

[First Reprint]

**SENATE, No. 2858**

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**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

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INTRODUCED MAY 7, 2015

**Sponsored by:**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Senator ROBERT M. GORDON**

**District 38 (Bergen and Passaic)**

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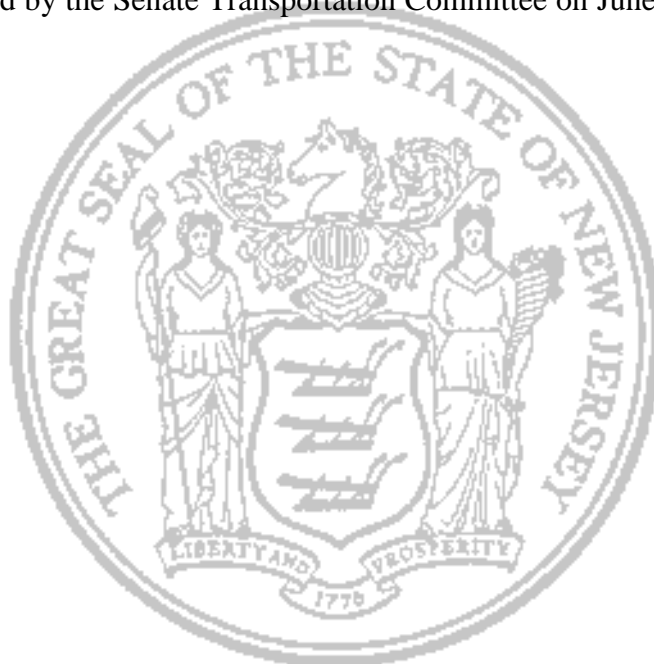
**Senator Bateman**

**SYNOPSIS**

Requires owner or operator of certain trains to have discharge response, cleanup, and contingency plans to transport certain hazardous materials by rail.

**CURRENT VERSION OF TEXT**

As reported by the Senate Transportation Committee on June 15, 2015, with amendments.



**(Sponsorship Updated As Of: 6/12/2015)**

1 AN ACT concerning the transport of certain hazardous materials by  
2 rail, amending P.L.1976, c.141, and supplementing Title 58 of  
3 the Revised Statutes.

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

7  
8 1. Section 3 of P.L.1976, c.141 (C.58:10-23.11b) is amended to  
9 read as follows:

10 3. Unless the context clearly indicates otherwise, the following  
11 terms shall have the following meanings:

12 "Act of God" means an act exclusively occasioned by an  
13 unanticipated, grave natural disaster without the interference of any  
14 human agency;

15 "Administrator" means the chief executive of the New Jersey  
16 Spill Compensation Fund;

17 "Barrel" means 42 United States gallons or 159.09 liters or an  
18 appropriate equivalent measure set by the director for hazardous  
19 substances which are other than fluid or which are not commonly  
20 measured by the barrel;

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

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

37 "Commissioner" means the Commissioner of Environmental  
38 Protection;

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

43 "Department" means the Department of Environmental  
44 Protection;

**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:

<sup>1</sup>Senate STR committee amendments adopted June 15, 2015.

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

3 "Discharge" means any intentional or unintentional action or  
4 omission resulting in the releasing, spilling, leaking, pumping,  
5 pouring, emitting, emptying<sup>1,1</sup> or dumping of hazardous substances  
6 into the waters or onto the lands of the State, or into waters outside  
7 the jurisdiction of the State when damage may result to the lands,  
8 waters<sup>1,1</sup> or natural resources within the jurisdiction of the State;

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

13 "Emergency services personnel" means a person who is  
14 employed as a law enforcement officer, emergency medical service  
15 technician, firefighter, emergency communications operator,  
16 hazardous materials responder, or in a related occupation or  
17 profession, or who serves as a volunteer member of a fire  
18 department, duly incorporated fire or first aid company, or  
19 volunteer emergency, ambulance, or rescue squad association,  
20 organization, or company which provides emergency services for a  
21 local unit;

22 "Emergency services provider" means a law enforcement  
23 agency, emergency medical services unit, fire department,  
24 emergency communications provider, hazardous material response  
25 unit, volunteer fire department, duly incorporated fire or first aid  
26 company, or volunteer emergency, ambulance, or rescue squad  
27 association, organization, or company which provides emergency  
28 services for a local unit;

29 "Fair market value" means the invoice price of the hazardous  
30 substances transferred, including transportation charges; but where  
31 no price is so fixed, "fair market value" shall mean the market price  
32 as of the close of the nearest day to the transfer, paid for similar  
33 hazardous substances, as shall be determined by the taxpayer  
34 pursuant to rules of the director;

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

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

41 "Hazardous substances" means the "environmental hazardous  
42 substances" on the environmental hazardous substance list adopted  
43 by the department pursuant to section 4 of P.L.1983,  
44 c.315 (C.34:5A-4); such elements and compounds, including  
45 petroleum products, which are defined as such by the department,  
46 after public hearing, and which shall be consistent to the maximum  
47 extent possible with, and which shall include, the list of hazardous  
48 substances adopted by the federal Environmental Protection Agency

1 pursuant to section 311 of the Federal Water Pollution Control Act  
2 Amendments of 1972, Pub.L.92-500, as amended by the Clean  
3 Water Act of 1977, Pub.L.95-217 (33 U.S.C. s.1251 et seq.); the list  
4 of toxic pollutants designated by the Congress of the United States  
5 or the **[EPA]** federal Environmental Protection Agency pursuant to  
6 section 307 of that act; and the list of hazardous substances adopted  
7 by the federal Environmental Protection Agency pursuant to section  
8 101 of the "Comprehensive Environmental Response,  
9 Compensation and Liability Act of 1980," Pub.L.96-510  
10 (42 U.S.C.s.9601 et seq.); provided, however, that sewage and  
11 sewage sludge shall not be considered as hazardous substances for  
12 the purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.);

13 "High hazard train" means any railroad tank car or connection of  
14 railroad tank cars powered by a locomotive transporting <sup>1</sup>**[100,000]**  
15 200,000<sup>1</sup> gallons or more of petroleum or petroleum products or  
16 20,000 gallons or more of hazardous substances other than  
17 petroleum or petroleum products;

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

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

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

37 A facility shall not be considered a major facility for the purpose  
38 of P.L.1976, c.141 (C.58:10-23.11 et seq.) unless it has total  
39 combined aboveground or buried storage capacity of:

- 40 (1) 20,000 gallons or more for hazardous substances which are  
41 other than petroleum or petroleum products, or
- 42 (2) 200,000 gallons or more for hazardous substances of all  
43 kinds.

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

1 For the purposes of this definition, "storage capacity" shall mean  
2 only that total combined capacity which is dedicated to, used for, or  
3 intended to be used for storage of hazardous substances of all kinds.  
4 Where appropriate to the nature of the facility, storage capacity may  
5 be determined by the intended or actual use of open land or  
6 unenclosed space as well as by the capacities of tanks or other  
7 enclosed storage spaces;

8 "Natural resources" means all land, fish, shellfish, wildlife, biota,  
9 air, waters, and other **[such]** resources owned, managed, held in  
10 trust, or otherwise controlled by the State;

11 "Owner" or "operator" means, with respect to a vessel, any  
12 person owning, operating, or chartering by demise **[such]** the  
13 vessel; with respect to any major facility, any person owning  
14 **[such]** the facility, or operating it by lease, contract, or other form  
15 of agreement; with respect to abandoned or derelict major facilities,  
16 the person who owned or operated **[such]** the facility immediately  
17 prior to **[such]** abandonment, or the owner at the time of discharge;  
18 with respect to any high hazard train, any person owning the high  
19 hazard train, or operating it by lease, contract, or other form of  
20 agreement;

21 "Person" means public or private corporations, companies,  
22 associations, societies, firms, partnerships, joint stock companies,  
23 individuals, the United States, the State of New Jersey, and any of  
24 its political subdivisions or agents;

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

36 "Petroleum" or "petroleum products" means oil or petroleum of  
37 any kind and in any form, including, but not limited to, oil,  
38 petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil  
39 mixed with other wastes, crude oils, and substances or additives to  
40 be utilized in the refining or blending of crude petroleum or  
41 petroleum stock in this State; however, any compound designated  
42 by specific chemical name on the list of hazardous substances  
43 adopted by the department pursuant to this section shall not be  
44 considered petroleum or a petroleum product for the purposes of  
45 P.L.1976, c.141 (C.58:10-23.11 et seq.), unless **[such]** the  
46 compound is to be utilized in the refining or blending of crude  
47 petroleum or petroleum stock in this State;

1 "Preliminary assessment" means the first phase in the process of  
2 identifying areas of concern and determining whether contaminants  
3 are or were present at a site or have migrated or are migrating from  
4 a site, and shall include the initial search for and evaluation of,  
5 existing site specific operational and environmental information,  
6 both current and historic, to determine if further investigation  
7 concerning the documented, alleged, suspected, or latent discharge  
8 of any contaminant is required. The evaluation of historic  
9 information shall be conducted from 1932 to the present, except that  
10 the department may require the search for and evaluation of  
11 additional information relating to ownership and use of the site  
12 prior to 1932 if **[such]** the information is available through diligent  
13 inquiry of the public records;

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

23 "Remedial investigation" means a process to determine the  
24 nature and extent of a discharge of a contaminant at a site or a  
25 discharge of a contaminant that has migrated or is migrating from  
26 the site and the problems presented by a discharge, and may include  
27 data collected, site characterization, sampling, monitoring, and the  
28 gathering of any other sufficient and relevant information necessary  
29 to determine the necessity for remedial action and to support the  
30 evaluation of remedial actions if necessary;

31 "Remediation" or "remediate" means all necessary actions to  
32 investigate and clean up or respond to any known, suspected, or  
33 threatened discharge, including, as necessary, the preliminary  
34 assessment, site investigation, remedial investigation, and remedial  
35 action, provided, however, that "remediation" or "remediate" shall  
36 not include the payment of compensation for damage to, or loss of,  
37 natural resources;

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

1 applicable remediation regulations, and all applicable permits and  
2 authorizations have been obtained;

3 "Site investigation" means the collection and evaluation of data  
4 adequate to determine whether or not discharged contaminants exist  
5 at a site or have migrated or are migrating from the site at levels in  
6 excess of the applicable remediation standards. A site investigation  
7 shall be developed based upon the information collected pursuant to  
8 the preliminary assessment;

9 "Taxpayer" means the owner or operator of a major facility  
10 subject to the tax provisions of P.L.1976, c.141 (C.58:10-23.11 et  
11 seq.);

12 "Tax period" means every calendar month on the basis of which  
13 the taxpayer is required to report under P.L.1976, c.141 (C.58:10-  
14 23.11 et seq.);

15 "Transfer" means onloading or offloading between major  
16 facilities and vessels, or vessels and major facilities **[, and from];**  
17 vessel to vessel **[or];** major facility to major facility; major facility  
18 to high hazard train, or high hazard train to major facility; vessel to  
19 high hazard train, or high hazard train to vessel; or high hazard train  
20 to high hazard train, except for fueling or refueling operations and  
21 except that with regard to the movement of hazardous substances  
22 other than petroleum, it shall also include any onloading of or  
23 offloading from a major facility;

24 "Vessel" means every description of watercraft or other  
25 contrivance that is practically capable of being used as a means of  
26 commercial transportation of hazardous substances upon the water,  
27 whether or not self-propelled; and

28 "Waters" means the ocean and its estuaries to the seaward limit  
29 of the State's jurisdiction, all springs, streams, and bodies of surface  
30 or groundwater, whether natural or artificial, within the boundaries  
31 of this State.

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

33

34 2. (New section) a. The owner or operator of a high hazard  
35 train traveling within this State shall submit a discharge response,  
36 cleanup, and contingency plan to the Department of Environmental  
37 Protection. The owner or operator of a high hazard train shall  
38 submit a discharge response, cleanup, and contingency plan within  
39 six months of the effective date of P.L. , c. (C. ) (pending  
40 before the Legislature as this bill).

41 b. The discharge response, cleanup, and contingency plan shall  
42 contain the following information:

43 (1) A summary and detailed description of the emergency  
44 response measures to be used by the trained personnel or discharge  
45 cleanup contractors employed by the owner or operator of the high  
46 hazard train, as applicable, in responding to, and minimizing health  
47 and environmental dangers from, fires, explosions, or unauthorized  
48 discharges or releases of hazardous substances to the air, soil, or

1 waters of the State, including: the planned deployment of personnel  
2 and equipment in the event of a discharge or other emergency, the  
3 chain of command for the emergency response measures, and the  
4 ability of the emergency response measures to comply with the  
5 timetables established pursuant to section 7 of P.L. , c. (C. )  
6 (pending before the Legislature as this bill);

7 (2) An identification of all equipment available for cleanup and  
8 emergency response measures, including all equipment located in a  
9 location other than the high hazard train, that is either under the  
10 direct control of the owner or operator of the high hazard train, or  
11 that is available, by contract, to the owner or operator of the high  
12 hazard train in the event of discharge or other emergency;

13 (3) A list of the names, business addresses, home addresses,  
14 telephone numbers, electronic mail addresses, and qualifications of  
15 all emergency response coordinators employed by the owner or  
16 operator of the high hazard train, along with the authority and  
17 responsibilities of each emergency response coordinator in the  
18 event of a discharge or other emergency, and the names and  
19 qualifications of all other trained personnel employed by the owner  
20 or operator of the high hazard train, which have been trained to  
21 operate containment, cleanup, and removal equipment and are  
22 required to respond to a discharge or other emergency;

23 (4) The priorities for the deployment of trained personnel and  
24 emergency response, recovery, and containment equipment to  
25 protect residential, environmentally sensitive, or other areas against  
26 a discharge or other emergency based on use, seasonal sensitivity,  
27 or other relevant factors; and

28 (5) Any other information deemed necessary or useful by the  
29 department.

30 c. The discharge response, cleanup, and contingency plan shall  
31 certify that:

32 (1) trained personnel and emergency response, recovery, and  
33 containment equipment as specified in the discharge response,  
34 cleanup, and contingency plan are readily available on the high  
35 hazard train or can be speedily deployed to the high hazard train;

36 (2) the emergency response, recovery, and containment  
37 equipment is in good repair;

38 (3) the discharge response, cleanup, and contingency plan is  
39 consistent with applicable local, regional, and State emergency  
40 response plans;

41 (4) the discharge response, cleanup, and contingency plan  
42 complies with departmental regulations; and

43 (5) the discharge response, cleanup, and contingency plan was  
44 reviewed, and approved by a licensed professional engineer.

45 d. The discharge response, cleanup, and contingency plan shall  
46 provide for simulated emergency response drills, to be conducted at  
47 least once annually, to determine the adequacy of and personnel



1 familiarity with the discharge response, cleanup, and contingency  
2 plan.

3 e. The owner or operator of a high hazard train shall include  
4 with the discharge response, cleanup, and contingency plan  
5 submitted to the department:

6 (1) An environmentally sensitive areas and habitats protection  
7 plan, reviewed and certified by a marine biologist and an  
8 ornithologist, that shall:

9 (a) identify all environmentally sensitive areas and wildlife  
10 habitats that could be affected by a discharge from the high hazard  
11 train that travels in proximity to the environmentally sensitive area;

12 (b) identify the seasonal sensitivity of the areas or habitats;

13 (c) in the event of a discharge, provide for the protection from,  
14 and mitigation of, any potentially adverse impact of the discharge  
15 on the identified areas or habitats; and

16 (d) provide for an environmental assessment of the impact of  
17 any discharge on the identified areas and habitats, including the  
18 effects on the habitat's flora, fauna, or organisms.

19 The environmentally sensitive areas and habitats protection plan  
20 shall, using criteria established by the department for identifying  
21 environmentally sensitive areas or habitats, identify any  
22 environmentally sensitive area or habitat that could be adversely  
23 affected by a discharge from the high hazard train;

24 (2) A copy of any existing agreement between the owner or  
25 operator of the high hazard train and an emergency services  
26 provider of a local unit located along the travel route of the high  
27 hazard train to coordinate the emergency response actions of the  
28 local unit and the owner or operator of the high hazard train; and

29 (3) A copy of all current contracts or agreements between the  
30 owner or operator of the high hazard train and a discharge cleanup  
31 organization for remedial action, including containment, cleanup,  
32 removal, and disposal.

33

34 3. (New section) a. The owner or operator of a high hazard  
35 train shall submit an application for renewal of the discharge  
36 response, cleanup, and contingency plan every five years to the  
37 department, unless the department requires a more frequent  
38 submission. Applications for discharge response, cleanup, and  
39 contingency plan renewals shall be accompanied by a summary of  
40 all unauthorized discharges within this State by the owner or  
41 operator of the high hazard train and any other information as may  
42 be deemed necessary or useful to the department. Discharge  
43 response, cleanup, and contingency plan renewals may be limited to  
44 certifying that the existing discharge response, cleanup, and  
45 contingency plan on file with the department is current. Filing of a  
46 revised discharge response, cleanup, and contingency plan may be  
47 required by the department at the time of renewal so as to  
48 incorporate into the discharge response, cleanup, and contingency

1 plan all amendments to the discharge response, cleanup, and  
2 contingency plan adopted since the filing of the original discharge  
3 response, cleanup, and contingency plan or its last renewal.

4 b. The owner or operator of a high hazard train shall file an  
5 amendment to the discharge response, cleanup, and contingency,  
6 not later than 30 days after any modification of the high hazard  
7 train, rail yards, fueling stations, or the high hazard train's route of  
8 travel.

9  
10 4. (New section) The owner or operator of a high hazard train  
11 shall make available to the public on its website, to the extent that  
12 the release of the information shall not conflict with federal law, the  
13 following information:

14 a. The routes and volumes of cargoes updated on a monthly  
15 basis;

16 b. An analysis of the consequences of maximum discharges  
17 from the high hazard trains owned or operated in the State;

18 c. The current levels of catastrophic insurance coverage carried  
19 by the owner or operator of the high hazard train;

20 d. A copy of the most current discharge response, cleanup, and  
21 contingency plan as required by section 2 of P.L. c. (C. )  
22 (pending before the Legislature as this bill); and

23 e. A railroad routing analysis, as required pursuant to section  
24 1551 of the "Implementing Recommendations of the 9/11  
25 Commission Act of 2007," Pub.L.110-53 (6 U.S.C.s.1201 et seq.),  
26 and any accompanying documentation that impacted the owner or  
27 operator's decision in routing the high hazard train through the  
28 State.

29  
30 5. (New section) A copy of the discharge response, cleanup,  
31 and contingency plan, discharge response, cleanup, and contingency  
32 plan renewal, and all discharge response, cleanup, and contingency  
33 plan amendments shall be filed by the owner or operator of a high  
34 hazard train with every local emergency planning committee having  
35 jurisdiction along the travel route of the high hazard train.

36  
37 6. (New section) The owner or operator of a high hazard train  
38 shall, at all times, retain on file with the department evidence of  
39 financial responsibility for cleaning up and removing a discharge or  
40 release of a hazardous substance, and for the removal of any  
41 damaged or disabled high hazard train equipment or parts. The  
42 amount, nature, terms, and conditions of the financial responsibility  
43 shall be determined by the department. The owner or operator of a  
44 high hazard train shall file evidence of financial responsibility with  
45 the department within 180 days of the effective date of P.L. ,  
46 c. (C. ) (pending before the Legislature as this bill).

1       7. (New section) The owner or operator of a high hazard train  
2 shall offer training to the emergency services personnel of every  
3 local unit having jurisdiction along the travel route of a high hazard  
4 train. Initial training shall be offered within one year of the  
5 effective date of P.L. c. (C. ) (pending before the Legislature  
6 as this bill) with renewal training offered to the emergency service  
7 personnel of every local unit having jurisdiction along the travel  
8 route of a high hazard train at least once every three years  
9 thereafter. The training shall address: the general hazards of the  
10 petroleum, petroleum products, or hazardous substances being  
11 transported by the high hazard train; techniques to assess hazards to  
12 the environment in the event of a discharge; techniques to assess the  
13 safety of emergency service personnel and the general public in the  
14 event of a discharge that poses an imminent threat to public health,  
15 safety, or welfare; factors an emergency service provider shall  
16 consider in determining whether to attempt to suppress a fire or to  
17 evacuate the public and emergency service personnel from an area  
18 in the event of a discharge that poses an imminent threat to public  
19 health, safety, or welfare; and other suggested protocols or practices  
20 for emergency service personnel to consider in the event of a  
21 discharge that poses an imminent threat to public health, safety, or  
22 welfare.

23  
24       8. (New section) Following a discharge that requires  
25 emergency response action, the owner or operator of a high hazard  
26 train shall:

27       a. Within one hour of a discharge, identify an emergency  
28 response coordinator to advise the emergency services provider of the  
29 local unit. The emergency response coordinator may be made  
30 available by telephone, but is required to have authorization to deploy  
31 all necessary emergency response resources of the owner or operator  
32 of the high hazard train;

33       b. Within three hours of a discharge, deploy the emergency  
34 response coordinator and trained personnel to the discharge site to  
35 assess the discharge and to advise the emergency service provider of  
36 the local unit;

37       c. Within eight hours of a discharge, deliver and deploy  
38 emergency response, recovery, and containment equipment, trained  
39 personnel, and all other materials needed to provide on-site  
40 containment of the discharged petroleum, petroleum products, and  
41 hazardous substances and to protect environmentally sensitive areas  
42 and potable water intakes within one mile of the discharge site and  
43 within eight hours of calculated water travel time in any river or  
44 stream that the discharge site intersects; and

45       d. Within 60 hours of a discharge, deliver and deploy additional  
46 emergency response, recovery, and containment equipment, trained  
47 personnel, and all other materials needed to provide containment and  
48 recovery of the discharged petroleum, petroleum products, and

1 hazardous substances and to protect environmentally sensitive areas  
2 and potable water intakes at any location along the travel route of the  
3 high hazard train or in any river or stream that the discharge site  
4 intersects.

5  
6 9. (New section) a. Except as otherwise provided in  
7 subsection b. of this section, the department shall, as soon as  
8 practicable, but not later than six months following a filing of a  
9 discharge response, cleanup, and contingency plan or a renewal of a  
10 discharge response, cleanup, and contingency plan, or, in the case  
11 of amendments, within 60 days of the filing of the amendments,  
12 review the filing to determine compliance with all statutory  
13 requirements, including rules and regulations adopted pursuant  
14 thereto.

15 b. The department may, at any time during the discharge  
16 response, cleanup, and contingency plan, discharge response,  
17 cleanup, and contingency plan renewal, or discharge response,  
18 cleanup, and contingency plan amendment review period approve,  
19 conditionally approve, or disapprove a discharge response, cleanup,  
20 and contingency plan, discharge response, cleanup, and contingency  
21 plan renewal, or discharge response, cleanup, and contingency plan  
22 amendments. If a discharge response, cleanup, and contingency  
23 plan, discharge response, cleanup, and contingency plan renewal, or  
24 discharge response, cleanup, and contingency plan amendments are  
25 disapproved, the owner or operator of the high hazard train shall  
26 have 30 days from receipt of written notice of the disapproval, and  
27 the reasons therefor, with which to submit a revised discharge  
28 response, cleanup, and contingency plan or discharge response,  
29 cleanup, and contingency plan amendments. If after 30 days of  
30 receipt of a written request therefor, the owner or operator of the  
31 high hazard train fails to file a revised discharge response, cleanup,  
32 and contingency plan, discharge response, cleanup, and contingency  
33 plan renewal, or amendments to the department or fails to contest  
34 the department's request in accordance with the "Administrative  
35 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the discharge  
36 response, cleanup, and contingency plan, discharge response,  
37 cleanup, and contingency plan renewal, or discharge response,  
38 cleanup, and contingency plan amendments shall be deemed to have  
39 been disapproved by the department and the owner or operator of  
40 the high hazard train shall be in violation of section 2 of P.L. ,  
41 c. (C. ) (pending before the Legislature as this bill). The  
42 department may, for good cause, extend by up to an additional 30  
43 days the time period for filing a revised discharge response,  
44 cleanup, and contingency plan or discharge response, cleanup, and  
45 contingency plan amendments.

46  
47 10. (New section) a. Whenever, on the basis of available  
48 information, the Commissioner of Environmental Protection finds

1 that the owner or operator of a high hazard train is in violation of  
2 the provisions of P.L. , c. (C. ) (pending before the  
3 Legislature as this bill), or any rule or regulation adopted pursuant  
4 thereto, the commissioner may:

5 (1) Levy a civil administrative penalty in accordance with  
6 subsection b. of this section; or

7 (2) Bring an action for a civil penalty in accordance with  
8 subsection c. of this section.

9 The exercise of any of the remedies provided in this section shall  
10 not preclude recourse to any other remedy so provided.

11 b. The commissioner is authorized to assess a civil  
12 administrative penalty of not more than \$25,000 for each violation  
13 of the provisions of P.L. c. (C. ) (pending before the  
14 Legislature as this bill), or any rule or regulation adopted pursuant  
15 thereto, and each day during which each violation continues shall  
16 constitute an additional, separate, and distinct offense. Any amount  
17 assessed under this section shall fall within a range established by  
18 regulation by the commissioner for violations of similar type,  
19 seriousness, duration, and conduct; provided, however, that prior to  
20 the adoption of the rule or regulation, the commissioner may, on a  
21 case-by-case basis, assess civil administrative penalties up to a  
22 maximum of \$25,000 per day for each violation, utilizing the  
23 criteria set forth herein. In addition to any civil administrative  
24 penalty assessed under this subsection and notwithstanding the  
25 \$25,000 maximum penalty set forth above, the commissioner may  
26 assess any economic benefits from the violation gained by the  
27 violator. Prior to assessment of a penalty under this subsection, the  
28 owner or operator of the high hazard train committing the violation  
29 shall be notified by certified mail or personal service that the  
30 penalty is being assessed. The notice shall include: a reference to  
31 the section of the statute or regulation violated; recite the facts  
32 alleged to constitute a violation; state the basis for the amount of  
33 the civil penalties to be assessed; and affirm the rights of the  
34 alleged violator to a hearing. The ordered party shall have 35  
35 calendar days from receipt of the notice within which to deliver to  
36 the commissioner a written request for a hearing. After the hearing  
37 and upon finding that a violation has occurred, the commissioner  
38 may issue a final order after assessing the amount of the fine  
39 specified in the notice. If a hearing is not requested, the notice shall  
40 become a final order after the expiration of the 35 calendar day  
41 period. Payment of the assessment is due when a final order is  
42 issued or the notice becomes a final order. The authority to levy an  
43 administrative order is in addition to all other enforcement  
44 provisions in P.L. c. (C. ) (pending before the Legislature as  
45 this bill), or of any rule or regulation adopted pursuant thereto, and  
46 the payment of any assessment shall not be deemed to affect the  
47 availability of any other enforcement provisions in connection with  
48 the violation for which the assessment is levied. The department

1 may compromise any civil administrative penalty assessed under  
2 this subsection in an amount and with conditions the department  
3 determines appropriate. A civil administrative penalty assessed,  
4 including a portion thereof required to be paid pursuant to a  
5 payment schedule approved by the department, which is not paid  
6 within 90 days of the date that payment of the penalty is due, shall  
7 be subject to an interest charge on the amount of the penalty, or  
8 portion thereof, which shall accrue as of the date payment is due. If  
9 the penalty is contested, an additional interest charge shall not  
10 accrue on the amount of the penalty until 90 days after the date on  
11 which a final order is issued. Interest charges assessed and  
12 collectible pursuant to this subsection shall be based on the rate of  
13 interest on judgments provided in the New Jersey Rules of Court.

14 c. Any owner or operator of a high hazard train who violates  
15 the provisions of P.L. c. (C. ) (pending before the Legislature  
16 as this bill), or any rule or regulation adopted pursuant thereto, or  
17 who fails to pay in full a civil administrative penalty levied  
18 pursuant to subsection b. of this section, or who fails to make a  
19 payment pursuant to a penalty payment schedule entered into with  
20 the department, or who knowingly makes any false or misleading  
21 statement, representation, or certification on any application,  
22 record, report, or other document required to be submitted to the  
23 department, shall be subject, upon order of a court, to a civil penalty  
24 not to exceed \$25,000 for each day during which the violation  
25 continues. Any civil penalty imposed pursuant to this subsection  
26 may be collected, and any costs incurred in connection therewith  
27 may be recovered, in a summary proceeding pursuant to the  
28 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10  
29 et seq.). In addition to any penalties, costs or interest charges, the  
30 court may assess against the violator the amount of economic  
31 benefit accruing to the violator from the violation. The Superior  
32 Court shall have jurisdiction to enforce the "Penalty Enforcement  
33 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).  
34

35 11. (New section) The department shall adopt rules and  
36 regulations pursuant to the "Administrative Procedure Act,"  
37 P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate the purposes of  
38 this act.  
39

40 12. This act shall take effect immediately.