[First Reprint]

ASSEMBLY, No. 3118

STATE OF NEW JERSEY

211th LEGISLATURE

INTRODUCED JUNE 21, 2004

Sponsored by:
Assemblyman LOUIS D. GREENWALD
District 6 (Camden)

Co-Sponsored by:
Senator B.Smith

SYNOPSIS

Imposes annual air toxics surcharge based on emissions at certain facilities.

CURRENT VERSION OF TEXT

As reported by the Assembly Budget Committee on June 21, 2004, with amendments.

(Sponsorship Updated As Of: 6/25/2004)

AN ACT imposing a surcharge based on certain air emissions, and supplementing Title 13 of the Revised Statutes.

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

1. As used in this act:

"CAS" means the Chemical Abstract Service registry number;

"Department" means the Department of Environmental Protection;

"Division" means the Division of Taxation in the Department of the Treasury;

"Director" means the Director of the Division of Taxation in the Department of the Treasury;

"Category 4 toxic substance" means the following substances as identified by the following name or chemical abstract service registry number: orenethylbenzene (CAS No. 100-41-4), chloroform (CAS No. 67-66-3), 1,4-dioxane (CAS No. 123-91-1), dichloromethane (CAS No. 75-09-2), styrene (CAS No. 100-42-5), p-cresol (CAS No. 106-44-5), trichloroethylene (CAS No. 79-01-6), 1,2-dichoroethane (CAS No. 107-06-2), vinyl acetate (CAS No. 108-05-4), vinylidene chloride (CAS No. 75-35-4), benzene (CAS No. 71-43-2), arsenic compounds (CAS No. N020), nickel (CAS No. 7440-02-0), nickel compounds (CAS No. N495), vinyl chloride (CAS No. 75-01-4), epichlorohydrin (CAS No. 106-89-8), formaldehyde (CAS No. 50-00-0), tetrachloroethylene (perchloroethylene) (CAS No. 127-18-4), hydrazine (CAS No. 302-01-2), propylene oxide (CAS No. 75-56-9), toluene diisocyanate (mixed isomers) (CAS No. 26471-62-5), aniline (and salts) (CAS No. 62-53-3), beryllium (CAS No. 7440-41-7), cadmium compounds (CAS No. N078), chromium (CAS No. 7440-47-3), chromium compounds (CAS No. N090), ethylene oxide (CAS No. 75-21-8), nitrobenzene (CAS No. 98-95-3), naphthalene (CAS No. 91-20-3), chlordane (CAS No. 57-74-9), acetaldehyde (CAS No. 75-07-0), 1,2-butylene oxide (CAS No. 106-88-7), cobalt (CAS No. 7440-48-4), cobalt compounds (CAS No. N096), di(2-ethylhexyl) phthalate (DEHP) (CAS No. 117-81-7), lead (CAS No. 7439-92-1), lead compounds (CAS No. N420), mercury (CAS No. 7439-97-6), mercury compounds (CAS No. N458), benzyl chloride (CAS No. 100-44-7), pentachlorobenzen (CAS No. 608-93-5), creosote (CAS No. 8001-58-9), pendimethalin (CAS No. 40487-42-1), asbestos (friable) (CAS No. 1332-21-4), dioxin and dioxin-like compounds (CAS No. N150), polycyclic aromatic compounds (CAS No. N590), polychlorinated biphenyls (PCB) (CAS

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.
Matter enclosed in superscript numerals has been adopted as follows:
[1] Assembly ABU committee amendments adopted June 21, 2004.

No. 1336-36-3), acrylamide (CAS No. 79-06-01), benzoic trichloride (CAS No. 98-07-7), dimethyl sulfate (CAS No. 77-78-1), 1,3-butadiene (CAS No. 106-99-0), benzal chloride (CAS No. 98-87-3), diethyl sulfate (CAS No. 64-67-5), dimethylcarbamyl chloride (CAS No. 79-44-7), hexachloroethane (CAS No. 67-72-1), heptachlor (CAS No. 76-44-8), hexachlorobenzene (CAS No. 118-74-1), acrylonitrile (CAS No. 107-13-1), antimony compounds (CAS No. N010), catechol (CAS No. 120-80-9), diglycidyl resorcinol ether (CAS No. 101-90-6), ethyl acrylate (CAS No. 140-88-5), nitrofen (CAS No. 1836-75-5), propyleneimine (CAS No. 75-55-8), sodium o-phenylphenoxide (CAS No. 132-27-4), urethane (CAS No. 51-79-6), benzo(g,h,i)perylene (CAS No. 191-24-2), allyl chloride (CAS No. 107-05-1), and decabromodiphenyl oxide (CAS No. 1163-19-5), 1,1,1,2-tetrachloroethane (CAS No. 630-20-6), 1,1,2,2-tetrachloroethane (CAS No. 79-34-5), 1,1,2-trichloroethane (CAS No. 79-00-5), 1,1-dimethyl hydrazine (CAS No. 57-14-7), 1,2-dibromo-3-chloropropane (CAS No. 96-12-8), 1,2-dibromoethane (CAS No. 106-93-4), 1,2-diphenylhydrazine (CAS No. 122-66-7), 1,3-dichloropropylene (CAS No. 542-75-6), 1,4-dichlorobenzene (CAS No. 106-46-7), 2,4,6-trichlorophenol (CAS No. 88-06-2), 2,4-diaminoanisole (CAS No. 615-05-4), 2,4-diaminotoluene (CAS No. 95-80-7), 2,4-dinitrotoluene (CAS No. 121-14-2), 2,6-dinitrotoluene (CAS No. 606-20-2), 2,6-xylidine (CAS No. 87-62-7), 2-nitropropane (CAS No. 79-46-9), 3,3'-dichlorobenzidine (CAS No. 91-94-1), 3,3-dimethoxybenzidine (CAS No. 119-90-4), 3,3-dimethylbenzidine (CAS No. 119-93-7), 4,4-diaminodiphenyl ether (CAS No. 101-80-4), 4,4-methylenebis(2-chloroaniline), (CAS No. 101-14-4), 4,4-methylenebis(n,n-dimethyl), benzenamin (CAS No. 101-61-1), 4,4-methylenedianiline (CAS No. 101-77-9), 4,4-thiodianiline (CAS No. 139-65-1), 4-aminoazobenzene (CAS No. 60-09-3), 4-aminobiphenyl (CAS No. 92-67-1), 4-dimethylaminoazobenzene (CAS No. 60-11-7), acephate (CAS No. 30560-19-1), acetamide (CAS No. 60-35-5), aldrin (CAS No. 309-00-2), alpha-hexachlorocyclohexane (CAS No. 319-84-6), arsenic (CAS No. 7440-38-2), benzidine (CAS No. 92-87-5), benzoyl chloride (CAS No. 98-88-4), beryllium compounds (CAS No. n050), beta-naphthylamine (CAS No. 91-59-8), beta-propiolactone (CAS No. 57-57-8), bis(2-chloroethyl), ether (CAS No. 111-44-4), bis(chloromethyl), ether (CAS No. 542-88-1), bromoform (CAS No. 75-25-2), c.i. acid red 114 (CAS No. 6459-94-5), c.i. food red 5 (CAS No. 3761-53-3), c.i. solvent yellow 3 (CAS No. 97-56-3), c.i. solvent yellow 34 (CAS No. 492-80-8), cadmium (CAS No. 7440-43-9), carbon tetrachloride (CAS No. 56-23-5), chlorendic acid (CAS No. 115-28-6), chloromethyl methyl ether (CAS No. 107-30-2), chloroprene (CAS No. 126-99-8), chlorothalonil (CAS No. 1897-45-6), dichlorobromomethane (CAS No. 75-27-4), dichlorvos

(CAS No. 62-73-7), dihydrosafrole (CAS No. 94-58-6), dimethipin (CAS No. 55290-64-7), ethyleneimine (CAS No. 151-56-4), ethylidene dichloride (CAS No. 75-34-3), folpet (CAS No. 133-07-3), fomesafen (CAS No. 72178-02-0), hexachloro-1,3-butadiene (CAS No. 87-68-3), hexamethylphosphoramide (CAS No. 680-31-9), hydrazine sulfate (CAS No. 10034-93-2), isodrin (CAS No. 465-73-6), lindane (CAS No. 58-89-9), linuron (CAS No. 330-55-2), m-cresol (CAS No. 108-39-4), methoxychlor (CAS No. 72-43-5), mustard gas (CAS No. 505-60-2), nitrilotriacetic acid (CAS No. 139-13-9), nitrogen mustard (mechlorethamine) (CAS No. 51-75-2), n-nitrosodiethylamine (CAS No. 55-18-5), n-nitrosodimethylamine (CAS No. 62-75-9), n-nitrosodi-n-butylamine (CAS No. 924-16-3), n-nitrosodi-n-propylamine (CAS No. 621-64-7), n-nitrosodiphenylamine (CAS No. 86-30-6), n-nitrosomethylvinylamine (CAS No. 4549-40-0), n-nitrosomorpholine (CAS No. 59-89-2), n-nitroso-n-ethylurea (CAS No. 759-73-9), n-nitroso-n-methylurea (CAS No. 684-93-5), n-nitrosonornicotine (CAS No. 16543-55-8), n-nitrosopiperidine (CAS No. 100-75-4), o-anisidine (CAS No. 90-04-0), o-cresol (CAS No. 95-48-7), octachlorostyrene (CAS No. 29082-74-4), oryzalin (CAS No. 19044-88-3), o-toluidine (CAS No. 95-53-4), paraquat dichloride (paraquat) (CAS No. 1910-42-5), parathion (CAS No. 56-38-2), p-chloroaniline (CAS No. 106-47-8), p-chloro-o-toluidine (CAS No. 95-69-2), p-cresidine (CAS No. 120-71-8), pentachlorophenol (pcp), (CAS No. 87-86-5), phenytoin (CAS No. 57-41-0), p-nitrosodiphenylamine (CAS No. 156-10-5), polybrominated biphenyls (pbbs), (CAS No. n575), potassium bromate (CAS No. 7758-01-2), propane sultone (CAS No. 1120-71-4), quinoline (CAS No. 91-22-5), safrole (CAS No. 94-59-7), styrene oxide (CAS No. 96-09-3), thioacetamide (CAS No. 62-55-5), toxaphene (camphechlor) (CAS No. 8001-35-2), trifluralin (CAS No. 1582-09-8), tris(2,3-dibromopropyl), phosphate (CAS No. 126-72-7), trypan blue (CAS No. 72-57-1), [1]and[1] vinyl chloride (CAS No. 593-60-2) [1][, or any other toxic substance reportable on the release and pollution prevention report and defined by United States Environmental Protection Agency or the International Agency for Research on Cancer as showing evidence of being carcinogenic or any other substance defined by the United State Environmental Protection Agency as being persistent, bioaccumulative, and toxic][1] ;

"Category 3 toxic substance" means the following substances as identified by the following name or chemical abstract service registry number: methyl ethyl ketone (CAS No. 78-93-3), carbon disulfide (CAS No. 75-15-0), chloroethane (CAS No. 75-00-3), glycol ethers (except surfactants) (CAS No. N230), copper compounds (with exceptions) (CAS No. N100), ammonia (CAS No. 7664-41-7), chlorine (CAS No. 7782-50-5), copper (CAS No. 7440-50-8), sulfuric

acid (CAS No. 7664-93-9), triethylamine (CAS No. 121-44-8), bromomethane (CAS No. 74-83-9), hydrochloric acid (CAS No. 7647-01-0), xylene (mixed isomers) (CAS No. 1330-20-7), acetonitrile (CAS No. 75-05-8), barium compounds (except barium sulfate) (CAS No. N040), chlorine dioxide (CAS No. 10049-04-4), manganese(CAS No. 7439-96-5), manganese compounds (CAS No. N450), phosphorus (CAS No. 7723-14-0), zinc compounds (CAS No. N982), dicyclopentadiene (CAS No. 77-73-6), maleic anhydride (CAS No. 108-31-6), phthalic anhydride (CAS No. 85-44-9), titanium tetrachloride (CAS No. 7550-45-0), toluene-2,4-diisocyanate (CAS No. 584-84-9), zinc (fume or dust) (CAS No. 7440-66-6), chloromethane (CAS No. 74-87-3), selenium (CAS No. 7782-49-2), 1,2-dichloropropane (CAS No. 78-87-5), diethanolamine (CAS No. 111-42-2), n,n-dimethylformamide (CAS No. 68-12-2), 2-chloroacetophenone (CAS No. 532-27-4), anthracene (CAS No. 120-12-7), barium (CAS No. 7440-39-3), boron trifluoride (CAS No. 7637-07-2), chloropicrin (CAS No. 76-06-2), hexachlorocyclopentadiene (CAS No. 77-47-4), hydrogen cyanide (hydrocyanic acid) (CAS No. 74-90-8), methacrylonitrile (CAS No. 126-98-7), methyl isocyanate (CAS No. 624-83-9), phosphine (CAS No. 7803-51-2), selenium compounds (CAS No. N725), **[1]**and**[1]** toluene-2,6-diisocyanate (CAS No. 91-08-7) **[1][**, or any other toxic substance reportable on the release and pollution prevention report and identified by the department as having severe long-term and short-term noncancer health effects such that, for long-term noncancer effects, the reference concentration, or concentration below which no effect is expected, is less than or equal to 100 ug/m3, and for short-term noncancer effects, the substance may have reproductive or developmental effects**][1]** ;

"Category 2 toxic substance" means the following substances as identified by the following name or chemical abstract service registry number: 1,1,1-trichloroethane (CAS No. 71-55-6), phenol (CAS No. 108-95-2), toluene (CAS No. 108-88-3), methanol (CAS No. 67-56-1), methyl methacrylate (CAS No. 80-62-6), 1,2-dichlorobenzene (CAS No. 95-50-1), chlorobenzene (CAS No. 108-90-7), cumene (CAS No. 98-82-8), methyl isobutyl ketone (CAS No. 108-10-1), 1-chloro-1,1-difluoroethane (HCFC-142b) (CAS No. 75-68-3), cresol (mixed isomers) (CAS No. 1319-77-3), dichlorodifluoromethane (CFC-12) (CAS No. 75-71-8), ethylene glycol (CAS No. 107-21-1), freon 113 (CAS No. 76-13-1), n-hexane (CAS No. 110-54-3), trichlorofluoromethane (CFC-11) (CAS No. 75-69-4), chlorodifluoromethane (hcfc-22) (CAS No. 75-45-6), methyl tert-butyl ether (CAS No. 1634-04-4), propylene (propene) (CAS No. 115-07-1), hydrogen fluoride (CAS No. 7664-39-3), phosgene (CAS No. 75-44-5), acrylic acid (CAS No. 79-10-7), isopropyl alcohol (mfg-strong acid process) (CAS No. 67-63-0), **[1]**and**[1]** acrolein (CAS

No. 107-02-8) [1]**[**, or any other toxic substance reportable on the release and pollution prevention report and identified by the department as having less severe long-term and short-term noncancer health effects such that for long-term noncancer effects, the reference concentration, or concentration below which no effect is expected, is greater than 100 ug/m3, or for short-term noncancer effects, the health endpoint is considered mild, such as an irritation**]**[1] ;

"Facility" means the building, equipment and contiguous area at a single location used for the conduct of business and for which the owner or operator is required to submit a release and pollution prevention report [1]pursuant to the reporting requirements of 42 U.S.C. s.11023, or other criteria adopted by the Department of Environmental Protection and in effect on the date of enactment of this act[1];

"Owner or operator" means any person who owns a facility, or any person in control of, or exercising responsibility for, the daily operation of the facility;

"Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity;

"Release and pollution prevention report" means the combined report submitted to the department annually pursuant to the "Worker and Community Right to Know Act," P.L.1983, c.315 (C.34:5A-1 et al.) and the "Pollution Prevention Act," P.L.1991, c.235 (C.13:1D-35 et seq.), and any rules and regulations adopted pursuant thereto [1]**[**,**]** that are in effect on the date of enactment of this act, and[1] that provides environmental emissions release and throughput data on an annual basis; and

"Toxic substance" means any hazardous substance as defined pursuant to section 3 of P.L.1991, c.235 (C.13:1D-37).

2. a. (1) There is imposed upon the owner or operator of each facility an air toxics surcharge in the amount provided in subsection b. of this section. The surcharge shall be based on the annual emissions of each Category 2 toxic substance, Category 3 toxic substance and Category 4 toxic substance as reported in the release and pollution prevention report for that facility.

(2) The air toxics surcharge due in a calender year shall be based upon the data reported in the release and pollution prevention report for emissions that occurred two calender years prior to the year for which the return is filed.

(3) Failure to submit a release and pollution prevention report shall not relieve the owner or operator of a facility of [1]**[**his**]** the[1] obligation to pay the required air toxics surcharge.

b. The air toxics surcharge for each facility shall be assessed as follows:

(1) $10.00 shall be assessed for each pound of Category 4 toxic substances released as stack or fugitive emissions as reported on the release and pollution prevention report;

(2) $1.00 shall be assessed for each pound of Category 3 toxic substances released as stack or fugitive emissions as reported on the release and pollution prevention report; and

(3) $0.10 shall be assessed for each pound of Category 2 toxic substances released as stack or fugitive emissions as reported on the release and pollution prevention report.

c. [1]**[**The owner or operator of each facility that releases any Category 2 toxic substance, Category 3 toxic substance or Category 4 toxic substance in any amount as stack or fugitive emissions as reported on the release and pollution prevention report, shall pay a minimum surcharge amount of $1,000 each year regardless of the amount of Category 2 toxic substances, Category 3 toxic substances and Category 4 toxic substances released in the year subject to the air toxics surcharge.

d.**]**[1] The air toxics surcharge imposed on the owner or operator of a facility shall not exceed $500,000 in any calender year.

[1]**[**e.**]** d.[1] The owner or operator of each facility subject to the air toxics surcharge imposed pursuant to this section shall file with the director a certificate of registration on a form prescribed by the director.

[1]**[**f. **]** e.[1] The owner or operator of each facility subject to the air toxics surcharge imposed pursuant to this section shall, on or before March 15 of each year, prepare and file a return under oath for the preceding calendar year with the director on such forms as may be prescribed by the director. The return shall include any information that the director shall prescribe, shall indicate the dollar value of the air toxics surcharge due pursuant to that return for the facility and at the said time the owner or operator of each facility shall pay the full amount of the air toxics surcharge due.

[1]**[**g.**]** f.[1] If a return required by this section is not filed, or if a return when filed is incorrect or insufficient as determined by the director, the amount of surcharge due shall be determined by the director based on collections of the air toxics surcharge from the owner or operator of the facility liable for the payment of the air toxics surcharge during the previous five years. Notice of the determination shall be given to the owner or operator of the facility liable for the payment of the air toxics surcharge. The determination shall finally and irrevocably fix the air toxics surcharge unless the owner or operator of the facility against whom it is assessed, within 90 days after the giving of the notice of the determination, shall file a protest in writing as provided in R.S.54:49-18 and request a hearing, or unless the director on the director's own motion shall redetermine the same. After the hearing the director shall give notice of the determination to

the owner or operator of the facility to whom the air toxics surcharge is assessed.

[1]**[**h.**]** g.[1] The air toxics surcharge imposed pursuant to this section shall be governed by the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

[1]**[**i.**]** h.[1] In addition to the other powers granted by this section, the director may adopt any rules and regulations necessary for the implementation of this section.

[1]**[**j.**]** i.[1] Notwithstanding the provisions of subparagraph (C) of paragraph (2) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), if any, to the contrary, any deduction of the air toxics surcharge imposed pursuant to subsection a. of this section allowed in computing a taxpayer's taxable income which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its federal taxable income shall be allowed in determining the taxpayer's "entire net income" pursuant to subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4).

[1]3. a. Any owner or operator of a facility required to remit an air toxics surcharge pursuant to section 2 of this act shall be allowed a credit against the amount of air toxic surcharge due for each facility for any calendar year as follows:

(1) For any owner or operator of a facility required to remit an air toxics surcharge for any calendar year, a credit of 50% of the total air toxics surcharge due shall be allowed, provided that the owner or operator certifies that the total actual emissions to the atmosphere of mercury from that facility for the calendar year two years prior to the calender year for which the return is filed is equal to or less than the numerical limits on mercury emissions from operations at the facility set by the Department of Environmental Protection for mercury in rules and regulations adopted after the date of enactment of this act, pursuant to the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.);

(2) For any owner or operator of a facility required to remit an air toxics surcharge, an annual credit of 50% of the total air toxics surcharge due shall be allowed provided that the owner or operator has installed, uses and properly maintains selective catalytic reduction equipment or a scrubber, or other particulate control technology with similar benefits to selective catalytic reduction equipment or scrubbers, permitted by the department to reduce air emissions; and

(3) An annual credit for each year after the date of enactment of this act, up to a maximum of 10 years, may be claimed in the amount of not more than 5% of the purchase price, excluding interest or financing costs, of any control equipment purchased or installed subsequent to two years prior to the date of enactment of this act provided that:

(a) the control equipment is installed and used exclusively within this State at the facility for which the return is filed;

(b) the owner or operator of the facility has received a certification from the department pursuant to section 4 of this act that use of the control equipment will result in the reduction or prevention of emissions of toxic substances to the atmosphere;

(c) the credit of air toxics surcharge due for any calendar year shall not exceed 50% of the total amount of air toxics surcharge due in that calendar year as calculated pursuant section 2 of this act; and

(d) for any calendar year in which a credit is claimed pursuant to this paragraph, the owner or operator of a facility has certified that the control equipment has been fully functional and properly maintained.

b. No credit received by any owner or operator of a facility pursuant to this section may exceed 50 percent of the maximum allowable air toxics surcharge calculated pursuant to section 2 of this act.[1]

[1]4. The owner or operator of a facility may request that the department, in issuing a permit to construct, reconstruct, install, or modify air pollution control equipment required pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.), also issue a certification that the control equipment will prevent or reduce the emission of toxic substances into the atmosphere. The owner or operator shall make such a request before the permit is issued. The commissioner, when requested for any such certification, shall certify the control equipment whenever the commissioner finds that the control equipment constructed or installed, or to be constructed or installed, will control or abate the emission of toxic substances to the atmosphere and is suitable and reasonably adequate for that purpose. This certificate shall contain information identifying the facilities and the control equipment and the cost thereof and shall be in such form and detail as the commissioner shall prescribe. This certificate shall be submitted to the applicant therefor with a copy to the director, and the allowable credit as provided in paragraph (3) of subsection a. of section 3 of this act for such control equipment shall become effective for the calender year in which certification has been granted.[1]

[1]5. There is established the "Nuclear Power Plant Security Fund" as a special non-lapsing fund in the Department of Environmental Protection. The fund shall be credited with $2,000,000 from the amount of air toxics surcharges collected pursuant to section 2 of this act. Monies in the fund shall be used to provide or enhance security at nuclear power plants in this State.[1]

[1]**[**3.**]** 6.[1] This act shall take effect immediately and shall first apply to the calender year in which it takes effect.