

SENATE, No. 2108

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED JUNE 24, 2010

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

SYNOPSIS

Increases Spill Compensation and Control Act cap on liability.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning liability for the discharge or a hazardous
2 substance, 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,
10 for all cleanup and removal costs and for all direct and indirect
11 damages 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
15 property is restored, repaired or replaced, and any reduction in
16 value of such property caused by such discharge by comparison
17 with its value prior thereto;

18 (2) The cost of restoration and replacement, where possible, of
19 any 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,
24 based upon income or business records, exclusive of other sources
25 of income, from activities related to the particular real or personal
26 property or natural resources damaged or destroyed by such
27 discharge during the week, month or year for which the claim is
28 filed;

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

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

36 b. The damages which may be recovered by the fund, without
37 regard to fault, subject to the defenses enumerated in subsection d.
38 of this section against the owner or operator of a major facility or
39 vessel, shall not exceed ~~[\$50,000,000.00]~~ \$1,000,000,000 for each
40 major facility or \$1,200 per gross ton for each vessel, except that
41 such maximum limitation shall not apply and the owner or operator
42 shall be liable, jointly and severally, for the full amount of such
43 damages if it can be shown that such discharge was the result of (1)
44 gross negligence or willful misconduct, within the knowledge and
45 privity of the owner, operator or person in charge, or (2) a gross or

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

5 c. (1) Except as provided in section 2 of P.L.2005, c.43
6 (C.58:10-23.11g12), any person who has discharged a hazardous
7 substance, or is in any way responsible for any hazardous
8 substance, shall be strictly liable, jointly and severally, without
9 regard to fault, for all cleanup and removal costs no matter by
10 whom incurred. Such person shall also be strictly liable, jointly and
11 severally, without regard to fault, for all cleanup and removal costs
12 incurred by the department or a local unit pursuant to subsection b.
13 of section 7 of P.L.1976, c.141 (C.58:10-23.11f).

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

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

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

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

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

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

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

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

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

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

46 (b) (i) at the time the person acquired the real property, the
47 person did not know and had no reason to know that any hazardous
48 substance had been discharged at the real property, or (ii) the person

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

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

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

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

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

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

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

24 (3) Notwithstanding the provisions of paragraph (2) of this
25 subsection to the contrary, if a person who owns real property
26 obtains actual knowledge of a discharge of a hazardous substance at
27 the real 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
30 liable for the cleanup and removal costs of the discharge and no
31 defense under this subsection shall be available to that person.

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

1 remediated in a timely manner at the time of the condemnation or
2 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
8 subsection c. of this section or pursuant to civil common law, if that
9 person can establish by a preponderance of the evidence that
10 subparagraphs (a) through (d) apply:

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

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

21 (c) the person did not discharge the hazardous substance, is not
22 in 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
25 cleanup and removal costs pursuant to this section;

26 (d) the person gave notice of the discharge to the department
27 upon 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
32 uses of the property based upon generally accepted good and
33 customary standards.

34 Nothing in this paragraph (5) shall be construed to alter liability
35 of 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
39 be liable for any damages incurred by any person who is relieved
40 from liability pursuant to subsection d. or f. of this section for a
41 remediation that involves the use of engineering controls but the
42 fund and the Sanitary Landfill Contingency Fund shall be liable for
43 any remediation that involves only the use of institutional controls
44 if after a valid final remediation document has been issued the
45 department orders additional remediation except that the fund and
46 the Sanitary Landfill Contingency Fund shall not be liable for any
47 additional remediation that is required to remove an institutional
48 control.

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

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

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

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

19 (4) (a) within 30 days after acquisition of the property, the
20 person commenced a remediation of the discharge, including any
21 migration, pursuant to a department oversight document executed
22 prior to acquisition, or (b) for property acquired after the date of
23 enactment of P.L.2009, c.60 (C.58:10C-1 et al.), the person
24 provides written notice of the acquisition to the department prior to
25 or on the date of acquisition and the person remediates the property
26 pursuant to the provisions of section 30 of P.L.2009, c.60
27 (C.58:10B-1.3), and (c) the department is satisfied that remediation
28 was completed in a timely and appropriate fashion; and

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

34 The provisions of this subsection shall not relieve any person of
35 any liability:

36 (1) for a discharge that occurs at that property after the person
37 acquired the property;

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

40 (3) if that person fails to maintain the institutional or
41 engineering controls on the property or to otherwise comply with
42 the provisions of a final remediation document or a remedial action
43 workplan and a person is harmed thereby;

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

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

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

8 h. Nothing in this section shall limit the requirements of any
9 person to comply with P.L.1983, c.330 (C.13:1K-6 et al.).
10 (cf: P.L.2009, c.60, s.38)

11

12 2. This act shall take effect immediately.

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STATEMENT

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17 This bill would increase the limitation on liability pursuant to the
18 "Spill Compensation and Control Act" for the owner or operator of
19 a major facility from \$50 million to \$1 billion.