

2065

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

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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. IF  
19    THE DEPARTMENT DETERMINES THAT THE PERSON THE DEPARTMENT INITIALLY DEEMS  
20    A DISCHARGER AND THE THIRD PARTY ARE BOTH DISCHARGERS, THE DEPARTMENT  
21    SHALL, WITHIN THIRTY DAYS OF SUCH REQUEST, ADVISE EACH OF THE PARTIES  
22    THAT THEY ARE DEEMED DISCHARGERS SUBJECT TO APPORTIONMENT OF LIABILITY  
23    FOR THE DISCHARGE PURSUANT TO SUBDIVISIONS ONE AND TWO OF SECTION ONE

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

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1 HUNDRED EIGHTY OF THIS ARTICLE. The department shall be responsible for  
2 cleanup and removal or as the case may be, for retaining agents and  
3 contractors who shall operate under the direction of that department for  
4 such purposes. Implementation of cleanup and removal procedures after  
5 each discharge shall be conducted in accordance with environmental  
6 priorities and procedures established by the department.

7 S 2. Subdivision 8 of section 176 of the navigation law, as added by  
8 chapter 712 of the laws of 1989, is amended and a new subdivision 9 is  
9 added to read as follows:

10 8. Notwithstanding any other provision of law to the contrary, includ-  
11 ing but not limited to SUBDIVISION (C) OF section 15-108 of the general  
12 obligations law, every person providing cleanup, removal of discharge of  
13 petroleum or relocation of persons pursuant to this section shall be  
14 entitled to contribution from any other responsible party.

15 9. THE FOLLOWING SHALL NOT BE DEEMED A FINAL AGENCY ACTION SUBJECT TO  
16 REVIEW PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND  
17 RULES, AND SHALL NOT HAVE A BINDING EFFECT ON ANY PARTY IN PENDING OR  
18 FUTURE PROCEEDINGS REGARDING THE DISCHARGE: (A) A DETERMINATION OR  
19 ACTION OF THE DEPARTMENT PURSUANT TO SUBDIVISION ONE, TWO, OR THREE OF  
20 THIS SECTION, INCLUDING BUT NOT LIMITED TO, A DETERMINATION OF THE  
21 REASONABLENESS OF ANY COSTS INCURRED; (B) A DETERMINATION OR ACTION OF  
22 THE ADMINISTRATOR PURSUANT TO SECTION ONE HUNDRED EIGHTY, ONE HUNDRED  
23 EIGHTY-ONE-A, OR ONE HUNDRED EIGHTY-THREE OF THIS ARTICLE, INCLUDING THE  
24 FILING OF AN ENVIRONMENTAL LIEN.

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

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

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

36 S 4. Subdivision 1 of section 181 of the navigation law, as amended by  
37 chapter 712 of the laws of 1989, is amended and a new subdivision 7 is  
38 added to read as follows:

39 1. (A) Any person who has discharged petroleum shall be strictly  
40 liable, without regard to fault, for all cleanup and removal costs and  
41 all direct and indirect damages, no matter by whom sustained, as defined  
42 in this section, UNLESS THE LIABILITY LIMITATION AS DESCRIBED UNDER  
43 PARAGRAPH (B) OF THIS SUBDIVISION APPLIES. In addition to cleanup and  
44 removal costs and damages, any such person who is notified of such  
45 release and who did not undertake relocation of persons residing in the  
46 area of the discharge in accordance with paragraph (c) of subdivision  
47 seven of section one hundred seventy-six of this article, shall be  
48 liable to the fund for an amount equal to two times the actual and  
49 necessary expense incurred by the fund for such relocation pursuant to  
50 section one hundred seventy-seven-a of this article.

51 (B) (I) ANY PERSON WHO AGREES TO REMEDIATE THE DISCHARGE TO THE SATIS-  
52 FACTION OF THE DEPARTMENT, AND IN CONFORMANCE WITH THIS ARTICLE, SHALL  
53 BE ENTITLED TO RECEIVE LIABILITY LIMITATION. SUCH AGREEMENT SHALL BE  
54 CALLED THE LIABILITY LIMITATION AGREEMENT AND SHALL BE WRITTEN AND  
55 EXECUTED BY BOTH THE DEPARTMENT AND SUCH PERSON. AFTER EXECUTION OF THE  
56 LIABILITY LIMITATION AGREEMENT, SUCH PERSON SHALL NOT BE LIABLE TO THE

1 STATE UPON ANY STATUTORY OR COMMON LAW CAUSE OF ACTION, ARISING OUT OF  
2 THE PRESENCE OF ANY CONTAMINATION IN, ON, OR EMANATING FROM THE SITE  
3 THAT WAS THE SUBJECT OF THE LIABILITY LIMITATION, EXCEPT THAT SUCH  
4 PERSON SHALL NOT RECEIVE A RELEASE FOR NATURAL RESOURCE DAMAGES THAT MAY  
5 BE AVAILABLE UNDER LAW. THE LIABILITY LIMITATION SHALL APPLY TO ALL  
6 SUCCESSORS IN OWNERSHIP OF THE PROPERTY AND TO ALL PERSONS WHO LEASE THE  
7 PROPERTY OR WHO ENGAGE IN OPERATIONS ON THE PROPERTY, PROVIDED THAT SUCH  
8 PERSONS ACT WITH DUE CARE AND IN GOOD FAITH TO ADHERE TO THE REQUIRE-  
9 MENTS OF THE LIABILITY LIMITATION AGREEMENT.

10 (II) A LIABILITY LIMITATION AGREEMENT AND THE PROTECTIONS IT AFFORDS  
11 SHALL NOT APPLY TO ANY DISCHARGE THAT OCCURS SUBSEQUENT TO THE EXECUTION  
12 OF THE LIABILITY LIMITATION AGREEMENT, NOR SHALL A LIABILITY LIMITATION  
13 AGREEMENT AND THE PROTECTIONS IT AFFORDS RELIEVE ANY PERSON OF THE OBLI-  
14 GATIONS TO COMPLY IN THE FUTURE WITH LAWS AND REGULATIONS. THE STATE  
15 NONETHELESS SHALL RESERVE ALL OF ITS RIGHTS CONCERNING, AND SUCH LIABIL-  
16 ITY LIMITATION SHALL NOT EXTEND TO, ANY FURTHER INVESTIGATION AND/OR  
17 REMEDIATION THE DEPARTMENT DEEMS NECESSARY DUE TO FRAUD, NONCOMPLIANCE  
18 WITH THE TERMS THAT FORMED THE LIABILITY LIMITATION AGREEMENT, OR A  
19 WRITTEN FINDING BY THE DEPARTMENT THAT A CHANGE IN AN ENVIRONMENTAL  
20 STANDARD, FACTOR, OR CRITERION UPON WHICH THE LIABILITY LIMITATION  
21 AGREEMENT WAS BASED WOULD RENDER REMEDIATION ACTIVITIES NO LONGER  
22 PROTECTIVE OF PUBLIC HEALTH OR THE ENVIRONMENT. NOTHING IN THIS SECTION  
23 SHALL AFFECT THE LIABILITY OF THE PERSON RESPONSIBLE FOR SUCH PERSON'S  
24 OWN ACTS OR OMISSIONS CAUSING WRONGFUL DEATH OR PERSONAL INJURY. NOTHING  
25 IN THIS SECTION SHALL AFFECT THE LIABILITY OF ANY PERSON WITH RESPECT TO  
26 ANY CIVIL ACTION BROUGHT BY A PARTY OTHER THAN THE STATE. THE PROVISIONS  
27 OF THIS SECTION SHALL NOT AFFECT AN ACTION OR A CLAIM, INCLUDING A STAT-  
28 UTORY OR COMMON LAW CLAIM FOR CONTRIBUTION OR INDEMNIFICATION, THAT SUCH  
29 PERSON HAS OR MAY HAVE AGAINST A THIRD PARTY.

30 7. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A PUBLIC  
31 CORPORATION SHALL NOT BE LIABLE FOR THE DISCHARGE OF PETROLEUM AT A SITE  
32 IF SUCH PUBLIC CORPORATION ACQUIRED SUCH SITE INVOLUNTARILY, AND SUCH  
33 PUBLIC CORPORATION RETAINED SUCH SITE WITHOUT PARTICIPATING IN THE  
34 DEVELOPMENT OF SUCH SITE. THIS EXEMPTION SHALL NOT APPLY TO ANY PUBLIC  
35 CORPORATION THAT HAS (A) CAUSED OR CONTRIBUTED TO THE DISCHARGE OF  
36 PETROLEUM FROM OR AT THE SITE, (B) PURCHASED, SOLD, REFINED, TRANS-  
37 PORTED, OR DISCHARGED PETROLEUM FROM OR AT SUCH SITE, OR (C) CAUSED THE  
38 PURCHASE, SALE, REFINEMENT, TRANSPORTATION, OR DISCHARGE OF PETROLEUM  
39 FROM OR AT SUCH SITE. THE TERMS "PARTICIPATION IN DEVELOPMENT," "PUBLIC  
40 CORPORATION" AND "INVOLUNTARY ACQUISITION OF OWNERSHIP OR CONTROL" SHALL  
41 HAVE THE SAME MEANING AS THOSE TERMS ARE DEFINED IN PARAGRAPHS (C), (D)  
42 AND (E) OF SUBDIVISION TWO OF SECTION 27-1323 OF THE ENVIRONMENTAL  
43 CONSERVATION LAW. HOWEVER, "PARTICIPATION IN DEVELOPMENT" SHALL NOT  
44 INCLUDE IMPROVEMENTS WHICH ARE PART OF A CLEANUP AND REMOVAL OF A  
45 DISCHARGE OF PETROLEUM PURSUANT TO THIS ARTICLE.

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

48 S 183. Settlements. The administrator shall attempt to promote and  
49 arrange a settlement between the claimant and the person OR PERSONS  
50 responsible for the discharge. If the source of the discharge can be  
51 determined and liability is conceded, the claimant and the alleged  
52 discharger OR DISCHARGERS may agree to a settlement which shall be final  
53 and binding upon the parties and which will waive all recourse against  
54 the fund. TO THE EXTENT AN ALLEGED DISCHARGER PRESENTS EVIDENCE TO THE  
55 ADMINISTRATOR THAT ANOTHER PARTY IS WHOLLY OR PARTIALLY RESPONSIBLE FOR  
56 THE CLAIM, AND REQUESTS THE ADMINISTRATOR TO CONSIDER WHETHER SUCH

1 INFORMATION PRESENTED ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE  
2 THAT THE THIRD PARTY IS IN FACT WHOLLY OR PARTIALLY RESPONSIBLE, THE  
3 ADMINISTRATOR WITHIN THIRTY DAYS OF RECEIPT OF SUCH REQUEST SHALL EITHER  
4 DETERMINE: (1) IN WRITING, IF THE THIRD PARTY SHALL BE DEEMED AN ADDI-  
5 TIONAL DISCHARGER TO ANY PENDING OR ANTICIPATED CLAIM OR (2) IF AN  
6 ADMINISTRATIVE HEARING AS TO LIABILITY IS NECESSARY.

7 S 6. This act shall take effect immediately.