

CHAPTER 348

AN ACT concerning protection from contribution suits, and amending and supplementing P.L.1976, c.141.

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

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

C.58:10-23.11f Cleanup and removal of hazardous substances.

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

(2) (a) Whenever one or more dischargers or persons cleans up and removes a discharge of a hazardous substance, those dischargers and persons shall have a right of contribution against all other dischargers and persons in any way responsible for a discharged hazardous substance or other persons who are liable for the cost of the cleanup and removal of that discharge of a hazardous substance. In an action for contribution, the contribution plaintiffs need prove only that a discharge occurred for which the contribution defendant or defendants are liable pursuant to the provisions of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), and the contribution defendant shall have only the defenses to liability available to parties pursuant to subsection d. of section 8 of P.L.1976, c.141 (C.58:10-23.11g). In resolving contribution claims, a court may allocate the costs of cleanup and removal among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall affect the right of any party to seek contribution pursuant to any other statute or under common law.

(b) A person who has discharged a hazardous substance or is in any way responsible for the discharge of a hazardous substance who has resolved his liability to the State for cleanup and removal costs, including the payment of compensation for damage to, or the loss of, natural resources, or for the restoration of natural resources, and (i) has received a no further action letter from the State, or (ii) has entered into an administrative or judicially approved settlement with the State, shall not be liable for claims for contribution regarding matters addressed in the settlement or the no further action letter, as the case may be. The settlement shall not release any other person from liability for cleanup and removal costs who is not a party to the settlement, but shall reduce the potential liability of any other discharger or person in any way responsible for a discharged hazardous substance at the site that is the subject of the no further action letter or the settlement by the amount of the no further action letter or the settlement.

(3) In an action for contribution taken pursuant to this subsection, a contribution plaintiff may file a claim with the court for treble damages. A contribution plaintiff may be granted an award of treble damages by the court from one or more contribution defendants only upon a finding by the court that: (a) the contribution defendant is a person who was named on or subject to a directive issued by the department, who failed or refused to comply with such a directive, and who is subject to contribution pursuant to this subsection; (b) the contribution plaintiff gave 30 days' notice to the contribution defendant of the plaintiff's intention to seek treble damages pursuant to this subsection and gave the contribution defendant an opportunity to participate in the cleanup; (c) the contribution defendant failed or refused to enter into a settlement agreement with the contribution plaintiff; and (d) the contribution plaintiff entered into an agreement with the department to remediate the site. Notwithstanding the foregoing requirements, any authorization to seek treble damages made by the department prior to the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.) shall remain in effect, provided that the department or the contribution plaintiff gave notice to the contribution defendant of the plaintiff's request to the department for authorization to seek treble damages.

A contribution defendant from whom treble damages is sought in a contribution action shall

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

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

Whenever the department acts to clean up and remove a discharge or contracts to secure prospective cleanup and removal services, it is authorized to draw upon the money available in the fund. Such money shall be used to pay promptly for all cleanup and removal costs incurred by the department in cleaning up, in removing or in minimizing damage caused by such discharge. Nothing in this section is intended to preclude removal and cleanup operations by any person threatened by such discharges, provided such persons coordinate and obtain approval for such actions with ongoing State or federal operations. No action taken by any person to contain or clean up and remove a discharge shall be construed as an admission of liability for said discharge. No person who renders assistance in containing or cleaning up and removing a discharge shall be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance, except for acts or omissions of gross negligence or willful misconduct. In the course of cleanup or removal operations, no person shall discharge any detergent into the waters of this State without prior authorization of the commissioner.

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

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

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

(a) Explosiveness;

(b) High flammability;

(c) Radioactivity;

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

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

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

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

c. If and to the extent that he determines that funds are available, the administrator shall

approve and make payments for any cleanup and removal costs incurred by the department for the cleanup and removal of a hazardous substance other than petroleum as authorized by subsection b. of this section; provided that in determining the availability of funds, the administrator shall not include as available funds revenues realized or to be realized from the tax on the transfer of petroleum, to the extent that such revenues result from a tax levied at a rate in excess of \$0.01 per barrel, pursuant to subsection b. of section 9 of P.L.1976, c.141 (C.58:10-23.11h), unless the administrator determines that the sum of claims paid by the fund on behalf of petroleum discharges or cleanup and removals plus pending reasonable claims against the fund on behalf of petroleum discharges or cleanup and removals is greater than 30% of the sum of all claims paid by the fund plus all pending reasonable claims against the fund.

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

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

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

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

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

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

(2) the owner or operator of the vessel, or a representative of the owner or operator,

provides evidence of financial responsibility as provided in section 2 of P.L.1991, c.58 (C.58:10-23.11g2) and satisfactorily guarantees that these costs will be paid; or

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

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

C.58:10-23.11e2 Publication of information relative to contribution suit settlements.

2. At least 30 days prior to its agreement to any administrative or judicially approved settlement entered into pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), or at least 30 days prior to the issuance of any no further action letter issued pursuant to P.L.1993, c.139 (C.58:10B-1 et seq.), on or after the effective date of P.L.2005, c.348 (C.58:10-23.11e2 et al.), the Department of Environmental Protection shall publish in the New Jersey Register and on the New Jersey Department of Environmental Protection's website the name of the case, the names of the parties to the settlement or the no further action letter, as the case may be, the location of the property on which the discharge occurred, and a summary of the terms of the settlement or the no further action letter, including the amount of any monetary payments made or to be made. The Department of Environmental Protection shall provide written notice of the settlement or of the no further action letter, which shall include the information listed above, to all other parties in the case and to any other potentially responsible parties of whom the department has notice at the time of the publication.

3. This act shall take effect on the 90th day after the date of enactment.

Approved January 12, 2006.