S T A T E O F N E W Y O R K

5011

2011-2012 Regular Sessions

I N S E N A T E

May 2, 2011

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed 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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph (a) of subdivision 2 of section 176 of the navigation law, as amended by chapter 584 of the laws of 1992, is amended to read as follows:

(a) Upon the occurrence of a discharge of petroleum, the department shall respond promptly and proceed to cleanup and remove the discharge in accordance with environmental priorities or may, at its discretion, direct the discharger to promptly cleanup and remove the discharge. IF A PERSON THE DEPARTMENT DEEMS A DISCHARGER, AND THUS DIRECTS TO CLEANUP AND REMOVE THE DISCHARGE PURSUANT TO THIS SECTION PRESENTS THE DEPARTMENT WITH EVIDENCE THAT A THIRD PARTY IS SOLELY RESPONSIBLE FOR THE DISCHARGE AND REQUESTS THE DEPARTMENT TO DETERMINE WHETHER THE EVIDENCE ESTABLISHES THE THIRD PARTY IS IN FACT SOLELY RESPONSIBLE, THE DEPARTMENT SHALL, WITHIN THIRTY DAYS OF RECEIPT OF SUCH REQUEST, DETERMINE IN WRITING EITHER THAT THE THIRD PARTY: (I) SHALL BE DEEMED A DISCHARGER BY THE DEPARTMENT, AND SHALL BE DIRECTED TO UNDERTAKE THE CLEANUP AND REMOVAL OF THE DISCHARGE; OR (II) WILL NOT BE DEEMED A DISCHARGER BY THE DEPARTMENT BECAUSE THE INFORMATION PRESENTED DOES NOT ESTABLISH THE RESPONSIBILITY OF THE THIRD PARTY BY A PREPONDERANCE OF THE EVIDENCE. The department shall be responsible for cleanup and removal or as the case may be, for retaining agents and contractors who shall operate under the direction of that department for such purposes. Implementation of cleanup and removal procedures after each discharge shall be conducted in accordance with environmental priorities and procedures established by the department.

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

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

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

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

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

1. Any person who has discharged petroleum shall be strictly liable, without regard to fault, for all cleanup and removal costs and all direct and indirect damages, no matter by whom sustained, as defined in this section. In addition to cleanup and removal costs and damages, any such person who is notified of such release and who did not undertake relocation of persons residing in the area of the discharge in accordance with paragraph (c) of subdivision seven of section one hundred seventy-six of this article, shall be liable to the fund for an amount equal to two times the actual and necessary expense incurred by the fund for such relocation pursuant to section one hundred seventy-seven-a of this article. HOWEVER, ANY PERSON WHO AGREES TO REMEDIATE THE DISCHARGE TO THE SATISFACTION OF THE DEPARTMENT, AND IN CONFORMANCE WITH ARTICLE TWELVE OF THE NAVIGATION LAW, SHALL BE ENTITLED TO RECEIVE THE LIABILITY LIMITATION AFFORDED TO PARTIES IN THE BROWNFIELD CLEANUP PROGRAM PURSUANT TO SECTION 27-1421 OF THE ENVIRONMENTAL CONSERVATION LAW.

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

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

S 5. This act shall take effect immediately.