

ENVIRONMENT AND ENERGY ALERT

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NJ Spill Act Contribution Rights in Jeopardy Under Proposed Bill *Points to Consider*

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A bill (A-3880/S-444) recently introduced in both houses of the New Jersey legislature would prevent companies and private individuals from exercising their existing contribution rights under New Jersey's Spill Act to recover cleanup and removal costs, or any other damages, associated with a discharge of hazardous substances from "local public entities," including municipalities and sewerage authorities. If enacted, the bill would not disable the state from bringing its own lawsuit, but in the frequent circumstance where the state sues some but not all polluters, the defendants lose their contribution rights against all local public entities that may be equally (or more) at fault.

Proponents describe the bill as a means to protect taxpayers and/or ratepayers from increased taxes or rates to cover historical liabilities. However, the shortcomings and public policy errors embedded in the bill negatively affect New Jersey businesses and individuals alike. Some examples include:

- The proposal totally unravels the existing Spill Act liability scheme, which relies upon contribution rights to achieve fairness, using well-known equitable principles where there are multiple potentially responsible parties. The result is to shift the brunt of the liability to everyone else regardless of whether a town or sewerage authority actually contributed more or equal amounts of the same hazardous substance.
- The perceived present or future harm to the taxpayer is illusory; public entities are likely to have already purchased insurance — years and even decades ago — which covers their defense fees and actual remediation costs.
- The legislation potentially provides absolution to other indirect dischargers who — relying on the bill's language — may seek to avoid Spill Act liability arising from their discharges of wastewater containing hazardous substances through public sewer systems or treatment plants.
- At a time when public entities continue to responsibly respond to calls from their shareholders and regulators for greater environmental stewardship, this bill creates a disincentive for

public entities to invest limited funds in pollution control technology and improved risk management practices.

Although this bill did not move in the last legislative session, it has already been voted out of committee in the Senate on a bipartisan basis (with three primary sponsors and two co-sponsors). The Assembly version is sponsored by Asm. Grace Spencer, the chair of the Environment and Solid Waste Committee, where the bill has been referred for consideration.

Various New Jersey trade associations, including the Commerce and Industry Association of New Jersey, the Chemistry Council, and the New Jersey Business and Industry Association, are actively speaking out against this bill. We encourage you to consider the consequence of this bill on your New Jersey-based business.

We are available to guide you through the issues in the bill that may affect your business and can also provide assistance in drafting letters or talking points, and/or arranging meetings with officials in Trenton to help give voice to your position.

Although the Office of the Governor maintains a policy of not commenting on legislation until it reaches the governor's desk, the Office of the Chief Counsel will consider comments on the pending bill. We can assist in arranging meetings for that purpose prior to the end of the current legislative session.

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