

ASSEMBLY, No. 1214

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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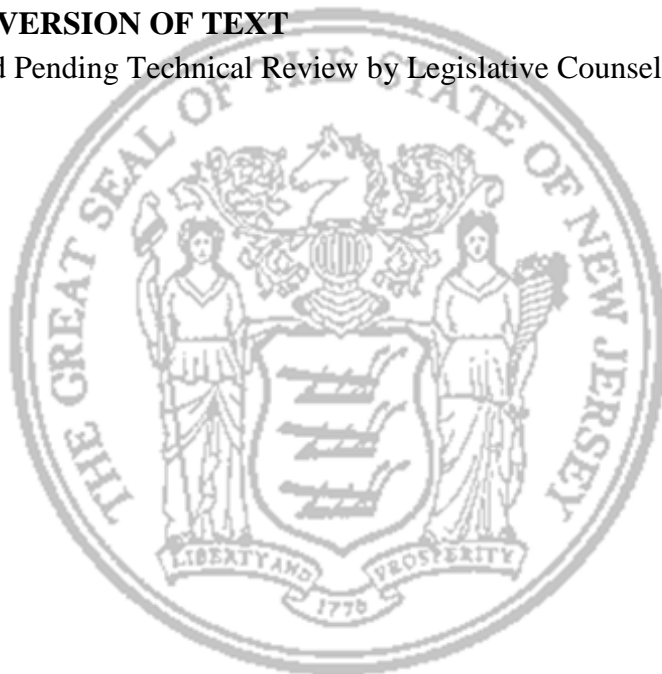
**Assemblywoman Jasey, Assemblyman Caputo, Assemblywoman Tucker,
Assemblymen Green, Prieto and Coughlin**

SYNOPSIS

Clarifies that certain types of sewage and sewage sludge do not constitute hazardous substances under “Spill Compensation and Control Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning sewage and sewage sludge and amending and
2 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) The Legislature finds and declares that:

8 a. The “Spill Compensation and Control Act,” P.L.1976, c.141
9 (C.58:10-23.11 et seq.), was first enacted on January 6, 1977 for the
10 purpose of regulating the transfer, storage, and discharge of
11 hazardous substances;

12 b. From the time of the original enactment of the “Spill
13 Compensation and Control Act,” the term “hazardous substances”
14 has been defined in section 3 of the act (C.58:10-23.11b), therein
15 providing explicitly and unequivocally that “sewage and sewage
16 sludge” shall not be considered hazardous substances for purposes
17 of the act;

18 c. It was the original intent of the Legislature, and remains the
19 intent of the Legislature, that the plain meaning of the phrase
20 “sewage and sewage sludge” includes, but is not necessarily limited
21 to, any domestic, commercial, or industrial wastewater, sewage, or
22 sewage sludge expelled or released from a public sewer system or a
23 public sewage treatment plant;

24 d. Notwithstanding the plain meaning of the “Spill
25 Compensation and Control Act,” the Department of Environmental
26 Protection has adopted rules and regulations that could potentially
27 be construed to limit the meaning of “sewage and sewage sludge” in
28 a manner that is inconsistent with the original intent of the
29 Legislature;

30 e. In order to clarify the scope of the phrase “sewage and
31 sewage sludge,” the Legislature has enacted this amendatory and
32 supplementary act, P.L. , c. (C.) (pending before the
33 Legislature as this bill), to explicitly provide that, consistent with
34 the original intent of the Legislature as expressed in the “Spill
35 Compensation and Control Act,” proper construction of the phrase
36 should include, but not necessarily be limited to, any domestic,
37 commercial, or industrial wastewater, sewage, or sewage sludge
38 expelled or released from a public sewer system or a public sewage
39 treatment plant; and

40 f. This construction of the phrase “sewage and sewage sludge,”
41 having always been the intended meaning contemplated by the
42 Legislature, and having now been explicitly incorporated into the
43 statutory law through this amendatory and supplementary act,
44 P.L. , c. (C.) (pending before the Legislature as this bill),
45 should be operative in any application of the “Spill Compensation

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 and Control Act,” notwithstanding whether the expulsion or release
2 at issue has occurred prior to enactment of P.L. , c. (C.)
3 (pending before the Legislature as this bill).

4
5 2. Section 3 of P.L.1976, c.141 (C.58:10-23.11b) is amended to
6 read as follows:

7 3. Unless the context clearly indicates otherwise, the following
8 terms shall have the following meanings:

9 "Act of God" means an act exclusively occasioned by an
10 unanticipated, grave natural disaster without the interference of any
11 human agency;

12 "Administrator" means the chief executive of the New Jersey
13 Spill Compensation Fund;

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

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

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

34 "Commissioner" means the Commissioner of Environmental
35 Protection;

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

40 "Department" means the Department of Environmental
41 Protection;

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

44 "Discharge" means any intentional or unintentional action or
45 omission resulting in the releasing, spilling, leaking, pumping,
46 pouring, emitting, emptying or dumping of hazardous substances
47 into the waters or onto the lands of the State, or into waters outside

1 the jurisdiction of the State when damage may result to the lands,
2 waters or natural resources within the jurisdiction of the State;

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

7 "Fair market value" means the invoice price of the hazardous
8 substances transferred, including transportation charges; but where
9 no price is so fixed, "fair market value" shall mean the market price
10 as of the close of the nearest day to the transfer, paid for similar
11 hazardous substances, as shall be determined by the taxpayer
12 pursuant to rules of the director;

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

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

19 "Hazardous substances" means the "environmental hazardous
20 substances" on the environmental hazardous substance list adopted
21 by the department pursuant to section 4 of P.L.1983, c.315
22 (C.34:5A-4); such elements and compounds, including petroleum
23 products, which are defined as such by the department, after public
24 hearing, and which shall be consistent to the maximum extent
25 possible with, and which shall include, the list of hazardous
26 substances adopted by the federal Environmental Protection Agency
27 pursuant to section 311 of the Federal Water Pollution Control Act
28 Amendments of 1972, Pub.L.92-500, as amended by the Clean
29 Water Act of 1977, Pub.L.95-217 (33 U.S.C.s.1251 et seq.); the list
30 of toxic pollutants designated by Congress or the EPA pursuant to
31 section 307 of that act; and the list of hazardous substances adopted
32 by the federal Environmental Protection Agency pursuant to section
33 101 of the "Comprehensive Environmental Response,
34 Compensation and Liability Act of 1980," Pub.L.96-510 (42
35 U.S.C.s.9601 et seq.); provided, however, that sewage and sewage
36 sludge, including, but not limited to, any domestic, commercial, or
37 industrial wastewater, sewage, or sewage sludge expelled or
38 released from a public sewer system or a public sewage treatment
39 plant, shall not be considered as hazardous substances for the
40 purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.);

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

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

1 "Major facility" includes, but is not limited to, any refinery,
2 storage or transfer terminal, pipeline, deep-water port, drilling
3 platform or any appurtenance related to any of the preceding that is
4 used or is capable of being used to refine, produce, store, handle,
5 transfer, process or transport hazardous substances. "Major
6 facility" shall include a vessel only when that vessel is engaged in a
7 transfer of hazardous substances between it and another vessel, and
8 in any event shall not include a vessel used solely for activities
9 directly related to recovering, containing, cleaning up or removing
10 discharges of petroleum in the surface waters of the State, including
11 training, research, and other activities directly related to spill
12 response.

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

16 (1) 20,000 gallons or more for hazardous substances which are
17 other than petroleum or petroleum products, or

18 (2) 200,000 gallons or more for hazardous substances of all
19 kinds.

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

25 For the purposes of this definition, "storage capacity" shall mean
26 only that total combined capacity which is dedicated to, used for or
27 intended to be used for storage of hazardous substances of all kinds.
28 Where appropriate to the nature of the facility, storage capacity may
29 be determined by the intended or actual use of open land or
30 unenclosed space as well as by the capacities of tanks or other
31 enclosed storage spaces;

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

35 "Owner" or "operator" means, with respect to a vessel, any
36 person owning, operating or chartering by demise such vessel; with
37 respect to any major facility, any person owning such facility, or
38 operating it by lease, contract or other form of agreement; with
39 respect to abandoned or derelict major facilities, the person who
40 owned or operated such facility immediately prior to such
41 abandonment, or the owner at the time of discharge;

42 "Person" means public or private corporations, companies,
43 associations, societies, firms, partnerships, joint stock companies,
44 individuals, the United States, the State of New Jersey and any of
45 its political subdivisions or agents;

46 "Person responsible for conducting the remediation" means (1)
47 any person who executes or is otherwise subject to an oversight
48 document to remediate a contaminated site, (2) the owner or

1 operator of an industrial establishment subject to P.L.1983, c.330
2 (C.13:1K-6 et al.), for the remediation of a discharge, (3) the owner
3 or operator of an underground storage tank subject to P.L.1986,
4 c.102 (C.58:10A-21 et seq.), for the remediation of a discharge, (4)
5 any other person who discharges a hazardous substance or is in any
6 way responsible for a hazardous substance, pursuant to section 8 of
7 P.L.1976, c.141 (C.58:10-23.11g), that was discharged at a
8 contaminated site, or (5) any other person who is remediating a site;

9 "Petroleum" or "petroleum products" means oil or petroleum of
10 any kind and in any form, including, but not limited to, oil,
11 petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil
12 mixed with other wastes, crude oils, and substances or additives to
13 be utilized in the refining or blending of crude petroleum or
14 petroleum stock in this State; however, any compound designated
15 by specific chemical name on the list of hazardous substances
16 adopted by the department pursuant to this section shall not be
17 considered petroleum or a petroleum product for the purposes of
18 P.L.1976, c.141, unless such compound is to be utilized in the
19 refining or blending of crude petroleum or petroleum stock in this
20 State;

21 "Preliminary assessment" means the first phase in the process of
22 identifying areas of concern and determining whether contaminants
23 are or were present at a site or have migrated or are migrating from
24 a site, and shall include the initial search for and evaluation of,
25 existing site specific operational and environmental information,
26 both current and historic, to determine if further investigation
27 concerning the documented, alleged, suspected or latent discharge
28 of any contaminant is required. The evaluation of historic
29 information shall be conducted from 1932 to the present, except that
30 the department may require the search for and evaluation of
31 additional information relating to ownership and use of the site
32 prior to 1932 if such information is available through diligent
33 inquiry of the public records;

34 "Public sewage treatment plant" means any publicly-owned
35 structure, device, or facility used to treat or process domestic,
36 commercial, or industrial sewage, sewage sludge, or wastewater;

37 "Public sewer system" means any publicly-owned network of
38 pipes, conduits, or other physical facilities used to carry sewage or
39 wastewater;

40 "Remedial action" means those actions taken at a site or offsite if
41 a contaminant has migrated or is migrating therefrom, as may be
42 required by the department, including the removal, treatment,
43 containment, transportation, securing, or other engineering or
44 treatment measures, whether to an unrestricted use or otherwise,
45 designed to ensure that any discharged contaminant at the site or
46 that has migrated or is migrating from the site, is remediated in
47 compliance with the applicable health risk or environmental
48 standards;

1 "Remedial investigation" means a process to determine the
2 nature and extent of a discharge of a contaminant at a site or a
3 discharge of a contaminant that has migrated or is migrating from
4 the site and the problems presented by a discharge, and may include
5 data collected, site characterization, sampling, monitoring, and the
6 gathering of any other sufficient and relevant information necessary
7 to determine the necessity for remedial action and to support the
8 evaluation of remedial actions if necessary;

9 "Remediation" or "remediate" means all necessary actions to
10 investigate and clean up or respond to any known, suspected, or
11 threatened discharge, including, as necessary, the preliminary
12 assessment, site investigation, remedial investigation, and remedial
13 action, provided, however, that "remediation" or "remediate" shall
14 not include the payment of compensation for damage to, or loss of,
15 natural resources;

16 "Response action outcome" means a written determination by a
17 licensed site remediation professional that the contaminated site
18 was remediated in accordance with all applicable statutes and
19 regulations, and based upon an evaluation of the historical use of
20 the site, or of any area of concern at that site, as applicable, and any
21 other investigation or action the department deems necessary, there
22 are no contaminants present at the site, or at any area of concern, at
23 any other site to which a discharge originating at the site has
24 migrated, or that any contaminants present at the site or that have
25 migrated from the site have been remediated in accordance with
26 applicable remediation regulations, and all applicable permits and
27 authorizations have been obtained;

28 "Site investigation" means the collection and evaluation of data
29 adequate to determine whether or not discharged contaminants exist
30 at a site or have migrated or are migrating from the site at levels in
31 excess of the applicable remediation standards. A site investigation
32 shall be developed based upon the information collected pursuant to
33 the preliminary assessment;

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

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

38 "Transfer" means onloading or offloading between major
39 facilities and vessels, or vessels and major facilities, and from
40 vessel to vessel or major facility to major facility, except for fueling
41 or refueling operations and except that with regard to the movement
42 of hazardous substances other than petroleum, it shall also include
43 any onloading of or offloading from a major facility;

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

1 "Waters" means the ocean and its estuaries to the seaward limit
2 of the State's jurisdiction, all springs, streams and bodies of surface
3 or groundwater, whether natural or artificial, within the boundaries
4 of this State.

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

6

7 3. This act shall take effect immediately.

8

9

10 STATEMENT

11

12 This bill would clarify that domestic, commercial, or industrial
13 wastewater, sewage, or sewage sludge expelled or released from a
14 public sewer system or a public sewage treatment plant does not
15 constitute a hazardous substance under the "Spill Compensation and
16 Control Act."

17 Current law expressly excepts sewage and sewage sludge from
18 the definition of a hazardous substance under the "Spill
19 Compensation and Control Act." This bill would clarify that this
20 exception for sewage and sewage sludge includes domestic,
21 commercial, or industrial wastewater, sewage, or sewage sludge
22 expelled or released from a public sewer system or a public sewage
23 treatment plant. This construction of the phrase "sewage and
24 sewage sludge" would be operative in any application of the "Spill
25 Compensation and Control Act," notwithstanding whether the
26 expulsion or release at issue has occurred prior to enactment of this
27 bill into law.