

PUBLIC HEARING

before

ASSEMBLY AGRICULTURE AND ENVIRONMENT COMMITTEE

on

ASSEMBLY BILL NO. 3542

(Amends various sections of the  
"Spill Compensation and Control Act")

Held:  
October 10, 1979  
Assembly Chamber  
State House  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman H. Donald Stewart (Chairman)  
Assemblyman Robert P. Hollenbeck  
Assemblywoman Barbara McConnell  
Assemblyman James J. Barry, Jr.

ALSO:

Norman Miller, Research Associate  
Office of Legislative Services  
Aide, Assembly Agriculture and Environment Committee

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ASSEMBLY, No. 3542

STATE OF NEW JERSEY

INTRODUCED JULY 16, 1979

By Assemblyman LESNIAK

Referred to Committee on Agriculture and Environment

AN ACT to amend the "Spill Compensation and Control Act,"  
approved January 6, 1977 (P. L. 1976, c. 141).

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

1 1. Section 3 of P. L. 1976, c. 141 (C. 58:10-23.11b) is amended to  
2 read as follows:

3 3. Unless the context clearly indicates otherwise, the following  
4 terms shall have the following meanings:

5 a. "Administrator" means the chief executive of the New Jersey  
6 Spill Compensation Fund;

7 b. "Barrel" means 42 United States gallons or 159.09 liters or  
8 an appropriate equivalent measure set by the director for hazard  
9 ous substances which are other than fluid or which are not com-  
10 monly measured by the barrel;

11 c. "Board" means a board of arbitration convened by the  
12 administrator to settle disputed disbursements from the fund;

13 d. "Cleanup and removal costs" means all costs associated with  
14 a discharge incurred by the State or its political subdivisions or  
15 their agents or any person with written approval from the depart-  
16 ment in the (1) removal or attempted removal of hazardous sub-  
17 stances or, (2) taking of reasonable measures to prevent or mitigate  
18 damages to the public health, safety, or welfare, including but not  
19 limited to, public and private property, shorelines, beaches, surface  
20 waters, water columns and bottom sediments, soils and other  
21 affected property, including wildlife and other natural resources;

22 e. "Commissioner" means the Commissioner of Environmental  
23 Protection;

24 f. "Department" means the Department of Environmental  
25 Protection;

26 g. "Director" means the Director of the Division of Taxation in  
27 the Department of the Treasury;

EXPLANATION—Matter enclosed in bold-faced brackets [bma] in the above bill  
is not enacted and is intended to be omitted in the law.

28 h. "Discharge" means any intentional or unintentional action  
 29 or omission resulting in the releasing, spilling, leaking, pumping,  
 30 pouring, emitting, emptying or dumping of hazardous substance  
 31 into the waters of the State or onto lands from which it might  
 32 flow or drain into said waters, or into waters outside the juris-  
 33 diction of the State when damage may result to the lands, waters  
 34 or natural resources within the jurisdiction of the State;

35 i. "Fair market value" means the invoice price of the hazardous  
 36 substances transferred including transportation charges; but where  
 37 no price is so fixed, "fair market value" shall mean the market  
 38 price as of the close of the nearest day to the transfer paid for  
 39 similar hazardous substances as shall be determined by the tax-  
 40 payer pursuant to rules of the director.

41 [i.] j. "Fund" means the New Jersey Spill Compensation Fund;

42 [i.] k. "Hazardous substances" means such elements and com-  
 43 pounds, including petroleum products, which are defined as such  
 44 by the department, after public hearing, and which shall be con-  
 45 sistent to the maximum extent possible with, and which shall  
 46 include, the list of hazardous substances adopted by the Federal  
 47 Environmental Protection Agency pursuant to Section 311 of the  
 48 Federal Water Pollution Control Act Amendments of 1972 as  
 49 amended by the Clean Water Act of 1977 ([P. L. 92-500,] 33 U.S.C.  
 50 1251 et seq.) and the list of toxic pollutants designated by Congress  
 51 or the EPA pursuant to Section 307 of that act; provided, however  
 52 that sewage and sewage sludge shall not be considered as haz-  
 53 ardous substances for the purposes of this act;

54 [k.] l. "Major facility" includes but is not limited to any  
 55 refinery, storage or transfer terminal, pipeline, deep water port,  
 56 drilling platform or any appurtenance related to any of the pre-  
 57 ceding that is used or is capable of being used to refine, produce,  
 58 store, handle, transfer, process or transport hazardous substances.  
 59 A vessel shall be considered a major facility only when hazardous  
 60 substances are transferred between vessels. [Facilities with total  
 61 combined above-ground or buried storage capacity of less than  
 62 400,000 gallons are not major facilities for the purposes of this  
 63 act.]

64 A facility shall not be considered a major facility for the purpose  
 65 of this act unless it has total combined above-ground or buried  
 66 storage capacity of—

67 (1) 50,000 gallons or more for hazardous substances which are  
 68 other than petroleum or petroleum products, or

69 (2) 400,000 gallons or more for hazardous substances of all kinds.

70 For the purposes of this definition, "storage capacity" shall  
71 mean only that capacity which is dedicated to, used for or intended  
72 to be used for storage of hazardous substances. Where appropriate  
73 to the nature of the facility, storage capacity may be determined  
74 by the intended or actual use of open land or unenclosed space as  
75 well as by the capacities of tanks or other enclosed storage spaces.

76 [l.] m. "Natural resources" means all land, fish, shellfish, wild-  
77 life, biota, air, waters and other such resources owned, managed,  
78 held in trust or otherwise controlled by the State;

79 [m.] n. "Owner" or "operator" means with respect to a vessel,  
80 any person owning, operating or chartering by demise such vessel;  
81 with respect to any major facility, any person owning such facility,  
82 or operating it by lease, contract or other form of agreement; with  
83 respect to abandoned or derelict major facilities, the person who  
84 owned or operated such facility immediately prior to such abandon-  
85 ment, or the owner at the time of discharge;

86 [n.] o. "Person" means public or private corporations, com-  
87 panies, associations, societies, firms, partnerships, joint stock com-  
88 panies, individuals, the United States, the State of New Jersey  
89 and any of its political subdivisions or agents;

90 [o.] p. "Petroleum" means oil or petroleum of any kind and in  
91 any form including, but not limited to, oil, petroleum, fuel oil,  
92 oil sludge, oil refuse, oil mixed with other wastes and crude oils;  
93 however, any compound designated by specific chemical name to the  
94 list of hazardous substances adopted by the department pursuant to  
95 subsection 3(k) shall not be considered petroleum or a petroleum  
96 product for the purposes of this act.

97 [p.] q. "Taxpayer" means the owner or operator of a major  
98 facility subject to the tax provisions of this act;

99 [q.] r. "Tax period" means every calendar month on the basis  
100 of which the taxpayer is required to report under this act;

101 [r.] s. "Transfer" means unloading or offloading between major  
102 facilities and vessels or vessels and major facilities, and from  
103 vessel to vessel or major facility to major facility, except for fueling  
104 or refueling operations and except that with regard to the move-  
105 ment of hazardous substances other than petroleum, it shall also  
106 include any unloading of or offloading from a major facility;

107 [s.] t. "Vessel" means every description of water craft or other  
108 contrivance that is practically capable of being used as a means  
109 of commercial transportation of hazardous substances upon the  
110 water, whether or not self-propelled;

111 [t.] u. "Waters" means the ocean and its estuaries to the sea-  
112 ward limit of the State's jurisdiction, all springs, streams and

113 bodies of surface or groundwater, whether natural or artificial,  
114 within the boundaries of this State [;].

115 [u. "Act of God" means an act exclusively occasioned by an  
116 unanticipated grave natural disaster without the interference of  
117 any human agency.]

1 2. Section 7 of P. L. 1976, c. 141 (C. 58:10-23.11f) is amended  
2 to read as follows:

3 7. a. Whenever any hazardous substance is discharged, the de-  
4 partment [shall] *may in its discretion* act to remove or arrange for  
5 the removal of such discharge[, unless it determines such removal  
6 will be done properly and expeditiously by the owner or operator  
7 of the major facility or any other source from which the discharge  
8 occurs].

9 Removal of hazardous substances and actions to minimize  
10 damage from discharges shall, to the greatest extent possible, be in  
11 accordance with the National Contingency Plan for removal of oil  
12 and hazardous substances established pursuant to section 311 (c)  
13 (2) of the Federal Water Pollution Control Act Amendments of  
14 1972 (P. L. 92-500, 33 U. S. C. 1251 et seq.).

15 Whenever the department acts to remove a discharge or contracts  
16 to secure prospective removal services, it is authorized to draw  
17 upon the money available in the fund. Such moneys shall be used  
18 to pay promptly for all cleanup costs incurred by the department  
19 in removing or in minimizing damage caused by such discharge.

20 Nothing in this section is intended to preclude removal and  
21 cleanup operations by any person threatened by such discharges,  
22 provided such persons coordinate and obtain approval for such  
23 actions with ongoing State or Federal operations. No action taken  
24 by any person to contain or remove a discharge shall be construed  
25 as an admission of liability for said discharge. No person who  
26 renders assistance in containing or removing a discharge shall be  
27 liable for any civil damages to third parties resulting solely from  
28 acts or omissions of such person in rendering such assistance except  
29 for acts or omissions of gross negligence or willful misconduct.  
30 In the course of cleanup operations, no person shall discharge  
31 any detergent into the waters of this State without prior authoriza-  
32 tion of the commissioner.

33 *b. Notwithstanding any other provisions of P. L. 1976, c. 141*  
34 *(C. 58:10-23.11 et seq.), the department, after notifying the ad-*  
35 *ministrators and subject to the approval of the administrator, with*  
36 *regard to the availability of funds therefor, may remove or arrange*  
37 *for the removal of any hazardous substance which:*

38 (1) Has not been discharged from a grounded or disabled vessel  
39 if the department determines that such removal is necessary to  
40 prevent an imminent discharge of such hazardous substance;

41 (2) Has not been discharged if the department determines that  
42 such substance is not satisfactorily stored or contained and such  
43 substance possesses any one or more of the following characteris-  
44 ties:

45 (a) explosiveness;

46 (b) high flammability;

47 (c) radioactivity;

48 (d) chemical properties which in combination with any dis-  
49 charged hazardous substance at the same storage facility would  
50 create a substantial risk of imminent damage to public health  
51 or safety or an imminent and severe damage to the environ-  
52 ment;

53 (e) is stored in a container from which its discharge is im-  
54 minent as a result of contact with a hazardous substance which  
55 has already been discharged and such additional discharge  
56 would create a substantial risk of imminent damage to public  
57 health or safety or imminent and severe damage to the en-  
58 vironment; or

59 (f) high toxicity and is stored or being transported in a  
60 container or motor vehicle, truck, railway or other mechanized  
61 conveyance from which its discharge is imminent as a result  
62 of the significant deterioration or the precarious location of  
63 the container, motor vehicle, truck, railway or other mechanized  
64 conveyance, and such discharge would create a substantial  
65 risk of imminent damage to public health or safety or imminent  
66 and severe damage to the environment.

67 (3) Has been discharged prior to the effective date of the act to  
68 which this act is amendatory, if such discharge poses a substantial  
69 risk of imminent damage to the public health or safety or imminent  
70 and severe damage to the environment.

71 c. If and to the extent that he determines that funds are available,  
72 the administrator shall approve and make payments for any cleanup  
73 and removal costs incurred by the department for the removal of  
74 a hazardous substance other than petroleum as authorized by sub-  
75 section b. of this section; provided that in determining the avail-  
76 ability of funds, the administrator shall not include as available  
77 funds revenues realized or to be realized from the tax on the trans-  
78 fer of petroleum to the extent that such revenues result from a  
79 tax levied at a rate in excess of \$0.01 per barrel, pursuant to sub-

80 section 9b. of the act to which this act is amendatory, unless the  
 81 administrator determines that the sum of claims paid by the fund  
 82 on behalf of petroleum discharges or removals plus pending reason-  
 83 able claims against the fund on behalf of petroleum discharges or  
 84 removals is greater than 30% of the sum of all claims paid by the  
 85 fund plus all pending, reasonable claims against the fund.

86 d. The administrator may only approve and make payments for  
 87 any cleanup and removal costs incurred by the department for the  
 88 removal of a hazardous substance discharged prior to the effective  
 89 date of the act to which this act is amendatory, pursuant to subsec-  
 90 tion b. of this section, if, and to the extent that, he determines that  
 91 adequate funds from another source are not or will not be avail-  
 92 able; and further provided, with regard to the cleanup and removal  
 93 costs incurred for discharges which occurred prior to the effective  
 94 date of the act to which this act is amendatory, the administrator  
 95 may not during any 1 year period pay more than \$2,500,000.00 in  
 96 total or more than \$1,000,000.00 for any discharge or related set or  
 97 series of discharges.

98 e. Any expenditures made by the administrator pursuant to this  
 99 act shall constitute a first priority claim and lien paramount to all  
 100 other claims and liens upon the revenues and all real and personal  
 101 property of the discharger, whether or not the discharger is in-  
 102 solvent.

1 Section 8 of P. L. 1976, c. 141 (C. 58:10-23.11g) is amended to  
 2 read as follows:

3 8. a. The fund shall be strictly liable, without regard to fault,  
 4 for all cleanup and removal costs and for all direct and indirect  
 5 damages no matter by whom sustained, including but not limited to:

6 (1) The cost of restoring, repairing, or replacing any real or  
 7 personal property damaged or destroyed by a discharge, any income  
 8 lost from the time such property is damaged to the time such  
 9 property is restored, repaired or replaced, and any reduction in  
 10 value of such property caused by such discharge by comparison  
 11 with its value prior thereto;

12 (2) The cost of restoration and replacement, where possible, of  
 13 any natural resource damaged or destroyed by a discharge;

14 (3) Loss of income or impairment of earning capacity due to  
 15 damage to real or personal property, including natural resources  
 16 destroyed or damaged by a discharge; provided that such loss or  
 17 impairment exceeds 10% of the amount which claimant derives,  
 18 based upon income or business records, exclusive of other sources  
 19 of income, from activities related to the particular real or personal  
 20 property or natural resources damaged or destroyed by such dis-

21 charge during the week, month or year for which the claim is filed.

22 (4) Loss of tax revenue by the State or local governments for  
23 a period of 1 year due to damage to real or personal property  
24 proximately resulting from a discharge;

25 (5) Interest on loans obtained or other obligations incurred  
26 by a claimant for the purpose of ameliorating the adverse effects  
27 of a discharge pending the payment of a claim in full as provided  
28 by this act.

29 b. The damages which may be recovered by the fund, without  
30 regard to fault, subject to the defenses enumerated in subsection  
31 d. of this section, against the owner or operator of a major facility  
32 or vessel, shall not exceed \$50,000,000.00 for each major facility  
33 or \$150.00 per gross ton for each vessel, except that such maximum  
34 limitation shall not apply and the owner or operator shall be liable,  
35 jointly and severally, for the full amount of such damages if it can  
36 be shown that such discharge was the result of (1) gross negligence  
37 or willful misconduct, within the knowledge and privity of the  
38 owner, operator or person in charge, or (2) a gross or willful viola-  
39 tion of applicable safety, construction or operating standards or  
40 regulations. Damages which may be recovered from, or by, any  
41 other person shall be limited to those authorized by common or  
42 statutory law.

43 c. Any person who has discharged a hazardous substance or is  
44 in any way responsible for any hazardous substance which the  
45 department has removed or is removing pursuant to subsection b.  
46 of section 7 of this act shall be strictly liable, jointly and severally,  
47 without regard to fault, for all cleanup and removal costs.

48 [d. An act or omission caused solely by war, sabotage, govern-  
49 mental negligence, God, or a third party or a combination thereof  
50 shall be the only defenses which may be raised by any owner or  
51 operator of a major facility or vessel responsible for a discharge  
52 in any action arising under the provisions of this act. For the  
53 purposes of this act, no employee or agent of such owner or  
54 operator shall be considered as a third party. Any other person  
55 shall have available to him any defense authorized by common or  
56 statutory law.]

1 k. Section 9 of P. L. 1976, c. 141 (C. 58:10-23.11h) is amended to  
2 read as follows:

3 9. a. There is hereby levied upon each owner or operator of one  
4 or more major facilities a tax to insure compensation for cleanup  
5 costs and damages associated with any discharge of hazardous  
6 substances to be paid by the transferee; provided, however, that  
7 in the case of a major facility which operates as a public storage

8 terminal for hazardous substances owned by others, the owner of  
9 the hazardous substance transferred to such major facility or his  
10 authorized agent shall be considered to be the transferee for the  
11 purposes of this section and shall be deemed to be a taxpayer for  
12 purposes of this act. Where such person has failed to file a return  
13 or pay the tax imposed by this act within 60 days after the due date  
14 thereof, the director shall forthwith take appropriate steps to  
15 collect same from the owner of the hazardous substance. In the  
16 event the director is not successful in collecting said tax then on  
17 notice to the owner or operator of the public storage terminal of  
18 said fact said owner or operator shall not release any hazardous  
19 substance owned by the taxpayer. The director may forthwith  
20 proceed to satisfy any tax liability of the taxpayer by seizing,  
21 selling or otherwise disposing of said hazardous substance to  
22 satisfy the taxpayer's tax liability and to take any further steps  
23 permitted by law for its collection. For the purposes of this act  
24 public storage terminal shall mean a public or privately owned  
25 major facility operated for public use which is used for the storage  
26 or transfer of hazardous substances. The tax shall be measured by  
27 the number of barrels or the fair market value, as the case may be,  
28 of hazardous substances transferred to the major facility, provided,  
29 however, that the same barrel, including any products derived  
30 therefrom, subject to multiple transfers from or between major  
31 facilities shall be taxed only once at the point of the first transfer;  
32 provided, however, that in the case of the transfer of hazardous  
33 substances other than petroleum, each transfer whether between  
34 major facilities or to or from a major facility shall be subject to  
35 tax. When a hazardous substance other than petroleum is trans-  
36 ferred from a major in-State facility to a facility which is not a  
37 major facility, the transferor shall be liable for tax payment for  
38 said transfer.

39 b. The tax shall be \$0.01 per barrel transferred and in the case  
40 of the transfer of hazardous substances other than petroleum, the  
41 tax shall be the greater of \$0.01 per barrel or 0.1% of the fair market  
42 value of the product, until the balance in the fund equals or exceeds  
43 ~~[\$25,000,000.00]~~ \$50,000,000.00. In each fiscal year following any  
44 year in which the balance of the fund equals or exceeds  
45 ~~[\$25,000,000.00]~~ \$50,000,000.00, no tax shall be levied unless (1)  
46 the current balance in the fund is less than ~~[\$20,000,000.00]~~  
47 \$40,000,000.00 or (2) pending claims against the fund exceed 50%  
48 of the existing balance of the fund. The provisions of the foregoing  
49 notwithstanding, should claims paid from or pending against the  
50 fund not exceed \$5,000,000.00 within 3 years after the tax is first

51 levied, the tax shall be \$0.01 per barrel transferred until the balance  
52 in the fund equals or exceeds ~~[\$18,000,000.00]~~ \$36,000,000.00, and  
53 thereafter shall not be levied unless: (1) the current balance in the  
54 fund is less than ~~[\$15,000,000.00]~~ \$30,000,000.00 or (2) pending  
55 claims against the fund exceed 50% of the existing balance of the  
56 fund. In the event of either such occurrence and upon certification  
57 thereof by the State Treasurer, the director shall within 10 days of  
58 the date of such certification relevel the excise tax, which shall take  
59 effect on the first day of the month following such relevel. In the  
60 event of a major discharge or series of discharges resulting in  
61 claims against the fund exceeding the existing balance of the fund,  
62 the tax shall be levied at the rate of \$0.04 per barrel transferred  
63 until the balance in the fund equals 150% of pending claims against  
64 the fund; provided, however, that the rate may be set at less than  
65 \$0.04 per barrel transferred if the administrator determines that  
66 the revenue produced by such lower rate shall be sufficient to  
67 pay outstanding claims against the fund within 1 year of such  
68 levy. Interest received on moneys in the fund shall be credited to  
69 the fund. Should the fund exceed ~~[\$18,000,000.00]~~ \$36,000,000.00 or  
70 ~~[\$25,000,000.00]~~ \$50,000,000.00, as herein provided, as a result of  
71 such interest, the administrator and the commissioner shall report  
72 to the Legislature and the Governor concerning the options for the  
73 use of such interest.

74 c. (1) Every taxpayer and owner or operator of a public storage  
75 terminal for hazardous substances shall on or before the twentieth  
76 day of the month following the close of each tax period render a  
77 return under oath to the director on such forms as may be pre-  
78 scribed by the director indicating the number of barrels of hazar-  
79 dous substances transferred ~~[to the major facility during the tax~~  
80 ~~period]~~ and where appropriate, the fair market value of the  
81 hazardous substances transferred to or from the major facility.  
82 and at said time the taxpayer shall pay the full amount of the  
83 tax due.

84 (2) Every taxpayer or owner or operator of a major facility or  
85 vessel which transfers a hazardous substance, as defined in this  
86 act, and who is subject to the tax under subsection a. shall within  
87 20 days after the first such transfer in any fiscal year register with  
88 the director on such form as shall be prescribed by him.

89 d. If a return required by this act is not filed, or if a return when  
90 filed is incorrect or insufficient in the opinion of the director, the  
91 amount of tax due shall be determined by the director from such  
92 information as may be available. Notice of such determination  
93 shall be given to the taxpayer liable for the payment of the tax.

94 Such determination shall finally and irrevocably fix the tax unless  
95 the person against whom it is assessed, within 30 days after receiv-  
96 ing notice of such determination, shall apply to the director for a  
97 hearing, or unless the director on his own motion shall redetermine  
98 the same. After such hearing the director shall give notice of his  
99 determination to the person to whom the tax is assessed.

100 c. Any taxpayer who shall fail to file his return when due or to  
101 pay any tax when the same becomes due, as herein provided, shall  
102 be subject to such penalties and interest as provided in the "State  
103 Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised  
104 Statutes. If the Division of Taxation determines that the failure  
105 to comply with any provision of this section was excusable under  
106 the circumstances, it may remit such part or all of the penalty as  
107 shall be appropriate under such circumstances.

108 f. (1) Any person failing to file a return, failing to pay the tax,  
109 or filing or causing to be filed, or making or causing to be made,  
110 or giving or causing to be given any return, certificate, affidavit,  
111 representation, information, testimony or statement required or  
112 authorized by this act, or rules or regulations adopted hereunder  
113 which is willfully false, or failing to keep any records required  
114 by this act or rules and regulations adopted hereunder, shall, in  
115 addition to any other penalties herein or elsewhere prescribed, be  
116 guilty of a misdemeanor.

117 (2) The certificate of the director to the effect that a tax has not  
118 been paid, that a return has not been filed, that information has  
119 not been supplied or that inaccurate information has been supplied  
120 pursuant to the provisions of this act or rules or regulations  
121 adopted hereunder shall be presumptive evidence thereof.

122 g. In addition to the other powers granted to the director in this  
123 section, he is hereby authorized and empowered:

124 (1) To delegate to any officer or employee of his division such of  
125 his powers and duties as he may deem necessary to carry out  
126 efficiently the provisions of this section, and the person or persons  
127 to whom such power has been delegated shall possess and may  
128 exercise all of said powers and perform all of the duties delegated  
129 by the director;

130 (2) To prescribe and distribute all necessary forms for the  
131 implementation of this section.

132 h. The tax imposed by this section shall be governed in all  
133 respects by the provisions of the "State Tax Uniform Procedure  
134 Law," Subtitle 9 of Title 54 of the Revised Statutes, except only  
135 to the extent that a specific provision of this section may be in  
136 conflict therewith.

137 i. Notwithstanding any other provisions of this section, the  
 138 Treasurer may order the director to levy the tax on all hazardous  
 139 substances other than petroleum at a specified rate greater than  
 140 \$0.01 per barrel or 0.1% of the fair market value of the product,  
 141 whichever is greater, but in no event to exceed the greater of \$0.04  
 142 per barrel or 0.4% of the fair market value of the product, if and  
 143 as long as the administrator determines the following:

144 (1) That pending, reasonable claims against the fund for hazar-  
 145 dous substances other than petroleum exceed 70% of the existing  
 146 balance of the fund, and

147 (2) That the sum of the claims paid by the fund on behalf of  
 148 discharges or removals of hazardous substances other than petro-  
 149 leum plus pending, reasonable claims against the fund on behalf  
 150 of discharges or hazardous substances other than petroleum is  
 151 equal to or greater than 70% of all claims paid by the fund plus  
 152 all pending, reasonable claims against the fund.

1 4. This act shall take effect immediately.

#### STATEMENT

This bill would amend the scope of authority of the Department of Environmental Protection to cleanup discharges of hazardous substances into the environment and would increase the liability of the Spill Compensation Fund to pay for the cleanup of such discharges. Further, the bill would distinguish between the petroleum and chemical industries for tax purposes.

The following significant amendments to the Spill Compensation and Control Act would be made:

##### *Section 3.*

The definition of "fair market value" would be added to the law. Under the proposed amendments the treasurer would be able to assess an increase in the tax on a non-petroleum hazardous substance based upon the fair market of the substance rather than at a rate of one cent per barrel, whichever is greater.

The definition of "major facility" would be amended to decrease the storage capacity requirement for non-petroleum hazardous substances. Under present law all facilities with a total capacity of more than 400,000 gallons are major facilities. Under the proposed amendment there would be two categories of facilities:

(1) Facilities with a capacity of 50,000 gallons or more for hazardous substances other than petroleum products and

(2) Facilities with a storage capacity of 400,000 gallons or more for all hazardous substances.

The definition of "transfer" would be expanded to state that with regard to transfer of hazardous substances other than petroleum the transfer would include the on-loading or off-loading to or from a major facility. Under present law the tax is imposed only on transfers between major facilities.

*Section 7.*

This section would be amended to give the DEP the discretion to act to remove a discharge. Under present law the DEP is required to act to remove a discharge unless they determine that the discharger will do so in an expeditious manner.

Other amendments would expand and clarify the scope of authority of DEP to respond to certain critical situations:

Section 7, as amended, would provide that the DEP after notifying the administrator of the Spill Fund and subject to his approval with regard to the availability of funds for cleanup could remove or arrange for the removal of a hazardous substance in three specific categories:

(1) Where a substance has not been discharged from a grounded or disabled vessel if the department determines that such removal were necessary to prevent an imminent discharge of the hazardous substance.

(2) Where a substance has not yet been discharged, if the department determines that such substance is not satisfactorily stored or contained and that the substance possesses any one or more of the following characteristics: (a) explosiveness, (b) high flammability, (c) radioactivity, (d) chemical properties which in combination with a hazardous substance already discharged at the same facility would create a substantial risk of imminent danger to public health or safety or an imminent and severe damage to the environment, (e) where a substance is stored in a container from which its discharge is imminent because another hazardous substance has already been discharged and is corroding the container of the stored hazardous substance where the additional discharge would create a substantial risk of imminent damage to the public health or safety or an imminent and severe damage to the environment, or (f) where the substance is of high toxicity and is being stored in a container or being transported in a vehicle or railcar from which its discharge is imminent as a result of the significant deterioration or the precarious location of the container or the truck or railcar and where such discharge would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment.

(3) Where a substance has been discharged prior to the effective date of the original act, if such discharge poses a substantial risk of imminent damage to the public health or safety or imminent and severe damage to the environment. While the department could arrange for the cleanup and removal of these ancient source discharges the bill would contain a limitation on funds expended for ancient source discharges. Under the amendments there would be a cap of \$2.5 million in total and no more and \$1 million for a discharge or related set of discharges from ancient sources during any 1 year. This section also contains a limitation on the availability of funds for the cleanup of non-petroleum substances based upon a computation of the amount of money which has been spent for the discharge of hazardous substances and the amount of money which could be spent for pending reasonable claims against the fund.

*Section 8.*

This section would be amended to specifically provide for joint and several liability of dischargers for cleanup and removal costs and for damages from spills of hazardous substances. This section also has been amended to remove the defenses to strict liability which exists under the present law.

*Section 9.*

This section would be amended to provide that transfers of hazardous substances other than petroleum would be subject to a tax when transferred between major facilities or to or from a major facility. Under present law transfers of all hazardous substances are only taxed at the first transfer in the State between major facilities. Petroleum transfers still be subject only to tax on first transfer and only between major facilities.

This section would also be amended to create two different levels of taxation for petroleum and non-petroleum hazardous substances. Petroleum would continue to be taxed at a rate of one cent per barrel transferred. The transfer of non-petroleum hazardous substances would be taxed at a rate of \$0.01 per barrel or 0.1% of the fair market value of the product whichever is greater. Other amendments would increase the level of the fund from \$25 million to \$50 million per year to increase the amount of money available for cleanup and would allow the level of the escalator tax to remain in effect until the balance of the fund equals 150% of the pending claims against the fund rather than 100% of the pending claims as the law now provides.

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ASSEMBLYMAN H. DONALD STEWART (Chairman): I would like to call the meeting of the Assembly Agriculture and Environment Committee to order.

This is a public hearing designed to hear testimony on Assembly Bill 3542, a bill to amend the Spill Compensation and Control Act of 1977, sponsored by Assemblyman Lesniak. First we will have a brief summary of the bill by our Committee staff and then we will open the hearing to testimony.

We do not have many witnesses on the list at this point. If any or you are interested in testifying and you have not given your name to Norman Miller on my right, please do so as soon as possible. We hope you will keep your remarks as brief as possible and try not to be repetitive of what others have already told us. Looking at the witness list we have now, unless there are many additions to it, we probably should be able to cover everyone by going straight through and not taking any lunch break.

Let me introduce the members of the Committee who are here: On my left is Assemblywoman Barbara McConnell and on my far right is Assemblyman Robert Hollenbeck.

We will now have a brief summary of the bill.

MR. NORMAN MILLER: The purpose of A-3542 most broadly is to establish some kind of parity or balance between the contributions of the petroleum industry and the chemical industry into the Spill Compensation and Control Fund created pursuant to the Spill Compensation and Control Act passed in 1977. Among the major provisions of the bill is to increase the size of the Spill Compensation and Control Fund from \$25 million to \$50 million. The bill also broadens slightly the definition of "hazardous substances"; amends the definition of "major facility" to include all the facilities for hazardous substances, exclusive of petroleum products, with 50,000 barrels of storage capacity or more; makes all transfers of hazardous substances other than petroleum, involving a major facility, taxable; but authorizes the computation of taxes with respect to transfers of hazardous substances other than petroleum on the basis of fair market value. It also amends the authority of DEP and permits DEP to apply the fund to the clean-up and removal of hazardous spills, ancient spills and imminent spills, when the nature of those materials is such that they are either highly flammable, highly explosive, radioactive or otherwise pose an imminent peril to public health and safety.

I think those are the major points.

ASSEMBLYMAN STEWART: The first witness will be the sponsor of Assembly Bill 3542, Assemblyman Raymond Lesniak of District 21.

A S S E M B L Y M A N R A Y M O N D L E S N I A K: First of all, Mr. Chairma I would like to thank you and Assemblywoman McConnell and Assemblyman Hollenbeck for coming down in the bad weather that we have here today to hear testimony on

this bill.

The Committee will be hearing today testimony on legislation representing part of the administration's program to deal with the tremendous problem of safe and orderly disposal of hazardous waste in New Jersey.

Legislation making illegal disposal of hazardous wastes a second degree felony with five to ten years presumptive sentences and up to \$100,000 in fines for each offense and legislation requiring mandatory weekly inspections of disposal sites has already been signed into law by Governor Byrne. A State strike force operating under a federal grant is developing procedures for intensive prosecutions of illegal disposal activities. The Governor has formed an Advisory Committee of experts and distinguished citizens to study methods to help solve this great problem. I intend to introduce legislation to establish a State and possibly region-wide waste exchange to greatly expand the capacity for recycling of waste materials.

Assembly Bill 3542 represents a continued effort to deal with this problem of hazardous waste disposal in New Jersey.

I know that I need not emphasize to this committee the magnitude of the problem throughout the country and especially here in New Jersey with its high concentration of industry generating hazardous wastes requiring safe disposal. But I do want to briefly outline the Chemical Control problem in Elizabeth which is the genesis of this bill and to which much of this proposed legislation is directed.

This committee and the public know part of the problem at Chemical Control: upwards to 40,000 drums, haphazardly stacked, rotted and corroded, unidentified and unclassified, containing the most dangerous chemicals known to mankind.

Since the cleanup began last May, thirty-nine cylinders of mustard gas, a nerve gas banned throughout the world because of its deadly properties, 520 pounds of explosives, including the highly volatile picric acid and nitroglycerin, and 5 1/2 pounds of radioactive chemicals have already been removed from the site.

There still remains over 35,000 drums of the following types of chemical wastes:

**Chlorates** - a strong oxydizing agent which can initiate fires and explosives when in contact with a wide variety of organic materials. Drums with chlorates are stored next to drums labelled flammable at the site.

**PCB's**, a subject Assemblyman Stewart is so familiar with, a cancer causing bioaccumulative chemical which is highly toxic to humans.

**Peroxides** - A chemical that when mixed with flammables will ignite. Drums labelled peroxides are stored next to drums labelled flammable at the site.

**Nitric Acide** - An oxydizer which can initiate combustion or an explosion and is also corrosive and can cut through a container. Nitric Acid bottles were found haphazardly throughout the site.

**Sulfuric Acid** - A corrosive which if mixed with aqueous material produces corrosive fumes.

**Cyanide** - This chemical can vaporize in a fire to create cyanide gas, a strong poison, and can react with water to produce hydrogen cyanide gas, a lethal gas.

Assorted other poisons are on the site: benzene, a leukemic agent; trichloroethaner, a carcinogen which produces poisonous gases in a fire; and also hexane which can explode if ignited.

I wish to quote from an affidavit from Wayne N. Pierre, dated February 5, 1979.

Mr. Pierre is an EPA chemist employed as a hazardous waste specialist with that department.

"In my opinion," - and he is referring to the Chemical Control site - "the large variety of wastes on site, many of which appear, from their labelling, to be incompatible, could easily combine to produce a mixture that will volatilize, ignite or explode. Any major fire at the Chemical Control site would have disastrous consequences. There is a high probability that vaporization of several of the toxic substances on site would create a highly toxic cloud of smoke and gases. Waste residues on the ground around the site, many of which are probably flammable, could support the propagation of any fire that starts on site, and this could lead to a major conflagration having extremely serious consequences."

As you can see, the danger at Chemical Control is real and extreme. And while Chemical Control may be unique in its magnitude, there are many mini-Chemical Controls throughout the State. Newark, Jersey City, and Perth Amboy are a few of the recently discovered sites of dangerously stored hazardous chemicals. Elizabeth also has its own mini-Chemical Controls, such as trailer trucks loaded with drums of dangerous chemicals abandoned along the roadway.

Although the spill compensation and control fund has been used at Chemical Control in order to get at the drums that are leaking, the fund does not now apply to the problem of abandoned hazardous waste sites which are extremely dangerous, but are not leaking or spilling into the waterways.

The State must have a source of funding to enable it to move swiftly to defuse these chemical time bombs whenever they are discovered. We cannot rely on supplemental appropriations. They are time-consuming and a hit or miss proposition, oftentime depending on political clout as much as absolute necessity.

A 3542 will fill in the gap by allowing the spill fund to be used to clean up dangerously stored hazardous chemicals.

The bill, as you know, is quite complex and addresses many more issues. To avoid repetition, I will defer to Committee Aide Norman Miller and the Department's representatives to outline the details of the bill that the Committee may want to question.

I want to emphasize that not only for the safety of the residents of the City of Elizabeth, but for our residents throughout the State, who are or who may very well in the future be exposed to the danger of dangerously stored or abandoned hazardous waste, we must act swiftly to provide for a fund that the Department of Environmental Protection may look to for the expeditious handling of these extremely dangerous circumstances.

**ASSEMBLYMAN STEWART:** Assemblyman, could you elaborate on how you will increase the size of the spill compensation fund? How are we going to get it from \$25 to \$50 million?

**ASSEMBLYMAN LESNIAK:** Mr. Chairman, if I may, I would like to just give a short summary as to where the fund is at the present time. In fiscal year 1977, which was part of the first year that the fund was originated, \$1.1 million was collected; in fiscal year 1978, \$6.4 million; in fiscal year 1979, \$6.4 million; and July, August and September of fiscal year 1980, \$1.5 million. There was a total of approximately \$5.5 million in collections, penalties and interest. The fund raises today under the current taxing procedures approximately \$6.5 million a year. Of that \$6.5 million, approximately \$200,000 are raised from the chemical companies. The vast majority of the revenues comes from the oil industry.

As far as claims pending, as of September 30, 1979, retroactive chemical

spills claims totalling \$8.9 million ---

ASSEMBLYWOMAN MC CONNELL: I am sorry. Could you go over that again?

ASSEMBLYMAN LESNIAK: Retroactive chemical spills - that is before the effective date of the original act - \$8.9 million pending. Those are four sites, the two major of which are the Ventron Corp., which the fund has for \$3 million, and the South Brunswick Township contamination of \$5 million, which they list as preAct discharges and which may have been changed somewhat since the Ventron Decision came down.

ASSEMBLYMAN STEWART: The figures you are giving us, are these claims on which there is no debate as to whether they can or cannot be paid by the fund?

ASSEMBLYMAN LESNIAK: Well, there was a debate as of this date.

ASSEMBLYMAN STEWART: So there is still a debate as to whether these funds can be used. But someone has put in a claim for these.

ASSEMBLYMAN LESNIAK: That is correct. The Ventron Case only applies to that situation, itself, and I assume that case will be on appeal anyway. So it would still be debatable whether, in fact, the fund could be used to support these claims. But these are claims that have been identified and made against the fund. Retroactive petroleum spills that the fund has identified, the claims for them are \$1.2 million. A total of the retroactive cases as of September 30th is approximately \$10 million. There are damage claims also. These are not for the cleanup, but these are for damage done by the spills. They are not extremely significant - they amount to hundreds of thousands of dollars - when we are talking in terms of these millions. Chemical spills, \$300,000; oil spills, around \$100,000. These are for damages done by the spills. They do not involve the retroactivity issue and I assume that they will be paid by the fund.

There are cleanup claims that do not involve the retroactive issue totalling \$4.6 million for chemical spills and for petroleum spills, approximately \$125,000.

So, basically, what we are talking about is a total of \$15.5 million, of which there are chemical spills which definitely must be paid from the fund of \$4.6 million and petroleum spills which definitely must be paid by the fund of \$125,000 approximately. Aside from that are the retroactive claims of over \$10 million.

Now, this bill will, number one, increase the fund to a total of \$50 million from \$25 million. Obviously, that will not be done in one year. And when I say total, I am speaking in terms of the limit as far as the size of the fund. But it will be done by an increase in the tax on the transfers of chemical products as opposed to petroleum products. That will be done by three different methods: Number one, instead of a per barrel tax, the tax will be .1 percent on the fair market value. Number two, the incidence of the tax will be increased by two methods: first by taxing every transfer involving a major facility, the theory behind that being that there is a hazard created and a danger created every time a chemical is transferred. That is how spills occur, by transferring them. So every transfer involving a major facility will be taxed. Secondly, the number of major facilities is increased as far as chemical storage by reducing the definition of a major facility down to storage capacity of 50,000 gallons.

So that there are three ways that the tax is going to be increased: by putting it on the fair market value, by increasing the number of major facilities and by increasing the incidences of the tax by taxing every transfer that involves a major facility.

It is estimated by the Treasury Department that the tax in the bill will raise approximately \$6 million additional a year. It is my understanding that is disputed by members of the chemical industry. But it is the intent of this bill to raise approximately \$6 or \$6.5 million a year to attain parity with the oil industry which is currently contributing approximately \$6.5 million a year.

ASSEMBLYMAN STEWART: You talk about changing the size of a facility. Are you changing the size of a facility just for the new industries you are adding or are you changing the size in the entire legislation for the spill compensation and control fund? Are you changing it for everybody?

ASSEMBLYMAN LESNIAK: For everybody that handles chemical products as opposed to petroleum products.

ASSEMBLYMAN STEWART: You are not changing it for the people who currently participate in the oil spill compensation fund?

ASSEMBLYMAN LESNIAK: Well, to the extent that they participate for the chemicals that they store --- In other words, the answer to that question is yes. There will be new facilities that will now be subject to the tax because they will now be labelled and defined as a major facility and, therefore, subject to the tax. That is correct.

ASSEMBLYMAN STEWART: I guess we will hear from some of the industry people as to what type of facilities this might affect.

Are there any other questions?

ASSEMBLYWOMAN MC CONNELL: How do you plan to determine fair market value?

ASSEMBLYMAN LESNIAK: I am not an economist and that is defined by the Treasury Department. I don't know whether there are any problems with that or whether the industry has any problems with that. I have some problems with that because it would appear to me that the cost would be a lot easier determination than fair market value.

ASSEMBLYWOMAN MC CONNELL: I was concerned about the enforceability of that, the administration of that.

ASSEMBLYMAN LESNIAK: I agree with that. We will have to have that question answered by the Treasury Department. They have no problems with that. Is there somebody here from ---

ASSEMBLYMAN STEWART: We will get to that. Maybe somebody from the DEP can talk about that. I don't see anyone on the list from the Department of the Treasury.

ASSEMBLYMAN LESNIAK: I am not sure if it is defined as invoice price plus transportation cost. I don't have that section. The fair market value in the bill is not the economic fair market value. It is defined specifically as invoice plus transportation cost. So it is defined. It is probably a bad word to use as far as the definition goes because the economic fair market value would not be the same as invoice price plus transportation. So it is specifically defined in the bill.

ASSEMBLYWOMAN MC CONNELL: To move on to another question and just for a point of clarification, Assemblyman, under your proposed bill you are excluding the petroleum industry from this bill; is that correct?

ASSEMBLYMAN LESNIAK: No. We are excluding them from the increase.

ASSEMBLYWOMAN MC CONNELL: From the increase.

ASSEMBLYMAN LESNIAK: They are still contributing approximately \$6.5 million towards the fund. They pay over 90 percent ---

ASSEMBLYWOMAN MC CONNELL: --- in funds to the Spill Compensation Fund.

ASSEMBLYMAN LESNIAK: Right. --- and over 90 percent of the expenditures for the cleanups are for chemical spills as opposed to petroleum spills. So in order to make a more equitable system of taxation, the tax on the transfers of chemical products is increased under the bill. The transfer of petroleum products is not affected.

ASSEMBLYWOMAN MC CONNELL: It is to bring about greater parity between the two different types of industries in the State.

Assemblyman, I think the whole issue of hazardous waste disposal is one that is of great concern to us, but I wonder in terms of overall State policy how your bill is going to help us come up with a method of disposal, whether it is a statewide plan of disposal or a regional plan of disposal or some kind of a national coordinated plan to continue to just increase this tax to sort of clean up our problem. I don't see that as addressing the problem in the State of New Jersey. We are a producer of hazardous waste, we profit from that hazardous waste, and yet I see us sending 60 percent of the residue out of state. Perhaps your bill is necessary, but ---

ASSEMBLYMAN LESNIAK: I would like to send 100 percent of it out of the state if we could.

ASSEMBLYWOMAN MC CONNELL: But that is not being responsible. The question is: How are we really addressing the problem?

ASSEMBLYMAN LESNIAK: As I mentioned in my opening statement, this is a part of the entire program that the administration and the Legislature is working on, as you are working on it. This particular problem - and this bill is not going to solve all the problems - is part of an effort that is being made to deal with the problem. One of the major difficulties is the spills and a major part of this bill is the illegal storage of chemicals. When they are discovered, one of the problems that came up with Chemical Control and that I criticized the Department for and they accepted some of that criticism, is that they did not move swiftly enough. One of the constraints that they had was money. They didn't have any money to go in and do these things. The chemical cleanup cost in Elizabeth could be \$10 million. I have heard some estimates it might be \$15 million. I think that is quite high. But it could be \$10 million to clean up that site. Meanwhile, as I outlined, there are all those problems there. We have to have 24-hour police and fire protection. At any time something could happen. There could be an explosion or a fire. Poisonous gas could be generated. There is great danger to the residents. There has to be a fund available so that the Department can say, "Go in. Clean that up. We have the money and we can make it safe for the residents." Chemical Control is a severe case. But these happen throughout the State. There may be 2,000 of these drums in any area, just left around. It is impossible for the local property taxpayers to foot that bill. It is a statewide problem as you say.

That is why we want to create a fund that will have the capability of handling these problems when they arise. You are well aware of the difficulty in getting a supplemental appropriation as they each come up. This would not be the right way to approach the task.

ASSEMBLYWOMAN MC CONNELL: There is an article in, I believe, the Star Ledger - I don't know the date of it - dealing with this issue. It lists several companies that apparently the DEP has indicated are in violation of the regulations and standards that we have in the State of New Jersey. What you are doing in

this bill is increasing this fund to clean up the mess of these particular companies, so to speak. Yet the \$25 million increase actually comes off the backs of some of the industries that are being good in our State and that are complying with environmental standards we have in this regard. How do you feel about that? Are we not penalizing these positive industries in our State in order to clean up those that are in violation?

ASSEMBLYMAN LESNIAK: First of all, let me say that the wastes at the Chemical Control site in Elizabeth comes from a wide variety of some of the largest chemical companies in the State of New Jersey. Secondly, sure that is a problem we have of people saying, "Why are you taxing me?" I feel the same way when I have to pay to the Clients' Security Fund as an attorney because some other attorneys take off with their clients' trust money and we have to pay money to pay for that. Hey, why should I have to pay for it? Well, I am a professional and I want to maintain the integrity of my profession. I think the chemical industry may very well feel the same way, that there is a problem, we are part of the problem, we want to stay in New Jersey - we want them in New Jersey - and that they are willing to help. Everybody has to help and pull together to solve this problem. This is one of the methods that we have available for us and I think it is the best method that we can use at the current time.

ASSEMBLYWOMAN MC CONNELL: You are talking about what is good for the general good.

ASSEMBLYMAN LESNIAK: Right.

ASSEMBLYWOMAN MC CONNELL: Thank you. I assume that we will have testimony from the Department, as well as some industries in the State.

ASSEMBLYMAN STEWART: That is right.

ASSEMBLYMAN LESNIAK: I would like to make one other point. Again, I would emphasize this is only one step in the entire plan that we are all working together to solve. If we can solve the disposal problem, the tracking problem, the generating problem, the recycling, then some day we may not need this. There won't be a tax. The tax will just go away. But until that time, we have to raise the money so that we can handle this problem expeditiously, so that when the danger erupts, we can protect the citizens.

ASSEMBLYWOMAN MC CONNELL: Do you envision that any of these moneys will be used to help us improve our tracking system and come up with a sound plan for disposal or do you see this as just providing more inspectors and just cleaning up after the fact?

ASSEMBLYMAN LESNIAK: There is a provision in the bill, I believe, that the interest can be used. Am I correct in that? I wasn't here when the ---

ASSEMBLYWOMAN MC CONNELL: The interest can be used?

ASSEMBLYMAN LESNIAK: The interest can be used for research.

ASSEMBLYWOMAN MC CONNELL: Thank you.

ASSEMBLYMAN HOLLENBECK: My only question deals with the area of retroactivity. Obviously, since it was in your legislation, you are concerned about retroactivity in areas of hazardous waste disposal that has occurred in the past. The definitions, of course, of what constitutes an imminent danger or an imminent risk are ones I am deeply concerned with because they applied in your cases in Elizabeth and one that I am familiar with also. Those definitions are very important definitions. So I hope by the time we get down to actually considering the bill itself we give very careful consideration to that particular retroactivity clause.

ASSEMBLYMAN LESNIAK: I would agree with that. I would like to give broad latitude so that these problems as they arise can be dealt with by the Department and we don't have citizens faced with the problems and nobody acting on them because they are restricted by the language in the bill.

ASSEMBLYMAN STEWART: In 1976 when we passed the Oil Spill Compensation Law, it was felt that if enough funds were generated, eventually - and probably this would have been the year; we have raised about \$18 or \$19 million - and if there were no major spills, as the industry indicated to us at that time they thought there would not be since the track record showed there had not been any in the past, the fund would be able finally to just sit there. There would be no more tax; the tax would go out. What kind of reaction are you getting from some of the people who are now paying the tax and now possibly see it being extended in perpetuity? Are you getting any ---

ASSEMBLYMAN LESNIAK: I haven't gotten any yet. I imagine we will before the day is out. As I said, I wasn't here when the original bill was passed. I don't know about that. I am sure you do. But that is not written in the legislation.

ASSEMBLYMAN STEWART: You really did cover it. What you did is increase the amount at which to kick off. Instead of kicking off now at \$18 million, I think it goes to \$36 million, which means we have to get \$36 million in our fund before the tax would go away altogether.

Do you have information as to what is in the fund now? You gave us a lot of figures.

ASSEMBLYMAN LESNIAK: About \$12 million.

ASSEMBLYMAN STEWART: Twelve million is in there right now. But we have some claims pending. Roughly how much did you say?

ASSEMBLYWOMAN MC CONNELL: Was it 8.9?

ASSEMBLYMAN LESNIAK: It is a very difficult question to answer because we don't know how the Ventron Decision will affect this and these other individual claims.

ASSEMBLYMAN STEWART: Let's stay away from that question and let's go back one step. How much has been raised in total, forgetting what has been paid out?

ASSEMBLYMAN LESNIAK: Over the lifetime of the bill?

ASSEMBLYMAN STEWART: Yes.

ASSEMBLYMAN LESNIAK: Fifteen point five million.

ASSEMBLYMAN STEWART: And that doesn't count the penalties or interest?

ASSEMBLYMAN LESNIAK: That includes nothing paid out. But it includes penalties and interest. Thirty-four thousand in one year, forty-five the next.

ASSEMBLYMAN STEWART: Just a minute. The figures you started off with were 1977 when we raised \$1.1 million. Is that right?

ASSEMBLYMAN LESNIAK: All I have is one figure for that total raised. I don't have that broken down.

ASSEMBLYMAN STEWART: 1978?

ASSEMBLYMAN LESNIAK: Six point four plus \$35,000 penalties and insurance.

ASSEMBLYMAN STEWART: What did you raise in '79?

ASSEMBLYMAN LESNIAK: Six point four.

ASSEMBLYMAN STEWART: How much so far this year?

ASSEMBLYMAN LESNIAK: One point five. That is for July, August and September.

ASSEMBLYMAN STEWART: And the penalties and interest total what?

ASSEMBLYMAN LESNIAK: Each year?

ASSEMBLYMAN STEWART: Total for 1, 2, 3, 4 years, yes. Do you know?

If you don't know, it is all right.

ASSEMBLYMAN LESNIAK: Eighty-five thousand.

ASSEMBLYMAN STEWART: Okay. That is where I made my mistake. I put 5.5 million down here and it doesn't add up.

I don't think I have any further questions. Would you like to join us up here so as we hear the rest of the witnesses, you can help us with the questions if you would like.

ASSEMBLYMAN LESNIAK: I would be delighted to join you up there.

ASSEMBLYMAN STEWART: Does anyone else have any further questions?

(No questions.)

We also have with us now Assemblyman Barry from Morris County.

Our next witness is Paul Arbesman, Assistant Commissioner for Environmental Quality in DEP.

P A U L A R B E S M A N: Chairman Stewart and members of the Committee, I appreciate the opportunity of being here today to talk about Assembly Bill 3542. I apologize for Commissioner English. She was called to Washington today. You know that she feels her top priority is the control of toxic and hazardous waste in the environment. She is very much interested in this debate and other debates that take place in the Legislature.

ASSEMBLYMAN STEWART: We can hear you, but I think some people in the room are having trouble.

(Mr. Arbesman given another microphone.)

MR. ARBESMAN: Again I apologize for Commissioner English's absence. She was unable to be here today. We have other representatives of the Department here as well. On my right is Dave Mattek, Director of Governmental Operations. On his right is Arnold Schiffman, the Director of our Division of Water Resources, who will be involved in many of the cleanup operations of hazardous substances. To my back is Steven Tasher from the Attorney General's Office; and to my right behind me is Carl Birns and Dave Mack who were on the Chemical Control cleanup operation.

I would like to first discuss hazardous waste in general and then focus on the bill in particular. Hazardous waste, as you know, we feel is the crucial control challenge of the decade. The public concern is at its peak now as it was in 1970 when the country's environmental conscience was first awakened. As public officials, I believe we must harness that energy which is often in the form of fear and anxiety, outrage and anger, and turn it to provide the programs of adequate waste disposal and treatment.

What we are finding today is sickening, an utter disregard for life and the environment, both in terms of the type of contamination - toxic and cancerous chemicals - and the extent of the problem. It is not just a New Jersey problem. It is a nationwide problem and a worldwide problem. It is also very personal and immediate. Last night, I was called by the Mayor of Jersey City who happened to have had a couple of trailer-loads of chemicals dumped off in his backyard. He was very concerned, to say the least. But he was calling really for assistance. "What are they? How can I find out? Where can I take them for disposal? Somebody give

me the answers. I can put a fence up around them but I don't want to leave them." Also, I remember sitting with another mayor recently for an hour or so going over with her what to tell the people she served who had their wells polluted by chemicals and then removed from service. Our citizens consider drinking water a God-given right. They now find that the quality is poor or downright unacceptable. In our State over half the drinking water comes from well supplies. Little solace is found in explaining how the chemicals got there. The public is just angry. Each of you faces some type of problem in this area. Chairman Stewart has Rollins and some leaching dumps, from Assemblyman Lesniak you have heard about Chemical Control, Assemblyman Hollenbeck has Ventron. The litany goes on and on. The real question is: How bad is the problem we don't know about yet? How many ticking time bombs are out there with the clocks coming due now? That is the haunting reality of the problem. The government is in a position to marshal its forces like never before because I personally don't believe we have faced a problem this tough before. People can go inside to escape air pollution--at least try to do that. They maybe can walk away from a stream of dead fish, but when you can't use your water in your own house, you can't escape the reality of the situation. And the threat of cancer always lurks in the background of these discussions. You know that better than I.

The Governor, this summer, announced a Four Point Program on Hazardous Wastes. That Four Point Program was constituted in the following: The creation of a State-Federal Strike Force to strengthen the enforcement of existing civil and criminal prohibitions of illegal waste dumping--I referred the Jersey City case of last night to that strike force which is in operation. The second was the introduction of a bill to stiffen criminal penalties for persons found guilty of unlawful disposal of hazardous waste to provide a further disincentive. The third were the amendments to the Spill Compensation Control Act which are before us today. The fourth was the establishment of a special advisory commission composed of representatives of industry, government, and environmental interests including Assemblyman Stewart to make recommendations for actions that will result in the development of enough new facilities to adequately treat and dispose of the hazardous waste generated in New Jersey. Two sub-committees of that commission have been formed. One will examine the technology and site of issues and another will study the institutional options to spur development of the hazardous waste treatment plants. The Governor has asked for a report by December. The advisory commission is working diligently and we expect that they will meet that goal. Those are the initiatives and there will be others I'm sure. One thing we have learned is that you cannot pass laws without providing the resources necessary to carry them out.

I think the bill before you today is the best example of responsible legislation. It gives our department an awfully tough charge on a piece of the problem--the cleanup spills and hazardous substances. But it also would provide the wherewithal to carry that charge out. We recognize the limitations of the State going it alone, so to speak, without federal resources for such a national problem. I will say this: thank goodness that we took the step in 1976 and 1977 to have a spill fund because right now we would be virtually powerless without that to clean up the number of toxic spills we have today. Last year, we had more than 1,600 spills of chemical and petroleum substances that we knew about--approximately two million gallons spilled. Twenty three of these were major--over 10,000 gallons--and this says nothing of the chemical plant fires, Chemical Control's accidents, explosions, and other types of incidents. Basically, the spill fund has worked well. Now we are trying to improve

upon it. The several years of experience that we have had with the existing Act, indicates the need to expand the coverage under the Act and to broaden the tax provision of the Act to extend the taxing mechanism to producers of chemical substances while holding the tax contributions from the petroleum industry constant. We believe that the limitations of the expenditures from the fund to two and a half million dollars in total per year or one million dollars per year for any single discharge where the removal of hazardous substances--discharge--prior to the date of the original Act is in accordance with our present abilities, utilizing both public and private resources to solve those problems. The expenditures for the cleanup of hazardous substances from spills and from old sites is roughly equivalent to the recommended taxes to be raised from the chemical industry. They figure the total is about five million dollars. That's the old site cleanup cost plus approximately what we have calculated we will pay per year based on past history to clean up the spills we know about today. We have been working with the chemical industry discussing the tax proposal over these past months trying to make sure that the taxes paid by any single taxpayer will be as even and fair as possible in order to reduce any competitive disadvantage with a similar firm in another state. Those discussions are continuing with the Treasurer's Office and we hope to complete those negotiations in the next several weeks and to recommend appropriate amendments to you well before the next regularly scheduled Committee meeting. I urge and the Commissioner urges that you move this bill at that time. Thank you very much.

ASSEMBLYMAN STEWART: I'd like to go back over the section where you talked about, I believe, limiting the expenditures on retroactive cleanups. Would you go through that one more time and maybe explain it a little more in detail?

MR. ARBESMAN: There is an expenditure limit proposed in the bill--two and a half million dollars per year overall. And the limit per facility or per discharge is one million dollars in any single year. It does not mean that you cannot come back in the second year or the third year and continue to clean up a facility. So it would give us a pot of money to start some of the cleanup of the problems that we are finding today in the State. It would not be an endall; it is not the ultimate solution. It will need to be supported with the federal super fund legislation which we are also supporting in Washington. The money that we are proposing now will just give us enough money, we believe, to respond to the most severe situations and try to contain them and remove the hazard from the public.

ASSEMBLYMAN STEWART: This limitation applies only to retroactive cleanup?

MR. ARBESMAN: Yes.

ASSEMBLYMAN STEWART: I thought I heard figures of up to ten, eleven million dollars being tossed around with Chemical Control.

MR. ARBESMAN: Well that may be an ultimate cleanup figure. They're always tough to toss around. But the process that we are going through in Chemical Control is that it looks like the cost will be spread out over one or two or three years depending on the speed with which we can get cooperation from the private sector in that case--Chemical Control. We have had excellent cooperation through the Chemical Industry Council. We are getting some of the substances removed free of charges.

ASSEMBLYMAN STEWART: The Spill Fund had a subrogation clause in it, if I remember correctly, where we could go back and the State would pay the claim, do what had to be done immediately, and then go after the perpetrator of the problem. Is that being left in tact in this?

MR. ARBESMAN: Oh yes.

ASSEMBLYMAN STEWART: Are you going to elaborate on that? Do you find or

does the Attorney General's Office find that we are going to actually be able to find first of all who the perpetrator is and secondly whether they are going to be anybody who is going to be able to pass back any money?

MR. ARBESMAN: Assemblyman, I'll let Steve Tasher respond to that.

MR. TASHER: I'm not sure whether I can speak for the Attorney General himself but I do know that we are investigating various subrogation claims at this time and, as I understand it, we fully intend, where we can find the responsible party--the party who created this charge--to go after them in the form of a subrogation action or otherwise. I think that may respond to Assemblywoman McConnell's question: "Isn't it unfair to tax the chemical industry and to have this pot of money set aside only for the purpose of cleaning up the spills?" Coupled with a realistic subrogation action, I think we can recoup a great deal of the money that is spent.

ASSEMBLYMAN STEWART: One thing I would like if you would do for us: If you would take a look at the subrogation clause that we have and if you have any suggestions as to how we might amend it or tighten it up since I don't think we were talking about the same types of individuals when we were drawing the original Oil Spill Compensation Fund.

Do we have any questions starting from down the right side of the table?

MR. ARBESMAN: I hope you don't ask me a lot of dollar and cents questions. My wife keeps the checkbook in my home.

ASSEMBLYMAN STEWART: Are the figures that the sponsor gave us relatively accurate as far as you know, as far as what is in the fund?

MR. ARBESMAN: Yes, the per year take in charge.

ASSEMBLYWOMAN MC CONNELL: As I understand it is a twelve million dollars in the Spill Compensation Fund to date?

MR. ARBESMAN: That is my understanding. It is approximate.

ASSEMBLYWOMAN MC CONNELL: There's a bill recently signed into law that requires routine inspections of chemical industries for hazardous waste disposal. Is that correct?

MR. ARBESMAN: That's right.

ASSEMBLYWOMAN MC CONNELL: Do you have a capacity number of inspectors to fulfill this mandate?

MR. ARBESMAN: No, we do not.

ASSEMBLYWOMAN MC CONNELL: What do you plan to do with the twelve million dollars you have on hand? Will that be used to hire new inspectors to comply with that law?

MR. ARBESMAN: No, it would not. This twelve million dollars is specifically focused on spills and hazardous waste cleanup. The inspection of hazardous waste facilities is a regulatory function of the department and would come out of different revenue sources. One of the points that was made at the time the bill was signed was that even though the bill gives us the authority to set fees on the industries that are going to be inspected for clients with rules and regulations, there is no startup on it. So in light of that fact, we have been forced to realign current inspection procedures and forces from within the department's air pollution and water control program to supplement the hazardous waste inspection so that we could do the monthly inspections until we get the fees on the books, put the money in the coffers, hire the inspectors so the people can be reassigned back to their existing duties.

ASSEMBLYWOMAN MC CONNELL: So what you are telling me is that the Legislature passed a bill requiring these routine inspections but did not provide the monies to comply with that requirement?

MR. ARBESMAN: Yes.

ASSEMBLYWOMAN MC CONNELL: There was no additional appropriation in your budget this year for that purpose?

MR. ARBESMAN: No.

ASSEMBLYMAN LESNIAK: First of all, as far as this inspection business goes, it is a method for assessing the sites to pay for the inspectors. Is that not correct?

MR. ARBESMAN: Yes. It said there is a fee system in the bill we can use but there is no startup money. We will probably have to make rules and regulations to collect the fees and so on.

ASSEMBLYMAN LESNIAK: Well how much money do you need to start it up?

MR. ARBESMAN: The program is estimated to be around a \$450,000 program to inspect the forty six facilities that we have in the State.

ASSEMBLYMAN LESNIAK: Do you need a loan?

MR. ARBESMAN: What I said is that we have restructured our own inspection forces. That means that when people call for an air pollution complaint or a water pollution complaint, the person may not be there now to inspect those facilities.

ASSEMBLYMAN LESNIAK: I'm sorry to deviate, Mr. Chairman, from the bill but I just want to get this straight. Is the problem that you don't have startup money and this will significantly delay the--- Because if you take away from something, you are hurting that other area. Is that a major problem to deal with in the department?

MR. ARBESMAN: It's a problem for us, yes, in trying to meet the mandate of that law.

ASSEMBLYMAN LESNIAK: Mr. Chairman, there are two other items that I just want to clear up. It is my understanding that the Chemical Control type of situation would not be subject to the two and a half million dollar lid because it is not a retroactive situation. It is a hazardous storage situation. Secondly, and by the way, we are--I certainly am myself--willing to accommodate any types of adjustments in this area that may be necessary in order to give the department greater leeway to handle the retroactive type claims. The reason why there is a lid in there is to avoid the complete bankruptcy of the fund due to a discovery that may make it unable to handle subsequent problems and be just concerned with one particular problem. Also there is an additional tool being given to the Attorney General's Office in the bill by making expenditures on it from the fund if a first priority claim and lien are paramount to other claims and liens upon the revenues and personal and real property of the discharger. That's on page six, subsection 8. I see Steve is still here. Steve, do you think you can defend that section against a challenge by insurers or mortgagees and is this wise?

MR. TASHER: Assemblyman Lesniak, we are still investigating the parameters of that provision. If it's all the same to the Committee, I prefer to go back to the Attorney General and discuss that at the next Committee meeting and discuss the implications of the section.

ASSEMBLYMAN LESNIAK: Thank you.

ASSEMBLYMAN STEWART: I wonder if you would comment on what the rationale is for setting up a separate Chemical Spill Compensation Act as opposed to putting it all together. Is there a rationale for doing that?

MR. ARBESMAN: I don't believe so because we are not supporting it.

ASSEMBLYMAN STEWART: You're not supporting what?

MR. ARBESMAN: A separate fund. We are supporting a one-fund bill. It is the bill before us.

ASSEMBLYMAN STEWART: I wonder if you might give us the benefit of why you refer a one-fund bill?

MR. ARBESMAN: To us it makes sense because the money will be in one pile. It will be administered by one person. With the types of facilities we will be inspecting for discharges, often you can't cut that fine a distinction between petroleum substances, chemical substances. As Assemblyman Lesniak said, there is a "certain discretion we must have in order to clean up spills." We think it is just a more efficient operation than having two pots reserved.

ASSEMBLYMAN STEWART: The people who are going to be paying into the fund, I imagine, are going to change drastically aren't they?

MR. ARBESMAN: Under these amendments, a number of chemical industries will be paying into the fund which are not paying now.

ASSEMBLYMAN STEWART: How about the change in definition of one who pays into the fund--the changing of the size and capacity? Whom do you anticipate that is going to bring into the fund? What type of firm will it be that is not now paying it?

MR. ARBESMAN: Many of the chemical firms that sell products, both intermediates, raw materials, and final products, will be brought into the fund. The question of how many firms and at what level they will pay is what I referred to before in terms of discussions that are taking place between the Treasurer and some of the industry's representatives to try to make that taxing provision as equitable as possible. We recognize the need for that and if we can do it, we would be prepared to offer, at your next meeting, some possible amendments in that regard.

ASSEMBLYMAN STEWART: I notice the summary says that "we are amending it to a facility with 50,000 barrels of storage capacity or more." What is it now, do you know offhand?

MR. ARBESMAN: 400,000. There is also some discussion on the 50,000 number because that affects the number of companies that we brought---

ASSEMBLYMAN STEWART: One of the things we might do is check back to the testimony when the Oil Spill Bill was being debated. It seems to me there were some changes made at that time with the size of the storage facility. We found we were hitting little gas stations and everything else with the smaller size, and that was not the intent of the Oil Spill Bill anyway. I would assume we would be careful not to fall back into that situation again.

MR. MATTEK: This drop of gallonage from 400,000 in a facility to 50,000 in a facility, related to hazardous substances, tries in part to avoid that problem. The petroleum would definitely need to avoid it. You don't want to change the system with respect to the tax paying or other liabilities of the petroleum industry pursuant to this Act.

ASSEMBLYMAN STEWART: So the size is only for the new people we are adding to the bill

MR. MATTEK: Correct, for hazardous substances other than petroleum.

ASSEMBLYMAN STEWART: O.K. I don't think I have any more questions. Has anyone else? Jim?

ASSEMBLYMAN BARRY: I wonder if you have any figures on the number of operators in business in New Jersey whose business it is to transfer hazardous waste in storage trucks and trailer trucks from one site to another? And I wonder if it isn't some of those companies that are most responsible for the spills that we see along the roadside, for instance? I watched a large trailer truck transferring some sort of chemical

waste not long ago with something trailing out the back. I don't know if it was simply nothing at all--just water dripping out of there--or some kind of dangerous substance. I wonder do we have a feel for the number operators in that kind of business?

MR. ARBESMAN: Yes. We register the number of operators. There are literally thousands of truck operators in the business. There are not that many corporations. In other words, they may report to a fewer number of corporations but there are a lot of people in the transfer business. That is one of the problems that we have. It is one of the areas that is being discussed by the Hazardous Waste Advisory Commission the government has formed: How do we police that very significant section that can be responsible for spills or illegal chemical dumping? What types of new authorities or new laws or requirements would you need to put into that area to make it an effective program for us in terms of mitigating spills? But the numbers are literally in the thousands for the people in the business.

ASSEMBLYMAN BARRY: And with this legislation in effect, resources would be available to move in to resolve a problem that may be created by that kind of spill on the roadside?

MR. ARBESMAN: Yes. But the taxes would come from the corporations themselves.

ASSEMBLYMAN STEWART: Thank you very much.

Our next witness is Richard B. Johnson, Vice Chairman for the Committee for Environmental Quality of the New Jersey Business and Industry Association, followed by Oliver Papps, the Associate Director of the New Jersey Petroleum Council.

R I C H A R D B. J O H N S O N: Mr. Chairman, Members of the Assembly Committee on Agriculture and Environment, I am Richard B. Johnson, Vice Chairman of the Committee on Environmental Quality, New Jersey Business and Industry Association. On behalf of the committee, we thank you for this opportunity to present our views on Assembly Bill 3542.

It is apparent that A-3542 addresses itself to the growing concern for the safe disposal of hazardous wastes in our State which has prompted not only this legislation, but action at all levels of government. In response to the flurry of legislative and regulatory activity on this subject, Governor Brendan Byrne has recently created a Hazardous Wastes Advisory Commission to make an urgent study of the situation in New Jersey in order that all remedial and prospective efforts at improving the situation will be comprehensive, coordinated, and effective. Chaired by former New Jersey Environmental Protection Commissioner, Rocco Ricci, this commission is due to make its report to the Governor by December of this year. Given the comprehensive nature of the study and its early reporting date, we suggest that any legislative action would be premature if taken in advance of that commission issuing its findings.

The New Jersey Spill Compensation Fund, which was originally created by the law which this bill would amend, has been in existence for just over two years, and as of mid 1978 had built reserves amounting to some eight million dollars while less than one million had been drawn from the fund to clean up spills during that time. It would appear, therefore, that the funds available under the present Act are more than adequate to provide prompt clean up of spills and other unauthorized discharges.

There is a question, however, as to whether the present fund can legally be drawn upon to pay for the clean up of spills, discharges, and the like, which predate the Spill Compensation and Control Act. Such "ancient" spills are thought to pose serious threats to the surrounding environment, and clean up costs are thought to be high. Hence, the major purpose in proposing A-3542.

We submit that A-3542, by seeking to solve two distinct problems as if they were one, does not represent the best approach. Instead we feel that there should be two separate programs--one devoted to the ongoing program of spill control, with a second to deal with previously existing difficulties, such as abandoned sites, and inactive facilities or the "ancient" spills.

The existing Spill Compensation Fund should be retained at its present maximum of \$25 million to allow for the prompt clean up of spills which occur now and in the future. As this Fund continues to grow and develop a larger reserve, there should be no need to increase its size. If future experience were to demonstrate the need for a larger fund, adjustments could certainly be made at that time.

A second fund should be created to deal specifically with "ancient spills," and the like. Its support should come from general revenues, which, if allocated on a gradual basis, would not constitute a heavy drain on any one year's State budget. Since this fund, more than the other, may be used in situations where direct responsibility for a spill cannot be established, the use of public funds to protect the public health would not be inappropriate.

The proposed method of taxing the transfer of hazardous substances other than petroleum will result not only in the imposition of new taxes on small and medium sized concerns but will also mean that these industries will be put to the expense of compliance with the comprehensive regulations implementing the Spill Act. This could include extensive ground water monitoring wells, spill prevention plans, dikes, retaining walls, curbing, diversion ponds, lagoons, holding tanks, and the like. If secondary containment and diversionary systems are required, all would have to be constructed of or lined with impermeable liners, in short, the likely imposition of high capital costs on these small and medium-sized businesses.

To tax each and every transfer of hazardous substances other than petroleum is not only unfair but it will create administrative problems to both government and the private sector. As to cost, one company, now paying a yearly tax of \$3,000 will see its taxes increased to almost \$90,000 each year, a thirty-fold increase in order to double the fund. And if the four tenths percent tax were imposed, it will result in a cost of over \$350,000 per year. The position of this firm in the national and international marketplace is obviously seriously affected by such a tax.

Under Section 9b we also question the proposal to tax non-petroleum products on the basis of "fair market values." The threat to the environment will bear no relationship to the amount of tax levied. An example: the solid substance vanadium pentoxide, a hazardous substance, is virtually insoluble in water and thereby resistant to discharge. It has a cost of approximately \$5.60 a pound or \$2,800.00 a barrel. The tax is \$2.80 and the tax on a barrel of oil where the spill factor is evident is one cent.

The extension of liability to any person who is "in any way responsible for any hazardous substance" the DEP has removed or is removing is an unnecessary and unfair provision. Should the manufacturer of a substance really be faulted for the manner of its ultimate disposition once the product has been turned over to another user or to a bona-fide, licensed, disposal facility and is completely beyond the manufacturer's physical control?

Under Section 8d, the defenses permitted by the present law are traditional and limited. In the consideration of liability, they recognize as a mitigating factor situations which may occur despite the exercise of utmost human caution and guarded action on the part of the owner or operator.

We question why these few defenses are being eliminated by these amendments.

Surely the sponsor is not concerned about attributing liability to an operator for a discharge caused solely by war, sabotage, or an act of God. We recognize the need for public protection in the two areas addressed by the bill. We suggest that the approaches defined herein unduly and unfairly impact one segment of our society--the business community. Thank you.

ASSEMBLYMAN STEWART: Why don't we go back to your suggestion of what it might cost one business and maybe try to get a little more specific. I think you did add some things to your testimony that aren't in the written testimony. Would you mind going back over that and elaborating a little more?

MR. JOHNSON: Yes, sir. Although I am not allowed to name the business, this is an actual calculation taking the monies proposed in the bill and applying them to one firm's annual business.

ASSEMBLYMAN STEWART: Can you tell us what type of firm you are talking about?

MR. JOHNSON: It is a chemical concern.

ASSEMBLYWOMAN MC CONNELL: Can you tell us what the gross profits of that company would be?

MR. JOHNSON: Gross profits---

ASSEMBLYMAN STEWART: Or gross receipts.

MR. JOHNSON: In the area of \$100 million.

ASSEMBLYMAN STEWART: O.K. How do you arrive at these figures? Why don't you elaborate to us rather than our asking you?

MR. JOHNSON: I'm not sure I can explain all of the details.

ASSEMBLYMAN STEWART: Whatever you can give us will be helpful.

MR. JOHNSON: On the---

ASSEMBLYMAN STEWART: It says, for instance, they are now paying a yearly tax of \$3,000.

MR. JOHNSON: Yes. That's based on the Oil Compensation Act.

ASSEMBLYMAN STEWART: That's what they are paying to the Oil Spill Compensation Fund.

MR. JOHNSON: The application of this to the chemicals listed as hazardous chemicals means that the firm would be taxed on the incoming chemicals and on the outgoing products of that concern which are not now taxed under the Oil Spill Compensation Act.

ASSEMBLYMAN STEWART: And your estimates show they would be paying how much in taxes?

MR. JOHNSON: They would be paying \$90,000--an estimated \$90,000--with the one-tenth percent of market value figure which certainly would apply. If the four-tenth percent figure were invoked as indicated in the bill that would, of course, go up by four times.

ASSEMBLYMAN STEWART: Four-tenths of one percent, when does that kick in?

MR. JOHNSON: I'm not sure I can answer that. That's in the bill.

ASSEMBLYMAN STEWART: That's probably if the fund gets down. Under the Oil Spill Bill if there was a large payout and the fund was depleted, then we had to raise the money back fast. I assume it is the same thing in this one.

I would think that if you could supply us--and I think I understand that you don't have to give us specific corporations at this point--but if you can supply us with some case examples of how you think this will affect industries X, Y, and Z, I think it would be very helpful to us and we could proceed from there. Does anybody else have any questions?

ASSEMBLYMAN LESNIAK: I have a few comments to make, Mr. Chairman. First of all, Mr. Chairman, it is very difficult, as you said, to be quiet concerning figures of an anonymous anything. And accompanied with a \$100 million gross, we don't know if maybe they ought to be paying an increase in taxes as opposed to other elements of the industry. As the department has previously stated, the administration and myself were willing to sit down--we have sat down--with the entire industry to insure that the tax is fairly distributed amongst the industry and does not impact on one particular segment of the industry. We are certainly willing, ready, and want to avoid that type of situation and are willing to sit down with you and discuss it. I do want to take issue with the first thing as far as waiting for the Commission's report: The people in the city of Elizabeth and Newark and Perth Amboy and Jersey City and Woodbury, wherever these hazardous chemicals are posing dangerous threats to life and health and safety to the residents, can't wait for any Commission's report. You can't wait for a fire or an explosion or a generation of a poisonous gas cloud and say, "Well, we are waiting for the Commission's report." I think we have not moved fast enough and we cannot wait for some kind of nebulous proposal sometime in the future that may or may not deal with the problem when people's lives have been threatened.

I do want to, Don, also address the question of the defenses. Traditionally in law, common law going way back when, the handling of hazardous materials was considered to be a strict liability without regard to negligence--blasting, fumigation, even airplane transportation until it was proved that it was not a hazardous operation. So that we are really, in this legislation, not doing anything new. In fact, we are just incorporating the old common law principles that when you are engaged in a hazardous operation that the damage that is done is your liability without regard to good intentions or good acts--strictly by the nature of the operation. So that is where that provision came from. It is really not new; it is a very old concept in law.

Again, I want to re-emphasize that we are willing and will sit down to insure that the tax does not impact on any segment of the industry unfairly.

ASSEMBLYWOMAN MC CONNELL: On page four of your statement you infer that certain governmental programs in the administration have been "negligent" in eliminating this problem. Could you be more specific?

MR. JOHNSON: I'm sorry. I don't---

ASSEMBLYWOMAN MC CONNELL: Under section eight. Some of the problems that we have today "have been allowed to occur through the negligence of governmental programs and administrators."

MR. JOHNSON: Actually, I struck that from the testimony. I don't have any direct evidence of that, that's why.

ASSEMBLYMAN STEWART: Jim, do you have any questions?

ASSEMBLYMAN BARRY: Only to repeat your suggestion: I think no one would deny that this is a legitimate area of concern for State government. I think it would be especially helpful if you could provide us with a representative sample of companies throughout the State that would be affected by this tax and let us know just exactly how it will impact on them. I would be especially interested to see those figures.

MR. JOHNSON: We may be able to do that. I'll have to confer with the people who provided the information. I think the concern is one of being able to compete on a national and international basis. Whether or not the tax may be justified or imposed, the products that are sold must be able to compete on that basis. And if we are taxed in this State and not in another state on an equal basis, obviously, it is going to impair that ability.

ASSEMBLYMAN STEWART: You suggested that there be a second fund not a part of the Oil Spill Compensation and Control Act. Other than what you gave us in the testimony, do you have anything else you'd like to add on that subject?

MR. JOHNSON: We suggested that the second fund come out of public monies. I recognize the unpopularity of that and that isn't a solid position. We don't have any other recommendations. We just don't feel that it should be impacting particular businesses to the extent that they would not be able to compete.

ASSEMBLYMAN STEWART: Have you yet--I realize it hasn't been around that long--but have you had a chance yet to try and determine what type of things we're talking about that we are going to be affecting by the change in the size of the storage capacity and a change in definition?

MR. JOHNSON: No, not to an extent that---

ASSEMBLYMAN STEWART: Do you think that would be difficult for you to get us? Could you at least check it?

MR. JOHNSON: We can certainly try.

ASSEMBLYMAN STEWART: That's all the questions I have. Thank you very much for your testimony.

Next we have Oliver Papps, the Associate Director of New Jersey Petroleum Council, followed by Diane Graves of the Sierra Club. Is someone here representing Diane Graves? James Benton of the New Jersey Chamber of Commerce will follow.

O L I V E R P A P P S: Mr. Chairman, members of the Committee, my name is Oliver Papps and as Associate Director of New Jersey Petroleum Council I welcome this opportunity to present to this Committee our comments and concerns with proposed Assembly Bill 3542.

This bill begins to make some long-needed distinctions between petroleum and non-petroleum hazardous substances. Members of this Committee may recall that the Petroleum Industry was deeply involved in the development of the present Spill Compensation and Control Act - Chapter 141, enacted in 1976. The original thrust for this legislation came from environmentalists, the Legislature, and the NJDEP because of public apprehension over the possibility of oil spills during the startup of oil and gas drilling operations off the coast of New Jersey in the Baltimore Canyon.

Since enactment, however, this legislation has proved more useful in dealing with hazardous and toxic substances. Oil or petroleum spills have been a minimal factor at most. This comports with our original concerns. At that time, our concern with the expanded scope of the Act rested with two considerations. First the environmental, toxic and economic ramifications of petroleum spills are considerably less severe than those from persistent discharges or spills of highly toxic chemicals and complex materials. The DEP and the Administrator of the spill fund will verify that since 1977, petroleum spills have not been a major environmental hazard or a drain on the fund. Since inception of the fund it was reported to us that there had been approximately \$15 million collected at the end of the last fiscal year. Of this total, only \$104,000 has been expended to date on petroleum spills, whereas more than \$2 million has been paid out on chemical spills or a ratio of roughly twenty to one. It is thus clear that we are being grossly overtaxed based upon experience versus contributions. Also, regulations have never been promulgated allowing a tax, as directed by the Spill Fund Act, on most of the chemicals described as "hazardous substances" in the Act. This aggravates even further the inequities of the existing situation. Our second objection to the inclusion of hazardous substances in the fund stems from the fact that 98% of the tax dollars in the fund have been derived from the spill fund tax placed on

the large volume of petroleum energy shipped into the State daily. To put it bluntly, we are not causing the State's current environmental dilemma, yet we are being asked to pay for a situation caused by someone else. A situation of gross tax inequity is evident.

Another deep concern within our industry results from increasing pressures to utilize fund monies retroactively for clean up of toxics and to rectify long-standing environmental problems. Such actions could result in a quadrupling of the spill fund tax on our industry. This would place our operating companies at a severe economic disadvantage and would also add to energy costs.

Our trade association members are generally familiar with the many serious environmental problems we face in several areas of the State due to long-standing and current disposal problems with toxic wastes. We are also familiar with the very costly and dangerous problem recently experienced in Assemblyman Lesniak's own district. I think it is important to recognize, however, that with the proper exercise of supervision and inspection by State and local authorities, this one costly problem might have been prevented. Legislative action is no substitute for the responsibilities State operating departments have in properly enforcing and exercising their regulatory duties.

Within the limited time available, we have reviewed A-3542 and the proposed amendments to Chapter 141. Some of the changes set forth show recognition of some of the points I just commented on; however, the revisions also include many unnecessary features. The bill raises the fund to \$50 million and yet favorable oil spill experience in New Jersey would suggest a reduction of the existing fund to \$10 million would be in order. Our experience in New Jersey has shown this to be an adequate amount for petroleum spills. For some unexplained reason, the normal defenses deemed wise by the previous Legislature and provided in Section 8d have been deleted. The revisions also provide for retroactive payments in certain situations and with certain limits. Revisions have been made in the tax escalator provisions. For both our industry and the chemical industry, the imposition of the spill fund tax upon transfers of hazardous substances would result in multiple taxation together with great administrative difficulties.

Suffice to say we are concerned with this bill and would like to suggest an alternate three-step program to deal with our State's present toxic waste program.

Step I - We would like to amend this bill so as to provide for separate funds - one for hazardous/toxic substances and a separate fund for petroleum products. The tax to fund the toxic substances fund should include as taxpayers all generators of toxic and hazardous wastes. And, incidentally, many of the petroleum concerns in New Jersey also have chemical operations. In this respect, we are certainly willing to pay our fair share.

Step II - The State needs to undertake an in-depth study of the location and number of toxic disposal sites or spoils areas requiring clean up and/or control. Complementing this study should be a determination of the time and costs associated with an adequate clean up program. We do not believe the NJDEP has such a comprehensive inventory of the waste problems with a detailed engineering analysis and estimate of clean up costs.

Step III - We suggest that that further action on this bill should await the results of the study commission appointed by Governor Byrne to help develop a program to handle and process toxic wastes. The commission, which includes representatives from our industry, has been actively working on this problem and expects to submit

their study recommendations to the Governor some time in December.

Any legislation amending Chapter 141 should be coordinated with the final recommendations of the Study Commission and with the results of a detailed review of the needs of a clean up program for the State's problem areas. Until the scope of this entire problem is defined, it is unwise to arbitrarily move ahead with A-3542 as presently drafted.

Thank you very much for your consideration of our views.

I would like to say that due to the relatively short time available for analysis of this proposed legislation, we would be happy to respond in writing in detail to any questions you might have regarding our statement. And we further assume there will be additional Committee hearings to perhaps develop those questions.

ASSEMBLYMAN STEWART: Mr. Papps, one of the points that was made three years ago and is being made a little bit already today is the competitive position that we have put New Jersey's industry in. Does any other state have a similar spill fund or hazardous wastes fund that you know of?

MR. PAPPS: Certainly Maine and Florida have had spill funds which predate ours. The figures are considerably less--I believe \$10 million in Maine is the cap on theirs. They have spent a very small fraction of that for oil spill cleanup. Even \$10 million has proved to be more than adequate in the state of Maine and a similar situation, I believe, exists in Florida.

ASSEMBLYMAN STEWART: Are they strictly oil spill funds?

MR. PAPPS: I believe so

ASSEMBLYMAN STEWART: To your knowledge, has anyone gotten into the subject that we are getting into today of expanding it to others?

MR. PAPPS: I don't know. Mr. Sitarski, have any other states proposed or taken similar action as proposed here today to bring other---

MR. SITARSKI: Not to my knowledge.

ASSEMBLYMAN LESNIAK: New York has legislation introduced, doesn't it?

MR. PAPPS: Yes.

ASSEMBLYMAN STEWART: Is there any indication as to how New York's tax compares to ours? Is it the same? Higher? Lower? Or don't we know. That is something we can find out later. I just thought somebody might know.

ASSEMBLYMAN LESNIAK: I have the bill but---

I just want to make a couple brief points. First of all, I wholeheartedly agree with you and I have stated on many occasions that Chemical Control's situation could have been avoided and should have been avoided by proper--both State and local--action. One point I do want to make and alert you to is that under the current state of the law, as I read the Ventron case, the fund is openended or could be openended as far as retroactive spills. So, therefore, the oil industry may be--if the law is not changed by this bill--subject to much greater liability and taxes and subject even to the kicker of the higher tax based on that decision.

MR. PAPPS: At least on the trial court level.

ASSEMBLYMAN LESNIAK: Right. And, of course, this bill would put a cap on that type of liability. We also understand the problems with that type of situation. I just want to again re-emphasize the point I made before: We really can't wait any longer. We do need action now.

MR. PAPPS: I would certainly make it clear that we are in no way trying to minimize the seriousness of this problem. I think you can tell from our statement that we are stressing the inequity of the taxation and its original concept was more or less a shore protection bill based on off-shore explorations.

ASSEMBLYMAN LESNIAK: I'm only making that statement in response to the proposal that you made that we wait for the Commission's report.

One last thing: the bill was introduced on July 16th. I had made some statements that were fairly widely publicized that we are going to try to seek action as quickly as possible because of the danger.

MR. PAPPS: Thank you very much.

ASSEMBLYMAN STEWART: Just a comment while we are waiting for our next witness--by the way, I do not see Diane Graves so we will move on to James Benton. For the sake of some of the Committee members, Bob Hollenbeck was on the Committee at the time we drafted the Oil Spill Bill. Most of the things that Mr. Papps just said to us about the size of the fund were stated back in 1976 and they did say that they didn't think we needed a fund as big as we were talking about--a \$50 million fund. A compromise was arrived at and we have the present formula. They told us at that time that they didn't think we would ever have to use that kind of money. So far, anyway, that statement has been accurate. We have not--at least from the figures we have been able to get--put a dent in that fund. So they were relatively accurate with those statements back in 1976.

ASSEMBLYMAN LESNIAK: As far as oil spills.

ASSEMBLYMAN STEWART: Yes. In fact, the kicker part of the tax that kicks it up in case the fund is depleted was put in because we were pretty much saying to the industry, "O.K. if you are right, the fund will get to \$18 million and will stop. If you are wrong, we are going to have to tax you more heavily to increase the size of the fund." That's how that amendment was put in back then.

JAMES BENTON: Good morning, Mr. Chairman, members of the Committee, welcome to snow-covered Trenton. I'm sorry that the weather couldn't be a little more accommodating.

My name is James Benton. I am associated with the New Jersey State Chamber of Commerce as a Governmental Relations Representative. As you undoubtedly know, the State Chamber draws its membership from business and industry throughout the State. Our headquarters are located in Newark and our Governmental Relations Office is here in Trenton.

We appreciate this opportunity to comment upon Assembly Bill 3542--an Act to amend the Spill Compensation and Control Act, and the problem of hazardous wastes disposal before the Assembly Agriculture and Environment Committee.

The Assembly Agriculture and Environment Committee is to be commended on its collective interests in bringing continued attention to the subject area, the disposal of hazardous wastes that remain a national as well as a statewide concern.

New Jersey is recognized nationally for its role in dealing with the disposal of hazardous materials as well as many other critical areas of our environment. Such recent developments initiated by the administration such as the creation of a "manifest system" designed to track the movement of wastes from cradle to grave, a new strike force to intensify State and federal efforts to detect and prosecute illegal dumpers, imposing new and stiffer fines for those convicted of illegal disposal, and the maintenance of advisory committees including industry representatives to seek solutions to the disposal of hazardous wastes.

I am certain many of us recall--and it has certainly been recalled before the Committee today--the legislative history surrounding the passage of then Assembly Bill 1903 and the eventual signing into law as Public Law 1976, Chapter 141. There was much concern expressed during the passage of this legislation that the scope of

Assembly Bill 1903 be expanded to include hazardous substances in what originally was legislation designed to respond to the possibility of oil drilling operations off the coast of New Jersey in the Baltimore Canyon.

Our concerns with this legislation did not end with the enactment into law. The regulations as initially promulgated were strongly opposed by many groups, including legislators, as unworkable and not in conformance with legislative intent. It was not until development of a task force, whose members included industry and environmental representatives representing diverse interests spent many hours with Department of Environmental Protection personnel in detailed reviews of various drafts of these proposed rules that progress was made toward the final rules. The creation of these "task force" approaches is a practice that remains in use at the Department of Environmental Protection and we strongly commend the Department and strongly urge the continuance of that practice.

We have, in the State Chamber, witnessed several attempts, both in the legislative and regulatory area, to broaden the use of monies gathered by the State to apply them towards clean up of complex, long standing environmental problems. The issue of retroactivity embodied in the law remains in the arena of the judicial system pending final decisions and appeals.

In summary, the history of P.L. 1976, Chapter 141 albeit somewhat brief has nonetheless touched and involved every branch of government. The State Chamber is pleased to have an opportunity to offer some comments at this time of a general nature and we feel many of our member trade associations and member companies will comment in detail on key aspects of Assembly Bill 3542.

The subject areas of oil spills, hazardous substance spills and inactive hazardous waste disposal sites are distinct and separate and should be addressed by different legislative proposals.

The State Chamber also endorses the following steps be taken: addressing the continuing problems of future siting of hazardous waste storage facilities; full enforcement of disposal laws; a county by county inventory of disposal sites to identify location and potential danger; the sequential order of sites and their potential for health danger.

The State Chamber of Commerce urges members of the Assembly Agriculture and Environment Committee to create a fund that limits the use of the spill fund for petroleum or petroleum-related products. Legislation may then be forwarded to establish a hazardous substance control act. Such an act may regulate the toxic wastes generated in our State.

Additionally, the Governor has appointed a high level study commission, chaired by former Commissioner of the Department of Environmental Protection, Rocco Ricci, to develop a program to handle and dispose of toxic wastes in our State. Many fine people both public and private representing diverse viewpoints have worked long hours on the questions being raised by the Governor in his charge to the Commission.

We believe legislation addressing the disposal of hazardous wastes will be forthcoming after the Commission has had an opportunity to finalize and present this plan to the Governor, his counsel, and the administration for their review.

Legislation amending Chapter 141--the "Spill Compensation and Control Act"--should not be moved at this time. To do so, in our opinion, would be premature in light of this Governor's Committee's activities.

Industry in the State recognizes its role in the development of a solution to the problems of toxic waste disposal and spill programs. Indeed, as industry has

a role to play in developing solutions, government too must share this burden. Government should consider new ways of mobilizing resources to solve these problems and not be involved in defending law suits and media attacks. There are constructive jobs of recognizing and correcting past practices and moving ahead with the technology of today. Attempts by the State to solve what is a problem that is being addressed at all levels in all branches of government, and throughout industry, necessitates movement with deliberate speed.

We await detailed analysis of the potential problems as presented by the Governor's Commission, and we in the New Jersey State Chamber stand ready to offer as we have in the past, at that time, a detailed analysis of any proposal--legislative or regulatory--which comes before the Committee at that time.

Thank you very much for your time.

ASSEMBLYMAN STEWART: One of the earlier questions that was asked was: Why two separate funds? It seems to be a growing trend in testimony that that is going to be a point of contention. You heard the DEP's answer when I asked them: Why two funds? I believe the answer was: "Confusing to try to mingle the funds or to keep the funds separate," and "difficult to enforce." Do you have any response to that statement that was made by Paul Arbesman?

MR. BENTON: We feel, speaking for the State Chamber, through its Environmental Committee, that the very nature of the substances involved--petroleum, petroleum related products, and those involving the more complex, hazardous chemicals--the very nature of those two diverse substances dictate the establishment of two separate funds. From an administrative point of view, as far as the Department is concerned, we believe that it would ease the burden on them in responding to various spills. To be somewhat repetitive, actually in the Chamber statement we are calling for the establishment of a separate fund to deal with petroleum and petroleum related products, a chemical spill fund, and the establishment of legislation to deal with the problem of waste disposal abandoned or off on waste disposal sites.

ASSEMBLYMAN STEWART: We had testimony a minute ago that there will be some industries paying both taxes. Would it be less confusing for them to pay that tax to one fund or wouldn't it make any difference whether they paid to one fund or two funds?

MR. BENTON: I don't believe it would make any difference but I would like to make a closer examination at some point down the road.

ASSEMBLYMAN STEWART: One of the things we are constantly hearing in the Legislature is: "You have tax inspectors coming out and driving us crazy. You have the guy from this fund, the guy from that fund." Of course, that is an argument for keeping it all together. I would think the DEP would be able to say, "There is only one fund," as opposed to having someone come out inspecting on the oil spill fund and telling XY industry who does both that they have to do thus and so and then the following week someone comes out from the hazardous waste fund who has another list of things that the industry has to do.

MR. BENTON: Hopefully, they would not conflict quite like that. Ideally, the representative from the petroleum spill fund would contact the petroleum companies and the hazardous chemical spill fund would similarly go after the companies that he is responsible for. It would not be a conflict.

ASSEMBLYMAN STEWART: This may not be a very fair question because you may not have much of an idea at this point but maybe you could find out for us: Could you get a rough estimate of how many industries would be paying both taxes?

MR. BENTON: I think the Chamber could be of assistance in that task. I also suggest that the Division of Taxation or the Department of Labor and Industry could be of help.

ASSEMBLYMAN STEWART: Thank you very much, sir.

L O U A P P L E G A T E: Mr. Chairman, this is probably the shortest statement that I will make before any Committee this year. Representing the Chemical Industry Council of which I am the Executive Director, I would like to present our statement on A-3542 at this time.

The Chemical Industry Council of New Jersey at this time has not taken an official position on A-3542. However, our Officers will recommend support in principle for this legislation to our policy-making body.

Among the items still under consideration and study by our Council are the following: 1) A preemption provision to prevent duplicate taxation under proposed federal legislation or State legislation generated by the Governor's Hazardous Waste Disposal Commission, 2) the impact of proposed tax levies on companies, including a reliable estimate of revenue and practical taxing provisions, 3) the size of the total fund in relation to need and annual limits, 4) inclusion of all generators of hazardous waste as contributors to the clean up funds, 5) the imposition of costly preventive measures on smaller companies by reason of reducing the transfer amounts from 400,000 gallons to 50,000 gallons, 6) separate legislation for hazardous substances other than petroleum, 7) multiple taxing of the same chemicals during processing by a single company, and 8) the need to include all potential disposers of hazardous waste. There is a ninth that should be on here that has been discussed by some of our officers and that is: our feeling that the act of God provision should be retained on page 7 of the bill. We feel that it is rather unfair to the chemical industry to remove that and I'm sure the petroleum people aren't happy about it either.

ASSEMBLYMAN STEWART: What page was that?

MR. APPELEGATE: It is on page 7 at the bottom. It is sub-paragraph D. We feel that should be left in the bill.

ASSEMBLYMAN STEWART: Your group has not yet made a final analysis of those nine points I assume you are telling us. How far have you proceeded on the subject of two separate funds? Have you made any study at this point? Is it too early to talk about it?

MR. APPELEGATE: It is a little early but let me tell you why we think it should be that way, at least in the eyes of our officers. First, we think there is a great deal of difference between cleaning up oil spills, which is the major purpose of the Oil Spill Fund, and cleaning up hazardous waste sites--abandoned dumps. We think these are very different. The other area which I think has to be considered is the fact that oil is oil is oil. It is very easy to see and identify. Chemicals come in solids, in gases, in liquids and some chemicals in a small package are very, very expensive while a barrel of some other chemicals isn't worth much. The application of a taxing instrument on that and the great variety of chemicals that are in use, we think, makes it so different from oil that we tend to support a separate fund.

And finally--these are the reasons that have been discussed so far--is the fact that the Governor's Commission on Solid Waste is coming up, we hope. We are participating in this with hazardous solid waste disposal facilities. We think that that particular bill is going to relate to the handling of cleanup sites particularly. We think there is a natural tie-in there. We would like to maintain the ability to do that at a future date. That is something that could not possibly be locked in, in our opinion, with the Oil Spill Fund. It would have to be entirely separate. But if we have a separate chemical waste fund, then it makes sense to tie in a hazardous waste disposal operation with that. We are hoping that that Commission will move quite fast. They seem to be now.

ASSEMBLYMAN STEWART: I thought I heard the DEP say that the establishment of two separate funds would cause confusion and internal problems. Do you see that?

MR. APPLGATE: It may cause them confusion and internal problems. It would cause industry fewer problems. That's who I'm representing. I think it could be worked out. Incidentally, we have discussed--as Mr. Arbesman commented--this with some of the leaders at DEP. We are making a very honest attempt to see if something can be worked out. But it has to be practical for both sides.

ASSEMBLYMAN BARRY: Is it correct that the Chemical Industry Council would suggest that the tax be imposed on all generators regardless of the amount or size of the transfer?

MR. APPLGATE: That is one of the items under discussion at this time. When you say "chemicals of New Jersey" or chemicals anywhere, right away the chemical industry is pinpointed. However, practically every manufacturer is using chemicals and disposing of hazardous waste. If you examine that dump that, I think, Mr. Lesniak has, what is picked up there is not only chemical companies' stuff that has ended up there. No matter how legitimately it was contracted to be disposed of, it has ended up there. Companies that you and I would not even consider being in the chemical industry yet they use chemicals in their processing are contributing to the waste. So there is a strong suggestion among some of our members that we devise a way of taxing also the people who are disposing of hazardous waste. It might be a supplement to the bill. There, we feel, is a more direct accounting between the potential spoilers, perhaps, and the people who have a good clean operation. They won't have a spill yet the bill is planning to tax them to pay for some of the irregularities or carelessness, perhaps, of others who aren't even going to participate in this program. That is a real serious problem, I think.

ASSEMBLYMAN LESNIAK: First of all, Mr. Applegate, I welcome that suggestion. I am fully open to either separate legislation or an amendment to include that type of procedure whereby all generators would be subject to some contribution. I do want to alert you to the fact that I do not intend, and I hope this Committee does not intend, to dilly-dally, so to speak, on this legislation. So therefore, I ask you to as soon as possible get concrete proposals and discussions regarding the issues that you do raise because we all are obviously open to your comments and input. We do want to hear from you but we need more concrete information. I also ask that you not rely on waiting for the Commission's report.

MR. APPLGATE: I hope I didn't indicate that we are waiting for that.

ASSEMBLYMAN LESNIAK: That was the general thrust of the last three speakers so I'm just saying that in general. We want to get down and get some concrete proposals down so that we can address all the issues that are raised today. Then if we can have some intense discussions within the next month, I think they could prove very fruitful.

MR. APPLGATE: Our only concern is that they would come in with a recommendation that could result in duplicate taxation. Therefore, there ought to be a pre-emption clause in there.

ASSEMBLYMAN LESNIAK: You see, you can always change legislation with legislation. So the easiest way to address that is to address it when it comes up rather than--- I have no idea how we would even formulate a self-destruct type of clause in there. I think it would be better just putting it into new legislation that develops.

One specific point that you do raise that I do want to pursue briefly is that you believe that the tax ought to tie in to the value of the product. There

is some contrary opinion. A barrel of oil is a barrel of oil and that is set at one cent and that's the way the tax is. This new tax on the chemical transfers is tied into the fair market value, of course, plus transportation. So therefore, you would support that type of---

MR. APPLGATE: Our officers--I have to be very careful--our officers in discussions with representatives of DEP actually suggested using fair market value.

ASSEMBLYMAN LESNIAK: Is the profit picture or the ability to pay correlated to the value of the product being produced?

MR. APPLGATE: In the eyes of the representatives that I have discussed this with, or officers, yes.

ASSEMBLYWOMAN MC CONNELL: Mr. Applegate, could you give me an example of a small company that would have chemical waste disposal of 50,000 gallons or less?

MR. APPLGATE: I would imagine a paint manufacturer, a small paint operation that has four employees would probably come into that category. All of your gasoline stations---

ASSEMBLYWOMAN MC CONNELL: It doesn't apply to this does it?

MR. APPLGATE: Why not?

ASSEMBLYWOMAN MC CONNELL: It doesn't apply to petroleum products.

MR. APPLGATE: Well you'd better take benzene off the list then.

ASSEMBLYMAN LESNIAK: Fifty thousand gallons of benzene?

MR. APPLGATE: It's in the gasoline.

ASSEMBLYMAN LESNIAK: Would they have 50,000 gallons?

MR. APPLGATE: No, they wouldn't have that much. I don't know. We haven't surveyed our membership to find out how many there would be. Frankly, the Chemical Industry Council represents primarily the larger chemical companies in the State.

ASSEMBLYWOMAN MC CONNELL: And it is your feeling that the smaller companies should be exempt under this proposal?

MR. APPLGATE: We feel that if they are disposing of hazardous waste, at that point there should be a form of taxing.

MR. STEWART: Thank you very much.

MR. APPLGATE: We are very concerned about that one point we make in here and it was brought up by a representative of BIA and that is: Once you come under this spill bill, you have to get involved with all the preventive measures which could possibly put some of these small companies out of business.

ASSEMBLYWOMAN MC CONNELL: That was my concern.

ASSEMBLYMAN LESNIAK: Mr. Chairman, I am also concerned with provision. I think we will have some further discussion on that.

ASSEMBLYMAN STEWART: Our next witness will be John Minott.

J O H N M I N O T T: Mr. Chairman, Ladies and Gentlemen, my name is John Minott and I am an environmental engineer for Ashland Chemical Company, a division of Ashland Oil Incorporated. Ashland operates three facilities in the State of New Jersey, all of which are classed as "major facilities." One plant produces Valvoline automotive lube oils, another distributes industrial chemicals and solvents to other industrial firms, and a third plant manufactures various plastic resins for use in the auto and home construction industries. In addition, Ashland operates a major system of gasoline and fuel oil retail outlets within New Jersey.

Ashland Chemical has studied the proposed bill and has several concerns about its impact on the business community in New Jersey. The greater tax load and the greatly increased recordkeeping workload will increase costs on most products manufactured or sold within the State. New Jersey industries are just now experiencing

the costs of the existing spill plan (DPCC) reconstruction costs. As of September, 1979, all major facilities had to submit plans for upgrading their plants to the DPCC Plan Standards. These costs are just now beginning to be felt at most facilities, but will continue for several more years. If the proposed law is implemented, the additional taxes will be added to already high reconstruction costs. Since all operating costs are ultimately passed on to the final consumer, residents of New Jersey will see noticeable cost increases in many products. In many cases there are alternate suppliers of the same products set up in neighboring states, who do not have the spill fund tax or DPCC plan compliance costs. These out-of-state firms will take away business from New Jersey because of their lower operating costs. Thus the higher costs of New Jersey products will cause an increasing loss of sales to out-of-state firms and this will cause profit margins of some firms within the State to drop to dangerous levels.

The proposed law would charge a tax of 0.1% of "fair market value" on each transfer, which is about 4.2¢/barrel/transfer based on an average sales price of \$1.00/gallon for most products. This is an increase of 4.2 times the present tax rate for many products. In addition, multiple transfers will always occur and we estimate an average of 2 transfers per shipment. If products are taxed two times, then the effective tax rate is 8.4¢/barrel, over 8 times the present tax rate. At this price differential, which must be passed on to the ultimate users, sales to New Jersey customers located near the State border can be expected to shift to out-of-state sellers. This will ultimately cause loss of employment and possibly loss of some firms within New Jersey.

In addition to the direct tax costs, there will be a high accounting manpower cost needed to develop the basis for each plant's taxes. For many small plants the costs of recordkeeping will equal or exceed the actual taxes paid. Again these costs must be borne by the ultimate consumer and reduce the competitiveness of New Jersey industries with the potential for lost employment or shutdown of firms.

We feel that the taxes should be uniform for all products, not only chemical or petroleum, since all products have equal potential as spill hazards. The products should be taxed on the first transfer into the State only. If future revenues prove to be insufficient to cover costs, then the tax rate should be raised uniformly until revenues are sufficient. Since spill potentials are not exclusively a large facility problem, the tax base and DPCC plan requirements should be kept as broad as possible. The accounting and bookkeeping problems or costs for any spill fund law should be minimized so that revenues are utilized for actual clean up labor, not the paperwork.

Ashland's primary disagreement with this proposed law is with the "ancient spills" (i.e. - dumps and landfills) section. Many of the present day landfills which are being considered for major cleanup work were once a fully legal, State approved disposal site. Industry, both within and without New Jersey, used such sites without necessarily judging the appropriateness of the operation. Inactive landfills, previously secured to the satisfaction of the State, are now considered problems due to the changing standards of society. Any required cleanup should be handled out of general tax revenues, not a tax on only two industries presently in business. In addition, disposal firms which go out of business due either to bankruptcy or changing environmental rules, are not an actual spill. These "potential spills" should not fall under the Spill Fund, but should be handled under State solid waste laws. This type of problem should also be paid for by general tax revenues since it was not caused exclusively by only currently operating industries. Industry should pay its fair share of "ancient spills" or "potential spills" but should not be the only contributor.

Many of the large, expensive cleanup projects presently planned or underway fall into the "ancient spill" category or "potential spill" at abandoned facilities. If these two problem areas are handled by a general statewide tax, the remaining spills should be handled by the existing Spill Fund Tax of 1c/barrel. Thank you for this opportunity to present our feelings on this proposed bill.

ASSEMBLYMAN STEWART: On the last page of your statement you mention "Any required cleanup should be handled out of general tax revenues, not a tax on only two industries presently in business." There are only two industries? Do you want to elaborate on that?

MR. MINOTT: Basically, your existing bill is for the chemical or petroleum industry.

ASSEMBLYMAN STEWART: Oh, I see what you mean.

MR. MINOTT: But they are not the only users or handlers of the materials in concern.

ASSEMBLYMAN STEWART: For instance?

MR. MINOTT: Rendering firms, plating industry. In many cases these will not have any appreciable storage, but they do handle a lot of material. There are probably others but I just can't think of them.

ASSEMBLYMAN STEWART: Is it possible that those businesses that you mentioned had storage of 50,000, are capable of handling the 50,000 minimum?

MR. MINOTT: I would guess not but I'm not certain.

ASSEMBLYMAN STEWART: If they did, the way you read this bill would they be subject to this tax?

MR. MINOTT: If they had 50,000 gallons of hazardous storage as defined then they would be under it, right.

ASSEMBLYMAN LESNIAK: I do want to address two points. You raised them as your primary disagreement with the bill. Number one as far as the ancient spills: I want to reiterate that under current law, Supreme Court decision, the fund is totally responsible for ancient spills as it now exists. Until an appeal overturns that, this bill would actually limit the liability of the fund as far as ancient spills. Secondly, I do want to disagree with your point you raised as far as the potential spills from the firms that went out of business due to either bankruptcy or changing environmental rules. There certainly is another reason--due to illegal activity as experienced with Chemical Control. Industry is somewhat responsible for that in this sense: Industry paid less to dispose of that waste because they were operating illegally and were not complying with the rules of the State of New Jersey. They were able to just stack these barrels on top of each other and not dispose of them, not classify them and allowed them to corrode. They did not comply with the rules so, therefore, they were able to take on the stuff and industry was left to dispose of it. So there is somewhat of a tie-in between that type of facility which is one of the major thrusts of this bill and the operations of industry.

MR. MINOTT: Again, I think Chemical Control was legal for a good percentage of its life. Toward the end--I don't know exactly when--it became illegal. The State classified it unacceptable. Industry has a very difficult time finding out at what point it becomes illegal.

ASSEMBLYMAN LESNIAK: I'm saying that industry does benefit from illegal activities such as this and, therefore, there is somewhat of a tie-in. They do pay less for the disposal because the disposer may be operating illegally.

MR. MINOTT: Agreed. We could have lower cost again though. Chemical Control

did not take exclusively from New Jersey nor exclusively from the petroleum and chemical industries. Again, we are saying the tax base could be broader.

ASSEMBLYMAN LESNIAK: I agree with that.

ASSEMBLYMAN STEWART: Thank you very much.

Our final witness will be Mr. Allan Marcus from the Independent Liquid Terminals Association. I'm sorry, is there someone here from the Public Interest Research Group?

A L L A N M A R C U S: Mr. Chairman, Mr. Thomas O'Neill will give my presentation.

ASSEMBLYMAN STEWART: Fine.

T H O M A S O' N E I L L: I am Tom O'Neill. I am here representing the Independent Liquid Terminals Association. Let me first begin by explaining exactly who that is and what role they play in the chain through which products such as petroleum and chemicals move in the State of New Jersey. We operate public storage facilities. I guess the best analogy would be a warehouse kind of analogy. We are generally located on water; the product comes into our State; we store it for customers and then it moves from our facility out to pipelines, tank cars, tank trucks, rail, other connections and goes wherever it is going next.

We were caught up in the sweep of the Oil Spill Fund Act as it passed the Legislature in 1976. And pursuant to the regulations that have been issued, our clients have made numerous capital expenditures, gone to great expense, to improve facilities--diking, all kinds of requirements--pursuant to Spill Compensation regulations. So when I get to the principal point, I wish to address the taxation question here. I want to make it clear that we have in no way had any kind of free ride on this nor are we looking for that. The Oil Spill Fund Bill as initially passed imposed a tax on the transferee and that term was not very clearly defined in the legislation. The Treasury Department took the position that we were the transferee as the person who first received the product in the State of New Jersey. It is important to understand that our fee for storing products, in some cases, doesn't even equal the tax liability that we were forced to bear under that interpretation of the word "transferee." Consequently, we came back to the Legislature and Assembly Bill 1542, sponsored by Dick VanWagner was passed and that clarified what, I think, was always the Legislature's intent, that is, that the burden of taxation fall on the owner of the product rather than upon the handler of the product. That is the language that you see now in Section 9 of the bill on pages 7 and 8. We are the public storage terminal referred to in the bill. We are now concerned as this bill is proposed that we are back somehow caught up in the sweep of taxation because we find a new undefined term--that of "transferor." It is clear that the first taxable event--the instance of taxation--falls on the product owner. After that, along the chain through which the product moves, somebody called the "transferor" is liable. We don't know who that is. We think that is a problem which certainly needs to be clarified. We're not even sure at all that you need to tax more than the one transfer. We think that that is a question that you ought to look at. It may well be that the funds necessary can be raised through simply taxing the first transfer. I just heard the gentleman from Ashland Oil testifying about a typical situation where there may be two transfers of the product. It would seem to us that rather than taxing two transfers at one rate, it would make more sense to tax the first transfer at a higher rate since you have the discretion--you the Legislature giving the discretion to the administrator of the Fund. It would seem to us that it is much more difficult to administer and enforce multiple taxation collections than it is to administer and enforce one collection. We think a careful revenue estimate ought to be

done before we go into this rather cumbersome problem of multiple transfers.

The other concerns which we have with the bill have already been addressed in testimonies by representatives of the Petroleum Council and the Chemical Industry Council and also the Business and Industry Association submitted to you. I don't want to take your time to belabor those points, I would just generally note them. We are concerned too about the removal of defenses. We're concerned too about the questions that have been raised by those representatives dealing with just how you structure this fund and how you administer it. I would note one other consideration that I think affects everybody in this chain. I don't know if it has been noted yet. It can be found on page six of the bill, section eight, where it purports to give a first lien--first priority claim--on monies expended by the administrator of the fund. First of all, I don't know if you can do that. I think there are other liens that would take priority, other claims that would take priority, federal claims, federal tax claims, for instance. Second, I don't know what the impact of that first lien would be on the ability of all kinds of entities to obtain necessary insurance and to borrow money if you give a priority claim over other claims. I would just note that as another area that the Committee may want to look at.

With that in mind, I would conclude and tell you that we would like to submit something more detailed in writing to you in the future particularly if you are going to stay with this multiple transfer concept. I don't think the language here is precise and does what you want to do. Thank you.

ASSEMBLYMAN STEWART: Thank you.

ASSEMBLYMAN LESNIAK: I think we have addressed most of Tom's concerns.

ASSEMBLYWOMAN MC CONNELL: I would like to address a question to you, Mr. Lesniak. It is true that the Legislature this year did clarify the original intent of the bill dealing with transferees. Now, Mr. O'Neill raised a question which concerns the definition of a "transferor" and are we not involving ourselves here with double taxation. How do you feel about that?

ASSEMBLYMAN LESNIAK: As far as the double taxation, we are involved because the concept was that every transfer creates a risk. The risk ought to involve a liability in terms of potential spills and the responsibility for those potential spills. As far as Tom's raising the question as to the definition of transferor, I would certainly be willing to clarify that if it needs clarification--and it very well may need clarification. I agree with him; I had some problems wrestling with that myself. We may need some clarifying language.

ASSEMBLYMAN STEWART: Thank you very much, Mr. O'Neill.

I want to thank everyone for attending today and thank the Committee for attending.



## City Council

CITY OF ELIZABETH, NEW JERSEY

CHARLES KENNEDY  
Councilman at Large  
888 WESTFIELD AVENUE  
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ELIZABETH, NEW JERSEY 07

353-6000

October 8, 1979

Assemblyman Raymond Lesniak  
60 Prince Street  
Elizabeth, New Jersey 07202

Dear Assemblyman Lesniak,

I am very pleased that you are moving to eliminate a very serious situation in the city of Elizabeth, namely, Chemical Control. I totally support your efforts in this matter.

The primary concern as always should be the public safety of the residents of Elizabeth and the cost burden to them.

I understand that this cleanup project is in the price range of ten million dollars. Anything that you and the committee can do to keep the burden from the local tax payer is of the utmost importance to all citizens.

Sincerely,

Charles F. Kennedy  
Councilman at Large

CFK:ma  
cc: WJDM  
Community News  
Star Ledger



REPLY TO:  
Legislative Office  
32 LAFAYETTE STREET  
TRENTON, N.J. 08608  
609 393-7474

## The League for Conservation Legislation

Box 605, Teaneck, N. J. 07666

TESTIMONY OF WILLIAM S. SINGER ON A.3542

BEFORE THE ASSEMBLY AGRICULTURE AND ENVIRONMENT COMMITTEE

The League for Conservation Legislation appreciates this opportunity to comment on Assembly Bill A.3542 introduced by Assemblyman Lesniak. This bill will provide part of the solution to the severe toxic waste problem in New Jersey. This state is blessed economically by the concentration of chemical and petroleum industries. That good fortune has also proved to have countervailing deleterious effects, particularly where the waste from these industries is not properly treated. The passage of the Spill Compensation Bill in 1977 was a significant step toward correcting the problem. In the last year, the spotlight has shifted to the mounting dilemma of the illegal dumping of hazardous substances and the lack of facilities for proper disposal. Unfortunately, we are just beginning to become aware of the results of the careless disposal of toxic waste throughout this State. Thus, steps to attack one aspect of the problem by Assemblyman Lesniak are greatly appreciated. The Lesniak bill offers a means to clean areas already despoiled by improper disposal of such substances, to see to proper disposal of illegal stored or dumped hazardous substances and to provide a mechanism to clean up discharges in the future.

Obviously, rather than establishing a fund for future clean-

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33-7474

ups, the industry, possibly in conjunction with the Legislature, must provide a means for the proper disposal of these wastes when they are created. The Governor's Advisory Committee on Hazardous Waste Control may come up with creative proposals to meet that need. Certainly, such ideas are necessary. Yet, absence of a ready answer for that concern now should not interfere with the passage of this crucial legislation. We are already presented with many dangerous situations around the state which are endangering the health and safety of our citizens. During your campaigns this fall, you have discovered that this issue is of immediate concern in some part of your district. Beside the enormous degradation of the environment, public health and safety are in jeopardy.

Although the funds for the clean up of discharges of hazardous substance from petroleum and non-petroleum substances are to be mixed within one fund, we believe it is best to distinguish between the petroleum and chemical industries. Therefore, we are in agreement with the different taxes to be imposed on those industries. We are also in agreement with the deletion from Section 8 of the bill of the defenses to strict liability under the present law.

The League for Conservation Legislation applauds the sponsor's concept to increase the authority to use the Spill Compensation Fund. The ability to effect the removal of hazardous substances as specified in Section 7 is a clear advance. The Department of Environmental Protection will have the power to remove substances which have not been discharged but present imminent danger of discharge or possess dangerous characteristics. Specific authority

is also given to use funds for discharges which have occurred before the effective date of the Act. We all suspect that there are other "ticking time bombs" waiting to be found. This bill will give us the ability to overcome these serious health and safety dangers.

Despite these important points, this bill fails to recognize the real cost of the clean-up. The expense is massive. This reality is not reflected in the retroactive feature of the bill. The administrator would only be allowed to spend \$2,500,000 in any one year or no more than \$1 million for any discharge or related series of discharges. These sums are much too low under the circumstances as we have learned from the discharges presently known. In addition, the language is unclear as to whether the \$1 million limit is per year or in total. We know that serious discharges already exist in New Jersey. Therefore, it is not sensible to hamstring the operations on these problem sites; particularly when we know in advance that the limits set in this bill are absurdly low. The League for Conservation Legislation seriously requests the Committee review these limits and increase them to a tolerable level.

We also disagree with the change in authority given to DEP under Section 7. Presently, the Department is directed to act to remove or arrange for the removal of discharges. This bill would change the language to a conditional tense and give DEP unlimited discretion. Considering the budget constraints already present, giving an executive agency the opportunity to overlook a discharge based on its own subjective viewpoint is a mistake. Why are there no standards for the exercise of this discretion? The

original language in the Spill Compensation Bill should be left intact.

There are also some small items which should be mentioned:

1. On page 6, subsection e at lines 98-102 conflicts with federal pre-emption of bankruptcy laws. Obviously, a state statute cannot supersede federal law as to what is a first priority lien in matters of insolvency.

2. At page 9, line 51 words should be added to include one percent of fair market value as well as \$0.01 per barrel to be consistent.

3. On page 10, line 116 the language should be made to conform with the new criminal code.

This bill is of crucial importance to the State of New Jersey. This State faces a severe test in controlling toxic substance disposal. A.3542 represents a bold attempt to resolve certain aspects of the problem in a well developed and considered manner. We urge the Assembly Agriculture Committee to review this bill expeditiously, make the changes we have mentioned and see that the bill gets speedy consideration in the Assembly. It would be a benefit to all the citizens of the State for this bill to be passed during this legislative session.



Oct. 10, 1979

TESTIMONY OF THE NEW JERSEY PUBLIC INTEREST RESEARCH GROUP  
ON A.3542, AN ACT TO AMEND THE SPILL COMPENSATION AND  
CONTROL ACT

My name is Timothy Luria, and I am the Director of the New Jersey Public Interest Research Group's (NJPIRG) Streamwalking Program.

NJPIRG is a non-profit, non-partisan corporation funded by college and law students on nine campuses throughout New Jersey. NJPIRG has been active on issues involving environmental quality, energy policy, consumer protection, and higher education.

Since 1975 NJPIRG has conducted a Streamwalking program to identify illegal discharges into New Jersey's waters. During that time we have discovered many such discharges and have often supplied our findings to the New Jersey Department of Environmental Protection (DEP) and the U.S. Environmental Protection Agency (EPA).

NJPIRG therefore supports the amendments to the Spill Compensation and Control Act with one major reservation. Although we support the concept of using the Spill Fund to pay for the cleanup of hazardous substances discharged

## TESTIMONY OF NJPIRG ON A. 3542

prior to the effective date of the Act, we do not support the financial limitations of section 7(d). That section restricts the fund's use to \$1,000,000 per "ancient source discharge" and a total of \$2,500,000 per year for all such discharges.

NJPIRG contends that those limited amounts will not go far in cleaning up "ancient source discharges." For example, the State of New York is spending \$23 million to clean up the infamous Love Canal. In an article in the Courier-News of Sept. 26, 1979, a copy of which is appended, Dr. Sidney Gray, Acting Director of DEP's Program on Environmental Cancer and Toxic Substances, is reported to have said that there may be 100 to 150 potential Love Canals in New Jersey.

Another example is the Ventron case. Cost estimates on containing the wastes there have ranged from three million to six million dollars. Finally, Jackson Township has required a loan of \$1.2 million to bring in drinking water to replace its own groundwater which was contaminated by a leaking dump.

These examples show that the cleanup of hazardous substances discharged prior to the effective date of the Act will cost far more than \$1,000,000 per discharge and \$2,500,000 per year. NJPIRG therefore urges that the financial restrictions of section 7(d) be removed.



# Sierra Club

NEW JERSEY CHAPTER  
360 Nassau Street, Princeton, N.J. 08540  
(609) 924-3141

Statement presented at the Public Hearing on A.3542 - Oct. 10, 1979

Thank you for the opportunity to comment on A. 3542, an Act to amend the "Spill Compensation and Control Act." My name is Diane Graves and I am Conservation Chairman for Sierra Club's New Jersey Chapter.

Within A. 3542 there are several provisions which we support, although we have a question on one of them. However, there is one major provision in the bill which we find totally unacceptable.

We support adding the definition of "fair market value" for taxing chemicals. We support the additional category to "major facility" by reducing the capacity taxed to 50,000 gallons or more. It is fair and reasonable to include these middle-sized facilities. In fact, if it were possible administratively, we believe all facilities handling hazardous substances should pay into the fund. We support providing the DEP with the authority to prevent an imminent discharge or explosion. Prevention is clearly safer and cheaper than dealing with an explosion, fire and/or clean-up.

Section 8 is not specific regarding medical costs coverage. Does 8.a., or any other section, provide the victim with money for medical costs incurred as a result of a discharge? We believe it should.

We cannot support Section 7's limitation on clean-up of abandoned dump sites. A. 3542 purports to give DEP the authority to clean up such sites, but limits expenditures from the fund to \$1 million per site per year, with a total of \$2.5 million per year.

In an effort to judge whether or not this is a solution that fits the problem, we looked for information to define the magnitude of the problem. This is what various informed individuals and agencies have said:

"In N.J., for example, there were about 350 public-disposal landfills operating in 1974, the year in which we began restricting landfill disposal of hazardous waste - and we were among the first states to do so. Of these, about 200 were municipally owned or operated. Records show at least 93 of the 350 landfills accepted chemical waste some time during their active lifetimes, but every landfill that was operating before 1974 has to be considered a potential candidate for hazardous waste contamination, because they were essentially unregulated." (Emphasis added) Dr. G. Paulson, 6/21  
Those were dump sites where material was brought in from a number of sources. These do not include industrial on-site dumps, of which there could be hundreds more.

New Jersey has just begun to look for additional, previously unreported dump sites with the aid of a \$300,000 federal grant (8/17/79, Paul Arbesman, Congressional testimony). Some dumps were known earlier, additional ones have been found recently. Of those found so far, Chemical Control Corp. in Elizabeth, with approximately 34,000 drums, the estimated clean-up amounts to \$10 to \$15 million. The Meadowlands mercury contamination is estimated at \$3 to \$6 million. A frequently used example outside of N.J. is the No. Carolina episode in which a tanker truck dumped PCB's along a roadside. The estimated clean-up is \$2 to \$12 million. In this instance, we've usually focused on the clean-up difficulties and costs. Focus instead on the amount involved - only one truck load. N.J. has hundreds, thousands - who knows how many truck loads already in the ground.

We assume that the cost of restoration or replacement of any natural resource covered in Sec. 8.a.(2) includes providing a new water supply - both temporary and/or permanent, depending on the extent of the contamination. In the case of Ocean County, the estimated cost of supplying clean water amounts to "\$1.2 million for 140 homes or over \$8,500 per home. Even temporary provision of water supply alone at the small rate of 8 gals. per day for a family of four costs at least \$2,000 per month."(Paulson).

In an EPA report, "Prevalence of subsurface migration of hazardous chemical substances at selected industrial waste land disposal sites" (Oct. 77) one of the conclusions states, "The typical solution to contamination of ground water with hazardous substances is to develop an alternative water supply, with minimum effort given to limiting additional pollution of the aquifer or to cleaning up the affected resource." It is complicated and expensive to clean up ground water once it has become contaminated.

New Jersey residents and industry rely on potable ground water - about one half of the states' water comes from ground water. The more we look, the more contamination and threats of contamination we find.

We don't know whether the Chemical Control Corp. site, Ocean County problem, or the mercury in the Meadowlands are unusual, unusually expensive, inexpensive, or represent average costs. N.J. doesn't have enough information. Even if we assume we've already uncovered the worst case N.J. is going to have, although we may have others like them, then this bill is clearly inadequate. We can't assume the fund will be used over the years to clean up one place - Chemical Control, say, unless the bill is amended to say this is an Elizabeth clean-up fund. Another flaw - if those wastes are as hazardous as claimed in the Oct. 2, 1979 Trenton Times article (attached), then we don't have time to wait several years.

According to DEP there are dangerous chemicals in drinking water in more than 200 locations throughout N.J. - probably in every Legislative District. These are just the sites that have come to light, so far, one way or another.

Is the Legislature prepared to limit clean-up to such an extreme extent as mandated in A.3542, that it is willing to accept increasing numbers of closed wells without cleaning up the sources, nevermind the contaminated water? What will N.J. use for drinking and industrial process water in future years? How much will it cost to clean up then? What are the potential health costs of not cleaning up?

It is accurate to call this bill an amendment, but it is not accurate to call it a solution to the clean up of abandoned dumps - clearly it won't do the job.

Thank you.