

P.L. 2001, CHAPTER 154, *approved July 13, 2001*
Senate Committee Substitute (*Second Reprint*) for
Senate, No. 2345

1 AN ACT concerning ¹[the cleanup of contaminated property,
2 amending and supplementing Title 58 of the Revised Statutes]
3 ²[the limitation of actions under certain environmental laws¹] the
4 cleanup of contaminated property, amending and supplementing
5 Title 58 of the Revised Statutes², and amending P.L.1991, c.387.
6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:
9

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

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

14 "Act of God" means an act exclusively occasioned by an
15 unanticipated, grave natural disaster without the interference of any
16 human agency;

17 "Administrator" means the chief executive of the New Jersey Spill
18 Compensation Fund;

19 "Barrel" means 42 United States gallons or 159.09 liters or an
20 appropriate equivalent measure set by the director for hazardous
21 substances which are other than fluid or which are not commonly
22 measured by the barrel;

23 "Board" means a board of arbitration convened by the
24 administrator to settle disputed disbursements from the fund;

25 "Cleanup and removal costs" means all costs associated with a
26 discharge, incurred by the State or its political subdivisions or their
27 agents or any person with written approval from the department in the:
28 (1) removal or attempted removal of hazardous substances, or (2)
29 taking of reasonable measures to prevent or mitigate damage to the
30 public health, safety, or welfare, including, but not limited to, public
31 and private property, shorelines, beaches, surface waters, water
32 columns and bottom sediments, soils and other affected property,
33 including wildlife and other natural resources, and shall include costs
34 incurred by the State for the indemnification and legal defense of
35 contractors pursuant to sections 1 through 11 of P.L.1991, c.373
36 (C.58:10-23.11f8 et seq.). For the purposes of this definition, costs
37 incurred by the State shall not include any indirect costs for

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted June 25, 2001.

² Senate floor amendments adopted June 28, 2001.

1 department oversight performed after the effective date of P.L.1997,
2 c.278 (C.58:10B-1.1 et al.), but may include only those program costs
3 directly related to the cleanup and removal of the discharge; however,
4 where the State or the fund have expended money for the cleanup and
5 removal of a discharge and are seeking to recover the costs incurred
6 in that cleanup and removal action from a responsible party, costs
7 incurred by the State shall include any indirect costs;

8 "Commissioner" means the Commissioner of Environmental
9 Protection;

10 "Contamination" or "contaminant" means any discharged
11 hazardous substance, hazardous waste as defined pursuant to section
12 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to
13 section 3 of P.L.1977, c.74 (C.58:10A-3);

14 "Department" means the Department of Environmental Protection;

15 "Director" means the Director of the Division of Taxation in the
16 Department of the Treasury;

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

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

27 "Fair market value" means the invoice price of the hazardous
28 substances transferred, including transportation charges; but where no
29 price is so fixed, "fair market value" shall mean the market price as of
30 the close of the nearest day to the transfer, paid for similar hazardous
31 substances, as shall be determined by the taxpayer pursuant to rules of
32 the director;

33 "Fund" means the New Jersey Spill Compensation Fund;

34 "Hazardous substances" means the "environmental hazardous
35 substances" on the environmental hazardous substance list adopted by
36 the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4);
37 such elements and compounds, including petroleum products, which
38 are defined as such by the department, after public hearing, and which
39 shall be consistent to the maximum extent possible with, and which
40 shall include, the list of hazardous substances adopted by the federal
41 Environmental Protection Agency pursuant to section 311 of the
42 federal Water Pollution Control Act Amendments of 1972,
43 Pub.L.92-500, as amended by the Clean Water Act of 1977,
44 Pub.L.95-217 (33 U.S.C. 1251 et seq.); the list of toxic pollutants
45 designated by Congress or the EPA pursuant to section 307 of that
46 act; and the list of hazardous substances adopted by the federal

1 Environmental Protection Agency pursuant to section 101 of the
2 "Comprehensive Environmental Response, Compensation and Liability
3 Act of 1980," Pub.L.96-510 (42 U.S.C. s.9601 et seq.); provided,
4 however, that sewage and sewage sludge shall not be considered as
5 hazardous substances for the purposes of P.L.1976, c.141
6 (C.58:10-23.11 et seq.);

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

10 "Major facility" includes, but is not limited to, any refinery, storage
11 or transfer terminal, pipeline, deep-water port, drilling platform or any
12 appurtenance related to any of the preceding that is used or is capable
13 of being used to refine, produce, store, handle, transfer, process or
14 transport hazardous substances. "Major facility" shall include a vessel
15 only when that vessel is engaged in a transfer of hazardous substances
16 between it and another vessel, and in any event shall not include a
17 vessel used solely for activities directly related to recovering,
18 containing, cleaning up or removing discharges of petroleum in the
19 surface waters of the State, including training, research, and other
20 activities directly related to spill response.

21 A facility shall not be considered a major facility for the purpose
22 of P.L.1976, c.141 unless it has total combined aboveground or buried
23 storage capacity of:

24 (1) 20,000 gallons or more for hazardous substances which are
25 other than petroleum or petroleum products, or

26 (2) 200,000 gallons or more for hazardous substances of all kinds.

27 In determining whether a facility is a major facility for the purposes
28 of P.L.1976, c.141 (C.58:10-23.11 et seq.), any underground storage
29 tank at the facility used solely to store heating oil for on-site
30 consumption shall not be considered when determining the combined
31 storage capacity of the facility.

32 For the purposes of this definition, "storage capacity" shall mean
33 only that total combined capacity which is dedicated to, used for or
34 intended to be used for storage of hazardous substances of all kinds.
35 Where appropriate to the nature of the facility, storage capacity may
36 be determined by the intended or actual use of open land or
37 unenclosed space as well as by the capacities of tanks or other
38 enclosed storage spaces;

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

42 "Owner" or "operator" means, with respect to a vessel, any person
43 owning, operating or chartering by demise such vessel; with respect to
44 any major facility, any person owning such facility, or operating it by
45 lease, contract or other form of agreement; with respect to abandoned
46 or derelict major facilities, the person who owned or operated such

1 facility immediately prior to such abandonment, or the owner at the
2 time of discharge;

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

7 "Petroleum" or "petroleum products" means oil or petroleum of
8 any kind and in any form, including, but not limited to, oil, petroleum,
9 gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other
10 wastes, crude oils, and substances or additives to be utilized in the
11 refining or blending of crude petroleum or petroleum stock in this
12 State; however, any compound designated by specific chemical name
13 on the list of hazardous substances adopted by the department
14 pursuant to this section shall not be considered petroleum or a
15 petroleum product for the purposes of P.L.1976, c.141, unless such
16 compound is to be utilized in the refining or blending of crude
17 petroleum or petroleum stock in this State;

18 "Preliminary assessment" means the first phase in the process of
19 identifying areas of concern and determining whether contaminants are
20 or were present at a site or have migrated or are migrating from a site,
21 and shall include the initial search for and evaluation of, existing site
22 specific operational and environmental information, both current and
23 historic, to determine if further investigation concerning the
24 documented, alleged, suspected or latent discharge of any contaminant
25 is required. The evaluation of historic information shall be conducted
26 from 1932 to the present, except that the department may require the
27 search for and evaluation of additional information relating to
28 ownership and use of the site prior to 1932 if such information is
29 available through diligent inquiry of the public records;

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

38 "Remedial investigation" means a process to determine the nature
39 and extent of a discharge of a contaminant at a site or a discharge of
40 a contaminant that has migrated or is migrating from the site and the
41 problems presented by a discharge, and may include data collected,
42 site characterization, sampling, monitoring, and the gathering of any
43 other sufficient and relevant information necessary to determine the
44 necessity for remedial action and to support the evaluation of remedial
45 actions if necessary;

46 "Remediation" or "remediate" means all necessary actions to

1 investigate and clean up or respond to any known, suspected, or
2 threatened discharge, including, as necessary, the preliminary
3 assessment, site investigation, remedial investigation, and remedial
4 action, provided, however, that "remediation" or "remediate" shall not
5 include the payment of compensation for damage to, or loss of, natural
6 resources;

7 "Site investigation" means the collection and evaluation of data
8 adequate to determine whether or not discharged contaminants exist
9 at a site or have migrated or are migrating from the site at levels in
10 excess of the applicable remediation standards. A site investigation
11 shall be developed based upon the information collected pursuant to
12 the preliminary assessment;

13 "Taxpayer" means the owner or operator of a major facility subject
14 to the tax provisions of P.L.1976, c.141;

15 "Tax period" means every calendar month on the basis of which the
16 taxpayer is required to report under P.L.1976, c.141;

17 "Transfer" means unloading or offloading between major facilities
18 and vessels, or vessels and major facilities, and from vessel to vessel
19 or major facility to major facility, except for fueling or refueling
20 operations and except that with regard to the movement of hazardous
21 substances other than petroleum, it shall also include any unloading of
22 or offloading from a major facility;

23 "Vessel" means every description of watercraft or other
24 contrivance that is practically capable of being used as a means of
25 commercial transportation of hazardous substances upon the water,
26 whether or not self-propelled;

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

31 (cf: P.L.1997, c.278, s.19)]¹

32

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

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

37 "Act of God" means an act exclusively occasioned by an
38 unanticipated, grave natural disaster without the interference of any
39 human agency;

40 "Administrator" means the chief executive of the New Jersey Spill
41 Compensation Fund;

42 "Barrel" means 42 United States gallons or 159.09 liters or an
43 appropriate equivalent measure set by the director for hazardous
44 substances which are other than fluid or which are not commonly
45 measured by the barrel;

46 "Board" means a board of arbitration convened by the

1 administrator to settle disputed disbursements from the fund;

2 "Cleanup and removal costs" means all costs associated with a
3 discharge, incurred by the State or its political subdivisions or their
4 agents or any person with written approval from the department in the:
5 (1) removal or attempted removal of hazardous substances, or (2)
6 taking of reasonable measures to prevent or mitigate damage to the
7 public health, safety, or welfare, including, but not limited to, public
8 and private property, shorelines, beaches, surface waters, water
9 columns and bottom sediments, soils and other affected property,
10 including wildlife and other natural resources, and shall include costs
11 incurred by the State for the indemnification and legal defense of
12 contractors pursuant to sections 1 through 11 of P.L.1991, c.373
13 (C.58:10-23.11f8 et seq.). For the purposes of this definition, costs
14 incurred by the State shall not include any indirect costs for
15 department oversight performed after the effective date of P.L.1997,
16 c.278 (C.58:10B-1.1 et al.), but may include only those program costs
17 directly related to the cleanup and removal of the discharge; however,
18 where the State or the fund have expended money for the cleanup and
19 removal of a discharge and are seeking to recover the costs incurred
20 in that cleanup and removal action from a responsible party, costs
21 incurred by the State shall include any indirect costs;

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

24 "Contamination" or "contaminant" means any discharged
25 hazardous substance, hazardous waste as defined pursuant to section
26 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to
27 section 3 of P.L.1977, c.74 (C.58:10A-3);

28 "Department" means the Department of Environmental Protection;

29 "Director" means the Director of the Division of Taxation in the
30 Department of the Treasury;

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

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

41 "Fair market value" means the invoice price of the hazardous
42 substances transferred, including transportation charges; but where no
43 price is so fixed, "fair market value" shall mean the market price as of
44 the close of the nearest day to the transfer, paid for similar hazardous
45 substances, as shall be determined by the taxpayer pursuant to rules of
46 the director;

1 "Fund" means the New Jersey Spill Compensation Fund;

2 "Hazardous substances" means the "environmental hazardous
3 substances" on the environmental hazardous substance list adopted by
4 the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4);
5 such elements and compounds, including petroleum products, which
6 are defined as such by the department, after public hearing, and which
7 shall be consistent to the maximum extent possible with, and which
8 shall include, the list of hazardous substances adopted by the federal
9 Environmental Protection Agency pursuant to section 311 of the
10 federal Water Pollution Control Act Amendments of 1972,
11 Pub.L.92-500, as amended by the Clean Water Act of 1977,
12 Pub.L.95-217 (33 U.S.C. 1251 et seq.); the list of toxic pollutants
13 designated by Congress or the EPA pursuant to section 307 of that
14 act; and the list of hazardous substances adopted by the federal
15 Environmental Protection Agency pursuant to section 101 of the
16 "Comprehensive Environmental Response, Compensation and Liability
17 Act of 1980," Pub.L.96-510 (42 U.S.C. s.9601 et seq.); provided,
18 however, that sewage and sewage sludge shall not be considered as
19 hazardous substances for the purposes of P.L.1976, c.141
20 (C.58:10-23.11 et seq.);

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

24 "Major facility" includes, but is not limited to, any refinery, storage
25 or transfer terminal, pipeline, deep-water port, drilling platform or any
26 appurtenance related to any of the preceding that is used or is capable
27 of being used to refine, produce, store, handle, transfer, process or
28 transport hazardous substances. "Major facility" shall include a vessel
29 only when that vessel is engaged in a transfer of hazardous substances
30 between it and another vessel, and in any event shall not include a
31 vessel used solely for activities directly related to recovering,
32 containing, cleaning up or removing discharges of petroleum in the
33 surface waters of the State, including training, research, and other
34 activities directly related to spill response.

35 A facility shall not be considered a major facility for the purpose
36 of P.L.1976, c.141 unless it has total combined aboveground or buried
37 storage capacity of:

38 (1) 20,000 gallons or more for hazardous substances which are
39 other than petroleum or petroleum products, or

40 (2) 200,000 gallons or more for hazardous substances of all kinds.

41 In determining whether a facility is a major facility for the purposes
42 of P.L.1976, c.141 (C.58:10-23.11 et seq.), any underground storage
43 tank at the facility used solely to store heating oil for on-site
44 consumption shall not be considered when determining the combined
45 storage capacity of the facility.

46 For the purposes of this definition, "storage capacity" shall mean

1 only that total combined capacity which is dedicated to, used for or
2 intended to be used for storage of hazardous substances of all kinds.
3 Where appropriate to the nature of the facility, storage capacity may
4 be determined by the intended or actual use of open land or
5 unenclosed space as well as by the capacities of tanks or other
6 enclosed storage spaces;

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

10 "Owner" or "operator" means, with respect to a vessel, any person
11 owning, operating or chartering by demise such vessel; with respect to
12 any major facility, any person owning such facility, or operating it by
13 lease, contract or other form of agreement; with respect to abandoned
14 or derelict major facilities, the person who owned or operated such
15 facility immediately prior to such abandonment, or the owner at the
16 time of discharge;

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

21 "Petroleum" or "petroleum products" means oil or petroleum of
22 any kind and in any form, including, but not limited to, oil, petroleum,
23 gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other
24 wastes, crude oils, and substances or additives to be utilized in the
25 refining or blending of crude petroleum or petroleum stock in this
26 State; however, any compound designated by specific chemical name
27 on the list of hazardous substances adopted by the department
28 pursuant to this section shall not be considered petroleum or a
29 petroleum product for the purposes of P.L.1976, c.141, unless such
30 compound is to be utilized in the refining or blending of crude
31 petroleum or petroleum stock in this State;

32 "Preliminary assessment" means the first phase in the process of
33 identifying areas of concern and determining whether contaminants are
34 or were present at a site or have migrated or are migrating from a site,
35 and shall include the initial search for and evaluation of, existing site
36 specific operational and environmental information, both current and
37 historic, to determine if further investigation concerning the
38 documented, alleged, suspected or latent discharge of any contaminant
39 is required. The evaluation of historic information shall be conducted
40 from 1932 to the present, except that the department may require the
41 search for and evaluation of additional information relating to
42 ownership and use of the site prior to 1932 if such information is
43 available through diligent inquiry of the public records;

44 "Remedial action" means those actions taken at a site or offsite if
45 a contaminant has migrated or is migrating therefrom, as may be
46 required by the department, including the removal, treatment,

1 containment, transportation, securing, or other engineering or
2 treatment measures, whether to an unrestricted use or otherwise,
3 designed to ensure that any discharged contaminant at the site or that
4 has migrated or is migrating from the site, is remediated in compliance
5 with the applicable health risk or environmental standards;

6 "Remedial investigation" means a process to determine the nature
7 and extent of a discharge of a contaminant at a site or a discharge of
8 a contaminant that has migrated or is migrating from the site and the
9 problems presented by a discharge, and may include data collected,
10 site characterization, sampling, monitoring, and the gathering of any
11 other sufficient and relevant information necessary to determine the
12 necessity for remedial action and to support the evaluation of remedial
13 actions if necessary;

14 "Remediation" or "remediate" means all necessary actions to
15 investigate and clean up or respond to any known, suspected, or
16 threatened discharge, including, as necessary, the preliminary
17 assessment, site investigation, remedial investigation, and remedial
18 action, provided, however, that "remediation" or "remediate" shall not
19 include the payment of compensation for damage to, or loss of, natural
20 resources;

21 "Site investigation" means the collection and evaluation of data
22 adequate to determine whether or not discharged contaminants exist
23 at a site or have migrated or are migrating from the site at levels in
24 excess of the applicable remediation standards. A site investigation
25 shall be developed based upon the information collected pursuant to
26 the preliminary assessment;

27 "Taxpayer" means the owner or operator of a major facility subject
28 to the tax provisions of P.L.1976, c.141;

29 "Tax period" means every calendar month on the basis of which the
30 taxpayer is required to report under P.L.1976, c.141;

31 "Transfer" means unloading or offloading between major facilities
32 and vessels, or vessels and major facilities, and from vessel to vessel
33 or major facility to major facility, except for fueling or refueling
34 operations and except that with regard to the movement of hazardous
35 substances other than petroleum, it shall also include any unloading of
36 or offloading from a major facility;

37 "Vessel" means every description of watercraft or other
38 contrivance that is practically capable of being used as a means of
39 commercial transportation of hazardous substances upon the water,
40 whether or not self-propelled;

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

45 (cf: P.L.1997, c.278, s.19)²

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

3 8. a. The fund shall be strictly liable, without regard to fault, for
4 all cleanup and removal costs and for all direct and indirect damages
5 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 property
9 is restored, repaired or replaced, and any reduction in value of such
10 property caused by such discharge by comparison with its value prior
11 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, based
18 upon income or business records, exclusive of other sources of
19 income, from activities related to the particular real or personal
20 property or natural resources damaged or destroyed by such discharge
21 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 a
23 period of one 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 by a
26 claimant for the purpose of ameliorating the adverse effects of a
27 discharge pending the payment of a claim in full as provided by this
28 act.

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

42 c. (1) Any person who has discharged a hazardous substance, or
43 is in any way responsible for any hazardous substance, shall be strictly
44 liable, jointly and severally, without regard to fault, for all cleanup and
45 removal costs no matter by whom incurred. Such person shall also be
46 strictly liable, jointly and severally, without regard to fault, for all

1 cleanup and removal costs incurred by the department or a local unit
2 pursuant to subsection b. of section 7 of P.L.1976, c.141
3 (C.58:10-23.11f).

4 (2) In addition to the persons liable pursuant to this subsection, in
5 the case of a discharge of a hazardous substance from a vessel into the
6 waters of the State, the owner or operator of a refinery, storage,
7 transfer, or pipeline facility to which the vessel was en route to deliver
8 the hazardous substance who, by contract, agreement, or otherwise,
9 was scheduled to assume ownership of the discharged hazardous
10 substance, and any other person who was so scheduled to assume
11 ownership of the discharged hazardous substance, shall be strictly
12 liable, jointly and severally, without regard to fault, for all cleanup and
13 removal costs if the owner or operator of the vessel did not have the
14 evidence of financial responsibility required pursuant to section 2 of
15 P.L.1991, c.58 (C.58:10-23.11g2).

16 Where a person is liable for cleanup and removal costs as provided
17 in this paragraph, any expenditures made by the administrator for that
18 cleanup and removal shall constitute a debt of that person to the fund.
19 The debt shall constitute a lien on all property owned by that person
20 when a notice of lien identifying the nature of the discharge and the
21 amount of the cleanup, removal and related costs expended from the
22 fund is duly filed with the clerk of the Superior Court. The clerk shall
23 promptly enter upon the civil judgment or order docket the name and
24 address of the liable person and the amount of the lien as set forth in
25 the notice of lien. Upon entry by the clerk, the lien, to the amount
26 committed by the administrator for cleanup and removal, shall attach
27 to the revenues and all real and personal property of the liable person,
28 whether or not that person is insolvent.

29 For the purpose of determining priority of this lien over all other
30 claims or liens which are or have been filed against the property of an
31 owner or operator of a refinery, storage, transfer, or pipeline facility,
32 the lien on the facility to which the discharged hazardous substance
33 was en route shall have priority over all other claims or liens which are
34 or have been filed against the property. The notice of lien filed
35 pursuant to this paragraph which affects any property of a person
36 liable pursuant to this paragraph other than the property of an owner
37 or operator of a refinery, storage, transfer, or pipeline facility to which
38 the discharged hazardous substance was en route, shall have priority
39 from the day of the filing of the notice of the lien over all claims and
40 liens filed against the property, but shall not affect any valid lien, right,
41 or interest in the property filed in accordance with established
42 procedure prior to the filing of a notice of lien pursuant to this
43 paragraph.

44 To the extent that a person liable pursuant to this paragraph is not
45 otherwise liable pursuant to paragraph (1) of this subsection, or under
46 any other provision of law or under common law, that person may

1 bring an action for indemnification for costs paid pursuant to this
2 paragraph against any other person who is strictly liable pursuant to
3 paragraph (1) of this subsection.

4 Nothing in this paragraph shall be construed to extend or negate
5 the right of any person to bring an action for contribution that may
6 exist under P.L.1976, c.141, or any other act or under common law.

7 (3) In addition to the persons liable pursuant to this subsection,
8 any person who owns real property acquired on or after September 14,
9 1993 on which there has been a discharge prior to the person's
10 acquisition of that property and who knew or should have known that
11 a hazardous substance had been discharged at the real property, shall
12 be strictly liable, jointly and severally, without regard to fault, for all
13 cleanup and removal costs no matter by whom incurred. Such person
14 shall also be strictly liable, jointly and severally, without regard to
15 fault, for all cleanup and removal costs incurred by the department or
16 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141
17 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter
18 liability of any person who acquired real property prior to September
19 14, 1993.

20 d. (1) In addition to those defenses provided in this subsection, an
21 act or omission caused solely by war, sabotage, or God, or a
22 combination thereof, shall be the only defenses which may be raised by
23 any owner or operator of a major facility or vessel responsible for a
24 discharge in any action arising under the provisions of this act.

25 (2) A person, including an owner or operator of a major facility,
26 who owns real property acquired on or after September 14, 1993 on
27 which there has been a discharge, shall not be liable for cleanup and
28 removal costs or for any other damages to the State or to any other
29 person for the discharged hazardous substance pursuant to subsection
30 c. of this section or pursuant to civil common law, if that person can
31 establish by a preponderance of the evidence that subparagraphs (a)
32 through (d) apply, or if applicable, subparagraphs (a) through (e)
33 apply:

34 (a) the person acquired the real property after the discharge of
35 that hazardous substance at the real property;

36 (b) (i) at the time the person acquired the real property, the person
37 did not know and had no reason to know that any hazardous substance
38 had been discharged at the real property, or (ii) the person acquired
39 the real property by devise or succession, except that any other funds
40 or property received by that person from the deceased real property
41 owner who discharged a hazardous substance or was in any way
42 responsible for a hazardous substance, shall be made available to
43 satisfy the requirements of P.L.1976, c.141, or (iii) the person
44 complies with the provisions of subparagraph (e) of paragraph (2) of
45 this subsection;

46 (c) the person did not discharge the hazardous substance, is not

1 in any way responsible for the hazardous substance , and is not a
2 corporate successor to the discharger or to any person in any way
3 responsible for the hazardous substance or to anyone liable for cleanup
4 and removal costs pursuant to this section;

5 (d) the person gave notice of the discharge to the department
6 upon actual discovery of that discharge.

7 To establish that a person had no reason to know that any
8 hazardous substance had been discharged for the purposes of this
9 paragraph (2), the person must have undertaken, at the time of
10 acquisition, all appropriate inquiry into the previous ownership and
11 uses of the property. For the purposes of this paragraph (2), all
12 appropriate inquiry shall mean the performance of a preliminary
13 assessment, and site investigation, if the preliminary assessment
14 indicates that a site investigation is necessary, as defined in section 23
15 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with
16 rules and regulations promulgated by the department defining these
17 terms.

18 Nothing in this paragraph (2) shall be construed to alter liability of
19 any person who acquired real property prior to September 14, 1993;
20 and

21 (e) For the purposes of this subparagraph the person must have (i)
22 acquired the property subsequent to a hazardous substance being
23 discharged on the site and which discharge was discovered at the time
24 of acquisition as a result of the appropriate inquiry, as defined in this
25 paragraph (2), (ii) performed, following the effective date of P.L.1997,
26 c.278, a remediation of the site or discharge consistent with the
27 provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied
28 upon a valid no further action letter from the department for a
29 remediation performed prior to acquisition, or obtained approval of a
30 remedial action workplan by the department after the effective date of
31 P.L.1997, c.278 and continued to comply with the conditions of that
32 workplan, and (iii) established and maintained all engineering and
33 institutional controls as may be required pursuant to sections 35 and
34 36 of P.L.1993, c.139. A person who complies with the provisions of
35 this subparagraph by actually performing a remediation of the site or
36 discharge as set forth in (ii) above shall be issued, upon application, a
37 no further action letter by the department. A person who complies
38 with the provisions of this subparagraph either by receipt of a no
39 further action letter from the department following the effective date
40 of P.L.1997, c.278, or by relying on a previously issued no further
41 action letter shall not be liable for any further remediation including
42 any changes in a remediation standard or for the subsequent discovery
43 of a hazardous substance, at the site, if the remediation was for the
44 entire site, and the hazardous substance was discharged prior to the
45 person acquiring the property. Notwithstanding any other provisions
46 of this subparagraph, a person who complies with the provisions of

1 this subparagraph only by virtue of the existence of a previously issued
2 no further action letter shall receive no liability protections for any
3 discharge which occurred during the time period between the issuance
4 of the no further action letter and the property acquisition.
5 Compliance with the provisions of this subparagraph (e) shall not
6 relieve any person of any liability for a discharge that is off the site of
7 the property covered by the no further action letter, for a discharge
8 that occurs at that property after the person acquires the property, for
9 any actions that person negligently takes that aggravates or contributes
10 to a discharge of a hazardous substance, for failure to comply in the
11 future with laws and regulations , or if that person fails to maintain the
12 institutional or engineering controls on the property or to otherwise
13 comply with the provisions of the no further action letter.

14 (3) Notwithstanding the provisions of paragraph (2) of this
15 subsection to the contrary, if a person who owns real property obtains
16 actual knowledge of a discharge of a hazardous substance at the real
17 property during the period of that person's ownership and
18 subsequently transfers ownership of the property to another person
19 without disclosing that knowledge, the transferor shall be strictly liable
20 for the cleanup and removal costs of the discharge and no defense
21 under this subsection shall be available to that person.

22 (4) Any federal, State, or local governmental entity which acquires
23 ownership of real property through bankruptcy, tax delinquency,
24 abandonment, escheat, eminent domain, condemnation or any
25 circumstance in which the governmental entity involuntarily acquires
26 title by virtue of its function as sovereign, or where the governmental
27 entity acquires the property by any means for the purpose of
28 promoting the redevelopment of that property, shall not be liable,
29 pursuant to subsection c. of this section or pursuant to common law,
30 to the State or to any other person for any discharge which occurred
31 or began prior to that ownership. This paragraph shall not provide any
32 liability protection to any federal, State or local governmental entity
33 which has caused or contributed to the discharge of a hazardous
34 substance. This paragraph shall not provide any liability protection to
35 any federal, State, or local government entity that acquires ownership
36 of real property by condemnation or eminent domain where the real
37 property is being remediated in a timely manner at the time of the
38 condemnation or eminent domain action.

39 (5) A person, including an owner or operator of a major facility,
40 who owns real property acquired prior to September 14, 1993 on
41 which there has been a discharge, shall not be liable for cleanup and
42 removal costs or for any other damages to the State or to any other
43 person for the discharged hazardous substance pursuant to subsection
44 c. of this section or pursuant to civil common law, if that person can
45 establish by a preponderance of the evidence that subparagraphs (a)
46 through (d) apply:

1 (a) the person acquired the real property after the discharge of
2 that hazardous substance at the real property;

3 (b) (i) at the time the person acquired the real property, the person
4 did not know and had no reason to know that any hazardous substance
5 had been discharged at the real property, or (ii) the person acquired
6 the real property by devise or succession, except that any other funds
7 or property received by that person from the deceased real property
8 owner who discharged a hazardous substance or was in any way
9 responsible for a hazardous substance, shall be made available to
10 satisfy the requirements of P.L.1976, c.141;

11 (c) the person did not discharge the hazardous substance, is not
12 in any way responsible for the hazardous substance, and is not a
13 corporate successor to the discharger or to any person in any way
14 responsible for the hazardous substance or to anyone liable for cleanup
15 and removal costs pursuant to this section;

16 (d) the person gave notice of the discharge to the department
17 upon actual discovery of that discharge.

18 To establish that a person had no reason to know that any
19 hazardous substance had been discharged for the purposes of this
20 paragraph (5), the person must have undertaken, at the time of
21 acquisition, all appropriate inquiry on the previous ownership and uses
22 of the property based upon generally accepted good and customary
23 standards.

24 Nothing in this paragraph (5) shall be construed to alter liability of
25 any person who acquired real property on or after September 14,
26 1993.

27 e. Neither the fund nor the Sanitary Landfill Contingency Fund
28 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be
29 liable for any damages incurred by any person who is relieved from
30 liability pursuant to subsection d. or f. of this section for a remediation
31 that involves the use of engineering controls but the fund and the
32 Sanitary Landfill Contingency Fund shall be liable for any remediation
33 that involves only the use of institutional controls if after a valid no
34 further action letter has been issued the department orders additional
35 remediation except that the fund and the Sanitary Landfill Contingency
36 Fund shall not be liable for any additional remediation that is required
37 to remove an institutional control.

38 f. Notwithstanding any other provision of this section, a person,
39 who owns real property acquired on or after the effective date of
40 P.L.1997, c.278 (C.58:10B-11.1 et al.), shall not be liable for any
41 cleanup and removal costs or damages, under this section or pursuant
42 to any other statutory or civil common law, to any person, other than
43 the State and the federal government, harmed by any hazardous
44 substance discharged on that property prior to acquisition, and any
45 migration off that property related to that discharge, provided all the
46 conditions of this subsection are met:

1 (1) the person acquired the real property after the discharge of
2 that hazardous substance at the real property;

3 (2) the person did not discharge the hazardous substance, is not in
4 any way responsible for the hazardous substance, and is not a
5 corporate successor to the discharger or to any person in any way
6 responsible for the hazardous substance or to anyone liable for a
7 discharge pursuant to this section;

8 (3) the person gave notice of the discharge to the department upon
9 actual discovery of that discharge;

10 (4) within 30 days after acquisition of the property, the person
11 commenced a remediation of the discharge, including any migration,
12 pursuant to a department oversight document executed prior to
13 acquisition, and the department is satisfied that remediation was
14 completed in a timely and appropriate fashion; and

15 (5) Within ten days after acquisition of the property, the person
16 agrees in writing to provide access to the State for remediation and
17 related activities, as determined by the State.

18 The provisions of this subsection shall not relieve any person of
19 any liability:

20 (1) for a discharge that occurs at that property after the person
21 acquired the property;

22 (2) for any actions that person negligently takes that aggravates or
23 contributes to the harm inflicted upon any person;

24 (3) if that person fails to maintain the institutional or engineering
25 controls on the property or to otherwise comply with the provisions
26 of a no further action letter or a remedial action workplan and a
27 person is harmed thereby;

28 (4) for any liability to clean up and remove, pursuant to the
29 department's regulations and directions, any hazardous substances that
30 may have been discharged on the property or that may have migrated
31 therefrom; and

32 (5) for that person's failure to comply in the future with laws and
33 regulations.

34 g. Nothing in the amendatory provisions to this section adopted
35 pursuant to P.L.1997, c.278 shall be construed to remove any defense
36 to liability that a person may have had pursuant to subsection e. of this
37 section that existed prior to the effective date of P.L.1997, c.278.

38 h. Nothing in this section shall limit the requirements of any
39 person to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).

40 (cf: P.L.1997, c.278, s.20)]¹

41

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

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

47 (1) The cost of restoring, repairing, or replacing any real or

1 personal property damaged or destroyed by a discharge, any income
2 lost from the time such property is damaged to the time such property
3 is restored, repaired or replaced, and any reduction in value of such
4 property caused by such discharge by comparison with its value prior
5 thereto;

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

8 (3) Loss of income or impairment of earning capacity due to
9 damage to real or personal property, including natural resources
10 destroyed or damaged by a discharge; provided that such loss or
11 impairment exceeds 10% of the amount which claimant derives, based
12 upon income or business records, exclusive of other sources of
13 income, from activities related to the particular real or personal
14 property or natural resources damaged or destroyed by such discharge
15 during the week, month or year for which the claim is filed;

16 (4) Loss of tax revenue by the State or local governments for a
17 period of one year due to damage to real or personal property
18 proximately resulting from a discharge;

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

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

36 c. (1) Any person who has discharged a hazardous substance, or
37 is in any way responsible for any hazardous substance, shall be strictly
38 liable, jointly and severally, without regard to fault, for all cleanup and
39 removal costs no matter by whom incurred. Such person shall also be
40 strictly liable, jointly and severally, without regard to fault, for all
41 cleanup and removal costs incurred by the department or a local unit
42 pursuant to subsection b. of section 7 of P.L.1976, c.141
43 (C.58:10-23.11f).

44 (2) In addition to the persons liable pursuant to this subsection, in
45 the case of a discharge of a hazardous substance from a vessel into the
46 waters of the State, the owner or operator of a refinery, storage,

1 transfer, or pipeline facility to which the vessel was en route to deliver
2 the hazardous substance who, by contract, agreement, or otherwise,
3 was scheduled to assume ownership of the discharged hazardous
4 substance, and any other person who was so scheduled to assume
5 ownership of the discharged hazardous substance, shall be strictly
6 liable, jointly and severally, without regard to fault, for all cleanup and
7 removal costs if the owner or operator of the vessel did not have the
8 evidence of financial responsibility required pursuant to section 2 of
9 P.L.1991, c.58 (C.58:10-23.11g2).

10 Where a person is liable for cleanup and removal costs as provided
11 in this paragraph, any expenditures made by the administrator for that
12 cleanup and removal shall constitute a debt of that person to the fund.
13 The debt shall constitute a lien on all property owned by that person
14 when a notice of lien identifying the nature of the discharge and the
15 amount of the cleanup, removal and related costs expended from the
16 fund is duly filed with the clerk of the Superior Court. The clerk shall
17 promptly enter upon the civil judgment or order docket the name and
18 address of the liable person and the amount of the lien as set forth in
19 the notice of lien. Upon entry by the clerk, the lien, to the amount
20 committed by the administrator for cleanup and removal, shall attach
21 to the revenues and all real and personal property of the liable person,
22 whether or not that person is insolvent.

23 For the purpose of determining priority of this lien over all other
24 claims or liens which are or have been filed against the property of an
25 owner or operator of a refinery, storage, transfer, or pipeline facility,
26 the lien on the facility to which the discharged hazardous substance
27 was en route shall have priority over all other claims or liens which are
28 or have been filed against the property. The notice of lien filed
29 pursuant to this paragraph which affects any property of a person
30 liable pursuant to this paragraph other than the property of an owner
31 or operator of a refinery, storage, transfer, or pipeline facility to which
32 the discharged hazardous substance was en route, shall have priority
33 from the day of the filing of the notice of the lien over all claims and
34 liens filed against the property, but shall not affect any valid lien, right,
35 or interest in the property filed in accordance with established
36 procedure prior to the filing of a notice of lien pursuant to this
37 paragraph.

38 To the extent that a person liable pursuant to this paragraph is not
39 otherwise liable pursuant to paragraph (1) of this subsection, or under
40 any other provision of law or under common law, that person may
41 bring an action for indemnification for costs paid pursuant to this
42 paragraph against any other person who is strictly liable pursuant to
43 paragraph (1) of this subsection.

44 Nothing in this paragraph shall be construed to extend or negate
45 the right of any person to bring an action for contribution that may
46 exist under P.L.1976, c.141, or any other act or under common law.

1 (3) In addition to the persons liable pursuant to this subsection,
2 any person who owns real property acquired on or after September 14,
3 1993 on which there has been a discharge prior to the person's
4 acquisition of that property and who knew or should have known that
5 a hazardous substance had been discharged at the real property, shall
6 be strictly liable, jointly and severally, without regard to fault, for all
7 cleanup and removal costs no matter by whom incurred. Such person
8 shall also be strictly liable, jointly and severally, without regard to
9 fault, for all cleanup and removal costs incurred by the department or
10 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141
11 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter
12 liability of any person who acquired real property prior to September
13 14, 1993.

14 d. (1) In addition to those defenses provided in this subsection, an
15 act or omission caused solely by war, sabotage, or God, or a
16 combination thereof, shall be the only defenses which may be raised by
17 any owner or operator of a major facility or vessel responsible for a
18 discharge in any action arising under the provisions of this act.

19 (2) A person, including an owner or operator of a major facility,
20 who owns real property acquired on or after September 14, 1993 on
21 which there has been a discharge, shall not be liable for cleanup and
22 removal costs or for any other damages to the State or to any other
23 person for the discharged hazardous substance pursuant to subsection
24 c. of this section or pursuant to civil common law, if that person can
25 establish by a preponderance of the evidence that subparagraphs (a)
26 through (d) apply, or if applicable, subparagraphs (a) through (e)
27 apply:

28 (a) the person acquired the real property after the discharge of
29 that hazardous substance at the real property;

30 (b) (i) at the time the person acquired the real property, the person
31 did not know and had no reason to know that any hazardous substance
32 had been discharged at the real property, or (ii) the person acquired
33 the real property by devise or succession, except that any other funds
34 or property received by that person from the deceased real property
35 owner who discharged a hazardous substance or was in any way
36 responsible for a hazardous substance, shall be made available to
37 satisfy the requirements of P.L.1976, c.141, or (iii) the person
38 complies with the provisions of subparagraph (e) of paragraph (2) of
39 this subsection;

40 (c) the person did not discharge the hazardous substance, is not
41 in any way responsible for the hazardous substance, and is not a
42 corporate successor to the discharger or to any person in any way
43 responsible for the hazardous substance or to anyone liable for cleanup
44 and removal costs pursuant to this section;

45 (d) the person gave notice of the discharge to the department
46 upon actual discovery of that discharge.

1 To establish that a person had no reason to know that any
2 hazardous substance had been discharged for the purposes of this
3 paragraph (2), the person must have undertaken, at the time of
4 acquisition, all appropriate inquiry into the previous ownership and
5 uses of the property. For the purposes of this paragraph (2), all
6 appropriate inquiry shall mean the performance of a preliminary
7 assessment, and site investigation, if the preliminary assessment
8 indicates that a site investigation is necessary, as defined in section 23
9 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with
10 rules and regulations promulgated by the department defining these
11 terms.

12 Nothing in this paragraph (2) shall be construed to alter liability of
13 any person who acquired real property prior to September 14, 1993;
14 and

15 (e) For the purposes of this subparagraph the person must have (i)
16 acquired the property subsequent to a hazardous substance being
17 discharged on the site and which discharge was discovered at the time
18 of acquisition as a result of the appropriate inquiry, as defined in this
19 paragraph (2), (ii) performed, following the effective date of P.L.1997,
20 c.278, a remediation of the site or discharge consistent with the
21 provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied
22 upon a valid no further action letter from the department for a
23 remediation performed prior to acquisition, or obtained approval of a
24 remedial action workplan by the department after the effective date of
25 P.L.1997, c.278 and continued to comply with the conditions of that
26 workplan, and (iii) established and maintained all engineering and
27 institutional controls as may be required pursuant to sections 35 and
28 36 of P.L.1993, c.139. A person who complies with the provisions of
29 this subparagraph by actually performing a remediation of the site or
30 discharge as set forth in (ii) above shall be issued, upon application, a
31 no further action letter by the department. A person who complies
32 with the provisions of this subparagraph either by receipt of a no
33 further action letter from the department following the effective date
34 of P.L.1997, c.278, or by relying on a previously issued no further
35 action letter shall not be liable for any further remediation including
36 any changes in a remediation standard or for the subsequent discovery
37 of a hazardous substance, at the site, if the remediation was for the
38 entire site, and the hazardous substance was discharged prior to the
39 person acquiring the property. Notwithstanding any other provisions
40 of this subparagraph, a person who complies with the provisions of
41 this subparagraph only by virtue of the existence of a previously issued
42 no further action letter shall receive no liability protections for any
43 discharge which occurred during the time period between the issuance
44 of the no further action letter and the property acquisition.
45 Compliance with the provisions of this subparagraph (e) shall not
46 relieve any person of any liability for a discharge that is off the site of

1 the property covered by the no further action letter, for a discharge
2 that occurs at that property after the person acquires the property, for
3 any actions that person negligently takes that aggravates or contributes
4 to a discharge of a hazardous substance, for failure to comply in the
5 future with laws and regulations , or if that person fails to maintain the
6 institutional or engineering controls on the property or to otherwise
7 comply with the provisions of the no further action letter.

8 (3) Notwithstanding the provisions of paragraph (2) of this
9 subsection to the contrary, if a person who owns real property obtains
10 actual knowledge of a discharge of a hazardous substance at the real
11 property during the period of that person's ownership and
12 subsequently transfers ownership of the property to another person
13 without disclosing that knowledge, the transferor shall be strictly liable
14 for the cleanup and removal costs of the discharge and no defense
15 under this subsection shall be available to that person.

16 (4) Any federal, State, or local governmental entity which acquires
17 ownership of real property through bankruptcy, tax delinquency,
18 abandonment, escheat, eminent domain, condemnation or any
19 circumstance in which the governmental entity involuntarily acquires
20 title by virtue of its function as sovereign, or where the governmental
21 entity acquires the property by any means for the purpose of
22 promoting the redevelopment of that property, shall not be liable,
23 pursuant to subsection c. of this section or pursuant to common law,
24 to the State or to any other person for any discharge which occurred
25 or began prior to that ownership. This paragraph shall not provide any
26 liability protection to any federal, State or local governmental entity
27 which has caused or contributed to the discharge of a hazardous
28 substance. This paragraph shall not provide any liability protection to
29 any federal, State, or local government entity that acquires ownership
30 of real property by condemnation or eminent domain where the real
31 property is being remediated in a timely manner at the time of the
32 condemnation or eminent domain action.

33 (5) A person, including an owner or operator of a major facility,
34 who owns real property acquired prior to September 14, 1993 on
35 which there has been a discharge, shall not be liable for cleanup and
36 removal costs or for any other damages to the State or to any other
37 person for the discharged hazardous substance pursuant to subsection
38 c. of this section or pursuant to civil common law, if that person can
39 establish by a preponderance of the evidence that subparagraphs (a)
40 through (d) apply:

41 (a) the person acquired the real property after the discharge of
42 that hazardous substance at the real property;

43 (b) (i) at the time the person acquired the real property, the person
44 did not know and had no reason to know that any hazardous substance
45 had been discharged at the real property, or (ii) the person acquired
46 the real property by devise or succession, except that any other funds

1 or property received by that person from the deceased real property
2 owner who discharged a hazardous substance or was in any way
3 responsible for a hazardous substance, shall be made available to
4 satisfy the requirements of P.L.1976, c.141;

5 (c) the person did not discharge the hazardous substance, is not
6 in any way responsible for the hazardous substance, and is not a
7 corporate successor to the discharger or to any person in any way
8 responsible for the hazardous substance or to anyone liable for cleanup
9 and removal costs pursuant to this section;

10 (d) the person gave notice of the discharge to the department
11 upon actual discovery of that discharge.

12 To establish that a person had no reason to know that any
13 hazardous substance had been discharged for the purposes of this
14 paragraph (5), the person must have undertaken, at the time of
15 acquisition, all appropriate inquiry on the previous ownership and uses
16 of the property based upon generally accepted good and customary
17 standards.

18 Nothing in this paragraph (5) shall be construed to alter liability of
19 any person who acquired real property on or after September 14,
20 1993.

21 e. Neither the fund nor the Sanitary Landfill Contingency Fund
22 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be
23 liable for any damages incurred by any person who is relieved from
24 liability pursuant to subsection d. or f. of this section for a remediation
25 that involves the use of engineering controls but the fund and the
26 Sanitary Landfill Contingency Fund shall be liable for any remediation
27 that involves only the use of institutional controls if after a valid no
28 further action letter has been issued the department orders additional
29 remediation except that the fund and the Sanitary Landfill Contingency
30 Fund shall not be liable for any additional remediation that is required
31 to remove an institutional control.

32 f. Notwithstanding any other provision of this section, a person,
33 who owns real property acquired on or after the effective date of
34 P.L.1997, c.278 (C.58:10B-11.1 et al.), shall not be liable for any
35 cleanup and removal costs or damages, under this section or pursuant
36 to any other statutory or civil common law, to any person, other than
37 the State and the federal government, harmed by any hazardous
38 substance discharged on that property prior to acquisition, and any
39 migration off that property related to that discharge, provided all the
40 conditions of this subsection are met:

41 (1) the person acquired the real property after the discharge of
42 that hazardous substance at the real property;

43 (2) the person did not discharge the hazardous substance, is not in
44 any way responsible for the hazardous substance, and is not a
45 corporate successor to the discharger or to any person in any way
46 responsible for the hazardous substance or to anyone liable for a

1 discharge pursuant to this section;

2 (3) the person gave notice of the discharge to the department upon
3 actual discovery of that discharge;

4 (4) within 30 days after acquisition of the property, the person
5 commenced a remediation of the discharge, including any migration,
6 pursuant to a department oversight document executed prior to
7 acquisition, and the department is satisfied that remediation was
8 completed in a timely and appropriate fashion; and

9 (5) Within ten days after acquisition of the property, the person
10 agrees in writing to provide access to the State for remediation and
11 related activities, as determined by the State.

12 The provisions of this subsection shall not relieve any person of
13 any liability:

14 (1) for a discharge that occurs at that property after the person
15 acquired the property;

16 (2) for any actions that person negligently takes that aggravates or
17 contributes to the harm inflicted upon any person;

18 (3) if that person fails to maintain the institutional or engineering
19 controls on the property or to otherwise comply with the provisions
20 of a no further action letter or a remedial action workplan and a
21 person is harmed thereby;

22 (4) for any liability to clean up and remove, pursuant to the
23 department's regulations and directions, any hazardous substances that
24 may have been discharged on the property or that may have migrated
25 therefrom; and

26 (5) for that person's failure to comply in the future with laws and
27 regulations.

28 g. Nothing in the amendatory provisions to this section adopted
29 pursuant to P.L.1997, c.278 shall be construed to remove any defense
30 to liability that a person may have had pursuant to subsection e. of this
31 section that existed prior to the effective date of P.L.1997, c.278.

32 h. Nothing in this section shall limit the requirements of any
33 person to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).

34 (cf: P.L.1997, c.278, s.20)²

35

36 ¹[3. Section 23 of P.L.1993, c.139 (C.58:10B-1) is amended to
37 read as follows:

38 23. As used in sections 23 through 43 and section 45 of P.L.1993,
39 c.139 (C.58:10B-1 et seq.) , as may be amended and supplemented:

40 "Area of concern" means any location where contaminants are or
41 were known or suspected to have been discharged, generated,
42 manufactured, refined, transported, stored, handled, treated, or
43 disposed, or where contaminants have or may have migrated;

44 "Authority" means the New Jersey Economic Development
45 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

46 "Contamination" or "contaminant" means any discharged

1 hazardous substance as defined pursuant to section 3 of P.L.1976,
2 c.141 (C.58:10-23.11b), hazardous waste as defined pursuant to
3 section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined
4 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

5 "Department" means the Department of Environmental Protection;

6 "Discharge" means an intentional or unintentional action or
7 omission resulting in the releasing, spilling, leaking, pumping, pouring,
8 emitting, emptying, or dumping of a contaminant onto the land or into
9 the waters of the State;

10 "Engineering controls" means any mechanism to contain or
11 stabilize contamination or ensure the effectiveness of a remedial
12 action. Engineering controls may include, without limitation, caps,
13 covers, dikes, trenches, leachate collection systems, signs, fences and
14 physical access controls;

15 "Environmental opportunity zone" has the meaning given that term
16 pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);

17 "Financial assistance" means loans or loan guarantees;

18 "Institutional controls" means a mechanism used to limit human
19 activities at or near a contaminated site, or to ensure the effectiveness
20 of the remedial action over time, when contaminants remain at a
21 contaminated site in levels or concentrations above the applicable
22 remediation standard that would allow unrestricted use of that
23 property. Institutional controls may include, without limitation,
24 structure, land, and natural resource use restrictions, well restriction
25 areas, and deed notices;

26 "Limited restricted use remedial action" means any remedial action
27 that requires the continued use of institutional controls but does not
28 require the use of an engineering control;

29 "No further action letter" means a written determination by the
30 department that based upon an evaluation of the historical use of a
31 particular site, or of an area of concern or areas of concern at that site,
32 as applicable, and any other investigation or action the department
33 deems necessary, there are no discharged contaminants present at the
34 site, at the area of concern or areas of concern, at any other site to
35 which a discharge originating at the site has migrated, or that any
36 discharged contaminants present at the site or that have migrated from
37 the site have been remediated in accordance with applicable
38 remediation regulations;

39 "Preliminary assessment" means the first phase in the process of
40 identifying areas of concern and determining whether contaminants are
41 or were present at a site or have migrated or are migrating from a site,
42 and shall include the initial search for and evaluation of, existing site
43 specific operational and environmental information, both current and
44 historic, to determine if further investigation concerning the
45 documented, alleged, suspected or latent discharge of any contaminant
46 is required. The evaluation of historic information shall be conducted

1 from 1932 to the present, except that the department may require the
2 search for and evaluation of additional information relating to
3 ownership and use of the site prior to 1932 if such information is
4 available through diligent inquiry of the public records;

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

13 "Remedial action workplan" means a plan for the remedial action
14 to be undertaken at a site, or at any area to which a discharge
15 originating at a site is migrating or has migrated; a description of the
16 remedial action to be used to remediate a site; a time schedule and cost
17 estimate of the implementation of the remedial action; and any other
18 information the department deems necessary;

19 "Remedial investigation" means a process to determine the nature
20 and extent of a discharge of a contaminant at a site or a discharge of
21 a contaminant that has migrated or is migrating from the site and the
22 problems presented by a discharge, and may include data collected,
23 site characterization, sampling, monitoring, and the gathering of any
24 other sufficient and relevant information necessary to determine the
25 necessity for remedial action and to support the evaluation of remedial
26 actions if necessary;

27 "Remediation" or "remediate" means all necessary actions to
28 investigate and clean up or respond to any known, suspected, or
29 threatened discharge of contaminants, including, as necessary, the
30 preliminary assessment, site investigation, remedial investigation, and
31 remedial action, provided, however, that "remediation" or "remediate"
32 shall not include the payment of compensation for damage to, or loss
33 of, natural resources;

34 "Remediation fund" means the Hazardous Discharge Site
35 Remediation Fund established pursuant to section 26 of P.L.1993,
36 c.139 (C.58:10B-4);

37 "Remediation funding source" means the methods of financing the
38 remediation of a discharge required to be established by a person
39 performing the remediation pursuant to section 25 of P.L.1993, c.139
40 (C.58:10B-3);

41 "Remediation standards" means the combination of numeric
42 standards that establish a level or concentration, and narrative
43 standards to which contaminants must be treated, removed, or
44 otherwise cleaned for soil, groundwater, or surface water, as provided
45 by the department pursuant to section 35 of P.L.1993, c.139
46 (C.58:10B-12) in order to meet the health risk or environmental

1 standards;

2 "Restricted use remedial action" means any remedial action that
3 requires the continued use of engineering and institutional controls in
4 order to meet the established health risk or environmental standards;

5 "Site investigation" means the collection and evaluation of data
6 adequate to determine whether or not discharged contaminants exist
7 at a site or have migrated or are migrating from the site at levels in
8 excess of the applicable remediation standards. A site investigation
9 shall be developed based upon the information collected pursuant to
10 the preliminary assessment;

11 "Unrestricted use remedial action" means any remedial action that
12 does not require the continued use of engineering or institutional
13 controls in order to meet the established health risk or environmental
14 standards;

15 "Voluntarily perform a remediation" means performing a
16 remediation without having been ordered or directed to do so by the
17 department or by a court and without being compelled to perform a
18 remediation pursuant to the provisions of P.L.1983, c.330 (C.13:1K-6
19 et al.).

20 (cf: P.L.1997, c.278, s.9)]¹

21

22 ²3. Section 23 of P.L.1993, c.139 (C.58:10B-1) is amended to
23 read as follows:

24 23. As used in sections 23 through 43 and section 45 of P.L.1993,
25 c.139 (C.58:10B-1 et seq.) , as may be amended and supplemented:

26 "Area of concern" means any location where contaminants are or
27 were known or suspected to have been discharged, generated,
28 manufactured, refined, transported, stored, handled, treated, or
29 disposed, or where contaminants have or may have migrated;

30 "Authority" means the New Jersey Economic Development
31 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

32 "Contamination" or "contaminant" means any discharged
33 hazardous substance as defined pursuant to section 3 of P.L.1976,
34 c.141 (C.58:10-23.11b), hazardous waste as defined pursuant to
35 section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined
36 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

37 "Department" means the Department of Environmental Protection;

38 "Discharge" means an intentional or unintentional action or
39 omission resulting in the releasing, spilling, leaking, pumping, pouring,
40 emitting, emptying, or dumping of a contaminant onto the land or into
41 the waters of the State;

42 "Engineering controls" means any mechanism to contain or
43 stabilize contamination or ensure the effectiveness of a remedial
44 action. Engineering controls may include, without limitation, caps,
45 covers, dikes, trenches, leachate collection systems, signs, fences and
46 physical access controls;

1 "Environmental opportunity zone" has the meaning given that term
2 pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);

3 "Financial assistance" means loans or loan guarantees;

4 "Institutional controls" means a mechanism used to limit human
5 activities at or near a contaminated site, or to ensure the effectiveness
6 of the remedial action over time, when contaminants remain at a
7 contaminated site in levels or concentrations above the applicable
8 remediation standard that would allow unrestricted use of that
9 property. Institutional controls may include, without limitation,
10 structure, land, and natural resource use restrictions, well restriction
11 areas, and deed notices;

12 "Limited restricted use remedial action" means any remedial action
13 that requires the continued use of institutional controls but does not
14 require the use of an engineering control;

15 "No further action letter" means a written determination by the
16 department that based upon an evaluation of the historical use of a
17 particular site, or of an area of concern or areas of concern at that site,
18 as applicable, and any other investigation or action the department
19 deems necessary, there are no discharged contaminants present at the
20 site, at the area of concern or areas of concern, at any other site to
21 which a discharge originating at the site has migrated, or that any
22 discharged contaminants present at the site or that have migrated from
23 the site have been remediated in accordance with applicable
24 remediation regulations;

25 "Preliminary assessment" means the first phase in the process of
26 identifying areas of concern and determining whether contaminants are
27 or were present at a site or have migrated or are migrating from a site,
28 and shall include the initial search for and evaluation of, existing site
29 specific operational and environmental information, both current and
30 historic, to determine if further investigation concerning the
31 documented, alleged, suspected or latent discharge of any contaminant
32 is required. The evaluation of historic information shall be conducted
33 from 1932 to the present, except that the department may require the
34 search for and evaluation of additional information relating to
35 ownership and use of the site prior to 1932 if such information is
36 available through diligent inquiry of the public records;

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

45 "Remedial action workplan" means a plan for the remedial action
46 to be undertaken at a site, or at any area to which a discharge

1 originating at a site is migrating or has migrated; a description of the
2 remedial action to be used to remediate a site; a time schedule and cost
3 estimate of the implementation of the remedial action; and any other
4 information the department deems necessary;

5 "Remedial investigation" means a process to determine the nature
6 and extent of a discharge of a contaminant at a site or a discharge of
7 a contaminant that has migrated or is migrating from the site and the
8 problems presented by a discharge, and may include data collected,
9 site characterization, sampling, monitoring, and the gathering of any
10 other sufficient and relevant information necessary to determine the
11 necessity for remedial action and to support the evaluation of remedial
12 actions if necessary;

13 "Remediation" or "remediate" means all necessary actions to
14 investigate and clean up or respond to any known, suspected, or
15 threatened discharge of contaminants, including, as necessary, the
16 preliminary assessment, site investigation, remedial investigation, and
17 remedial action, provided, however, that "remediation" or "remediate"
18 shall not include the payment of compensation for damage to, or loss
19 of, natural resources;

20 "Remediation fund" means the Hazardous Discharge Site
21 Remediation Fund established pursuant to section 26 of P.L.1993,
22 c.139 (C.58:10B-4);

23 "Remediation funding source" means the methods of financing the
24 remediation of a discharge required to be established by a person
25 performing the remediation pursuant to section 25 of P.L.1993, c.139
26 (C.58:10B-3);

27 "Remediation standards" means the combination of numeric
28 standards that establish a level or concentration, and narrative
29 standards to which contaminants must be treated, removed, or
30 otherwise cleaned for soil, groundwater, or surface water, as provided
31 by the department pursuant to section 35 of P.L.1993, c.139
32 (C.58:10B-12) in order to meet the health risk or environmental
33 standards;

34 "Restricted use remedial action" means any remedial action that
35 requires the continued use of engineering and institutional controls in
36 order to meet the established health risk or environmental standards;

37 "Site investigation" means the collection and evaluation of data
38 adequate to determine whether or not discharged contaminants exist
39 at a site or have migrated or are migrating from the site at levels in
40 excess of the applicable remediation standards. A site investigation
41 shall be developed based upon the information collected pursuant to
42 the preliminary assessment;

43 "Unrestricted use remedial action" means any remedial action that
44 does not require the continued use of engineering or institutional
45 controls in order to meet the established health risk or environmental
46 standards;

1 "Voluntarily perform a remediation" means performing a
2 remediation without having been ordered or directed to do so by the
3 department or by a court and without being compelled to perform a
4 remediation pursuant to the provisions of P.L.1983, c.330 (C.13:1K-6
5 et al.).

6 (cf: P.L.1997, c.278, s.9)²

7

8 ¹[4. Section 6 of P.L.1997, c.278 (C.58:10B-13.1) is amended to
9 read as follows:

10 6. a. Whenever after the effective date of P.L.1997, c.278
11 (C.58:10B-1.1 et al.) the Department of Environmental Protection
12 issues a no further action letter pursuant to a remediation, it shall also
13 issue to the person performing the remediation a covenant not to sue
14 with respect to the real property upon which the remediation has been
15 conducted. A covenant not to sue shall be executed by the person
16 performing the remediation and by the department in order to become
17 effective. The covenant not to sue shall be consistent with any
18 conditions and limitations contained in the no further action letter.
19 The covenant not to sue shall be for any area of concern remediated
20 and may apply to the entire real property if the remediation included
21 a preliminary assessment and, if necessary, a site investigation of the
22 entire real property, and any other necessary remedial actions. The
23 covenant remains effective only for as long as the real property for
24 which the covenant was issued continues to meet the conditions of the
25 no further action letter. Upon a finding by the department that real
26 property or a portion thereof to which a covenant not to sue pertains,
27 no longer meets with the conditions of the no further action letter, the
28 department shall provide notice of that fact to the person responsible
29 for maintaining compliance with the no further action letter. The
30 department may allow the person a reasonable time to come into
31 compliance with the terms of the original no further action letter. If
32 the property does not meet the conditions of the no further action
33 letter and if the department does not allow for a period of time to
34 come into compliance or if the person fails to come into compliance
35 within the time period, the department may invoke the provisions of
36 the covenant not to sue permitting revocation of the covenant not to
37 sue.

38 Except as provided in subsection e. of this section, a covenant not
39 to sue shall contain the following, as applicable:

40 (1) a provision releasing the person who undertook the remediation
41 from all civil liability to the State to perform any additional
42 remediation, to pay compensation for damage to, or loss of, natural
43 resources, or for any cleanup and removal costs;

44 (2) for a remediation that involves the use of engineering or
45 institutional controls:

46 (a) a provision requiring the person, or any subsequent owner,

1 lessee, or operator during the person's period of ownership, tenancy,
2 or operation, to maintain those controls, conduct periodic monitoring
3 for compliance, and submit to the department, on a biennial basis, a
4 certification that the engineering and institutional controls are being
5 properly maintained and continue to be protective of public health and
6 safety and of the environment. The certification shall state the
7 underlying facts and shall include the results of any tests or
8 procedures performed that support the certification; and

9 (b) a provision revoking the covenant if the engineering or
10 institutional controls are not being maintained or are no longer in
11 place; and

12 (3) for a remediation that involves the use of engineering controls
13 but not for any remediation that involves the use of institutional
14 controls only, a provision barring the person or persons whom the
15 covenant not to sue benefits, from making a claim against the New
16 Jersey Spill Compensation Fund and the Sanitary Landfill Facility
17 Contingency Fund for any costs or damages relating to the real
18 property and remediation covered by the covenant not to sue. The
19 covenant not to sue shall not bar a claim by any person against the
20 New Jersey Spill Compensation Fund and the Sanitary Landfill
21 Contingency Fund for any remediation that involves only the use of
22 institutional controls if, after a valid no further action letter has been
23 issued, the department orders additional remediation, except that the
24 covenant shall bar such a claim if the department ordered additional
25 remediation in order to remove the institutional control.

26 b. Unless a covenant not to sue issued under this section is
27 revoked by the department, the covenant shall remain effective. The
28 covenant not to sue shall apply to all successors in ownership of the
29 property and to all persons who lease the property or who engage in
30 operations on the property.

31 c. If a covenant not to sue is revoked, liability for any additional
32 remediation shall not be applied retroactively to any person for whom
33 the covenant remained in effect during that person's ownership,
34 tenancy, or operation of the property.

35 d. A covenant not to sue and the protections it affords shall not
36 apply to any discharge that occurs subsequent to the issuance of the
37 no further action letter which was the basis of the issuance of the
38 covenant, nor shall a covenant not to sue and the protections it affords
39 relieve any person of the obligations to comply in the future with laws
40 and regulations.

41 e. The covenant not to sue may be issued to any person who
42 obtains a no further action letter as provided in subsection a. of this
43 section. The covenant not to sue shall not provide relief from any
44 liability, either under statutory or common law, to any person who is
45 liable for cleanup and removal costs pursuant to subsection c. of
46 section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not have

1 a defense to liability pursuant to subsection d. of that section.
2 (cf: P.L.1997, c.278, s.6)]¹

3
4 ²4. Section 6 of P.L.1997, c.278 (C.58:10B-13.1) is amended to
5 read as follows:

6 6. a. Whenever after the effective date of P.L.1997, c.278
7 (C.58:10B-1.1 et al.) the Department of Environmental Protection
8 issues a no further action letter pursuant to a remediation, it shall also
9 issue to the person performing the remediation a covenant not to sue
10 with respect to the real property upon which the remediation has been
11 conducted. A covenant not to sue shall be executed by the person
12 performing the remediation and by the department in order to become
13 effective. The covenant not to sue shall be consistent with any
14 conditions and limitations contained in the no further action letter.
15 The covenant not to sue shall be for any area of concern remediated
16 and may apply to the entire real property if the remediation included
17 a preliminary assessment and, if necessary, a site investigation of the
18 entire real property, and any other necessary remedial actions. The
19 covenant remains effective only for as long as the real property for
20 which the covenant was issued continues to meet the conditions of the
21 no further action letter. Upon a finding by the department that real
22 property or a portion thereof to which a covenant not to sue pertains,
23 no longer meets with the conditions of the no further action letter, the
24 department shall provide notice of that fact to the person responsible
25 for maintaining compliance with the no further action letter. The
26 department may allow the person a reasonable time to come into
27 compliance with the terms of the original no further action letter. If
28 the property does not meet the conditions of the no further action
29 letter and if the department does not allow for a period of time to
30 come into compliance or if the person fails to come into compliance
31 within the time period, the department may invoke the provisions of
32 the covenant not to sue permitting revocation of the covenant not to
33 sue.

34 Except as provided in subsection e. of this section, a covenant not
35 to sue shall contain the following, as applicable:

36 (1) a provision releasing the person who undertook the remediation
37 from all civil liability to the State to perform any additional
38 remediation, to pay compensation for damage to, or loss of, natural
39 resources, or for any cleanup and removal costs;

40 (2) for a remediation that involves the use of engineering or
41 institutional controls:

42 (a) a provision requiring the person, or any subsequent owner,
43 lessee, or operator during the person's period of ownership, tenancy,
44 or operation, to maintain those controls, conduct periodic monitoring
45 for compliance, and submit to the department, on a biennial basis, a
46 certification that the engineering and institutional controls are being

1 properly maintained and continue to be protective of public health and
2 safety and of the environment. The certification shall state the
3 underlying facts and shall include the results of any tests or
4 procedures performed that support the certification; and

5 (b) a provision revoking the covenant if the engineering or
6 institutional controls are not being maintained or are no longer in
7 place; and

8 (3) for a remediation that involves the use of engineering controls
9 but not for any remediation that involves the use of institutional
10 controls only, a provision barring the person or persons whom the
11 covenant not to sue benefits, from making a claim against the New
12 Jersey Spill Compensation Fund and the Sanitary Landfill Facility
13 Contingency Fund for any costs or damages relating to the real
14 property and remediation covered by the covenant not to sue. The
15 covenant not to sue shall not bar a claim by any person against the
16 New Jersey Spill Compensation Fund and the Sanitary Landfill
17 Contingency Fund for any remediation that involves only the use of
18 institutional controls if, after a valid no further action letter has been
19 issued, the department orders additional remediation, except that the
20 covenant shall bar such a claim if the department ordered additional
21 remediation in order to remove the institutional control.

22 b. Unless a covenant not to sue issued under this section is
23 revoked by the department, the covenant shall remain effective. The
24 covenant not to sue shall apply to all successors in ownership of the
25 property and to all persons who lease the property or who engage in
26 operations on the property.

27 c. If a covenant not to sue is revoked, liability for any additional
28 remediation shall not be applied retroactively to any person for whom
29 the covenant remained in effect during that person's ownership,
30 tenancy, or operation of the property.

31 d. A covenant not to sue and the protections it affords shall not
32 apply to any discharge that occurs subsequent to the issuance of the
33 no further action letter which was the basis of the issuance of the
34 covenant, nor shall a covenant not to sue and the protections it affords
35 relieve any person of the obligations to comply in the future with laws
36 and regulations.

37 e. The covenant not to sue may be issued to any person who
38 obtains a no further action letter as provided in subsection a. of this
39 section. The covenant not to sue shall not provide relief from any
40 liability, either under statutory or common law, to any person who is
41 liable for cleanup and removal costs pursuant to subsection c. of
42 section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not have
43 a defense to liability pursuant to subsection d. of that section.

44 (cf: P.L.1997, c.278, s.6)²

45

46 ¹[5. (New section) a. (1) Except where a limitations provision

1 expressly and specifically applies to actions commenced by the State
2 or where a longer limitations period would otherwise apply, and
3 subject to any statutory provisions or common law rules extending
4 limitations periods, any civil action concerning the remediation of a
5 contaminated site or the closure of a sanitary landfill facility
6 commenced by the State pursuant to the State's environmental laws
7 shall be commenced within three years next after the cause of action
8 shall have accrued.

9 (2) For purposes of determining whether a civil action subject to
10 the limitations periods specified in paragraph (1) of this subsection has
11 been commenced within time, no cause of action shall be deemed to
12 have accrued prior to January 1, 2002 or until the contaminated site
13 is remediated or the sanitary landfill has been properly closed,
14 whichever is later.

15 b. (1) Except where a limitations provision expressly and
16 specifically applies to actions commenced by the State or where a
17 longer limitations period would otherwise apply, and subject to any
18 statutory provisions or common law rules extending limitations
19 periods, any civil action concerning the payment of compensation for
20 damage to, or loss of, natural resources due to the discharge of a
21 hazardous substance, commenced by the State pursuant to the State's
22 environmental laws, shall be commenced within four years next after
23 the cause of action shall have accrued.

24 (2) For purposes of determining whether a civil action subject to
25 the limitations periods specified in paragraph (1) of this subsection has
26 been commenced within time, no cause of action shall be deemed to
27 have accrued prior to January 1, 2002 or until the performance of the
28 preliminary assessment, site investigation, and remedial investigation,
29 if necessary, of the contaminated site or the sanitary landfill facility,
30 whichever is later.

31 c. As used in this section:

32 "State's environmental laws" means the "Spill Compensation and
33 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water
34 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
35 P.L.1986, c.102 (C.58:10A-21 et seq.), the "Brownfield and
36 Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1
37 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6
38 et al.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1
39 et seq.), the "Comprehensive Regulated Medical Waste Management
40 Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous
41 Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the
42 "Sanitary Landfill Facility Closure and Contingency Fund Act,"
43 P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level
44 Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333
45 (C.13:1E-177 et seq.), or any other law or regulation by which the
46 State may compel a person to perform remediation activities on

1 contaminated property; and

2 "State" means the State, its political subdivisions, any office,
3 department, division, bureau, board, commission or agency of the
4 State or one of its political subdivisions, and any public authority or
5 public agency, including, but not limited to, the New Jersey Transit
6 Corporation and the University of Medicine and Dentistry of New
7 Jersey.]¹

8

9 25. (New section) a. (1) Except where a limitations provision
10 expressly and specifically applies to actions commenced by the State
11 or where a longer limitations period would otherwise apply, and
12 subject to any statutory provisions or common law rules extending
13 limitations periods, any civil action concerning the remediation of a
14 contaminated site or the closure of a sanitary landfill facility
15 commenced by the State pursuant to the State's environmental laws
16 shall be commenced within three years next after the cause of action
17 shall have accrued.

18 (2) For purposes of determining whether a civil action subject to
19 the limitations periods specified in paragraph (1) of this subsection has
20 been commenced within time, no cause of action shall be deemed to
21 have accrued prior to January 1, 2002 or until the contaminated site
22 is remediated or the sanitary landfill has been properly closed,
23 whichever is later.

24 b. (1) Except where a limitations provision expressly and
25 specifically applies to actions commenced by the State or where a
26 longer limitations period would otherwise apply, and subject to any
27 statutory provisions or common law rules extending limitations
28 periods, any civil action concerning the payment of compensation for
29 damage to, or loss of, natural resources due to the discharge of a
30 hazardous substance, commenced by the State pursuant to the State's
31 environmental laws, shall be commenced within four years next after
32 the cause of action shall have accrued.

33 (2) For purposes of determining whether a civil action subject to
34 the limitations periods specified in paragraph (1) of this subsection has
35 been commenced within time, no cause of action shall be deemed to
36 have accrued prior to January 1, 2002 or until the performance of the
37 preliminary assessment, site investigation, and remedial investigation,
38 if necessary, of the contaminated site or the sanitary landfill facility,
39 whichever is later.

40 c. As used in this section:

41 "State's environmental laws" means the "Spill Compensation and
42 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water
43 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
44 P.L.1986, c.102 (C.58:10A-21 et seq.), the "Brownfield and
45 Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1
46 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6

1 et al.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1
2 et seq.), the "Comprehensive Regulated Medical Waste Management
3 Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous
4 Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the
5 "Sanitary Landfill Facility Closure and Contingency Fund Act,"
6 P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level
7 Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333
8 (C.13:1E-177 et seq.), or any other law or regulation by which the
9 State may compel a person to perform remediation activities on
10 contaminated property; and

11 "State" means the State, its political subdivisions, any office,
12 department, division, bureau, board, commission or agency of the
13 State or one of its political subdivisions, and any public authority or
14 public agency, including, but not limited to, the New Jersey Transit
15 Corporation and the University of Medicine and Dentistry of New
16 Jersey.²

17

18 ²6. (New section) Any person who has a defense to liability
19 pursuant to paragraphs (2) and (5) of subsection d. of section 8 of
20 P.L.1976, c.141 (C.58:10-23.11g) shall not be liable for the payment
21 of compensation for damage to, or loss of, natural resources due to the
22 discharge of a hazardous substance.²

23

24 ¹[7.] ²[¹.¹] ⁷.² Section 2 of P.L.1991, c.387 (C.2A:14-1.2) is
25 amended to read as follows:

26 2. a. ²[¹(1)¹]² Except ²[¹ as provided in paragraph (2) of this
27 subsection, or except ¹]² where a limitations provision expressly and
28 specifically applies to actions commenced by the State or where a
29 longer limitations period would otherwise apply, and subject to any
30 statutory provisions or common law rules extending limitations
31 periods, any civil action commenced by the State shall be commenced
32 within ten years next after the cause of action shall have accrued.

33 ²[¹(2) Except where a limitations provision expressly and
34 specifically applies to actions commenced by the State or where a
35 longer limitations period would otherwise apply, and subject to any
36 statutory provisions or common law rules extending limitations
37 periods, any civil action commenced by the State pursuant to the laws
38 concerning the remediation of contaminated sites or the closure of
39 sanitary landfill facilities shall be commenced within three years next
40 after the cause of action shall have accrued.¹]²

41 b. ²[¹(1)¹]² For purposes of determining whether ¹[an] ²[a civil
42 ¹] an² action subject to the limitations period specified in [² ¹
43 paragraph (1) of ¹]² subsection a. of this section has been commenced
44 within time, no ¹[such] ²[cause of ¹] such² action shall be deemed to
45 have accrued prior to January 1, 1992.

1 ²[¹(2) For purposes of determining whether a civil action subject
2 to the limitations period specified in paragraph (2) of subsection a. of
3 this section has been commenced within time, no cause of action shall
4 be deemed to have accrued prior to January 1, 2002, or until the
5 contaminated site has been remediated or the sanitary landfill facility
6 has been properly closed, whichever is later.¹²

7 c. As used in this act ¹[, the term] ²[:

8 "Laws concerning the remediation of contaminated sites or the
9 closure of sanitary landfill facilities" means the "Spill Compensation
10 and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water
11 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
12 P.L.1986, c.102 (C.58:10A-21 et seq.), the "Brownfield and
13 Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1
14 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6
15 et al.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1
16 et seq.), the "Comprehensive Regulated Medical Waste Management
17 Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous
18 Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the
19 "Sanitary Landfill Facility Closure and Contingency Fund Act,"
20 P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level
21 Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333
22 (C.13:1E-177 et seq.), or any other law or regulation by which the
23 State may compel a person to perform remediation activities on
24 contaminated property; and ¹], the term² "State" means the State, its
25 political subdivisions, any office, department, division, bureau, board,
26 commission or agency of the State or one of its political subdivisions,
27 and any public authority or public agency, including, but not limited
28 to, the New Jersey Transit Corporation and the University of Medicine
29 and Dentistry of New Jersey.

30 ¹[The provisions of this section shall not apply to any civil action
31 commenced by the State concerning the remediation of a contaminated
32 site or the closure of a sanitary landfill facility, or the payment of
33 compensation for damage to, or loss of, natural resources due to the
34 discharge of a hazardous substance, and subject to the limitations
35 period specified in section 5 of P.L. , c. (C.) (before the Legislature
36 as this bill).]¹ ² The provisions of this section shall not apply to any
37 civil action commenced by the State concerning the remediation of a
38 contaminated site or the closure of a sanitary landfill facility, or the
39 payment of compensation for damage to, or loss of, natural resources
40 due to the discharge of a hazardous substance, and subject to the
41 limitations period specified in section 5 of P.L. , c. (C.) (before the
42 Legislature as this bill).²

43 (cf: P.L.1991, c.387, s.2)

44
45 ¹[8.] ²[2.1] 8.² This act shall take effect immediately.

1

2

3 Establishes and extends statute of limitations for site cleanups;

4 clarifies liability for purchasers of contaminated sites.