

5418--A

2011-2012 Regular Sessions

I N S E N A T E

May 19, 2011

Introduced by Sens. GRISANTI, MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the navigation law, in relation to responsible parties for petroleum contaminated sites and incentives to parties who are willing to remediate petroleum contaminated sites

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (a) of subdivision 2 of section 176 of the navi-
2 gation law, as amended by chapter 584 of the laws of 1992, is amended to
3 read as follows:
4 (a) Upon the occurrence of a discharge of petroleum, the department
5 shall respond promptly and proceed to cleanup and remove the discharge
6 in accordance with environmental priorities or may, at its discretion,
7 direct the discharger to promptly cleanup and remove the discharge. IF
8 A PERSON THE DEPARTMENT DEEMS A DISCHARGER, AND THUS DIRECTS TO CLEANUP
9 AND REMOVE THE DISCHARGE PURSUANT TO THIS SECTION PRESENTS THE DEPART-
10 MENT WITH EVIDENCE THAT A THIRD PARTY IS SOLELY RESPONSIBLE FOR THE
11 DISCHARGE AND REQUESTS THE DEPARTMENT TO DETERMINE WHETHER THE EVIDENCE
12 ESTABLISHES THE THIRD PARTY IS IN FACT SOLELY RESPONSIBLE, THE DEPART-
13 MENT SHALL, WITHIN THIRTY DAYS OF RECEIPT OF SUCH REQUEST, DETERMINE IN
14 WRITING EITHER THAT THE THIRD PARTY: (I) SHALL BE DEEMED A DISCHARGER BY
15 THE DEPARTMENT, AND SHALL BE DIRECTED TO UNDERTAKE THE CLEANUP AND
16 REMOVAL OF THE DISCHARGE; OR (II) WILL NOT BE DEEMED A DISCHARGER BY THE
17 DEPARTMENT BECAUSE THE INFORMATION PRESENTED DOES NOT ESTABLISH THE
18 RESPONSIBILITY OF THE THIRD PARTY BY A PREPONDERANCE OF THE EVIDENCE.
19 The department shall be responsible for cleanup and removal or as the
20 case may be, for retaining agents and contractors who shall operate
21 under the direction of that department for such purposes. Implementation
22 of cleanup and removal procedures after each discharge shall be

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD11700-02-1

1 conducted in accordance with environmental priorities and procedures
2 established by the department.

3 S 2. Subdivisions 1 and 2 of section 180 of the navigation law, subdi-
4 vision 1 as added by chapter 845 of the laws of 1977 and subdivision 2
5 as amended by chapter 672 of the laws of 1991, are amended to read as
6 follows:

7 1. To represent the state in meetings with the alleged discharger OR
8 DISCHARGERS and claimants concerning liability for the discharge and
9 amount of the claims, AND, IF THERE IS MORE THAN ONE DISCHARGER IN A
10 MEETING, TO APPORTION LIABILITY FOR THE DISCHARGE;

11 2. To determine if hearings are needed to settle particular claims
12 filed by injured persons AND TO APPORTION LIABILITY BETWEEN AND AMONG
13 DISCHARGERS;

14 S 3. Subdivision 1 of section 181 of the navigation law, as amended by
15 chapter 712 of the laws of 1989, is amended to read as follows:

16 1. (A) Any person who has discharged petroleum shall be strictly
17 liable, without regard to fault, for all cleanup and removal costs and
18 all direct and indirect damages, no matter by whom sustained, as defined
19 in this section, UNLESS THE LIABILITY LIMITATION AS DESCRIBED UNDER
20 PARAGRAPH (B) OF THIS SUBDIVISION APPLIES. In addition to cleanup and
21 removal costs and damages, any such person who is notified of such
22 release and who did not undertake relocation of persons residing in the
23 area of the discharge in accordance with paragraph (c) of subdivision
24 seven of section one hundred seventy-six of this article, shall be
25 liable to the fund for an amount equal to two times the actual and
26 necessary expense incurred by the fund for such relocation pursuant to
27 section one hundred seventy-seven-a of this article.

28 (B) (I) ANY PERSON WHO AGREES TO REMEDIATE THE DISCHARGE TO THE SATIS-
29 FACTION OF THE DEPARTMENT, AND IN CONFORMANCE WITH THIS ARTICLE, SHALL
30 BE ENTITLED TO RECEIVE LIABILITY LIMITATION. SUCH AGREEMENT SHALL BE
31 CALLED THE LIABILITY LIMITATION AGREEMENT AND SHALL BE WRITTEN AND
32 EXECUTED BY BOTH THE DEPARTMENT AND SUCH PERSON. AFTER EXECUTION OF THE
33 LIABILITY LIMITATION AGREEMENT, SUCH PERSON SHALL NOT BE LIABLE TO THE
34 STATE UPON ANY STATUTORY OR COMMON LAW CAUSE OF ACTION, ARISING OUT OF
35 THE PRESENCE OF ANY CONTAMINATION IN, ON, OR EMANATING FROM THE SITE
36 THAT WAS THE SUBJECT OF THE LIABILITY LIMITATION, EXCEPT THAT SUCH
37 PERSON SHALL NOT RECEIVE A RELEASE FOR NATURAL RESOURCE DAMAGES THAT MAY
38 BE AVAILABLE UNDER LAW. THE LIABILITY LIMITATION SHALL APPLY TO ALL
39 SUCCESSORS IN OWNERSHIP OF THE PROPERTY AND TO ALL PERSONS WHO LEASE THE
40 PROPERTY OR WHO ENGAGE IN OPERATIONS ON THE PROPERTY, PROVIDED THAT SUCH
41 PERSONS ACT WITH DUE CARE AND IN GOOD FAITH TO ADHERE TO THE REQUIRE-
42 MENTS OF THE LIABILITY LIMITATION AGREEMENT.

43 (II) A LIABILITY LIMITATION AGREEMENT AND THE PROTECTIONS IT AFFORDS
44 SHALL NOT APPLY TO ANY DISCHARGE THAT OCCURS SUBSEQUENT TO THE EXECUTION
45 OF THE LIABILITY LIMITATION AGREEMENT, NOR SHALL A LIABILITY LIMITATION
46 AGREEMENT AND THE PROTECTIONS IT AFFORDS RELIEVE ANY PERSON OF THE OBLI-
47 GATIONS TO COMPLY IN THE FUTURE WITH LAWS AND REGULATIONS. THE STATE
48 NONETHELESS SHALL RESERVE ALL OF ITS RIGHTS CONCERNING, AND SUCH LIABIL-
49 ITY LIMITATION SHALL NOT EXTEND TO, ANY FURTHER INVESTIGATION AND/OR
50 REMEDIATION THE DEPARTMENT DEEMS NECESSARY DUE TO FRAUD, NONCOMPLIANCE
51 WITH THE TERMS THAT FORMED THE LIABILITY LIMITATION AGREEMENT, OR A
52 WRITTEN FINDING BY THE DEPARTMENT THAT A CHANGE IN AN ENVIRONMENTAL
53 STANDARD, FACTOR, OR CRITERION UPON WHICH THE LIABILITY LIMITATION
54 AGREEMENT WAS BASED WOULD RENDER REMEDIATION ACTIVITIES NO LONGER
55 PROTECTIVE OF PUBLIC HEALTH OR THE ENVIRONMENT. NOTHING IN THIS SECTION
56 SHALL AFFECT THE LIABILITY OF THE PERSON RESPONSIBLE FOR SUCH PERSON'S

1 OWN ACTS OR OMISSIONS CAUSING WRONGFUL DEATH OR PERSONAL INJURY. NOTHING
2 IN THIS SECTION SHALL AFFECT THE LIABILITY OF ANY PERSON WITH RESPECT TO
3 ANY CIVIL ACTION BROUGHT BY A PARTY OTHER THAN THE STATE. THE PROVISIONS
4 OF THIS SECTION SHALL NOT AFFECT AN ACTION OR A CLAIM, INCLUDING A STAT-
5 UTORY OR COMMON LAW CLAIM FOR CONTRIBUTION OR INDEMNIFICATION, THAT SUCH
6 PERSON HAS OR MAY HAVE AGAINST A THIRD PARTY.

7 S 4. Section 183 of the navigation law, as added by chapter 845 of the
8 laws of 1977, is amended to read as follows:

9 S 183. Settlements. The administrator shall attempt to promote and
10 arrange a settlement between the claimant and the person OR PERSONS
11 responsible for the discharge. If the source of the discharge can be
12 determined and liability is conceded, the claimant and the alleged
13 discharger OR DISCHARGERS may agree to a settlement which shall be final
14 and binding upon the parties and which will waive all recourse against
15 the fund. TO THE EXTENT AN ALLEGED DISCHARGER PRESENTS EVIDENCE TO THE
16 ADMINISTRATOR THAT ANOTHER PARTY IS WHOLLY OR PARTIALLY RESPONSIBLE FOR
17 THE CLAIM, AND REQUESTS THE ADMINISTRATOR TO CONSIDER WHETHER SUCH
18 INFORMATION PRESENTED ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE
19 THAT THE THIRD PARTY IS IN FACT WHOLLY OR PARTIALLY RESPONSIBLE, THE
20 ADMINISTRATOR WITHIN THIRTY DAYS OF RECEIPT OF SUCH REQUEST SHALL EITHER
21 DETERMINE: (1) IN WRITING, IF THE THIRD PARTY SHALL BE DEEMED AN ADDI-
22 TIONAL DISCHARGER TO ANY PENDING OR ANTICIPATED CLAIM OR (2) IF AN
23 ADMINISTRATIVE HEARING AS TO LIABILITY IS NECESSARY.

24 S 5. This act shall take effect immediately.