

[First Reprint]

SENATE, No. 576

STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

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District 3 (Cumberland, Gloucester and Salem)

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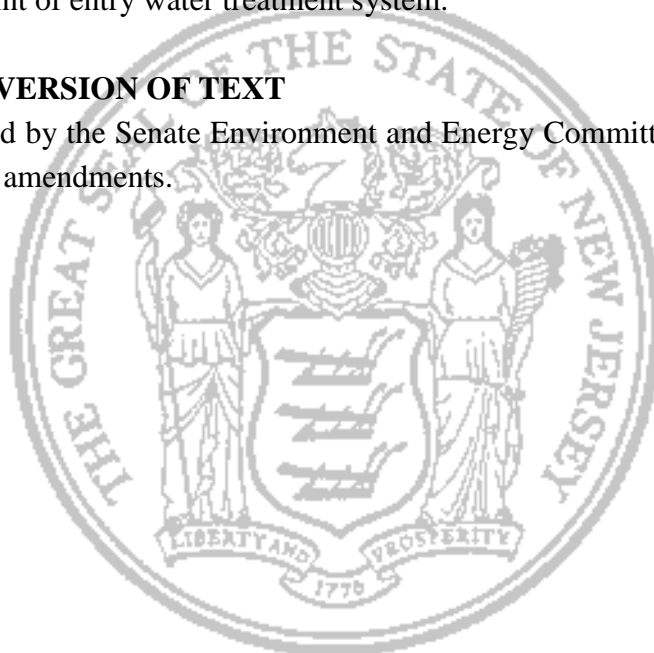
Assemblyman Johnson

SYNOPSIS

Requires certain notifications, and provides for guaranteed NJ Spill Compensation Fund coverage, upon sale of property where private well is treated by point of entry water treatment system.

CURRENT VERSION OF TEXT

As reported by the Senate Environment and Energy Committee on February 4, 2013, with amendments.



(Sponsorship Updated As Of: 6/21/2013)

1 AN ACT concerning certain private wells, supplementing Title 58 of
2 the Revised Statutes, 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. (New section) a. Every contract of sale of real property
8 where the potable water supply is a private well located on the
9 property that is treated by a point of entry water treatment system
10 the cost for which a claim has been submitted to the New Jersey
11 Spill Compensation Fund pursuant to P.L.1976, c.141 (C.58:10-
12 23.11 et seq.), shall include a provision requiring, as a condition of
13 sale, notification of the administrator of the fund at the Department
14 of Environmental Protection of the change in ownership of the
15 property.

16 b. Closing of title on the sale of the real property shall not
17 occur unless both the buyer and the seller have received and
18 reviewed a copy of the notification provided to the Department of
19 Environmental Protection. At closing, the buyer and seller both
20 shall certify in writing that they have received and reviewed the
21 notification.

22 c. ¹(1)¹ The seller shall provide the buyer with the name of the
23 installer of the point of entry water treatment system, **[and]** if the
24 name of the installer is known by the seller. If the name of the
25 installer is known by the seller, closing of title on the sale of the
26 property shall not occur unless the seller has provided the buyer
27 with the name of the installer and the buyer has certified that the
28 name of the installer has been provided by the seller.

29 (2) The seller shall provide the buyer with information
30 regarding¹ the future monitoring and maintenance requirements of
31 the ¹point of entry water treatment¹ system. Closing of title on the
32 sale of the property shall not occur unless the seller has provided
33 the buyer with this information and the buyer has certified that the
34 information has been provided by the seller.

35 d. As used in this section, “point of entry water treatment
36 system” means a water treatment system used to remove
37 contaminants from the water entering a structure from a potable
38 well.

39

40 2. (New section) Whenever the administrator of the New
41 Jersey Spill Compensation Fund at the Department of
42 Environmental Protection is notified of a change in ownership of
43 real property pursuant to section 1 of this act, the administrator

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEN committee amendments adopted February 4, 2013.

1 shall notify the buyer of the real property that the buyer may submit
2 a claim to the fund for payment of the ongoing monitoring and
3 maintenance costs of the point of entry water treatment system.
4

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

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

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

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

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

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

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

34 (6) The cost of installation and maintenance of a point of entry
35 water treatment system necessary to remedy contamination of a
36 private residential well, the liability for which shall continue as long
37 as the point of entry water treatment system is required to treat the
38 contamination. Notwithstanding any rule or regulation adopted
39 pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) to the contrary,
40 for the purposes of this paragraph, an eligible claimant includes, but
41 is not limited to, a person who has purchased residential property on
42 which a point of entry water treatment system was installed
43 pursuant to a claim for damages filed in accordance with P.L.1976,
44 c.141 prior to the purchase, provided that the claimant meets all
45 other eligibility criteria established by P.L.1976, c.141 and any
46 rules or regulations adopted pursuant thereto. As used in this
47 paragraph, "point of entry water treatment system" means a water

1 treatment system used to remove contaminants from the water
2 entering a structure from a potable well.

3 b. The damages which may be recovered by the fund, without
4 regard to fault, subject to the defenses enumerated in subsection d.
5 of this section against the owner or operator of a major facility or
6 vessel, shall not exceed \$50,000,000.00 for each major facility or
7 \$1,200 per gross ton for each vessel, except that such maximum
8 limitation shall not apply and the owner or operator shall be liable,
9 jointly and severally, for the full amount of such damages if it can
10 be shown that such discharge was the result of (1) gross negligence
11 or willful misconduct, within the knowledge and privity of the
12 owner, operator or person in charge, or (2) a gross or willful
13 violation of applicable safety, construction or operating standards or
14 regulations. Damages which may be recovered from, or by, any
15 other person shall be limited to those authorized by common or
16 statutory law.

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

26 (2) In addition to the persons liable pursuant to this subsection,
27 in the case of a discharge of a hazardous substance from a vessel
28 into the waters of the State, the owner or operator of a refinery,
29 storage, transfer, or pipeline facility to which the vessel was en
30 route to deliver the hazardous substance who, by contract,
31 agreement, or otherwise, was scheduled to assume ownership of the
32 discharged hazardous substance, and any other person who was so
33 scheduled to assume ownership of the discharged hazardous
34 substance, shall be strictly liable, jointly and severally, without
35 regard to fault, for all cleanup and removal costs if the owner or
36 operator of the vessel did not have the evidence of financial
37 responsibility required pursuant to section 2 of P.L.1991, c.58
38 (C.58:10-23.11g2).

39 Where a person is liable for cleanup and removal costs as
40 provided in this paragraph, any expenditures made by the
41 administrator for that cleanup and removal shall constitute a debt of
42 that person to the fund. The debt shall constitute a lien on all
43 property owned by that person when a notice of lien identifying the
44 nature of the discharge and the amount of the cleanup, removal and
45 related costs expended from the fund is duly filed with the clerk of
46 the Superior Court. The clerk shall promptly enter upon the civil
47 judgment or order docket the name and address of the liable person

1 and the amount of the lien as set forth in the notice of lien. Upon
2 entry by the clerk, the lien, to the amount committed by the
3 administrator for cleanup and removal, shall attach to the revenues
4 and all real and personal property of the liable person, whether or
5 not that person is insolvent.

6 For the purpose of determining priority of this lien over all other
7 claims or liens which are or have been filed against the property of
8 an owner or operator of a refinery, storage, transfer, or pipeline
9 facility, the lien on the facility to which the discharged hazardous
10 substance was en route shall have priority over all other claims or
11 liens which are or have been filed against the property. The notice
12 of lien filed pursuant to this paragraph which affects any property
13 of a person liable pursuant to this paragraph other than the property
14 of an owner or operator of a refinery, storage, transfer, or pipeline
15 facility to which the discharged hazardous substance was en route,
16 shall have priority from the day of the filing of the notice of the lien
17 over all claims and liens filed against the property, but shall not
18 affect any valid lien, right, or interest in the property filed in
19 accordance with established procedure prior to the filing of a notice
20 of lien pursuant to this paragraph.

21 To the extent that a person liable pursuant to this paragraph is
22 not otherwise liable pursuant to paragraph (1) of this subsection, or
23 under any other provision of law or under common law, that person
24 may bring an action for indemnification for costs paid pursuant to
25 this paragraph against any other person who is strictly liable
26 pursuant to paragraph (1) of this subsection.

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

30 (3) In addition to the persons liable pursuant to this subsection,
31 any person who owns real property acquired on or after September
32 14, 1993 on which there has been a discharge prior to the person's
33 acquisition of that property and who knew or should have known
34 that a hazardous substance had been discharged at the real property,
35 shall be strictly liable, jointly and severally, without regard to fault,
36 for all cleanup and removal costs no matter by whom incurred.
37 Such person shall also be strictly liable, jointly and severally,
38 without regard to fault, for all cleanup and removal costs incurred
39 by the department or a local unit pursuant to subsection b. of
40 section 7 of P.L.1976, c.141 (C.58:10-23.11f). Nothing in this
41 paragraph shall be construed to alter liability of any person who
42 acquired real property prior to September 14, 1993.

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

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

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

12 (b) (i) at the time the person acquired the real property, the
13 person did not know and had no reason to know that any hazardous
14 substance had been discharged at the real property, or (ii) the person
15 acquired the real property by devise or succession, except that any
16 other funds or property received by that person from the deceased
17 real property owner who discharged a hazardous substance or was
18 in any way responsible for a hazardous substance, shall be made
19 available to satisfy the requirements of P.L.1976, c.141, or (iii) the
20 person complies with the provisions of subparagraph (e) of
21 paragraph (2) of this subsection;

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

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

29 To establish that a person had no reason to know that any
30 hazardous substance had been discharged for the purposes of this
31 paragraph (2), the person must have undertaken, at the time of
32 acquisition, all appropriate inquiry into the previous ownership and
33 uses of the property. For the purposes of this paragraph (2), all
34 appropriate inquiry shall mean the performance of a preliminary
35 assessment, and site investigation, if the preliminary assessment
36 indicates that a site investigation is necessary, as defined in section
37 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance
38 with rules and regulations promulgated by the department defining
39 these terms.

40 Nothing in this paragraph (2) shall be construed to alter liability
41 of any person who acquired real property prior to September 14,
42 1993; and

43 (e) For the purposes of this subparagraph the person must have
44 (i) acquired the property subsequent to a hazardous substance being
45 discharged on the site and which discharge was discovered at the
46 time of acquisition as a result of the appropriate inquiry, as defined
47 in this paragraph (2), (ii) performed, following the effective date of

1 P.L.1997, c.278, a remediation of the site or discharge consistent
2 with the provisions of section 35 of P.L.1993, c.139 (C.58:10B-12),
3 or, relied upon a valid final remediation document for a remediation
4 performed prior to acquisition, or obtained approval of a remedial
5 action workplan by the department after the effective date of
6 P.L.1997, c.278 and continued to comply with the conditions of that
7 workplan, and (iii) established and maintained all engineering and
8 institutional controls as may be required pursuant to sections 35 and
9 36 of P.L.1993, c.139. A person who complies with the provisions
10 of this subparagraph by actually performing a remediation of the
11 site or discharge as set forth in (ii) above shall be issued, upon
12 application, a no further action letter by the department or a
13 response action outcome by a licensed site remediation
14 professional, as applicable. A person who complies with the
15 provisions of this subparagraph either by receipt of a final
16 remediation document following the effective date of P.L.1997,
17 c.278, or by relying on a previously issued final remediation
18 document shall not be liable for any further remediation including
19 any changes in a remediation standard or for the subsequent
20 discovery of a hazardous substance, at the site, or emanating from
21 the site, if the remediation was for the entire site, and the hazardous
22 substance was discharged prior to the person acquiring the property.
23 Notwithstanding any other provisions of this subparagraph, a person
24 who complies with the provisions of this subparagraph only by
25 virtue of the existence of a previously issued final remediation
26 document shall receive no liability protections for any discharge
27 which occurred during the time period between the issuance of the
28 final remediation document and the property acquisition.
29 Compliance with the provisions of this subparagraph (e) shall not
30 relieve any person of any liability for a discharge that is off the site
31 of the property covered by the final remediation document, for a
32 discharge that occurs at that property after the person acquires the
33 property, for any actions that person negligently takes that
34 aggravates or contributes to a discharge of a hazardous substance,
35 for failure to comply in the future with laws and regulations, or if
36 that person fails to maintain the institutional or engineering controls
37 on the property or to otherwise comply with the provisions of the
38 final remediation document.

39 (3) Notwithstanding the provisions of paragraph (2) of this
40 subsection to the contrary, if a person who owns real property
41 obtains actual knowledge of a discharge of a hazardous substance at
42 the real property during the period of that person's ownership and
43 subsequently transfers ownership of the property to another person
44 without disclosing that knowledge, the transferor shall be strictly
45 liable for the cleanup and removal costs of the discharge and no
46 defense under this subsection shall be available to that person.

1 (4) Any federal, State, or local governmental entity which
2 acquires ownership of real property through bankruptcy, tax
3 delinquency, abandonment, escheat, eminent domain, condemnation
4 or any circumstance in which the governmental entity involuntarily
5 acquires title by virtue of its function as sovereign, or where the
6 governmental entity acquires the property by any means for the
7 purpose of promoting the redevelopment of that property, shall not
8 be liable, pursuant to subsection c. of this section or pursuant to
9 common law, to the State or to any other person for any discharge
10 which occurred or began prior to that ownership. This paragraph
11 shall not provide any liability protection to any federal, State or
12 local governmental entity which has caused or contributed to the
13 discharge of a hazardous substance. This paragraph shall not
14 provide any liability protection to any federal, State, or local
15 government entity that acquires ownership of real property by
16 condemnation or eminent domain where the real property is being
17 remediated in a timely manner at the time of the condemnation or
18 eminent domain action.

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

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

29 (b) (i) at the time the person acquired the real property, the
30 person did not know and had no reason to know that any hazardous
31 substance had been discharged at the real property, or (ii) the person
32 acquired the real property by devise or succession, except that any
33 other funds or property received by that person from the deceased
34 real property owner who discharged a hazardous substance or was
35 in any way responsible for a hazardous substance, shall be made
36 available to satisfy the requirements of P.L.1976, c.141;

37 (c) the person did not discharge the hazardous substance, is not
38 in any way responsible for the hazardous substance, and is not a
39 corporate successor to the discharger or to any person in any way
40 responsible for the hazardous substance or to anyone liable for
41 cleanup and removal costs pursuant to this section;

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

44 To establish that a person had no reason to know that any
45 hazardous substance had been discharged for the purposes of this
46 paragraph (5), the person must have undertaken, at the time of
47 acquisition, all appropriate inquiry on the previous ownership and

1 uses of the property based upon generally accepted good and
2 customary standards.

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

6 e. Neither the fund nor the Sanitary Landfill 'Facility'
7 Contingency Fund established pursuant to P.L.1981, c.306
8 (C.13:1E-100 et seq.) shall be liable for any damages incurred by
9 any person who is relieved from liability pursuant to subsection d.
10 or f. of this section for a remediation that involves the use of
11 engineering controls but the fund and the Sanitary Landfill
12 'Facility' Contingency Fund shall be liable for any remediation that
13 involves only the use of institutional controls if after a valid final
14 remediation document has been issued the department orders
15 additional remediation except that the fund and the Sanitary
16 Landfill 'Facility' Contingency Fund shall not be liable for any
17 additional remediation that is required to remove an institutional
18 control.

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

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

30 (2) the person did not discharge the hazardous substance, is not
31 in any way responsible for the hazardous substance, and is not a
32 corporate successor to the discharger or to any person in any way
33 responsible for the hazardous substance or to anyone liable for a
34 discharge pursuant to this section;

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

37 (4) (a) within 30 days after acquisition of the property, the
38 person commenced a remediation of the discharge, including any
39 migration, pursuant to a department oversight document executed
40 prior to acquisition, or (b) for property acquired after the date of
41 enactment of P.L.2009, c.60 (C.58:10C-1 et al.), the person
42 provides written notice of the acquisition to the department prior to
43 or on the date of acquisition and the person remediates the property
44 pursuant to the provisions of section 30 of P.L.2009, c.60
45 (C.58:10B-1.3), and (c) the department is satisfied that remediation
46 was completed in a timely and appropriate fashion; and

1 (5) Within ten days after acquisition of the property, or within
2 30 days after the expiration of the period or periods allowed for the
3 right of redemption pursuant to tax foreclosure law, the person
4 agrees in writing to provide access to the State for remediation and
5 related activities, as determined by the State.

6 The provisions of this subsection shall not relieve any person of
7 any liability:

8 (1) for a discharge that occurs at that property after the person
9 acquired the property;

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

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

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

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

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

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

30

31 4. This act shall take effect on the ¹~~30th~~ 180th¹ day after the
32 date of enactment.