

[First Reprint]
SENATE, No. 806
STATE OF NEW JERSEY
217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator ROBERT M. GORDON

District 38 (Bergen and Passaic)

Co-Sponsored by:

Senator Bateman

SYNOPSIS

Requires owner or operator of certain trains to have discharge response, cleanup, and contingency plans to transport certain hazardous materials by rail; requires NJ DOT to request bridge inspection reports from US DOT.

CURRENT VERSION OF TEXT

As reported by the Assembly Transportation and Independent Authorities Committee on October 13, 2016, with amendments.

AN ACT concerning ¹[the transport of certain hazardous materials by] freight¹ rail ¹safety¹ and supplementing ¹[Title] Titles¹ 58 ¹and 27¹ of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. As used in P.L. ¹1¹ c. (C.) (pending before the Legislature as this bill):

"Cleanup and removal costs" means all direct costs associated with a discharge, and those indirect costs that may be imposed by the department pursuant to section 1 of P.L.2002, c.37 (C.58:10b-2.1) associated with a discharge, incurred by the State, or its political subdivisions, or their agents, or any person with written approval from the department in the: (1) removal or attempted removal of hazardous substances, or (2) taking of reasonable measures to prevent or mitigate damage to the public health, safety, or welfare, including, but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom

sediments, soils, and other affected property, including wildlife and other natural resources, and shall include costs incurred by the State for the indemnification and legal defense of contractors pursuant to sections 1 through 11 of P.L.1991, c.373 (C.58:10-23.11f8 et seq.);

"Commissioner" means the Commissioner of Environmental Protection;

"Contamination" or "contaminant" means any discharged hazardous substance, hazardous waste as defined pursuant to section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

"Department" means the Department of Environmental Protection;

"Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous substances into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters, or natural resources within the jurisdiction of the State;

"Emergency response action" means those activities conducted by a local unit to clean up, remove, prevent, contain, or mitigate a discharge that poses an immediate threat to the environment or to the public health, safety, or welfare;

"Emergency services personnel" means a person who is employed as a law enforcement officer, emergency medical service technician, firefighter, emergency communications operator, hazardous materials responder, or in a related occupation or profession, or who serves as a volunteer member of a fire department, duly incorporated fire or first aid company, or volunteer emergency, ambulance, or rescue squad association, organization, or company which provides emergency services for a local unit;

"Emergency services provider" means a law enforcement agency, emergency medical services unit, fire department, emergency communications provider, hazardous material response unit, volunteer fire department, duly incorporated fire or first aid company, or volunteer emergency, ambulance, or rescue squad association, organization, or company which provides emergency services for a local unit;

"Hazardous substances" means the "environmental hazardous substances" on the environmental hazardous substance list adopted by the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4); elements and compounds, including petroleum products, which are defined by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 311 of the "Federal Water Pollution Control Act Amendments of 1972," Pub.L.92-500, as amended by the "Clean Water Act of 1977," Pub.L.95-217 (33 U.S.C. s.1251 et seq.); the list of toxic pollutants designated by the Congress of the United States or the federal Environmental Protection Agency pursuant to section 53 of that act; and the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 101 of the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," Pub.L.96-510 (42 U.S.C. s.9601 et seq.); provided, however, that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of P.L. , c. (C.) (pending before the Legislature as this bill);

"High hazard train" means any railroad locomotive propelling a railroad tank car or connection of railroad tank cars transporting 200,000 gallons or more of petroleum or petroleum products or 20,000 gallons or more of hazardous substances other than petroleum or petroleum products;

"Local unit" means any county or municipality, or any agency or other instrumentality thereof, or a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad;

"Major facility" shall have the same meaning as forth in section 3 of P.L.1976, c.141 (C.58:10-23.11b);

"Natural resources" means all land, fish, shellfish, wildlife, biota, air, waters, and other resources owned, managed, held in trust, or otherwise controlled by the State;

"Owner" or "operator" means, with respect to any high hazard train, any person owning the high hazard train, or operating it by lease, contract, or other form of agreement; provided, however, that the owner or operator shall not mean a person who operates a high hazard train only for the purposes of positioning or moving railroad tank cars within the confines of a major facility, or a person whose interest in a high hazard train solely involves the ownership or lease of one or more railroad tank cars without operational authority;

"Person" means public or private corporations, companies, associations, societies, firms, partnerships, joint stock companies, individuals, the United States, the State of New Jersey, and any of its political subdivisions or agents;

"Petroleum" or "petroleum products" shall have the same meaning as forth in section 3 of P.L.1976, c.141 (C.58:10-23.11b);

"Remedial action" means those actions taken at a site or offsite if a contaminant has migrated or is migrating therefrom, as may be required by the department, including the removal, treatment, containment, transportation, securing, or other engineering or treatment measures, whether to an unrestricted use or otherwise, designed to ensure that any discharged contaminant at the site or that has migrated or is migrating from the site, is remediated in compliance with the applicable health risk or environmental standards;

"Remediation" or "remediate" means all necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, provided, however, that "remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources. For the purpose of this definition, "remedial investigation" means a process to determine the nature and extent of a discharge of a contaminant at a site or a discharge of a contaminant that has migrated or is migrating from the site and the problems presented by a discharge, and may include data collected, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the evaluation of remedial actions if necessary and "site investigation" means the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site or have migrated or are migrating from the site at levels in excess of the applicable remediation standards; and

"Waters" means the ocean and its estuaries to the seaward limit of the State's jurisdiction, all springs, streams, and bodies of surface or groundwater, whether natural or artificial, within the boundaries of this State.

2. a. The owner or operator of a high hazard train traveling within this State shall submit a discharge response, cleanup, and contingency plan to the Department of Environmental Protection. The owner or operator of a high hazard train shall submit a discharge response, cleanup, and contingency plan within six months of the effective date of P.L. , c. (C.) (pending before the Legislature as this bill).

b. The discharge response, cleanup, and contingency plan shall contain the following information:

(1) A summary and detailed description of the emergency response measures to be used by the trained personnel or discharge cleanup contractors employed by the owner or operator of the high hazard train, as applicable, in responding to, and minimizing health and environmental dangers from, fires, explosions, or unauthorized discharges or releases of hazardous substances to the air, soil, or waters of the State, including: the planned deployment of personnel and equipment in the event of a discharge or other emergency, the chain of command for the emergency response measures, and the ability of the emergency response measures to comply with the timetables established pursuant to section 8 of P.L. , c. (C.) (pending before the Legislature as this bill);

(2) An identification of all equipment available for cleanup and emergency response measures, including all equipment located in a location other than the high hazard train, that is either under the direct control of the owner or operator of the high hazard train, or that is available, by contract, to the owner or operator of the high hazard train in the event of a discharge or other emergency;

(3) A list of the names, business addresses, home addresses, telephone numbers, electronic mail addresses, and qualifications of all emergency response coordinators employed by the owner or operator of the high hazard train, along with the authority and responsibilities of each emergency response coordinator in the event of a discharge or other emergency, and the names and qualifications of all other trained personnel employed by the owner or operator of the high hazard train, which have been trained to operate containment, cleanup, and removal equipment and are required to respond to a discharge or other emergency;

(4) The priorities for the deployment of trained personnel and emergency response, recovery, and containment equipment to protect residential, environmentally sensitive, or other areas against a discharge or other emergency based on use, seasonal sensitivity, or other relevant factors; and

(5) Any other information deemed necessary or useful by the department.

c. The discharge response, cleanup, and contingency plan shall certify that:

(1) trained personnel and emergency response, recovery, and containment equipment as specified in the discharge response, cleanup, and contingency plan are readily available on the high hazard train or can be speedily deployed to the high hazard train;

(2) the emergency response, recovery, and containment equipment is in good repair;

(3) the discharge response, cleanup, and contingency plan is consistent with applicable local, regional, and State emergency response plans;

(4) the discharge response, cleanup, and contingency plan complies with departmental regulations; and

(5) the discharge response, cleanup, and contingency plan was reviewed, and approved by a licensed professional engineer.

d. The discharge response, cleanup, and contingency plan shall provide for simulated emergency response drills, to be conducted at least once annually, to determine the adequacy of and personnel familiarity with the discharge response, cleanup, and contingency plan.

e. The owner or operator of a high hazard train shall include with the discharge response, cleanup, and contingency plan submitted to the department:

(1) An environmentally sensitive areas and habitats protection plan, reviewed and certified by a marine biologist and an ornithologist, that shall:

- (a) identify all environmentally sensitive areas and wildlife habitats that could be affected by a discharge from the high hazard train that travels in proximity to the environmentally sensitive area;
- (b) identify the seasonal sensitivity of the areas or habitats;
- (c) in the event of a discharge, provide for the protection from, and mitigation of, any potentially adverse impact of the discharge on the identified areas or habitats; and
- (d) provide for an environmental assessment of the impact of any discharge on the identified areas and habitats, including the effects on the habitat's flora, fauna, or organisms.

The environmentally sensitive areas and habitats protection plan shall, using criteria established by the department for identifying environmentally sensitive areas or habitats, identify any environmentally sensitive area or habitat that could be adversely affected by a discharge from the high hazard train;

(2) A copy of any existing agreement between the owner or operator of the high hazard train and an emergency services provider of a local unit located along the travel route of the high hazard train to coordinate the emergency response actions of the local unit and the owner or operator of the high hazard train; and

(3) A copy of all current contracts or agreements between the owner or operator of the high hazard train and a discharge cleanup organization for remedial action, including containment, cleanup, removal, and disposal.

3. a. The owner or operator of a high hazard train shall submit an application for renewal of the discharge response, cleanup, and contingency plan every five years to the department, unless the department requires a more frequent submission. Applications for discharge response, cleanup, and contingency plan renewals shall be accompanied by a summary of all unauthorized discharges within this State by the owner or operator of the high hazard train and any other information as may be deemed necessary or useful to the department. Discharge response, cleanup, and contingency plan renewals may be limited to certifying that the existing discharge response, cleanup, and contingency plan on file with the department is current. Filing of a revised discharge response, cleanup, and contingency plan may be required by the department at the time of renewal so as to incorporate into the discharge response, cleanup, and contingency plan all amendments to the discharge response, cleanup, and contingency plan adopted since the filing of the original discharge response, cleanup, and contingency plan or its last renewal.

b. The owner or operator of a high hazard train shall file an amendment to the discharge response, cleanup, and contingency, not later than 30 days after any modification of the high hazard train, rail yards, fueling stations, or the high hazard train's route of travel.

4. The owner or operator of a high hazard train shall make available to the public on its website, to the extent that the release of the information shall not conflict with federal law, the following information:

- a. The routes and volumes of cargoes updated on a monthly basis;
- b. An analysis of the consequences of maximum discharges from the high hazard trains owned or operated in the State;
- c. A copy of the most current discharge response, cleanup, and contingency plan submitted to the department pursuant to sections 2 and 3 of P.L. c. (C.) (pending before the Legislature as this bill); and
- d. A railroad routing analysis, as required pursuant to section 1551 of the "Implementing Recommendations of the 9/11 Commission Act of 2007," Pub.L.110-53 (6 U.S.C.s.1201 et seq.), and any

accompanying documentation that impacted the owner or operator's decision in routing the high hazard train through the State.

5. A copy of the discharge response, cleanup, and contingency plan, discharge response, cleanup, and contingency plan renewal, and all discharge response, cleanup, and contingency plan amendments shall be filed by the owner or operator of a high hazard train with the New Jersey Office of Emergency Management.

6. The owner or operator of a high hazard train shall, at all times, retain on file with the department evidence of financial responsibility for ¹~~the cleanup and removal costs of~~ ¹~~cleaning up and removing~~ the cleanup and removal costs of a discharge or release of a hazardous substance, and for the removal of any damaged or disabled high hazard train equipment or parts. The amount, nature, terms, and conditions of the financial responsibility shall be determined by the department. The owner or operator of a high hazard train shall file evidence of financial responsibility with the department within 180 days of the effective date of P.L. , c. (C.) (pending before the Legislature as this bill).

7. The owner or operator of a high hazard train shall offer training to the emergency services personnel of every local unit having jurisdiction along the travel route of a high hazard train. Initial training shall be offered within one year of the effective date of P.L. c. (C.) (pending before the Legislature as this bill) with renewal training offered to the emergency service personnel of every local unit having jurisdiction along the travel route of a high hazard train at least once every three years thereafter. The training shall address: the general hazards of the petroleum, petroleum products, or hazardous substances being transported by the high hazard train; techniques to assess hazards to the environment in the event of a discharge; techniques to assess the safety of emergency service personnel and the general public in the event of a discharge that poses an imminent threat to public health, safety, or welfare; factors an emergency service provider shall consider in determining whether to attempt to suppress a fire or to evacuate the public and emergency service personnel from an area in the event of a discharge that poses an imminent threat to public health, safety, or welfare; and other suggested protocols or practices for emergency service personnel to consider in the event of a discharge that poses an imminent threat to public health, safety, or welfare.

8. Following a discharge that requires emergency response action, the owner or operator of a high hazard train shall:

a. Within one hour of a discharge, identify an emergency response coordinator to advise the emergency services provider of the local unit. The emergency response coordinator may be made available by telephone, but is required to have authorization to deploy all necessary emergency response resources of the owner or operator of the high hazard train;

b. Within three hours of a discharge, deploy the emergency response coordinator and trained personnel to the discharge site to assess the discharge and to advise the emergency service provider of the local unit;

c. Within eight hours of a discharge, deliver and deploy emergency response, recovery, and containment equipment, trained personnel, and all other materials needed to provide on-site containment of the discharged petroleum, petroleum products, and hazardous substances and to protect environmentally sensitive areas and

potable water intakes within one mile of the discharge site and within eight hours of calculated water travel time in any river or stream that the discharge site intersects; and

d. Within 60 hours of a discharge, deliver and deploy additional emergency response, recovery, and containment equipment, trained personnel, and all other materials needed to provide containment and recovery of the discharged petroleum, petroleum products, and hazardous substances and to protect environmentally sensitive areas and potable water intakes at any location along the travel route of the high hazard train or in any river or stream that the discharge site intersects.

9. The provisions of P.L. c. (C.) (pending before the Legislature as this bill) shall not apply to the owner or operator of a ¹high hazard train in circumstances where the high hazard train is operating or traveling entirely within a major facility Class III carrier, as defined by the Surface Transportation Board within the United States Department of Transportation pursuant to 49 C.F.R. Part 1201.1-1, that operates within a single municipality on not more than 25 total track miles and is engaged in switching or terminal railroad services¹.

Nothing contained herein shall be construed to exempt a major facility from the provisions of the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.).

10. a. Except as otherwise provided in subsection b. of this section, the department shall, as soon as practicable, but not later than six months following a filing of a discharge response, cleanup, and contingency plan or a renewal of a discharge response, cleanup, and contingency plan, or, in the case of amendments, within 60 days of the filing of the amendments, review the filing to determine compliance with all statutory requirements, including rules and regulations adopted pursuant thereto.

b. The department may, at any time during the discharge response, cleanup, and contingency plan, discharge response, cleanup, and contingency plan renewal, or discharge response, cleanup, and contingency plan amendment review period approve, conditionally approve, or disapprove a discharge response, cleanup, and contingency plan, discharge response, cleanup, and contingency plan renewal, or discharge response, cleanup, and contingency plan amendments. If a discharge response, cleanup, and contingency plan, discharge response, cleanup, and contingency plan renewal, or discharge response, cleanup, and contingency plan amendments are disapproved, the owner or operator of the high hazard train shall have 30 days from receipt of written notice of the disapproval, and the reasons therefor, with which to submit a revised discharge response, cleanup, and contingency plan or discharge response, cleanup, and contingency plan amendments. If after 30 days of receipt of a written request therefor, the owner or operator of the high hazard train fails to file a revised discharge response, cleanup, and contingency plan, discharge response, cleanup, and contingency plan renewal, or amendments to the department or fails to contest the department's request in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the discharge response, cleanup, and contingency plan, discharge response, cleanup, and contingency plan renewal, or discharge response, cleanup, and contingency plan amendments shall be deemed to have been disapproved by the department and the owner or operator of the high hazard train shall be in violation of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill). The department may, for good cause, extend by up

to an additional 30 days the time period for filing a revised discharge response, cleanup, and contingency plan or discharge response, cleanup, and contingency plan amendments.

11. a. Whenever, on the basis of available information, the Commissioner of Environmental Protection finds that the owner or operator of a high hazard train is in violation of the provisions of P.L. , c. (C.) (pending before the Legislature as this bill), or any rule or regulation adopted pursuant thereto, the commissioner may:

- (1) Levy a civil administrative penalty in accordance with subsection b. of this section; or
- (2) Bring an action for a civil penalty in accordance with subsection c. of this section.

The exercise of any of the remedies provided in this section shall not preclude recourse to any other remedy so provided.

b. The commissioner is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of the provisions of P.L. , c. (C.) (pending before the Legislature as this bill), or any rule or regulation adopted pursuant thereto, and each day during which each violation continues shall constitute an additional, separate, and distinct offense. Any amount assessed under this section shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, duration, and conduct; provided, however, that prior to the adoption of the rule or regulation, the commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein. In addition to any civil administrative penalty assessed under this subsection and notwithstanding the \$25,000 maximum penalty set forth above, the commissioner may assess any economic benefits from the violation gained by the violator. Prior to assessment of a penalty under this subsection, the owner or operator of the high hazard train committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall ^{1.1} include ^{1[:]} a reference to the section of the statute or regulation violated; recite the facts alleged to constitute a violation; state the basis for the amount of the civil penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 calendar days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If a hearing is not requested, the notice shall become a final order after the expiration of the 35 calendar day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy an administrative order is in addition to all other enforcement provisions in P.L. , c. (C.) (pending before the Legislature as this bill), or of any rule or regulation adopted pursuant thereto, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. The department may compromise any civil administrative penalty assessed under this subsection in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including a portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, an additional interest charge shall not accrue on the amount of the penalty until 90 days after the

date on which a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court.

c. Any owner or operator of a high hazard train who violates the provisions of P.L. , c. (C.) (pending before the Legislature as this bill), or any rule or regulation adopted pursuant thereto, or who fails to pay in full a civil administrative penalty levied pursuant to subsection b. of this section, or who fails to make a payment pursuant to a penalty payment schedule entered into with the department, or who knowingly makes any false or misleading statement, representation, or certification on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty not to exceed \$25,000 for each day during which the violation continues. Any civil penalty imposed pursuant to this subsection may be collected, and any costs incurred in connection therewith may be recovered, in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of economic benefit accruing to the violator from the violation. The Superior Court shall have jurisdiction to enforce the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

d. The owner or operator of a high hazard train that experiences a discharge shall be subject to the penalty and injunctive relief provisions of section 22 of P.L.1976, c.141 (C.58:10-23.11u).

12. Whenever information is received by the New Jersey Office of Emergency Management pursuant to United States Department of Transportation Emergency Order Docket No. DOT-OST-2014-0067, or any law, rule, regulation, or order that shall supersede that order, or pursuant to section 5 of P.L. c. (C.) (pending before the Legislature as this bill), the New Jersey Office of Emergency Management shall provide that information to each county office of emergency management and emergency services provider having jurisdiction along the travel route of a high hazard train.

13. The department shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate the purposes of this act.

¹14. a. In accordance with the federal regulations promulgated pursuant to section 11405 of the federal "Fixing America's Surface Transportation Act," Pub.L.114-94, the Commissioner of Transportation shall, at least annually and whenever the Commissioner of Transportation shall deem necessary, request from the United States Secretary of Transportation a copy of the most recent bridge inspection report generated pursuant to the federal "Railroad Safety Improvement Act of 2008," Pub.L.110-432, for every bridge owned by a railroad or upon which a railroad is located.

The Commissioner of Transportation shall submit any bridge inspection report, acquired by the Department of Transportation pursuant to this section, to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.¹

¹[14.] 15.¹ This act shall take effect immediately.