44 this subparagraph by actually performing a remediation of the site or  
45 discharge as set forth in (ii) above shall be issued, upon application, a  
46 no further action letter by the department. A person who complies

1 with the provisions of this subparagraph either by receipt of a no  
2 further action letter from the department following the effective date  
3 of P.L.1997, c.278, or by relying on a previously issued no further  
4 action letter shall not be liable for any further remediation including  
5 any changes in a remediation standard or for the subsequent discovery  
6 of a hazardous substance, at the site, or emanating from the site, if the  
7 remediation was for the entire site, and the hazardous substance was  
8 discharged prior to the person acquiring the property.  
9 Notwithstanding any other provisions of this subparagraph, a person  
10 who complies with the provisions of this subparagraph only by virtue  
11 of the existence of a previously issued no further action letter shall  
12 receive no liability protections for any discharge which occurred  
13 during the time period between the issuance of the no further action  
14 letter and the property acquisition. Compliance with the provisions of  
15 this subparagraph (e) shall not relieve any person of any liability for a  
16 discharge that is off the site of the property covered by the no further  
17 action letter, for a discharge that occurs at that property after the  
18 person acquires the property, for any actions that person negligently  
19 takes that aggravates or contributes to a discharge of a hazardous  
20 substance, for failure to comply in the future with laws and  
21 regulations, or if that person fails to maintain the institutional or  
22 engineering controls on the property or to otherwise comply with the  
23 provisions of the no further action letter.

24 (3) Notwithstanding the provisions of paragraph (2) of this  
25 subsection to the contrary, if a person who owns real property obtains  
26 actual knowledge of a discharge of a hazardous substance at the real  
27 property during the period of that person's ownership and  
28 subsequently transfers ownership of the property to another person  
29 without disclosing that knowledge, the transferor shall be strictly liable  
30 for the cleanup and removal costs of the discharge and no defense  
31 under this subsection shall be available to that person.

32 (4) Any federal, State, or local governmental entity which acquires  
33 ownership of real property through bankruptcy, tax delinquency,  
34 abandonment, escheat, eminent domain, condemnation or any  
35 circumstance in which the governmental entity involuntarily acquires  
36 title by virtue of its function as sovereign, or where the governmental  
37 entity acquires the property by any means for the purpose of  
38 promoting the redevelopment of that property, shall not be liable,  
39 pursuant to subsection c. of this section or pursuant to common law,  
40 to the State or to any other person for any discharge which occurred  
41 or began prior to that ownership. This paragraph shall not provide any  
42 liability protection to any federal, State or local governmental entity  
43 which has caused or contributed to the discharge of a hazardous  
44 substance. This paragraph shall not provide any liability protection to  
45 any federal, State, or local government entity that acquires ownership  
46 of real property by condemnation or eminent domain where the real



1 property is being remediated in a timely manner at the time of the  
2 condemnation or eminent domain action.

3 (5) A person, including an owner or operator of a major facility,  
4 who owns real property acquired prior to September 14, 1993 on  
5 which there has been a discharge, shall not be liable for cleanup and  
6 removal costs or for any other damages to the State or to any other  
7 person for the discharged hazardous substance pursuant to subsection  
8 c. of this section or pursuant to civil common law, if that person can  
9 establish by a preponderance of the evidence that subparagraphs (a)  
10 through (d) apply:

11 (a) the person acquired the real property after the discharge of that  
12 hazardous substance at the real property;

13 (b) (i) at the time the person acquired the real property, the person  
14 did not know and had no reason to know that any hazardous substance  
15 had been discharged at the real property, or (ii) the person acquired  
16 the real property by devise or succession, except that any other funds  
17 or property received by that person from the deceased real property  
18 owner who discharged a hazardous substance or was in any way  
19 responsible for a hazardous substance, shall be made available to  
20 satisfy the requirements of P.L.1976, c.141;

21 (c) the person did not discharge the hazardous substance, is not in  
22 any way responsible for the hazardous substance, and is not a  
23 corporate successor to the discharger or to any person in any way  
24 responsible for the hazardous substance or to anyone liable for cleanup  
25 and removal costs pursuant to this section;

26 (d) the person gave notice of the discharge to the department upon  
27 actual discovery of that discharge.

28 To establish that a person had no reason to know that any  
29 hazardous substance had been discharged for the purposes of this  
30 paragraph (5), the person must have undertaken, at the time of  
31 acquisition, all appropriate inquiry on the previous ownership and uses  
32 of the property based upon generally accepted good and customary  
33 standards.

34 Nothing in this paragraph (5) shall be construed to alter liability of  
35 any person who acquired real property on or after September 14,  
36 1993.

37 e. Neither the fund nor the Sanitary Landfill Contingency Fund  
38 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be  
39 liable for any damages incurred by any person who is relieved from  
40 liability pursuant to subsection d. or f. of this section for a remediation  
41 that involves the use of engineering controls but the fund and the  
42 Sanitary Landfill Contingency Fund shall be liable for any remediation  
43 that involves only the use of institutional controls if after a valid no  
44 further action letter has been issued the department orders additional  
45 remediation except that the fund and the Sanitary Landfill Contingency  
46 Fund shall not be liable for any additional remediation that is required

1 to remove an institutional control.

2 f. Notwithstanding any other provision of this section, a person,  
3 who owns real property acquired on or after the effective date of  
4 P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for any  
5 cleanup and removal costs or damages, under this section or pursuant  
6 to any other statutory or civil common law, to any person, other than  
7 the State and the federal government, harmed by any hazardous  
8 substance discharged on that property prior to acquisition, and any  
9 migration off that property related to that discharge, provided all the  
10 conditions of this subsection are met:

11 (1) the person acquired the real property after the discharge of that  
12 hazardous substance at the real property;

13 (2) the person did not discharge the hazardous substance, is not in  
14 any way responsible for the hazardous substance, and is not a  
15 corporate successor to the discharger or to any person in any way  
16 responsible for the hazardous substance or to anyone liable for a  
17 discharge pursuant to this section;

18 (3) the person gave notice of the discharge to the department upon  
19 actual discovery of that discharge;

20 (4) within 30 days after acquisition of the property, the person  
21 commenced a remediation of the discharge, including any migration,  
22 pursuant to a department oversight document executed prior to  
23 acquisition, and the department is satisfied that remediation was  
24 completed in a timely and appropriate fashion; and

25 (5) Within ten days after acquisition of the property, or within 30  
26 days after the expiration of the period or periods allowed for the right  
27 of redemption pursuant to tax foreclosure law, the person agrees in  
28 writing to provide access to the State for remediation and related  
29 activities, as determined by the State.

30 The provisions of this subsection shall not relieve any person of any  
31 liability:

32 (1) for a discharge that occurs at that property after the person  
33 acquired the property;

34 (2) for any actions that person negligently takes that aggravates or  
35 contributes to the harm inflicted upon any person;

36 (3) if that person fails to maintain the institutional or engineering  
37 controls on the property or to otherwise comply with the provisions  
38 of a no further action letter or a remedial action workplan and a  
39 person is harmed thereby;

40 (4) for any liability to clean up and remove, pursuant to the  
41 department's regulations and directions, any hazardous substances that  
42 may have been discharged on the property or that may have migrated  
43 therefrom; and

44 (5) for that person's failure to comply in the future with laws and  
45 regulations.

46 g. Nothing in the amendatory provisions to this section adopted

1 pursuant to P.L.1997, c.278 shall be construed to remove any defense  
2 to liability that a person may have had pursuant to subsection e. of this  
3 section that existed prior to the effective date of P.L.1997, c.278.

4 h. Nothing in this section shall limit the requirements of any person  
5 to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).  
6 (cf: P.L.2003, c.224, s.1)

7

8 2. This act shall take effect 120 days after enactment.

9

10

11

#### STATEMENT

12

13 This bill would increase the limitation on liability pursuant to the  
14 "Spill Compensation and Control Act" for the owner or operator of a  
15 vessel from which a hazardous substance is discharged. Current law  
16 caps that liability at \$150 per gross ton for vessels. This bill would  
17 increase the limit on liability to \$1,200 per gross ton for vessels. The  
18 liability limitation has not been increased since 1976.

ASSEMBLY ENVIRONMENT AND SOLID WASTE  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 3643**

**STATE OF NEW JERSEY**

DATED: MARCH 7, 2005

The Assembly Environment and Solid Waste Committee reports favorably Assembly Bill No. 3643.

This bill would increase the limitation on liability pursuant to the "Spill Compensation and Control Act" for the owner or operator of a vessel from which a hazardous substance is discharged. Current law caps that liability at \$150 per gross ton for vessels. This bill would increase the limit on liability to \$1,200 per gross ton for vessels. The liability limitation has not been increased since 1976.

**SENATE, No. 2311**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED FEBRUARY 3, 2005

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Salem, Cumberland and Gloucester)**

**Senator JOHN H. ADLER**

**District 6 (Camden)**

**SYNOPSIS**

Increases liability limitation for owners or operators of vessels that discharge a hazardous substance.

**CURRENT VERSION OF TEXT**

As introduced.



S2311 SWEENEY, ADLER

2

1 AN ACT concerning liability for the discharge of hazardous substances,  
2 and amending P.L.1976, c.141.

3

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

6

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

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

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

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

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

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

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

35 b. The damages which may be recovered by the fund, without  
36 regard to fault, subject to the defenses enumerated in subsection d. of  
37 this section against the owner or operator of a major facility or vessel,  
38 shall not exceed \$50,000,000.00 for each major facility or ~~[\$150.00]~~  
39 \$1,200 per gross ton for each vessel, except that such maximum  
40 limitation shall not apply and the owner or operator shall be liable,  
41 jointly and severally, for the full amount of such damages if it can be  
42 shown that such discharge was the result of (1) gross negligence or  
43 willful misconduct, within the knowledge and privity of the owner,

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

**Matter underlined thus is new matter.**

1 operator or person in charge, or (2) a gross or willful violation of  
2 applicable safety, construction or operating standards or regulations.  
3 Damages which may be recovered from, or by, any other person shall  
4 be limited to those authorized by common or statutory law.

5 c. (1) Any person who has discharged a hazardous substance, or is  
6 in any way responsible for any hazardous substance, shall be strictly  
7 liable, jointly and severally, without regard to fault, for all cleanup and  
8 removal costs no matter by whom incurred. Such person shall also be  
9 strictly liable, jointly and severally, without regard to fault, for all  
10 cleanup and removal costs incurred by the department or a local unit  
11 pursuant to subsection b. of section 7 of P.L.1976, c.141  
12 (C.58:10-23.11f).

13 (2) In addition to the persons liable pursuant to this subsection, in  
14 the case of a discharge of a hazardous substance from a vessel into the  
15 waters of the State, the owner or operator of a refinery, storage,  
16 transfer, or pipeline facility to which the vessel was en route to deliver  
17 the hazardous substance who, by contract, agreement, or otherwise,  
18 was scheduled to assume ownership of the discharged hazardous  
19 substance, and any other person who was so scheduled to assume  
20 ownership of the discharged hazardous substance, shall be strictly  
21 liable, jointly and severally, without regard to fault, for all cleanup and  
22 removal costs if the owner or operator of the vessel did not have the  
23 evidence of financial responsibility required pursuant to section 2 of  
24 P.L.1991, c.58 (C.58:10-23.11g2).

25 Where a person is liable for cleanup and removal costs as provided  
26 in this paragraph, any expenditures made by the administrator for that  
27 cleanup and removal shall constitute a debt of that person to the fund.  
28 The debt shall constitute a lien on all property owned by that person  
29 when a notice of lien identifying the nature of the discharge and the  
30 amount of the cleanup, removal and related costs expended from the  
31 fund is duly filed with the clerk of the Superior Court. The clerk shall  
32 promptly enter upon the civil judgment or order docket the name and  
33 address of the liable person and the amount of the lien as set forth in  
34 the notice of lien. Upon entry by the clerk, the lien, to the amount  
35 committed by the administrator for cleanup and removal, shall attach  
36 to the revenues and all real and personal property of the liable person,  
37 whether or not that person is insolvent.

38 For the purpose of determining priority of this lien over all other  
39 claims or liens which are or have been filed against the property of an  
40 owner or operator of a refinery, storage, transfer, or pipeline facility,  
41 the lien on the facility to which the discharged hazardous substance  
42 was en route shall have priority over all other claims or liens which are  
43 or have been filed against the property. The notice of lien filed  
44 pursuant to this paragraph which affects any property of a person  
45 liable pursuant to this paragraph other than the property of an owner  
46 or operator of a refinery, storage, transfer, or pipeline facility to which

1 the discharged hazardous substance was en route, shall have priority  
2 from the day of the filing of the notice of the lien over all claims and  
3 liens filed against the property, but shall not affect any valid lien, right,  
4 or interest in the property filed in accordance with established  
5 procedure prior to the filing of a notice of lien pursuant to this  
6 paragraph.

7 To the extent that a person liable pursuant to this paragraph is not  
8 otherwise liable pursuant to paragraph (1) of this subsection, or under  
9 any other provision of law or under common law, that person may  
10 bring an action for indemnification for costs paid pursuant to this  
11 paragraph against any other person who is strictly liable pursuant to  
12 paragraph (1) of this subsection.

13 Nothing in this paragraph shall be construed to extend or negate the  
14 right of any person to bring an action for contribution that may exist  
15 under P.L.1976, c.141, or any other act or under common law.

16 (3) In addition to the persons liable pursuant to this subsection, any  
17 person who owns real property acquired on or after September 14,  
18 1993 on which there has been a discharge prior to the person's  
19 acquisition of that property and who knew or should have known that  
20 a hazardous substance had been discharged at the real property, shall  
21 be strictly liable, jointly and severally, without regard to fault, for all  
22 cleanup and removal costs no matter by whom incurred. Such person  
23 shall also be strictly liable, jointly and severally, without regard to  
24 fault, for all cleanup and removal costs incurred by the department or  
25 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141  
26 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter  
27 liability of any person who acquired real property prior to September  
28 14, 1993.

29 d. (1) In addition to those defenses provided in this subsection, an  
30 act or omission caused solely by war, sabotage, or God, or a  
31 combination thereof, shall be the only defenses which may be raised by  
32 any owner or operator of a major facility or vessel responsible for a  
33 discharge in any action arising under the provisions of this act.

34 (2) A person, including an owner or operator of a major facility,  
35 who owns real property acquired on or after September 14, 1993 on  
36 which there has been a discharge, shall not be liable for cleanup and  
37 removal costs or for any other damages to the State or to any other  
38 person for the discharged hazardous substance pursuant to subsection  
39 c. of this section or pursuant to civil common law, if that person can  
40 establish by a preponderance of the evidence that subparagraphs (a)  
41 through (d) apply, or if applicable, subparagraphs (a) through (e)  
42 apply:

43 (a) the person acquired the real property after the discharge of that  
44 hazardous substance at the real property;

45 (b) (i) at the time the person acquired the real property, the person  
46 did not know and had no reason to know that any hazardous substance



1 had been discharged at the real property, or (ii) the person acquired  
2 the real property by devise or succession, except that any other funds  
3 or property received by that person from the deceased real property  
4 owner who discharged a hazardous substance or was in any way  
5 responsible for a hazardous substance, shall be made available to  
6 satisfy the requirements of P.L.1976, c.141, or (iii) the person  
7 complies with the provisions of subparagraph (e) of paragraph (2) of  
8 this subsection;

9 (c) the person did not discharge the hazardous substance, is not in  
10 any way responsible for the hazardous substance, and is not a  
11 corporate successor to the discharger or to any person in any way  
12 responsible for the hazardous substance or to anyone liable for cleanup  
13 and removal costs pursuant to this section;

14 (d) the person gave notice of the discharge to the department upon  
15 actual discovery of that discharge.

16 To establish that a person had no reason to know that any  
17 hazardous substance had been discharged for the purposes of this  
18 paragraph (2), the person must have undertaken, at the time of  
19 acquisition, all appropriate inquiry into the previous ownership and  
20 uses of the property. For the purposes of this paragraph (2), all  
21 appropriate inquiry shall mean the performance of a preliminary  
22 assessment, and site investigation, if the preliminary assessment  
23 indicates that a site investigation is necessary, as defined in section 23  
24 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with  
25 rules and regulations promulgated by the department defining these  
26 terms.

27 Nothing in this paragraph (2) shall be construed to alter liability of  
28 any person who acquired real property prior to September 14, 1993;  
29 and

30 (e) For the purposes of this subparagraph the person must have (i)  
31 acquired the property subsequent to a hazardous substance being  
32 discharged on the site and which discharge was discovered at the time  
33 of acquisition as a result of the appropriate inquiry, as defined in this  
34 paragraph (2), (ii) performed, following the effective date of P.L.1997,  
35 c.278, a remediation of the site or discharge consistent with the  
36 provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied  
37 upon a valid no further action letter from the department for a  
38 remediation performed prior to acquisition, or obtained approval of a  
39 remedial action workplan by the department after the effective date of  
40 P.L.1997, c.278 and continued to comply with the conditions of that  
41 workplan, and (iii) established and maintained all engineering and  
42 institutional controls as may be required pursuant to sections 35 and  
43 36 of P.L.1993, c.139. A person who complies with the provisions of  
44 this subparagraph by actually performing a remediation of the site or  
45 discharge as set forth in (ii) above shall be issued, upon application, a  
46 no further action letter by the department. A person who complies

1 with the provisions of this subparagraph either by receipt of a no  
2 further action letter from the department following the effective date  
3 of P.L.1997, c.278, or by relying on a previously issued no further  
4 action letter shall not be liable for any further remediation including  
5 any changes in a remediation standard or for the subsequent discovery  
6 of a hazardous substance, at the site, or emanating from the site, if the  
7 remediation was for the entire site, and the hazardous substance was  
8 discharged prior to the person acquiring the property.  
9 Notwithstanding any other provisions of this subparagraph, a person  
10 who complies with the provisions of this subparagraph only by virtue  
11 of the existence of a previously issued no further action letter shall  
12 receive no liability protections for any discharge which occurred  
13 during the time period between the issuance of the no further action  
14 letter and the property acquisition. Compliance with the provisions of  
15 this subparagraph (e) shall not relieve any person of any liability for a  
16 discharge that is off the site of the property covered by the no further  
17 action letter, for a discharge that occurs at that property after the  
18 person acquires the property, for any actions that person negligently  
19 takes that aggravates or contributes to a discharge of a hazardous  
20 substance, for failure to comply in the future with laws and  
21 regulations, or if that person fails to maintain the institutional or  
22 engineering controls on the property or to otherwise comply with the  
23 provisions of the no further action letter.

24 (3) Notwithstanding the provisions of paragraph (2) of this  
25 subsection to the contrary, if a person who owns real property obtains  
26 actual knowledge of a discharge of a hazardous substance at the real  
27 property during the period of that person's ownership and  
28 subsequently transfers ownership of the property to another person  
29 without disclosing that knowledge, the transferor shall be strictly liable  
30 for the cleanup and removal costs of the discharge and no defense  
31 under this subsection shall be available to that person.

32 (4) Any federal, State, or local governmental entity which acquires  
33 ownership of real property through bankruptcy, tax delinquency,  
34 abandonment, escheat, eminent domain, condemnation or any  
35 circumstance in which the governmental entity involuntarily acquires  
36 title by virtue of its function as sovereign, or where the governmental  
37 entity acquires the property by any means for the purpose of  
38 promoting the redevelopment of that property, shall not be liable,  
39 pursuant to subsection c. of this section or pursuant to common law,  
40 to the State or to any other person for any discharge which occurred  
41 or began prior to that ownership. This paragraph shall not provide any  
42 liability protection to any federal, State or local governmental entity  
43 which has caused or contributed to the discharge of a hazardous  
44 substance. This paragraph shall not provide any liability protection to  
45 any federal, State, or local government entity that acquires ownership  
46 of real property by condemnation or eminent domain where the real

1 property is being remediated in a timely manner at the time of the  
2 condemnation or eminent domain action.

3 (5) A person, including an owner or operator of a major facility,  
4 who owns real property acquired prior to September 14, 1993 on  
5 which there has been a discharge, shall not be liable for cleanup and  
6 removal costs or for any other damages to the State or to any other  
7 person for the discharged hazardous substance pursuant to subsection  
8 c. of this section or pursuant to civil common law, if that person can  
9 establish by a preponderance of the evidence that subparagraphs (a)  
10 through (d) apply:

11 (a) the person acquired the real property after the discharge of that  
12 hazardous substance at the real property;

13 (b) (i) at the time the person acquired the real property, the person  
14 did not know and had no reason to know that any hazardous substance  
15 had been discharged at the real property, or (ii) the person acquired  
16 the real property by devise or succession, except that any other funds  
17 or property received by that person from the deceased real property  
18 owner who discharged a hazardous substance or was in any way  
19 responsible for a hazardous substance, shall be made available to  
20 satisfy the requirements of P.L.1976, c.141;

21 (c) the person did not discharge the hazardous substance, is not in  
22 any way responsible for the hazardous substance, and is not a  
23 corporate successor to the discharger or to any person in any way  
24 responsible for the hazardous substance or to anyone liable for cleanup  
25 and removal costs pursuant to this section;

26 (d) the person gave notice of the discharge to the department upon  
27 actual discovery of that discharge.

28 To establish that a person had no reason to know that any  
29 hazardous substance had been discharged for the purposes of this  
30 paragraph (5), the person must have undertaken, at the time of  
31 acquisition, all appropriate inquiry on the previous ownership and uses  
32 of the property based upon generally accepted good and customary  
33 standards.

34 Nothing in this paragraph (5) shall be construed to alter liability of  
35 any person who acquired real property on or after September 14,  
36 1993.

37 e. Neither the fund nor the Sanitary Landfill Contingency Fund  
38 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be  
39 liable for any damages incurred by any person who is relieved from  
40 liability pursuant to subsection d. or f. of this section for a remediation  
41 that involves the use of engineering controls but the fund and the  
42 Sanitary Landfill Contingency Fund shall be liable for any remediation  
43 that involves only the use of institutional controls if after a valid no  
44 further action letter has been issued the department orders additional  
45 remediation except that the fund and the Sanitary Landfill Contingency  
46 Fund shall not be liable for any additional remediation that is required

1 to remove an institutional control.

2 f. Notwithstanding any other provision of this section, a person,  
3 who owns real property acquired on or after the effective date of  
4 P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for any  
5 cleanup and removal costs or damages, under this section or pursuant  
6 to any other statutory or civil common law, to any person, other than  
7 the State and the federal government, harmed by any hazardous  
8 substance discharged on that property prior to acquisition, and any  
9 migration off that property related to that discharge, provided all the  
10 conditions of this subsection are met:

11 (1) the person acquired the real property after the discharge of that  
12 hazardous substance at the real property;

13 (2) the person did not discharge the hazardous substance, is not in  
14 any way responsible for the hazardous substance, and is not a  
15 corporate successor to the discharger or to any person in any way  
16 responsible for the hazardous substance or to anyone liable for a  
17 discharge pursuant to this section;

18 (3) the person gave notice of the discharge to the department upon  
19 actual discovery of that discharge;

20 (4) within 30 days after acquisition of the property, the person  
21 commenced a remediation of the discharge, including any migration,  
22 pursuant to a department oversight document executed prior to  
23 acquisition, and the department is satisfied that remediation was  
24 completed in a timely and appropriate fashion; and

25 (5) Within ten days after acquisition of the property, or within 30  
26 days after the expiration of the period or periods allowed for the right  
27 of redemption pursuant to tax foreclosure law, the person agrees in  
28 writing to provide access to the State for remediation and related  
29 activities, as determined by the State.

30 The provisions of this subsection shall not relieve any person of any  
31 liability:

32 (1) for a discharge that occurs at that property after the person  
33 acquired the property;

34 (2) for any actions that person negligently takes that aggravates or  
35 contributes to the harm inflicted upon any person;

36 (3) if that person fails to maintain the institutional or engineering  
37 controls on the property or to otherwise comply with the provisions  
38 of a no further action letter or a remedial action workplan and a  
39 person is harmed thereby;

40 (4) for any liability to clean up and remove, pursuant to the  
41 department's regulations and directions, any hazardous substances that  
42 may have been discharged on the property or that may have migrated  
43 therefrom; and

44 (5) for that person's failure to comply in the future with laws and  
45 regulations.

46 g. Nothing in the amendatory provisions to this section adopted

1 pursuant to P.L.1997, c.278 shall be construed to remove any defense  
2 to liability that a person may have had pursuant to subsection e. of this  
3 section that existed prior to the effective date of P.L.1997, c.278.

4 h. Nothing in this section shall limit the requirements of any person  
5 to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).  
6 (cf: P.L.2003, c.224, s.1)

7

8 2. This act shall take effect 120 days after enactment.

9

10

11

STATEMENT

12

13 This bill would increase the limitation on liability pursuant to the  
14 "Spill Compensation and Control Act" for the owner or operator of a  
15 vessel from which a hazardous substance is discharged. Current law  
16 caps that liability at \$150 per gross ton for vessels. This bill would  
17 increase the limit on liability to \$1,200 per gross ton for vessels. The  
18 liability limitation has not been increased since 1976.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

**SENATE, No. 2311**

**STATE OF NEW JERSEY**

DATED: MAY 19, 2005

The Senate Environment Committee reports favorably Senate Bill No. 2311.

This bill would increase the limitation on liability pursuant to the "Spill Compensation and Control Act" for the owner or operator of a vessel from which a hazardous substance is discharged. Current law caps that liability at \$150 per gross ton for vessels. This bill would increase the limit on liability to \$1,200 per gross ton for vessels. The liability limitation has not been increased since 1976.