

8192

2011-2012 Regular Sessions

I N   A S S E M B L Y

June 6, 2011

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Introduced by M. of A. SCHIMMINGER -- read once and referred to the  
Committee on Environmental Conservation

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 ASSEM-  
BLY, 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  
23    conducted in accordance with environmental priorities and procedures  
24    established by the department.

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

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

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

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

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

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

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

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

1 ANY CIVIL ACTION BROUGHT BY A PARTY OTHER THAN THE STATE. THE PROVISIONS  
2 OF THIS SECTION SHALL NOT AFFECT AN ACTION OR A CLAIM, INCLUDING A STAT-  
3 UTORY OR COMMON LAW CLAIM FOR CONTRIBUTION OR INDEMNIFICATION, THAT SUCH  
4 PERSON HAS OR MAY HAVE AGAINST A THIRD PARTY.

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

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

22 S 5. This act shall take effect immediately.