

6938

2011-2012 Regular Sessions

I N A S S E M B L Y

April 6, 2011

Introduced by M. of A. SWEENEY, N. RIVERA, COOK, REILLY, JAFFEE, ROSEN-
THAL, CAHILL, TITONE -- Multi-Sponsored by -- M. of A. ABINANTI,
GLICK, LUPARDO, THIELE -- read once and referred to the Committee on
Environmental Conservation

AN ACT to amend the navigation law, in relation to increasing liability
for the discharge of petroleum

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

1 Section 1. Subdivision 3 of section 181 of the navigation law, as
2 amended by chapter 584 of the laws of 1992, subparagraphs (ii) and (iii)
3 of paragraph (e) as amended by chapter 585 of the laws of 1992, is
4 amended to read as follows:
5 3. (a) The owner or operator of a major facility or vessel which has
6 discharged petroleum shall be strictly liable, without regard to fault,
7 subject to the defenses enumerated in subdivision four of this section,
8 for all cleanup and removal costs and all direct and indirect damages
9 paid by the fund. However, the cleanup and removal costs and direct and
10 indirect damages which may be recovered by the fund with respect to each
11 incident shall not exceed:
12 (i) for a tank vessel, the greater of:
13 (1) [one] TWO thousand [two hundred] dollars per gross ton; or
14 (2) (A) in the case of a vessel greater than three thousand gross
15 tons, [ten] SIXTEEN million dollars; or
16 (B) in the case of a vessel [or] OF three thousand gross tons or less,
17 [two] THREE million dollars;
18 (ii) for any other vessel subject to the liability limits set forth in
19 the Federal Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), [six
20 hundred] ONE THOUSAND dollars per gross ton or [five] EIGHT hundred
21 thousand dollars, whichever is greater;

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

LBD09196-01-1

(iii) for any other vessel not subject to the liability limits set forth in the Federal Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), [three] FIVE hundred dollars per gross ton for each vessel;

(iv) for a major facility that is defined as an "onshore facility" and covered by the liability limits established under the Federal Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), [three] FIVE hundred fifty million dollars. This liability limit shall not be considered to increase the liability above the federal limit of three hundred fifty million dollars per incident[.];

(v) for a major facility not covered in subparagraph (iv) of this paragraph, [fifty] SEVENTY-FIVE million dollars.

(b) The liability limits established in subparagraphs (i) and (ii) of paragraph (a) of this subdivision shall not be considered to increase liability above the federal limits for tank vessels or vessels as defined in the Federal Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.).

(c) (i) The department shall establish, by regulation, a limit of liability under this subdivision of less than [three] FIVE hundred fifty million dollars but not less than [eight] TWELVE million dollars, for major facilities defined as "onshore facilities" under the Federal Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), taking into account facility size, storage capacity, throughput, proximity to environmentally sensitive areas, type of petroleum handled, and other factors relevant to risks posed by the class or category of facility.

(ii) The department shall establish, by regulation, a limit of liability under this subdivision of [fifty] SEVENTY-FIVE million dollars or less for major facilities other than vessels that are not defined as "onshore facilities" under the Federal Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), taking into account facility size, storage capacity, throughput, proximity to environmentally sensitive areas, type of petroleum handled, and other factors relevant to risks posed by the class or category of facility.

(d) The provisions of paragraph (a) of this subdivision shall not apply and the owner or operator shall be liable for the full amount of cleanup and removal costs and damages if it can be shown that the discharge was the result of (i) gross negligence or willful misconduct, within the knowledge and privity of the owner, operator or person in charge, or (ii) a gross or willful violation of applicable safety, construction or operating standards or regulations. In addition, the provisions of paragraph (a) of this subdivision shall not apply if the owner or operator fails or refuses:

(1) to report the discharge as required by section one hundred seventy-five of this article and the owner or operator knows or had reason to know of the discharge; or

(2) to provide all reasonable cooperation and assistance requested by the federal on-scene coordinator or the commissioner or his designee in connection with cleanup and removal activities.

(e) (i) The owner or operator of a vessel shall establish and maintain with the department evidence of financial responsibility sufficient to meet the amount of liability established pursuant to paragraph (a) of this subdivision. The owner or operator of any vessel which demonstrates financial responsibility pursuant to the requirements of the Federal Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), shall be deemed to have demonstrated financial responsibility in accordance with this paragraph.

(ii) The commissioner in consultation with the superintendent of insurance may promulgate regulations requiring the owner or operator of

1 a major facility other than a vessel to establish and maintain evidence
2 of financial responsibility in an amount not to exceed [twenty-five]
3 FORTY dollars, per incident, for each barrel of total petroleum storage
4 capacity at the facility, subject to a maximum of one million SIX
5 HUNDRED dollars per incident per facility in an aggregate not to exceed
6 [two] THREE million dollars per facility per year; provided, however,
7 that if the owner or operator establishes to the satisfaction of the
8 commissioner that a lesser amount will be sufficient to protect the
9 environment and public health, safety and welfare, the commissioner
10 shall accept evidence of financial responsibility in such lesser amount.
11 In determining the sufficiency of the amount of financial responsibility
12 required under this section, the commissioner and the superintendent of
13 insurance shall take into consideration facility size, storage capacity,
14 throughput, proximity to environmentally sensitive areas, type of petro-
15 leum handled, and other factors relevant to the risks posed by the class
16 or category of facility, as well as the availability and affordability
17 of pollution liability insurance. Any regulations promulgated pursuant
18 to this subparagraph shall not take effect until forty-eight months
19 after the effective date of this section.

20 (iii) Financial responsibility under this paragraph may be established
21 by any one or a combination of the following methods acceptable to the
22 commissioner in consultation with the superintendent of insurance:
23 evidence of insurance, surety bonds, guarantee, letter of credit, quali-
24 fication as a self-insurer, or other evidence of financial responsibil-
25 ity, including certifications which qualify under the Federal Oil
26 Pollution Act of 1990 (33 U.S.C. 2701 et seq.).

27 (iv) The liability of a third-party insurer providing proof of finan-
28 cial responsibility on behalf of a person required to establish and
29 maintain evidence of financial responsibility under this section is
30 limited to the type of risk assumed and the amount of coverage specified
31 in the proof of financial responsibility furnished to and approved by
32 the department. For the purposes of this section, the term "third-party
33 insurer" means a third-party insurer, surety, guarantor, person furnish-
34 ing a letter of credit, or other group or person providing proof of
35 financial responsibility on behalf of another person; it does not
36 include the person required to establish and maintain evidence of such
37 financial responsibility.

38 S 2. This act shall take effect immediately.