

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 444 and 2419

STATE OF NEW JERSEY
216th LEGISLATURE

ADOPTED OCTOBER 27, 2014

Sponsored by:

Senator M. TERESA RUIZ

District 29 (Essex)

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Co-Sponsored by:

Senators Sarlo and Stack

SYNOPSIS

Prohibits contribution action against local public entity for cleanup and removal costs or any other damages associated with discharge of hazardous substances.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Environment and Energy Committee.



1 **AN ACT** concerning liability for the discharge of hazardous
2 substances, and amending and supplementing 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) Notwithstanding any provision of P.L.1976,
8 c.141 (C.58:10-23.11 et seq.), or any other law, including the
9 common law, or any rule or regulation, to the contrary, no person
10 may bring an action for contribution against a local public entity for
11 cleanup and removal costs or any other damages associated with a
12 discharge of a hazardous substance. Nothing in this act shall be
13 construed to preclude the State from bringing an action against a
14 local public entity for cleanup and removal costs pursuant to the
15 provisions of P.L.1976, c.141.

16

17 2. Section 3 of P.L.1976, c.141 (C.58:10-23.11b) is amended to
18 read as follows:

19 3. Unless the context clearly indicates otherwise, the following
20 terms shall have the following meanings:

21 "Act of God" means an act exclusively occasioned by an
22 unanticipated, grave natural disaster without the interference of any
23 human agency;

24 "Administrator" means the chief executive of the New Jersey
25 Spill Compensation Fund;

26 "Barrel" means 42 United States gallons or 159.09 liters or an
27 appropriate equivalent measure set by the director for hazardous
28 substances which are other than fluid or which are not commonly
29 measured by the barrel;

30 "Board" means a board of arbitration convened by the
31 administrator to settle disputed disbursements from the fund;

32 "Cleanup and removal costs" means all direct costs associated
33 with a discharge, and those indirect costs that may be imposed by
34 the department pursuant to section 1 of P.L.2002, c.37 associated
35 with a discharge, incurred by the State or its political subdivisions
36 or their agents or any person with written approval from the
37 department in the: (1) removal or attempted removal of hazardous
38 substances, or (2) taking of reasonable measures to prevent or
39 mitigate damage to the public health, safety, or welfare, including,
40 but not limited to, public and private property, shorelines, beaches,
41 surface waters, water columns and bottom sediments, soils and
42 other affected property, including wildlife and other natural
43 resources, and shall include costs incurred by the State for the
44 indemnification and legal defense of contractors pursuant to
45 sections 1 through 11 of P.L.1991, c.373 (C.58:10-23.11f8 et seq.);

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 "Commissioner" means the Commissioner of Environmental
2 Protection;

3 "Contamination" or "contaminant" means any discharged
4 hazardous substance, hazardous waste as defined pursuant to
5 section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined
6 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

7 "Department" means the Department of Environmental
8 Protection;

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

11 "Discharge" means any intentional or unintentional action or
12 omission resulting in the releasing, spilling, leaking, pumping,
13 pouring, emitting, emptying or dumping of hazardous substances
14 into the waters or onto the lands of the State, or into waters outside
15 the jurisdiction of the State when damage may result to the lands,
16 waters or natural resources within the jurisdiction of the State;

17 "Emergency response action" means those activities conducted
18 by a local unit to clean up, remove, prevent, contain, or mitigate a
19 discharge that poses an immediate threat to the environment or to
20 the public health, safety, or welfare;

21 "Fair market value" means the invoice price of the hazardous
22 substances transferred, including transportation charges; but where
23 no price is so fixed, "fair market value" shall mean the market price
24 as of the close of the nearest day to the transfer, paid for similar
25 hazardous substances, as shall be determined by the taxpayer
26 pursuant to rules of the director;

27 "Final remediation document" means a no further action letter
28 issued by the department pursuant to P.L.1993, c.139 (C.58:10B-1
29 et al.), or a response action outcome issued by a licensed site
30 remediation professional pursuant to section 14 of P.L.2009,
31 c.60 (C.58:10C-14);

32 "Fund" means the New Jersey Spill Compensation Fund;

33 "Hazardous substances" means the "environmental hazardous
34 substances" on the environmental hazardous substance list adopted
35 by the department pursuant to section 4 of P.L.1983,
36 c.315 (C.34:5A-4); such elements and compounds, including
37 petroleum products, which are defined as such by the department,
38 after public hearing, and which shall be consistent to the maximum
39 extent possible with, and which shall include, the list of hazardous
40 substances adopted by the federal Environmental Protection Agency
41 pursuant to section 311 of the Federal Water Pollution Control Act
42 Amendments of 1972, Pub.L.92-500, as amended by the Clean
43 Water Act of 1977, Pub.L.95-217 (33 U.S.C.s.1251 et seq.); the list
44 of toxic pollutants designated by Congress or the EPA pursuant to
45 section 307 of that act; and the list of hazardous substances adopted
46 by the federal Environmental Protection Agency pursuant to section
47 101 of the "Comprehensive Environmental Response,

1 Compensation and Liability Act of 1980," Pub.L.96-510 (42
2 U.S.C.s.9601 et seq.); provided, however, that sewage and sewage
3 sludge shall not be considered as hazardous substances for the
4 purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.);

5 "Licensed site remediation professional" means an individual
6 who is licensed by the Site Remediation Professional Licensing
7 Board pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) or the
8 department pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12);

9 "Local unit" means any county or municipality, or any agency or
10 other instrumentality thereof, or a duly incorporated volunteer fire,
11 ambulance, first aid, emergency, or rescue company or squad;

12 "Local public entity" means a local unit, an authority as defined
13 pursuant to subsection a. of section 3 of P.L.1983,
14 c.313 (C.40A:5A-3), a sewerage authority established pursuant to
15 P.L.1946, c.138 (C.40:14A-1 et seq.), an authority established
16 pursuant to P.L.1957, c.183 (C.40:14B-1 et seq.), the Passaic Valley
17 Sewerage Commissioners continued pursuant to R.S.58:14-2, or a
18 joint meeting established pursuant to R.S.40:63-68 et seq.

19 "Major facility" includes, but is not limited to, any refinery,
20 storage or transfer terminal, pipeline, deep-water port, drilling
21 platform or any appurtenance related to any of the preceding that is
22 used or is capable of being used to refine, produce, store, handle,
23 transfer, process or transport hazardous substances. "Major
24 facility" shall include a vessel only when that vessel is engaged in a
25 transfer of hazardous substances between it and another vessel, and
26 in any event shall not include a vessel used solely for activities
27 directly related to recovering, containing, cleaning up or removing
28 discharges of petroleum in the surface waters of the State, including
29 training, research, and other activities directly related to spill
30 response.

31 A facility shall not be considered a major facility for the purpose
32 of P.L.1976, c.141 unless it has total combined aboveground or
33 buried storage capacity of:

34 (1) 20,000 gallons or more for hazardous substances which are
35 other than petroleum or petroleum products, or

36 (2) 200,000 gallons or more for hazardous substances of all
37 kinds.

38 In determining whether a facility is a major facility for the
39 purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.), any
40 underground storage tank at the facility used solely to store heating
41 oil for on-site consumption shall not be considered when
42 determining the combined storage capacity of the facility.

43 For the purposes of this definition, "storage capacity" shall mean
44 only that total combined capacity which is dedicated to, used for or
45 intended to be used for storage of hazardous substances of all kinds.
46 Where appropriate to the nature of the facility, storage capacity may
47 be determined by the intended or actual use of open land or

1 unenclosed space as well as by the capacities of tanks or other
2 enclosed storage spaces;

3 "Natural resources" means all land, fish, shellfish, wildlife, biota,
4 air, waters and other such resources owned, managed, held in trust
5 or otherwise controlled by the State;

6 "Owner" or "operator" means, with respect to a vessel, any
7 person owning, operating or chartering by demise such vessel; with
8 respect to any major facility, any person owning such facility, or
9 operating it by lease, contract or other form of agreement; with
10 respect to abandoned or derelict major facilities, the person who
11 owned or operated such facility immediately prior to such
12 abandonment, or the owner at the time of discharge;

13 "Person" means public or private corporations, companies,
14 associations, societies, firms, partnerships, joint stock companies,
15 individuals, the United States, the State of New Jersey and any of
16 its political subdivisions or agents;

17 "Person responsible for conducting the remediation" means (1)
18 any person who executes or is otherwise subject to an oversight
19 document to remediate a contaminated site, (2) the owner or
20 operator of an industrial establishment subject to P.L.1983,
21 c.330 (C.13:1K-6 et al.), for the remediation of a discharge, (3) the
22 owner or operator of an underground storage tank subject to
23 P.L.1986, c.102 (C.58:10A-21 et seq.), for the remediation of a
24 discharge, (4) any other person who discharges a hazardous
25 substance or is in any way responsible for a hazardous substance,
26 pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g), that was
27 discharged at a contaminated site, or (5) any other person who is
28 remediating a site;

29 "Petroleum" or "petroleum products" means oil or petroleum of
30 any kind and in any form, including, but not limited to, oil,
31 petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil
32 mixed with other wastes, crude oils, and substances or additives to
33 be utilized in the refining or blending of crude petroleum or
34 petroleum stock in this State; however, any compound designated
35 by specific chemical name on the list of hazardous substances
36 adopted by the department pursuant to this section shall not be
37 considered petroleum or a petroleum product for the purposes of
38 P.L.1976, c.141, unless such compound is to be utilized in the
39 refining or blending of crude petroleum or petroleum stock in this
40 State;

41 "Preliminary assessment" means the first phase in the process of
42 identifying areas of concern and determining whether contaminants
43 are or were present at a site or have migrated or are migrating from
44 a site, and shall include the initial search for and evaluation of,
45 existing site specific operational and environmental information,
46 both current and historic, to determine if further investigation
47 concerning the documented, alleged, suspected or latent discharge

1 of any contaminant is required. The evaluation of historic
2 information shall be conducted from 1932 to the present, except that
3 the department may require the search for and evaluation of
4 additional information relating to ownership and use of the site
5 prior to 1932 if such information is available through diligent
6 inquiry of the public records;

7 "Remedial action" means those actions taken at a site or offsite if
8 a contaminant has migrated or is migrating therefrom, as may be
9 required by the department, including the removal, treatment,
10 containment, transportation, securing, or other engineering or
11 treatment measures, whether to an unrestricted use or otherwise,
12 designed to ensure that any discharged contaminant at the site or
13 that has migrated or is migrating from the site, is remediated in
14 compliance with the applicable health risk or environmental
15 standards;

16 "Remedial investigation" means a process to determine the
17 nature and extent of a discharge of a contaminant at a site or a
18 discharge of a contaminant that has migrated or is migrating from
19 the site and the problems presented by a discharge, and may include
20 data collected, site characterization, sampling, monitoring, and the
21 gathering of any other sufficient and relevant information necessary
22 to determine the necessity for remedial action and to support the
23 evaluation of remedial actions if necessary;

24 "Remediation" or "remediate" means all necessary actions to
25 investigate and clean up or respond to any known, suspected, or
26 threatened discharge, including, as necessary, the preliminary
27 assessment, site investigation, remedial investigation, and remedial
28 action, provided, however, that "remediation" or "remediate" shall
29 not include the payment of compensation for damage to, or loss of,
30 natural resources;

31 "Response action outcome" means a written determination by a
32 licensed site remediation professional that the contaminated site
33 was remediated in accordance with all applicable statutes and
34 regulations, and based upon an evaluation of the historical use of
35 the site, or of any area of concern at that site, as applicable, and any
36 other investigation or action the department deems necessary, there
37 are no contaminants present at the site, or at any area of concern, at
38 any other site to which a discharge originating at the site has
39 migrated, or that any contaminants present at the site or that have
40 migrated from the site have been remediated in accordance with
41 applicable remediation regulations, and all applicable permits and
42 authorizations have been obtained;

43 "Site investigation" means the collection and evaluation of data
44 adequate to determine whether or not discharged contaminants exist
45 at a site or have migrated or are migrating from the site at levels in
46 excess of the applicable remediation standards. A site investigation

1 shall be developed based upon the information collected pursuant to
2 the preliminary assessment;

3 "Taxpayer" means the owner or operator of a major facility
4 subject to the tax provisions of P.L.1976, c.141;

5 "Tax period" means every calendar month on the basis of which
6 the taxpayer is required to report under P.L.1976, c.141;

7 "Transfer" means unloading or offloading between major
8 facilities and vessels, or vessels and major facilities, and from
9 vessel to vessel or major facility to major facility, except for fueling
10 or refueling operations and except that with regard to the movement
11 of hazardous substances other than petroleum, it shall also include
12 any unloading of or offloading from a major facility;

13 "Vessel" means every description of watercraft or other
14 contrivance that is practically capable of being used as a means of
15 commercial transportation of hazardous substances upon the water,
16 whether or not self-propelled;

17 "Waters" means the ocean and its estuaries to the seaward limit
18 of the State's jurisdiction, all springs, streams and bodies of surface
19 or groundwater, whether natural or artificial, within the boundaries
20 of this State.

21 (cf: P.L.2009, c.60, s.35)

22

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

25 7. a. (1) Whenever any hazardous substance is discharged, the
26 department may, in its discretion, act to clean up and remove or
27 arrange for the cleanup and removal of the discharge or may direct
28 the discharger to clean up and remove, or arrange for the cleanup
29 and removal of, the discharge. If the discharge occurs at any
30 hazardous waste facility or solid waste facility, the department may
31 order the hazardous waste facility or solid waste facility closed for
32 the duration of the cleanup and removal operations. The department
33 may monitor the discharger's compliance with any such directive.
34 Any discharger who fails to comply with such a directive shall be
35 liable to the department in an amount equal to three times the cost
36 of such cleanup and removal, and shall be subject to the revocation
37 or suspension of any license issued or permit held authorizing that
38 person to operate a hazardous waste facility or solid waste facility.

39 (2) (a) Whenever one or more dischargers or persons cleans up
40 and removes a discharge of a hazardous substance, those
41 dischargers and persons shall have a right of contribution against all
42 other dischargers and persons in any way responsible for a
43 discharged hazardous substance or other persons who are liable for
44 the cost of the cleanup and removal of that discharge of a hazardous
45 substance; provided, however, no discharger or person shall have a
46 right of contribution against a local public entity, notwithstanding
47 any provision of P.L.1976, c.141 (C.58:10-23.11 et seq.), or any

1 other law, including the common law, or any rule or regulation, to
2 the contrary. In an action for contribution, the contribution
3 plaintiffs need prove only that a discharge occurred for which the
4 contribution defendant or defendants are liable pursuant to the
5 provisions of subsection c. of section 8 of P.L.1976,
6 c.141 (C.58:10-23.11g), and the contribution defendant shall have
7 only the defenses to liability available to parties pursuant to
8 subsection d. of section 8 of P.L.1976, c.141 (C.58:10-23.11g). In
9 resolving contribution claims, a court may allocate the costs of
10 cleanup and removal among liable parties using such equitable
11 factors as the court determines are appropriate. Nothing in this
12 subsection shall affect the right of any party to seek contribution
13 pursuant to any other statute or under common law against a party
14 other than a local public entity.

15 (b) A person who has discharged a hazardous substance or is in
16 any way responsible for the discharge of a hazardous substance who
17 has resolved his liability to the State for cleanup and removal costs,
18 including the payment of compensation for damage to, or the loss
19 of, natural resources, or for the restoration of natural resources, and
20 (i) has received a final remediation document, or (ii) has entered
21 into an administrative or judicially approved settlement with the
22 State, shall not be liable for claims for contribution regarding
23 matters addressed in the settlement or the final remediation
24 document, as the case may be. The settlement shall not release any
25 other person from liability for cleanup and removal costs who is not
26 a party to the settlement, but shall reduce the potential liability of
27 any other discharger or person in any way responsible for a
28 discharged hazardous substance at the site that is the subject of the
29 final remediation document or the settlement by the amount of the
30 final remediation document or the settlement.

31 (3) In an action for contribution taken pursuant to this
32 subsection, a contribution plaintiff may file a claim with the court
33 for treble damages. A contribution plaintiff may be granted an
34 award of treble damages by the court from one or more contribution
35 defendants only upon a finding by the court that: (a) the
36 contribution defendant is a person who was named on or subject to
37 a directive issued by the department, who failed or refused to
38 comply with such a directive, and who is subject to contribution
39 pursuant to this subsection; (b) the contribution plaintiff gave 30
40 days' notice to the contribution defendant of the plaintiff's intention
41 to seek treble damages pursuant to this subsection and gave the
42 contribution defendant an opportunity to participate in the cleanup;
43 (c) the contribution defendant failed or refused to enter into a
44 settlement agreement with the contribution plaintiff; and (d) the
45 contribution plaintiff (i) on or after the date of enactment of
46 P.L.2009, c.60 (C.58:10C-1 et al.), commenced remediation of the
47 site and provided written notice to the department that the

1 contribution plaintiff is remediating or has remediated the property
2 pursuant to the provisions of section 30 of P.L.2009,
3 c.60 (C.58:10B-1.3), or (ii) entered into an agreement with the
4 department to remediate the site. Notwithstanding the foregoing
5 requirements, any authorization to seek treble damages made by the
6 department prior to the effective date of P.L.1997, c.278 (C.58:10B-
7 1.1 et al.) shall remain in effect, provided that the department or the
8 contribution plaintiff gave notice to the contribution defendant of
9 the plaintiff's request to the department for authorization to seek
10 treble damages.

11 A contribution defendant from whom treble damages is sought in
12 a contribution action shall not be assessed treble damages by any
13 court where the contribution defendant, for good cause shown,
14 failed or refused to enter the settlement agreement with the
15 contribution plaintiff or where principles of fundamental fairness
16 will be violated. One third of an award of treble damages in a
17 contribution action pursuant to this paragraph shall be paid to the
18 department, which sum shall be deposited in the New Jersey Spill
19 Compensation Fund. The other two thirds of the treble damages
20 award shall be shared by the contribution plaintiffs in the proportion
21 of the responsibility for the cost of the cleanup and removal that the
22 contribution plaintiffs have agreed to with the department or in an
23 amount as has been agreed to by those parties.

24 Cleanup and removal of hazardous substances and actions to
25 minimize damage from discharges shall, to the greatest extent
26 possible, be in accordance with the National Contingency Plan for
27 cleanup and removal of oil and hazardous substances established
28 pursuant to section 311(c)(2) of the Federal Water Pollution Control
29 Act Amendments of 1972 (Pub.L.92-500, 33 U.S.C. s.1251 et seq.).

30 Whenever the department acts to clean up and remove a
31 discharge or contracts to secure prospective cleanup and removal
32 services, it is authorized to draw upon the money available in the
33 fund. Such money shall be used to pay promptly for all cleanup and
34 removal costs incurred by the department in cleaning up, in
35 removing or in minimizing damage caused by such discharge.
36 Nothing in this section is intended to preclude removal and cleanup
37 operations by any person threatened by such discharges, provided
38 such persons coordinate and obtain approval for such actions with
39 ongoing State or federal operations. No action taken by any person
40 to contain or clean up and remove a discharge shall be construed as
41 an admission of liability for said discharge. No person who renders
42 assistance in containing or cleaning up and removing a discharge
43 shall be liable for any civil damages to third parties resulting solely
44 from acts or omissions of such person in rendering such assistance,
45 except for acts or omissions of gross negligence or willful
46 misconduct. In the course of cleanup or removal operations, no

1 person shall discharge any detergent into the waters of this State
2 without prior authorization of the commissioner.

3 b. Notwithstanding any other provisions of P.L.1976,
4 c.141 (C.58:10-23.11 et seq.), the department, subject to the
5 approval of the administrator with regard to the availability of funds
6 therefor, or a local unit as a part of an emergency response action
7 and with the approval of the department, may clean up and remove
8 or arrange for the cleanup and removal of any hazardous substance
9 which:

10 (1) Has not been discharged from a grounded or disabled vessel,
11 if the department determines that such cleanup and removal is
12 necessary to prevent an imminent discharge of such hazardous
13 substance; or

14 (2) Has not been discharged, if the department determines that
15 such substance is not satisfactorily stored or contained and said
16 substance possesses any one or more of the following
17 characteristics:

18 (a) Explosiveness;

19 (b) High flammability;

20 (c) Radioactivity;

21 (d) Chemical properties which in combination with any
22 discharged hazardous substance at the same storage facility would
23 create a substantial risk of imminent damage to public health or
24 safety or an imminent and severe damage to the environment;

25 (e) Is stored in a container from which its discharge is imminent
26 as a result of contact with a hazardous substance which has already
27 been discharged and such additional discharge would create a
28 substantial risk of imminent damage to public health or safety or
29 imminent and severe damage to the environment; or

30 (f) High toxicity and is stored or being transported in a
31 container or motor vehicle, truck, rail car or other mechanized
32 conveyance from which its discharge is imminent as a result of the
33 significant deterioration or the precarious location of the container,
34 motor vehicle, truck, rail car or other mechanized conveyance, and
35 such discharge would create a substantial risk of imminent damage
36 to public health or safety or imminent and severe damage to the
37 environment; or

38 (3) Has been discharged prior to the effective date of P.L.1976,
39 c.141.

40 c. If and to the extent that he determines that funds are
41 available, the administrator shall approve and make payments for
42 any cleanup and removal costs incurred by the department for the
43 cleanup and removal of a hazardous substance other than petroleum
44 as authorized by subsection b. of this section; provided that in
45 determining the availability of funds, the administrator shall not
46 include as available funds revenues realized or to be realized from
47 the tax on the transfer of petroleum, to the extent that such revenues

1 result from a tax levied at a rate in excess of \$0.01 per barrel,
2 pursuant to subsection b. of section 9 of P.L.1976, c.141 (C.58:10-
3 23.11h), unless the administrator determines that the sum of claims
4 paid by the fund on behalf of petroleum discharges or cleanup and
5 removals plus pending reasonable claims against the fund on behalf
6 of petroleum discharges or cleanup and removals is greater than
7 30% of the sum of all claims paid by the fund plus all pending
8 reasonable claims against the fund.

9 d. The administrator may only approve and make payments for
10 any cleanup and removal costs incurred by the department for the
11 cleanup and removal of a hazardous substance discharged prior to
12 the effective date of P.L.1976, c.141, pursuant to subsection b. of
13 this section, if, and to the extent that, he determines that adequate
14 funds from another source are not or will not be available; and
15 provided further, with regard to the cleanup and removal costs
16 incurred for discharges which occurred prior to the effective date of
17 P.L.1976, c.141, the administrator may not during any one-year
18 period pay more than \$18,000,000 in total or more than \$3,000,000
19 for any discharge or related set or series of discharges.

20 e. Notwithstanding any other provisions of P.L.1976, c.141, the
21 administrator, after considering, among any other relevant factors,
22 the department's priorities for spending funds pursuant to P.L.1976,
23 c.141, and within the limits of available funds, shall make payments
24 for the restoration or replacement of, or connection to an alternative
25 water supply for, any private residential well destroyed,
26 contaminated, or impaired as a result of a discharge prior to the
27 effective date of P.L.1976, c.141; provided, however, total
28 payments for said purpose shall not exceed \$500,000 for the period
29 between the effective date of this subsection e. and January 1, 1983,
30 and in any calendar year thereafter.

31 f. Any expenditures of cleanup and removal costs and related
32 costs made by the State pursuant to this act shall constitute, in each
33 instance, a debt of the discharger to the fund. The debt shall
34 constitute a lien on all property owned by the discharger when a
35 notice of lien, incorporating a description of the property of the
36 discharger subject to the cleanup and removal and an identification
37 of the amount of cleanup, removal and related costs expended by
38 the State, is duly filed with the clerk of the Superior Court. The
39 clerk shall promptly enter upon the civil judgment or order docket
40 the name and address of the discharger and the amount of the lien as
41 set forth in the notice of lien. Upon entry by the clerk, the lien, to
42 the amount committed by the State for cleanup and removal, shall
43 attach to the revenues and all real and personal property of the
44 discharger, whether or not the discharger is insolvent.

45 The notice of lien filed pursuant to this subsection which affects
46 the property of a discharger subject to the cleanup and removal of a
47 discharge shall create a lien with priority over all other claims or

1 liens which are or have been filed against the property, except if the
2 property comprises six dwelling units or less and is used
3 exclusively for residential purposes, this notice of lien shall not
4 affect any valid lien, right or interest in the property filed in
5 accordance with established procedure prior to the filing of this
6 notice of lien. The notice of lien filed pursuant to this subsection
7 which affects any property of a discharger, other than the property
8 subject to the cleanup and removal, shall have priority from the day
9 of the filing of the notice of the lien over all other claims and liens
10 filed against the property, but shall not affect any valid lien, right,
11 or interest in the property filed in accordance with established
12 procedure prior to the filing of a notice of lien pursuant to this
13 subsection.

14 g. In the event a vessel discharges a hazardous substance into
15 the waters of the State, the cleanup and removal and related costs
16 resulting from that discharge that constitute a maritime lien on the
17 discharging vessel pursuant to 33 U.S.C. s.1321 or any other law,
18 may be recovered by the Department of Environmental Protection
19 in an action in rem brought in the district court of the United States.
20 An impoundment of a vessel resulting from this action shall
21 continue until:

22 (1) the claim against the owner or operator of the vessel for the
23 cleanup and removal and related costs of the discharge is satisfied;

24 (2) the owner or operator of the vessel, or a representative of the
25 owner or operator, provides evidence of financial responsibility as
26 provided in section 2 of P.L.1991, c.58 (C.58:10-23.11g2) and
27 satisfactorily guarantees that these costs will be paid; or

28 (3) the impoundment is otherwise vacated by a court order. The
29 remedy provided in this subsection is in addition to any other
30 remedy or enforcement power that the department may have under
31 any other law.

32 Any action brought by the State pursuant to this subsection and
33 any impoundment of a vessel resulting therefrom shall not subject
34 the State to be in any way liable for a subsequent or continued
35 discharge of a hazardous substance from that vessel.

36 (cf: P.L.2009, c.60, s.37)

37

38 4. This act shall take effect immediately.