

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, No. 2724

**STATE OF NEW JERSEY**

ADOPTED DECEMBER 11, 1997

Sponsored by Assemblymen DiGAETANO, DORIA, Zisa and  
LeFevre

1 AN ACT concerning the remediation of contaminated sites, revising  
2 parts of the statutory law, and making appropriations.

3

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

6

7 1. (New section) Sections 23 through 43 and section 45 of  
8 P.L.1993, c.139 (C.58:10B-1 et seq.), as may be amended and  
9 supplemented, shall be known and may be cited as the "Brownfield and  
10 Contaminated Site Remediation Act."

11

12 2. (New section) The Legislature finds and declares that due to  
13 New Jersey's industrial history, large areas in the State's urban and  
14 suburban areas formerly used for commercial and industrial purposes  
15 are underused or abandoned; that many of these properties, often  
16 referred to as brownfields, are contaminated with hazardous  
17 substances and pose a health risk to the nearby residents and a threat  
18 to the environment; and that these sites can be a blight to the  
19 neighborhood and a financial drain on a municipality because they have  
20 no productive use, and fail to generate property taxes and jobs. The  
21 Legislature further finds that often there are legal, financial, technical,  
22 and institutional impediments to the efficient and cost-effective  
23 cleanup of brownfield sites as well as all other contaminated sites  
24 wherever they may be. The Legislature finds and declares that the  
25 State needs to ensure that the public health and safety and the  
26 environment are protected from the risks posed by contaminated sites  
27 and that strict standards coupled with a risk based and flexible  
28 regulatory system will result in more cleanups and thus the elimination  
29 of the public's exposure to these hazardous substances and the  
30 environmental degradation that contamination causes.

31 The Legislature therefore declares that strict remediation standards  
32 are necessary to protect public health and safety and the environment;

**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.

1 that these standards should be adopted based upon the risk posed by  
2 discharged hazardous substances; that unrestricted remedies for  
3 contaminated sites are preferable and the State must adopt policies  
4 that encourage their use; that institutional and engineering controls  
5 should be allowed only when the public health risk and environmental  
6 protection standards are met; and that in order to encourage the  
7 cleanup of contaminated sites, there must be finality in the process, the  
8 provision of financial incentives, liability protection for innocent  
9 parties who clean up, cleanup procedures that are cost effective and  
10 regulatory action that is timely and efficient.

11

12 3. (New section) a. The Department of Environmental Protection  
13 shall investigate and determine the extent of contamination of every  
14 aquifer in this State. The department shall prioritize its investigations  
15 of aquifers giving the highest priority to those aquifers underlying  
16 urban or industrial areas that are known or suspected of having large  
17 areas of contamination. This information shall be updated periodically  
18 as necessary. The information derived from the investigation shall be  
19 made available to the public by entering it into the Department of  
20 Environmental Protection's existing geographic information system,  
21 by making this information available on the system, and by making  
22 copies of any maps and data available to the public. The functions  
23 required pursuant to this section shall be considered a site remediation  
24 obligation of the State. The department may charge a reasonable fee  
25 for the reproduction of the maps and data which fee shall reflect the  
26 cost of their reproduction.

27 b. Upon completion of an investigation of an aquifer by the  
28 department and upon the department's determination of the extent of  
29 contamination of an aquifer, a person performing a remediation may  
30 rely upon that information for that person's submission of information  
31 to the department in the performance of a remediation.

32 c. The entire cost of the investigation required pursuant to this  
33 section shall be borne by the department from appropriations made to  
34 it by the Legislature specifically for this purpose. The department may  
35 not fund any part of this investigation by the imposition of a fee or  
36 charge on any person performing a remediation or upon any person  
37 who is in need of a permit or approval from the department.

38 d. Nothing in this section shall be construed to require or obligate  
39 the department to reclassify the groundwater of any aquifer.

40

41 4. (New section) a. The Department of Environmental Protection  
42 shall investigate and map those areas of the State at which large areas  
43 of historic fill exist. The department shall prioritize its investigations  
44 of historic fill areas giving highest priority to those areas of the State  
45 that are known or suspected to contain historic fill. This information  
46 shall be updated periodically as necessary. The information derived

1 from the investigation shall be made available to the public by entering  
2 it into the Department of Environmental Protection's existing  
3 geographic information system, by making this information available  
4 on the system, and by making copies of any maps and data available to  
5 the public. The functions required pursuant to this section shall be  
6 considered a site remediation obligation of the State. The department  
7 may charge a reasonable fee for the reproduction of the maps and data  
8 which fee shall reflect the cost of their reproduction.

9 b. Upon completion of an investigation of an area of historic fill  
10 by the department and upon the department's determination of the  
11 location of historic fill in an area, a person performing a remediation  
12 may rely upon that information for that person's performance of a  
13 remediation and selection of a remedial action pursuant to subsection  
14 h. of section 35 of P.L.1993, c.139 (C.58:10B-12).

15 c. The entire cost of investigation required pursuant to this section  
16 shall be borne by the department from appropriations made to it by the  
17 Legislature specifically for this purpose. The department may not fund  
18 any part of this investigation by the imposition of a fee or charge on  
19 any person performing a remediation or upon any person who is in  
20 need of a permit or approval from the department.

21

22 5. (New section) a. There is created the "Brownfields  
23 Redevelopment Task Force." The Task Force shall consist of five  
24 representatives from State agencies and six public members. The State  
25 agency representatives shall be from each of the following State  
26 agencies: the Office of State Planning in the Department of Treasury,  
27 the Office of Neighborhood Empowerment in the Department of  
28 Community Affairs, the New Jersey Redevelopment Authority in the  
29 Department of Commerce and Economic Development, the  
30 Department of Transportation, and the Site Remediation Program in  
31 the Department of Environmental Protection. The six public members  
32 shall be appointed by the Governor with the advice and consent of the  
33 Senate. The public members shall include to the extent practicable: a  
34 representative of commercial or residential development interests, a  
35 representative of the financial community, a representative of a public  
36 interest environmental organization, a representative of a neighborhood  
37 or community redevelopment organization, a representative of a labor  
38 or trade organization, and a representative of a regional planning  
39 entity.

40 The Office of State Planning shall provide staff to implement the  
41 functions and duties of the Task Force. The public members of the  
42 Task Force shall serve without compensation but may be reimbursed  
43 for actual expenses in the performance of their duties. The Governor  
44 shall select the chairperson of the Task Force.

45 b. The Task Force shall prepare and update an inventory of  
46 brownfield sites in the State. In preparing the inventory, priority shall

1 be given to those areas of the State that receive assistance from the  
2 Urban Coordinating Council or from the Office of Neighborhood  
3 Empowerment. To the extent practicable, the inventory shall include  
4 an assessment of the contaminants known or suspected to have been  
5 discharged or that are currently stored on the site, the extent of any  
6 remediation performed on the site, the site's proximity to  
7 transportation networks, and the availability of infrastructure to  
8 support the redevelopment of the site. The information gathered for  
9 the inventory shall, to the extent practicable, be made available to the  
10 public by entering it into the Department of Environmental  
11 Protection's existing geographic information system, by making this  
12 information available on the system and by making copies of any maps  
13 and data available to the public. The department may charge a  
14 reasonable fee for the reproduction of maps and data which fee shall  
15 reflect the cost of their reproduction.

16 c. In addition to its functions pursuant to subsection b. of this  
17 section, the Task Force shall:

18 (1) coordinate State policy on brownfields redevelopment,  
19 including incentives, regulatory programs, provision of infrastructure,  
20 and redevelopment planning assistance to local governments;

21 (2) use the inventory to prioritize sites based on their immediate  
22 economic development potential;

23 (3) prepare a plan of action to return these sites to productive  
24 economic use on an expedited basis;

25 (4) actively market sites on the inventory to prospective  
26 developers;

27 (5) use the inventory to provide a targeted environmental  
28 assessment of the sites, or of areas containing several brownfield sites,  
29 by the Department of Environmental Protection;

30 (6) consult with the Pinelands Commission concerning the  
31 remediation and redevelopment of brownfield sites located in the  
32 pinelands area as designated pursuant to section 10 of P.L.1979, c.111  
33 (C.13:18A-11);

34 (7) evaluate the performance of current public incentives in  
35 encouraging the remediation of and redevelopment of brownfields; and

36 (8) make recommendations to the Governor and the Legislature  
37 on means to better promote the redevelopment of brownfields,  
38 including the provision of necessary public infrastructure and methods  
39 to attract private investment in redevelopment.

40 d. As used in this section, "brownfield" means any former or  
41 current commercial or industrial site that is currently vacant or  
42 underutilized and on which there has been, or there is suspected to  
43 have been, a discharge of a contaminant.

44

45 6. (New section) a. Whenever after the effective date of P.L. ,

46 c. (now before the legislature as this bill) the Department of

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

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

29 (1) a provision releasing the person who undertook the remediation  
30 from all civil liability to the State to perform any additional  
31 remediation or for any cleanup and removal costs;

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

34 (a) a provision requiring the person, or any subsequent owner,  
35 lessee, or operator during the person's period of ownership, tenancy,  
36 or operation, to maintain those controls, conduct periodic monitoring  
37 for compliance, and submit to the department, on a biennial basis, a  
38 certification that the engineering and institutional controls are being  
39 properly maintained and continue to be protective of public health and  
40 safety and of the environment. The certification shall state the  
41 underlying facts and shall include the results of any tests or  
42 procedures performed that support the certification; and

43 (b) a provision revoking the covenant if the engineering or  
44 institutional controls are not being maintained or are no longer in  
45 place; and

46 (3) for a remediation that involves the use of engineering controls

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

14 b. Unless a covenant not to sue issued under this section is  
15 revoked by the department, the covenant shall remain effective. The  
16 covenant not to sue shall apply to all successors in ownership of the  
17 property and to all persons who lease the property or who engage in  
18 operations on the property.

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

23 d. A covenant not to sue and the protections it affords shall not  
24 apply to any discharge that occurs subsequent to the issuance of the  
25 no further action letter which was the basis of the issuance of the  
26 covenant, nor shall a covenant not to sue and the protections it affords  
27 relieve any person of the obligations to comply in the future with laws  
28 and regulations.

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

36

37 7. Section 3 of P.L.1983, c.330 (C.13:1K-8) is amended to read  
38 as follows:

39 3. "Remedial action workplan" means a plan for the remedial  
40 action to be undertaken at an industrial establishment, or at any area  
41 to which a discharge originating at the industrial establishment is  
42 migrating or has migrated; a description of the remedial action to be  
43 used to remediate the industrial establishment; a time schedule and  
44 cost estimate of the implementation of the remedial action; and any  
45 other relevant information the department deems necessary;

46 "Closing operations" means:

1 (1) the cessation of operations resulting in at least a 90 percent  
2 reduction in the total value of the product output from the entire  
3 industrial establishment, as measured on a constant, annual  
4 date-specific basis, within any five year period, or, for industrial  
5 establishments for which the product output is undefined, a 90 percent  
6 reduction in the number of employees or a 90 percent reduction in the  
7 area of operations of an industrial establishment within any five year  
8 period; provided, however, the department may approve a waiver of  
9 the provisions of this paragraph for any owner or operator who, upon  
10 application and review, evidences a good faith effort to maintain and  
11 expand product output, the number of employees, or area of  
12 operations of the affected industrial establishment;

13 (2) any temporary cessation of operations of an industrial  
14 establishment for a period of not less than two years;

15 (3) any judicial proceeding or final agency action through which  
16 an industrial establishment becomes nonoperational for health or safety  
17 reasons;

18 (4) the initiation of bankruptcy proceedings pursuant to Chapter  
19 7 of the federal Bankruptcy Code, 11 U.S.C. s.701 et seq. or the filing  
20 of a plan of reorganization that provides for a liquidation pursuant to  
21 Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. s.1101 et seq.;

22 (5) any change in operations of an industrial establishment that  
23 changes the industrial establishment's Standard Industrial Classification  
24 number to one that is not subject to this act; or

25 (6) the termination of a lease unless there is no disruption in  
26 operations of the industrial establishment, or the assignment of a lease;

27 "Transferring ownership or operations" means:

28 (1) any transaction or proceeding through which an industrial  
29 establishment undergoes a change in ownership;

30 (2) the sale or transfer of more than 50% of the assets of an  
31 industrial establishment within any five year period, as measured on a  
32 constant, annual date-specific basis;

33 (3) the execution of a lease for a period of 99 years or longer for  
34 an industrial establishment; or

35 (4) the dissolution of an entity that is an owner or operator or an  
36 indirect owner of an industrial establishment, except for any  
37 dissolution of an indirect owner of an industrial establishment whose  
38 assets would have been unavailable for the remediation of the  
39 industrial establishment if the dissolution had not occurred;

40 "Change in ownership" means:

41 (1) the sale or transfer of the business of an industrial  
42 establishment or any of its real property;

43 (2) the sale or transfer of stock in a corporation resulting in a  
44 merger or consolidation involving the direct owner or operator or  
45 indirect owner of the industrial establishment;

46 (3) the sale or transfer of stock in a corporation, or the transfer of

1 a partnership interest, resulting in a change in the person holding the  
2 controlling interest in the direct owner or operator or indirect owner  
3 of an industrial establishment;

4 (4) the sale or transfer of title to an industrial establishment or the  
5 real property of an industrial establishment by exercising an option to  
6 purchase; or

7 (5) the sale or transfer of a partnership interest in a partnership  
8 that owns or operates an industrial establishment, that would reduce,  
9 by 10% or more, the assets available for remediation of the industrial  
10 establishment;

11 "Change in ownership" shall not include:

12 (1) a corporate reorganization not substantially affecting the  
13 ownership of the industrial establishment;

14 (2) a transaction or series of transactions involving the transfer of  
15 stock, assets or both, among corporations under common ownership,  
16 if the transaction or transactions will not result in the diminution of the  
17 net worth of the corporation that directly owns or operates the  
18 industrial establishment by more than 10%, or if an equal or greater  
19 amount in assets is available for the remediation of the industrial  
20 establishment before and after the transaction or transactions;

21 (3) a transaction or series of transactions involving the transfer of  
22 stock, assets or both, resulting in the merger or de facto merger or  
23 consolidation of the indirect owner with another entity, or in a change  
24 in the person holding the controlling interest of the indirect owner of  
25 an industrial establishment, when the indirect owner's assets would  
26 have been unavailable for cleanup if the transaction or transactions had  
27 not occurred;

28 (4) a transfer where the transferor is the sibling, spouse, child,  
29 parent, grandparent, child of a sibling, or sibling of a parent of the  
30 transferee;

31 (5) a transfer to confirm or correct any deficiencies in the  
32 recorded title of an industrial establishment;

33 (6) a transfer to release a contingent or reversionary interest  
34 except for any transfer of a lessor's reversionary interest in leased real  
35 property;

36 (7) a transfer of an industrial establishment by devise or intestate  
37 succession;

38 (8) the granting or termination of an easement or a license to any  
39 portion of an industrial establishment;

40 (9) the sale or transfer of real property pursuant to a  
41 condemnation proceeding initiated pursuant to the "Eminent Domain  
42 Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);

43 (10) execution, delivery and filing or recording of any mortgage,  
44 security interest, collateral assignment or other lien on real or personal  
45 property; or

46 (11) any transfer of personal property pursuant to a valid security



1 agreement, collateral assignment or other lien, including, but not  
2 limited to, seizure or replevin of such personal property which transfer  
3 is for the purpose of implementing the secured party's rights in the  
4 personal property which is the collateral.

5 "Department" means the Department of Environmental Protection  
6 [and Energy];

7 "Hazardous substances" means those elements and compounds,  
8 including petroleum products, which are defined as such by the  
9 department, after public hearing, and which shall be consistent to the  
10 maximum extent possible with, and which shall include, the list of  
11 hazardous substances adopted by the Environmental Protection  
12 Agency pursuant to Section 311 of the "Federal Water Pollution  
13 Control Act Amendments of 1972" (33 U.S.C.§1321) and the list of  
14 toxic pollutants designated by Congress or the Environmental  
15 Protection Agency pursuant to Section 307 of that act (33  
16 U.S.C.§1317); except that sewage and sewage sludge shall not be  
17 considered as hazardous substances for the purposes of this act;

18 "Hazardous waste" shall have the same meaning as provided in  
19 section 1 of P.L.1976, c.99 (C.13:1E-38);

20 "Industrial establishment" means any place of business engaged in  
21 operations which involve the generation, manufacture, refining,  
22 transportation, treatment, storage, handling, or disposal of hazardous  
23 substances or hazardous wastes on-site, above or below ground,  
24 having a Standard Industrial Classification number within 22-39  
25 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard  
26 Industrial Classifications Manual prepared by the Office of  
27 Management and Budget in the Executive Office of the President of  
28 the United States. Those facilities or parts of facilities subject to  
29 operational closure and post-closure maintenance requirements  
30 pursuant to the "Solid Waste Management Act," P.L.1970, c.39  
31 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting  
32 Act," P.L.1981, c.279 (C.13:1E-49 et seq.) or the "Solid Waste  
33 Disposal Act" (42 U.S.C.§6901 et seq.), or any establishment engaged  
34 in the production or distribution of agricultural commodities, shall not  
35 be considered industrial establishments for the purposes of this act.  
36 The department may, pursuant to the "Administrative Procedure Act,"  
37 P.L.1968, c.410 (C.52:14B-1 et seq.), exempt certain sub-groups or  
38 classes of operations within those sub-groups within the Standard  
39 Industrial Classification major group numbers listed in this subsection  
40 upon a finding that the operation of the industrial establishment does  
41 not pose a risk to public health and safety;

42 "Negative declaration" means a written declaration, submitted by  
43 the owner or operator of an industrial establishment or other person  
44 assuming responsibility for the remediation under paragraph (3) of  
45 subsection b. of section 4 of P.L.1983, c.330 to the department,  
46 certifying that there has been no discharge of hazardous substances or

1 hazardous wastes on the site, or that any such discharge on the site or  
2 discharge that has migrated or is migrating from the site has been  
3 remediated in accordance with procedures approved by the department  
4 and in accordance with any applicable remediation regulations;

5 "Discharge" means an intentional or unintentional action or  
6 omission resulting in the releasing, spilling, leaking, pumping, pouring,  
7 emitting, emptying, or dumping of a hazardous substance or hazardous  
8 waste into the waters or onto the lands of the State;

9 "No further action letter" means a written determination by the  
10 department that, based upon an evaluation of the historical use of the  
11 industrial establishment and the property, or of an area of concern or  
12 areas of concern, as applicable, and any other investigation or action  
13 the department deems necessary, there are no discharged hazardous  
14 substances or hazardous wastes present at the site of the industrial  
15 establishment, at the area of concern or areas of concern, or at any  
16 other site to which discharged hazardous substances or hazardous  
17 wastes originating at the industrial establishment have migrated, and  
18 that any discharged hazardous substances or hazardous wastes present  
19 at the industrial establishment or that have migrated from the site have  
20 been remediated in accordance with applicable remediation  
21 regulations;

22 "Indirect owner" means any person who holds a controlling interest  
23 in a direct owner or operator, holds a controlling interest in another  
24 indirect owner, or holds an interest in a partnership which is an  
25 indirect owner or a direct owner or operator, of an industrial  
26 establishment;

27 "Direct owner or operator" means any person that directly owns or  
28 operates an industrial establishment. A holder of a mortgage or other  
29 security interest in the industrial establishment shall not be deemed to  
30 be a direct owner or operator of the industrial establishment unless or  
31 until it loses its exemption under P.L.1993, c.112 (C.58:10-23.11g4  
32 et al.) or obtains title to the industrial establishment by deed of  
33 foreclosure, by other deed, or by court order or other process;

34 "Area of concern" means any location where hazardous substances  
35 or hazardous wastes are or were known or suspected to have been  
36 discharged, generated, manufactured, refined, transported, stored,  
37 handled, treated, or disposed, or where hazardous substances or  
38 hazardous wastes have or may have migrated;

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

1 "Owner" means any person who owns the real property of an  
2 industrial establishment or who owns the industrial establishment. A  
3 holder of a mortgage or other security interest in the industrial  
4 establishment shall not be deemed to be an owner of the industrial  
5 establishment unless or until it loses its exemption under P.L.1993,  
6 c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial  
7 establishment by deed of foreclosure, by other deed, or by court order  
8 or other process;

9 "Operator" means any person, including users, tenants, or  
10 occupants, having and exercising direct actual control of the  
11 operations of an industrial establishment. A holder of a mortgage or  
12 other security interest in the industrial establishment shall not be  
13 deemed to be an operator of the industrial establishment unless or until  
14 it loses its exemption under P.L.1993, c.112 (C.58:10-23.11g4 et al.)  
15 or obtains title to the industrial establishment by deed of foreclosure,  
16 by other deed, or by court order or other process;

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

31 "Remediation" or "remediate" means all necessary actions to  
32 investigate and clean up or respond to any known, suspected, or  
33 threatened discharge of hazardous substances or hazardous wastes,  
34 including, as necessary, the preliminary assessment, site investigation,  
35 remedial investigation, and remedial action;

36 "Remedial action" means those actions taken at an industrial  
37 establishment or offsite of an industrial establishment if hazardous  
38 substances or hazardous wastes have migrated or are migrating  
39 therefrom, as may be required by the department to protect public  
40 health, safety, and the environment. These actions may include the  
41 removal, treatment, containment, transportation, securing, or other  
42 engineering measures, whether [of a permanent nature] to an  
43 unrestricted use or otherwise, designed to ensure that any discharged  
44 hazardous substances or hazardous wastes at the site or that have  
45 migrated or are migrating from the site, are remediated in compliance

1 with the applicable [remediation] health risk or environmental  
2 standards;

3 "Remedial investigation" means a process to determine the nature  
4 and extent of a discharge of hazardous substances or hazardous wastes  
5 at an industrial establishment or a discharge of hazardous substances  
6 or hazardous wastes that have migrated or are migrating from the site  
7 and the problems presented by a discharge, and may include data  
8 collection, site characterization, sampling, monitoring, and the  
9 gathering of any other sufficient and relevant information necessary to  
10 determine the necessity for remedial action and to support the  
11 evaluation of remedial actions if necessary;

12 "Site investigation" means the collection and evaluation of data  
13 adequate to determine whether or not discharged hazardous  
14 substances or hazardous wastes exist at the industrial establishment or  
15 have migrated or are migrating from the site at levels in excess of the  
16 applicable remediation standards. A site investigation shall be  
17 developed based upon the information collected pursuant to the  
18 preliminary assessment.

19 (cf: P.L.1993, c.139, s.3)

20

21 8. Section 4 of P.L.1983, c.330 (C.13:1K-9) is amended to read  
22 as follows:

23 4. a. The owner or operator of an industrial establishment  
24 planning to close operations or transfer ownership or operations shall  
25 notify the department in writing, no more than five days subsequent to  
26 closing operations or of its public release of its decision to close  
27 operations, whichever occurs first, or within five days after the  
28 execution of an agreement to transfer ownership or operations, as  
29 applicable. The notice to the department shall: identify the subject  
30 industrial establishment; describe the transaction requiring compliance  
31 with P.L.1983, c.330 (C.13:1K-6 et al.); state the date of the closing  
32 of operations or the date of the public release of the decision to close  
33 operations as evidenced by a copy of the appropriate public  
34 announcement, if applicable; state the date of execution of the  
35 agreement to transfer ownership or operations and the names,  
36 addresses and telephone numbers of the parties to the transfer, if  
37 applicable; state the proposed date for closing operations or  
38 transferring ownership or operations; list the name, address, and  
39 telephone number of an authorized agent for the owner or operator;  
40 and certify that the information submitted is accurate. The notice shall  
41 be transmitted to the department in the manner and form required by  
42 the department. The department may, by regulation, require the  
43 submission of any additional information in order to improve the  
44 efficient implementation of P.L.1983, c.330.

45 b. (1) Subsequent to the submittal of the notice required pursuant  
46 to subsection a. of this section, the owner or operator of an industrial

1 establishment shall, except as otherwise provided by P.L.1983, c.330  
2 or P.L.1993, c.139 (C.13:1K-9.6 et al.), remediate the industrial  
3 establishment. The remediation shall be conducted in accordance with  
4 criteria, procedures, and time schedules established by the department.

5 (2) The owner or operator shall attach a copy of any approved  
6 negative declaration, approved remedial action workplan, no further  
7 action letter, or remediation agreement approval to the contract or  
8 agreement of sale or agreement to transfer or any option to purchase  
9 which may be entered into with respect to the transfer of ownership or  
10 operations. In the event that any sale or transfer agreements or  
11 options have been executed prior to the approval of a negative  
12 declaration, remedial action workplan, no further action letter, or  
13 remediation agreement, these documents, as relevant, shall be  
14 transmitted by the owner or operator, by certified mail, overnight  
15 delivery, or personal service, prior to the transfer of ownership or  
16 operations, to all parties to any transaction concerning the transfer of  
17 ownership or operations, including purchasers, bankruptcy trustees,  
18 mortgagees, sureties, and financiers.

19 (3) The preliminary assessment, site investigation, remedial  
20 investigation, and remedial action for the industrial establishment shall  
21 be performed and implemented by the owner or operator of the  
22 industrial establishment, except that any other party may assume that  
23 responsibility pursuant to the provisions of P.L.1983, c.330.

24 c. The owner or operator of an industrial establishment shall,  
25 subsequent to closing operations, or of its public release of its decision  
26 to close operations, or prior to transferring ownership or operations  
27 except as otherwise provided in subsection e. of this section, as  
28 applicable, submit to the department for approval a proposed negative  
29 declaration or proposed remedial action workplan. Except as  
30 otherwise provided in section 6 of P.L.1983, c.330 (C.13:1K-11), and  
31 sections 13, 16, 17 and 18 of P.L.1993, c.139 (C.13:1K-11.2,  
32 C.13:1K-11.5, C.13:1K-11.6 and C.13:1K-11.7), the owner or  
33 operator of an industrial establishment shall not transfer ownership or  
34 operations until a negative declaration or a remedial action workplan  
35 has been approved by the department or the conditions of subsection  
36 e. of this section for remediation agreements have been met and until,  
37 in cases where a remedial action workplan is required to be approved  
38 or a remediation agreement has been approved, a remediation funding  
39 source, as required pursuant to section 25 of P.L.1993, c.139  
40 (C.58:10B-3), has been established.

41 d. (1) Upon the submission of the results of either the preliminary  
42 assessment, site investigation, remedial investigation, or remedial  
43 action, where applicable, which demonstrate that there are no  
44 discharged hazardous substances or hazardous wastes at the industrial  
45 establishment, or that have migrated from or are migrating from the  
46 industrial establishment, in violation of the applicable remediation

1 [standards] regulations, the owner or operator may submit to the  
2 department for approval a proposed negative declaration as provided  
3 in subsection c. of this section.

4 (2) After the submission and review of the information submitted  
5 pursuant to a preliminary assessment, site investigation, remedial  
6 investigation, or remedial action, as necessary, the department shall,  
7 within 45 days of submission of a complete and accurate negative  
8 declaration, approve the negative declaration, or inform the owner or  
9 operator of the industrial establishment that a remedial action  
10 workplan or additional remediation shall be required. The department  
11 shall approve a negative declaration by the issuance of a no further  
12 action letter.

13 e. The owner or operator of an industrial establishment, who has  
14 submitted a notice to the department pursuant to subsection a. of this  
15 section, may transfer ownership or operations of the industrial  
16 establishment prior to the approval of a negative declaration or  
17 remedial action workplan upon application to and approval by the  
18 department of a remediation agreement. The owner or operator  
19 requesting a remediation agreement shall submit the following  
20 documents: (1) an estimate of the cost of the remediation that is  
21 approved by the department; (2) a certification of the statutory liability  
22 of the owner or operator pursuant to P.L.1983, c.330 to perform and  
23 to complete a remediation of the industrial establishment in the manner  
24 and time limits provided by the department in regulation and consistent  
25 with all applicable laws and regulations; however, nothing in this  
26 paragraph shall be construed to be an admission of liability, or to  
27 impose liability on the owner or operator, pursuant to P.L.1976, c.141  
28 (C.58:10-23.11 et seq.) or pursuant to any other statute or common  
29 law; (3) evidence of the establishment of a remediation funding source  
30 in an amount of the estimated cost of the remediation and in  
31 accordance with the provisions of section 25 of P.L.1993, c.139  
32 (C.58:10B-3); (4) a certification that the owner or operator is subject  
33 to the provisions of P.L.1983, c.330, including the liability for  
34 penalties for violating the act, defenses to liability and limitations  
35 thereon, the requirement to perform a remediation as required by the  
36 department, allowing the department access to the industrial  
37 establishment as provided in section 5 of P.L.1983, c.330  
38 (C.13:1K-10), and the requirement to prepare and submit any  
39 document required by the department relevant to the remediation of  
40 the industrial establishment; and (5) evidence of the payment of all  
41 applicable fees required by the department.

42 The department may require in the remediation agreement that all  
43 plans for and results of the preliminary assessment, site investigation,  
44 remedial investigation, and the implementation of the remedial action  
45 workplan, prepared or initiated subsequent to the transfer of  
46 ownership or operations, be submitted to the department, for review

1 purposes only, at the completion of each phase of the remediation.

2 The department shall adopt regulations establishing the manner in  
3 which the documents required pursuant to paragraphs (1) through (5),  
4 inclusive, of this subsection shall be submitted. The department shall  
5 approve the application for the remediation agreement upon the  
6 complete and accurate submission of the documents required to be  
7 submitted pursuant to this subsection. The regulations shall include a  
8 sample form of the certifications. Approval of a remediation agreement  
9 shall not affect an owner's or operator's right to avail itself of the  
10 provisions of section 6 of P.L.1983, c.330 (C.13:1K-11), of section  
11 13, 14, 15, 16, 17, or 18 of P.L.1993, c.139 (C.13:1K-11.2,  
12 C.13:1K-11.3, C.13:1K-11.4, C.13:1K-11.5, C.13:1K-11.6 or  
13 C.13:1K-11.7), or of the other provisions of this section.

14 f. An owner or operator of an industrial establishment may  
15 perform a preliminary assessment, site investigation, or remedial  
16 investigation for a soil, surface water, or groundwater remediation  
17 without the prior submission to or approval of the department, except  
18 as otherwise provided in a remediation agreement required pursuant  
19 to subsection e. of this section. However, the plans for and results of  
20 the preliminary assessment, site investigation, and remedial  
21 investigation may, at the discretion of the owner or operator, be  
22 submitted to the department for its review and approval at the  
23 completion of each phase of the remediation.

24 g. [(1)] The soil, groundwater, and surface water remediation  
25 standard and the remedial action to be implemented on an industrial  
26 establishment shall be selected [in conformance with] by the owner or  
27 operator, and reviewed and approved by the department, based upon  
28 the policies and criteria enumerated in section 35 of P.L.1993, c.139  
29 (C.58:10B-12).

30 [(2) The department may not disapprove the use of the minimum  
31 nonresidential soil remediation standards adopted by the department  
32 except upon a finding that the use of the nonresidential soil  
33 remediation standards at that site would not be protective of public  
34 health, safety, or the environment or except as provided in subsection  
35 i. of this section. ]

36 h. An owner or operator of an industrial establishment may  
37 implement a soil remedial action at an industrial establishment without  
38 prior department approval of the remedial action workplan for the  
39 remediation of soil when the remedial action can reasonably be  
40 expected to be completed pursuant to standards, criteria, and time  
41 schedules established by the department, which schedules shall not  
42 exceed five years from the commencement of the implementation of  
43 the remedial action and if the owner or operator is implementing a soil  
44 remediation which meets the established minimum residential or  
45 nonresidential use soil remediation standards adopted by the  
46 department.

1 Nothing in this subsection shall be construed to authorize the  
2 closing of operations or the transfer of ownership or operations of an  
3 industrial establishment without the department's approval of a  
4 negative declaration, a remedial action workplan or a remediation  
5 agreement.

6 i. An owner or operator of an industrial establishment shall base  
7 [his] the decision to [use the nonresidential use soil remediation  
8 standards for the industrial establishment upon the criteria listed  
9 below, as applicable:

10 (1) The soil remediation standards proposed for the industrial  
11 establishment are protective of public health, safety and the  
12 environment;

13 (2) The accessibility of the industrial establishment to persons not  
14 authorized to enter the site;

15 (3) The transferee of the industrial establishment has agreed to the  
16 implementation of the nonresidential use soil remediation standards;

17 (4) The potential for hazardous substances or hazardous wastes  
18 to affect any other property;

19 (5) The difference in cost between the use of the residential use  
20 soil remediation standards and the nonresidential use soil remediation  
21 standards; and

22 (6) Consistency with regulations established by the Pinelands  
23 Commission pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.).

24 The department shall, within 18 months of the effective date of  
25 P.L.1993, c.139 (C.13:1K-9.6 et al.), promulgate regulations to clearly  
26 define how the department will evaluate the application of the criteria  
27 enumerated in paragraphs (1) through (6) of this subsection; provided,  
28 however, that notwithstanding the preceding requirement, the criteria  
29 enumerated in paragraphs (1) through (4) and in paragraph (6) shall  
30 become immediately operative. Until the department promulgates  
31 those regulations, it shall impose reasonable standards and  
32 requirements upon any owner or operator deciding to use  
33 nonresidential use soil remediation standards pursuant to this  
34 subsection. Furthermore, the department shall not impose any  
35 requirement or standard with regard to the criterion enumerated in  
36 paragraph (5) that would require an owner or operator to implement  
37 residential use soil remediation standards unless the cost difference  
38 between implementing the residential standards and the nonresidential  
39 standards is a de minimis amount. For the purposes of the preceding,  
40 de minimis shall mean a cost difference not exceeding 10 percent of  
41 the cost of implementing the nonresidential standards.] select a  
42 remedial action based upon the standards and criteria set forth in  
43 section 35 of P.L.1993, c.139 (C.58:10B-12). When a remedial action  
44 selected by an owner or operator includes the use of an engineering or  
45 institutional controls that necessitates the recording of a notice  
46 pursuant to section 36 of P.L. 1993, c.139 (C.58:10B-13), the owner



1 or operator shall obtain the approval of the transferee of the industrial  
2 establishment.

3 At any time after the effective date of P.L.1993, c.139, an owner  
4 or operator may request the department to provide a determination as  
5 to whether a proposed remedial action is consistent with the standards  
6 and criteria set forth [above in paragraphs (1) through (6)] in section  
7 35 of P.L.1993, c.139 (C.58:10B-12). The department shall make that  
8 determination based upon the standards and criteria set forth in that  
9 section. The department shall provide any such determination within  
10 30 calendar days of the department's receipt of the request.

11 j. An owner or operator proposing to implement a soil remedial  
12 action other than one which is set forth in subsection h. of this section  
13 must receive department approval prior to implementation of the  
14 remedial action.

15 k. An owner or operator of an industrial establishment shall not  
16 implement a remedial action involving the remediation of groundwater  
17 or surface water without the prior review and approval by the  
18 department of a remedial action workplan.

19 l. Submissions of a preliminary assessment, site investigation,  
20 remedial investigation, remedial action workplan, and the results of a  
21 remedial action shall be in a manner and form, and shall contain any  
22 relevant information relating to the remediation, as may be required by  
23 the department.

24 Upon receipt of a complete and accurate submission, the  
25 department shall review and approve or disapprove the submission in  
26 accordance with the review schedules established pursuant to section  
27 2 of P.L.1991, c.423 (C.13:1D-106). The owner or operator shall not  
28 be required to wait for a response by the department before continuing  
29 remediation activities, except as otherwise provided in this section.  
30 Upon completion of the remediation, the plans for and results of the  
31 preliminary assessment, site investigation, remedial investigation,  
32 remedial action workplan, and remedial action and any other  
33 information required to be submitted as provided in section 35 of  
34 P.L.1993, c.139 (C.58:10B-12), that has not previously been  
35 submitted to the department, shall be submitted to the department for  
36 its review and approval.

37 The department shall review all information submitted to it by the  
38 owner or operator at the completion of the remediation to determine  
39 whether the actions taken were in compliance with rules and  
40 regulations of the department regarding remediation.

41 The department may review and approve or disapprove every  
42 remedial action workplan, no matter when submitted, to determine, in  
43 accordance with the criteria listed in subsection g. of section 35 of  
44 P.L.1993, c.139 (C.58:10B-12) if the remedial action that has  
45 occurred or that will occur is appropriate to meet the applicable  
46 [remediation] health risk or environmental standards.

1 The department may order additional remediation activities at the  
2 industrial establishment, or offsite where necessary, or may require the  
3 submission of additional information, where (a) the department  
4 determines that the remediation activities undertaken were not in  
5 compliance with the applicable rules or regulations of the department;  
6 (b) all documents required to be submitted to the department were not  
7 submitted or, if submitted, were inaccurate, or deficient; or (c)  
8 discharged hazardous substances or hazardous wastes remain at the  
9 industrial establishment, or have migrated or are migrating offsite, at  
10 levels or concentrations or in a manner that is in violation of the  
11 applicable [remediation] health risk or environmental standards. Upon  
12 a finding by the department that the remediation conducted at the  
13 industrial establishment was in compliance with all applicable  
14 regulations, that no hazardous substances or hazardous wastes remain  
15 at the industrial establishment in a manner that is in violation of the  
16 applicable [remediation] health risk or environmental standards, and  
17 that all hazardous substances or hazardous wastes that migrated from  
18 the industrial establishment have been remediated in conformance with  
19 the applicable [remediation] health risk or environmental standards,  
20 the department shall approve the remediation for that industrial  
21 establishment by the issuance of a no further action letter.

22 (cf: P.L.1993, c.139, s.4)

23

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

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

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

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

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

39 "Department" means the Department of Environmental Protection  
40 [and Energy];

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

45 "Engineering controls" means any mechanism to contain or  
46 stabilize contamination or ensure the effectiveness of a remedial

1 action. Engineering controls may include, without limitation, caps,  
2 covers, dikes, trenches, leachate collection systems, signs, fences and  
3 physical access controls;

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

6 "Financial assistance" means loans or loan guarantees;

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

15 "Limited restricted use remedial action" means any remedial action  
16 that requires the continued use of institutional controls but does not  
17 require the use of an engineering control;

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

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

40 "Remedial action" means those actions taken at a site or offsite if  
41 a contaminant has migrated or is migrating therefrom, as may be  
42 required by the department, including the removal, treatment,  
43 containment, transportation, securing, or other engineering or  
44 treatment measures, whether [of a permanent nature] to an  
45 unrestricted use or otherwise, designed to ensure that any discharged  
46 contaminant at the site or that has migrated or is migrating from the

1 site, is remediated in compliance with the applicable [remediation  
2 standards] health risk or environmental standards;

3 "Remedial action workplan" means a plan for the remedial action  
4 to be undertaken at a site, or at any area to which a discharge  
5 originating at a site is migrating or has migrated; a description of the  
6 remedial action to be used to remediate a site; a time schedule and cost  
7 estimate of the implementation of the remedial action; and any other  
8 information the department deems necessary;

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

17 "Remediation" or "remediate" means all necessary actions to  
18 investigate and clean up or respond to any known, suspected, or  
19 threatened discharge of contaminants, including, as necessary, the  
20 preliminary assessment, site investigation, remedial investigation, and  
21 remedial action;

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

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

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

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

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

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

8 "Remediation standards" means the combination of numeric and  
9 narrative standards to which contaminants must be remediated for soil,  
10 groundwater, or surface water as provided by the department pursuant  
11 to section 35 of P.L.1993, c.139 (C.58:10B-12).]

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

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

21 (cf: P.L.1993, c.139, s.23)

22

23 10. Section 24 of P.L.1993, c.139 (C.58:10B-2) is amended to  
24 read as follows:

25 24. a. The department shall, pursuant to the "Administrative  
26 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and  
27 regulations establishing criteria and minimum standards necessary for  
28 the submission, evaluation and approval of plans or results of  
29 preliminary assessments, site investigations, remedial investigations,  
30 and remedial action workplans and for the implementation thereof.  
31 The documents for the preliminary assessment, site investigation,  
32 remedial investigation, and remedial action workplan required to be  
33 submitted for a remediation, shall not be identical to the criteria and  
34 standards used for similar documents submitted pursuant to federal  
35 law, except as may be required by federal law. In establishing criteria  
36 and minimum standards for these terms the department shall strive to  
37 be result oriented, provide for flexibility, and to avoid duplicate or  
38 unnecessarily costly or time consuming conditions or standards.

39 b. The regulations adopted by the department pursuant to  
40 subsection a. of this section shall provide that a person performing a  
41 remediation may deviate from the strict adherence to the regulations,  
42 in a variance procedure or by another method prescribed by the  
43 department, if that person can demonstrate that the deviation and the  
44 resulting remediation would be as protective of human health, safety,  
45 and the environment, as appropriate, as the department's regulations  
46 and that the health risk standards established in subsection d. of

1 section 35 of P.L.1993, c.139 (C.58:10B-12) and any applicable  
2 environmental standards would be met. Factors to be considered in  
3 determining if the deviation should be allowed are whether the  
4 alternative method:

5 (1) has been either used successfully or approved by the  
6 department in writing or similar situations;

7 (2) reflects current technology as documented in peer-reviewed  
8 professional journals;

9 (3) can be expected to achieve the same or substantially the same  
10 results or objectives as the method which it is to replace; and

11 (4) furthers the attainment of the goals of the specific remedial  
12 phase for which it is used.

13 The department shall make available to the public, and shall  
14 periodically update, a list of alternative remediation methods used  
15 successfully or approved by the department as provided in paragraph  
16 (1) of this subsection.

17 c. To the extent practicable and in conformance with the standards  
18 for remediations as provided in section 35 of P.L.1993, c.139  
19 (C.58:10-12), the department shall adopt rules and regulations that  
20 allow for certain remedial actions to be undertaken in a manner  
21 prescribed by the department without having to obtain prior approval  
22 from or submit detailed documentation to the department. A person  
23 who performs a remedial action in the manner prescribed in the rules  
24 and regulations of the department, and who certifies this fact to the  
25 department, shall obtain a no further action letter from the department  
26 for that particular remedial action.

27 d. The department shall develop regulatory procedures that  
28 encourage the use of innovative technologies in the performance of  
29 remedial actions and other remediation activities.

30 e. Notwithstanding any other provisions of this section, all  
31 remediation standards and remedial actions that involve real property  
32 located in the pinelands area shall be consistent with the provisions of  
33 the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.),  
34 any rules and regulations adopted pursuant thereto, and with section  
35 502 of the "National Parks and Recreation Act of 1978," 16  
36 U.S.C.§471i.

37 (cf: P.L.1993, c.139, s.24)

38

39 11. Section 25 of P.L.1993, c.139 (C.58:10B-3) is amended to  
40 read as follows:

41 25. a. The owner or operator of an industrial establishment or any  
42 other person required to perform remediation activities pursuant to  
43 P.L.1983, c.330 (C.13:1K-6 et al.), or a discharger [or] , a person in  
44 any way responsible for a hazardous substance , or a person otherwise  
45 liable for cleanup and removal costs pursuant to P.L.1976, c.141  
46 (C.58:10-23.11 et seq.) who has been issued a directive or an order by

1 a State agency, who has entered into an administrative consent order  
2 with a State agency, or who has been ordered by a court to clean up  
3 and remove a hazardous substance or hazardous waste discharge  
4 pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall establish  
5 and maintain a remediation funding source in the amount necessary to  
6 pay the estimated cost of the required remediation. A person who  
7 voluntarily undertakes a remediation pursuant to a memorandum of  
8 agreement with the department, or without the department's oversight,  
9 or who performs a remediation in an environmental opportunity zone  
10 is not required to establish or maintain a remediation funding source.  
11 A person who uses an innovative technology or who, in a timely  
12 fashion, implements an unrestricted use remedial action or a limited  
13 restricted use remedial action for all or part of a remedial action is not  
14 required to establish a remediation funding source for the cost of the  
15 remediation involving the innovative technology or permanent remedy.  
16 A person required to establish a remediation funding source pursuant  
17 to this section shall provide to the department satisfactory  
18 documentation that the requirement has been met.

19 The remediation funding source shall be established in an amount  
20 equal to or greater than the cost estimate of the implementation of the  
21 remediation (1) as approved by the department, (2) as provided in an  
22 administrative consent order or remediation agreement as required  
23 pursuant to subsection e. of section 4 of P.L.1983, c.330, (3) as stated  
24 in a departmental order or directive, or (4) as agreed to by a court, and  
25 shall be in effect for a term not less than the actual time necessary to  
26 perform the remediation at the site. Whenever the remediation cost  
27 estimate increases, the person required to establish the remediation  
28 funding source shall cause the amount of the remediation funding  
29 source to be increased to an amount at least equal to the new estimate.  
30 Whenever the remediation or cost estimate decreases, the person  
31 required to obtain the remediation funding source may file a written  
32 request to the department to decrease the amount in the remediation  
33 funding source. The remediation funding source may be decreased to  
34 the amount of the new estimate upon written approval by the  
35 department delivered to the person who established the remediation  
36 funding source and to the trustee or the person or institution providing  
37 the remediation trust, the environmental insurance policy, or the line  
38 of credit, as applicable. The department shall approve the request  
39 upon a finding that the remediation cost estimate decreased by the  
40 requested amount. The department shall review and respond to the  
41 request to decrease the remediation funding source within 90 days of  
42 receipt of the request.

43 b. The person responsible for performing the remediation and who  
44 established the remediation funding source may use the remediation  
45 funding source to pay for the actual cost of the remediation. The  
46 department may not require any other financial assurance by the

1 person responsible for performing the remediation other than that  
2 required in this section. In the case of a remediation performed  
3 pursuant to P.L.1983, c.330, the remediation funding source shall be  
4 established no more than 14 days after the approval by the department  
5 of a remedial action workplan or upon approval of a remediation  
6 agreement pursuant to subsection e. of section 4 of P.L.1983, c.330  
7 (C.13:1K-9), unless the department approves an extension. In the case  
8 of a remediation performed pursuant to P.L.1976, c.141, the  
9 remediation funding source shall be established as provided in an  
10 administrative consent order signed by the parties, as provided by a  
11 court, or as directed or ordered by the department. The establishment  
12 of a remediation funding source for that part of the remediation  
13 funding source to be established by a grant or financial assistance from  
14 the remediation fund may be established for the purposes of this  
15 subsection by the application for a grant or financial assistance from  
16 the remediation fund and satisfactory evidence submitted to the  
17 department that the grant or financial assistance will be awarded.  
18 However, if the financial assistance or grant is denied or the  
19 department finds that the person responsible for establishing the  
20 remediation funding source did not take reasonable action to obtain  
21 the grant or financial assistance, the department shall require that the  
22 full amount of the remediation funding source be established within 14  
23 days of the denial or finding. The remediation funding source shall be  
24 evidenced by the establishment and maintenance of (1) a remediation  
25 trust fund, (2) an environmental insurance policy, issued by an entity  
26 licensed by the Department of Insurance to transact business in the  
27 State of New Jersey, to fund the remediation, (3) a line of credit from  
28 a person or institution satisfactory to the department authorizing the  
29 person responsible for performing the remediation to borrow money,  
30 or (4) a self-guarantee, or by any combination thereof. Where it can  
31 be demonstrated that a person cannot establish and maintain a  
32 remediation funding source for the full cost of the remediation by a  
33 method specified in this subsection, that person may establish the  
34 remediation funding source for all or a portion of the remediation, by  
35 securing financial assistance from the Hazardous Discharge Site  
36 Remediation Fund as provided in section 29 of P.L.1993, c.139  
37 (C.58:10B-7).

38 c. A remediation trust fund shall be established pursuant to the  
39 provisions of this subsection. An originally signed duplicate of the  
40 trust agreement shall be delivered to the department by certified mail  
41 within 14 days of receipt of notice from the department that the  
42 remedial action workplan or remediation agreement as provided in  
43 subsection e. of section 4 of P.L.1983, c.330 is approved or as  
44 specified in an administrative consent order, civil order, or order of the  
45 department, as applicable. The remediation trust fund agreement shall  
46 conform to a model trust fund agreement as established by the



1 department and shall be accompanied by a certification of  
2 acknowledgment that conforms to a model established by the  
3 department. The trustee shall be an entity which has the authority to  
4 act as a trustee and whose trust operations are regulated and examined  
5 by a federal or New Jersey agency.

6 The trust fund agreement shall provide that the remediation trust  
7 fund may not be revoked or terminated by the person required to  
8 establish the remediation funding source or by the trustee without the  
9 written consent of the department. The trustee shall release to the  
10 person required to establish the remediation funding source, or to the  
11 department or transferee of the property, as appropriate, only those  
12 moneys as the department authorizes, in writing, to be released. The  
13 person entitled to receive money from the remediation trust fund shall  
14 submit documentation to the department detailing the costs incurred  
15 or to be incurred as part of the remediation. Upon a determination by  
16 the department that the costs are consistent with the remediation of  
17 the site, the department shall, in writing, authorize a disbursement of  
18 moneys from the remediation trust fund in the amount of the  
19 documented costs.

20 The department shall return the original remediation trust fund  
21 agreement to the trustee for termination after the person required to  
22 establish the remediation funding source substitutes an alternative  
23 remediation funding source as specified in this section or the  
24 department notifies the person that that person is no longer required  
25 to maintain a remediation funding source for remediation of the  
26 contaminated site.

27 d. An environmental insurance policy shall be established  
28 pursuant to the provisions of this subsection. An originally signed  
29 duplicate of the insurance policy shall be delivered to the department  
30 by certified mail, overnight delivery, or personal service within 30 days  
31 of receipt of notice from the department that the remedial action  
32 workplan or remediation agreement, as provided in subsection e. of  
33 section 4 of P.L.1983, c.330, is approved or as specified in an  
34 administrative consent order, civil order, or order of the department,  
35 as applicable. The environmental insurance policy may not be revoked  
36 or terminated without the written consent of the department. The  
37 insurance company shall release to the person required to establish the  
38 remediation funding source, or to the department or transferee of the  
39 property, as appropriate, only those moneys as the department  
40 authorizes, in writing, to be released. The person entitled to receive  
41 money from the environmental insurance policy shall submit  
42 documentation to the department detailing the costs incurred or to be  
43 incurred as part of the remediation.

44 e. A line of credit shall be established pursuant to the provisions  
45 of this subsection. A line of credit shall allow the person establishing  
46 it to borrow money up to a limit established in a written agreement in

1 order to pay for the cost of the remediation for which the line of credit  
2 was established. An originally signed duplicate of the line of credit  
3 agreement shall be delivered to the department by certified mail,  
4 overnight delivery, or personal service within 14 days of receipt of  
5 notice from the department that the remedial action workplan or  
6 remediation agreement as provided in subsection e. of section 4 of  
7 P.L.1983, c.330 is approved, or as specified in an administrative  
8 consent order, civil order, or order of the department, as applicable.  
9 The line of credit agreement shall conform to a model agreement as  
10 established by the department and shall be accompanied by a  
11 certification of acknowledgment that conforms to a model established  
12 by the department.

13 A line of credit agreement shall provide that the line of credit may  
14 not be revoked or terminated by the person required to obtain the  
15 remediation funding source or the person or institution providing the  
16 line of credit without the written consent of the department. The  
17 person or institution providing the line of credit shall release to the  
18 person required to establish the remediation funding source, or to the  
19 department or transferee of the property as appropriate, only those  
20 moneys as the department authorizes, in writing, to be released. The  
21 person entitled to draw upon the line of credit shall submit  
22 documentation to the department detailing the costs incurred or to be  
23 incurred as part of the remediation. Upon a determination that the  
24 costs are consistent with the remediation of the site, the department  
25 shall, in writing, authorize a disbursement from the line of credit in the  
26 amount of the documented costs.

27 The department shall return the original line of credit agreement to  
28 the person or institution providing the line of credit for termination  
29 after the person required to establish the remediation funding source  
30 substitutes an alternative remediation funding source as specified in  
31 this section, or after the department notifies the person that that  
32 person is no longer required to maintain a remediation funding source  
33 for remediation of the contaminated site.

34 f. A person may self-guarantee a remediation funding source upon  
35 the submittal of documentation to the department demonstrating that  
36 the cost of the remediation as estimated in the remedial action  
37 workplan, in the remediation agreement as provided in subsection e.  
38 of section 4 of P.L.1983, c.330, in an administrative consent order, or  
39 as provided in a departmental or court order, would not exceed  
40 one-third of the tangible net worth of the person required to establish  
41 the remediation funding source, and that the person has a cash flow  
42 sufficient to assure the availability of sufficient moneys for the  
43 remediation during the time necessary for the remediation. Satisfactory  
44 documentation of a person's capacity to self-guarantee a remediation  
45 funding source shall consist only of a statement of income and  
46 expenses or similar statement of that person and the balance sheet or

1 similar statement of assets and liabilities as used by that person for the  
2 fiscal year of the person making the application that ended closest in  
3 time to the date of the self-guarantee application. The self-guarantee  
4 application shall be certified as true to the best of the applicant's  
5 information, knowledge, and belief, by the chief financial, or similar  
6 officer or employee, or general partner, or principal of the person  
7 making the self-guarantee application. A person shall be deemed by  
8 the department to possess the required cash flow pursuant to this  
9 section if that person's gross receipts exceed its gross payments in that  
10 fiscal year in an amount at least equal to the estimated costs of  
11 completing the remedial action workplan schedule to be performed in  
12 the 12 month period following the date on which the application for  
13 self-guarantee is made. In the event that a self-guarantee is required  
14 for a period of more than one year, applications for a self-guarantee  
15 shall be renewed annually pursuant to this subsection for each  
16 successive year. The department may establish requirements and  
17 reporting obligations to ensure that the person proposing to  
18 self-guarantee a remediation funding source meets the criteria for  
19 self-guaranteeing prior to the initiation of remedial action and until  
20 completion of the remediation.

21 g. (1) If the person required to establish the remediation funding  
22 source fails to perform the remediation as required, the department  
23 shall make a written determination of this fact. A copy of the  
24 determination by the department shall be delivered to the person  
25 required to establish the remediation funding source and, in the case  
26 of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6  
27 et al.), to any transferee of the property. Following this written  
28 determination, the department may perform the remediation in place  
29 of the person required to establish the remediation funding source. In  
30 order to finance the cost of the remediation the department may make  
31 disbursements from the remediation trust fund or the line of credit or  
32 claims upon the environmental insurance policy, as appropriate, or, if  
33 sufficient moneys are not available from those funds, from the  
34 remediation guarantee fund created pursuant to section 45 of  
35 P.L.1993, c.139 (C.58:10B-20).

36 (2) The transferee of property subject to a remediation conducted  
37 pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), may, at any time after  
38 the department's determination of nonperformance by the owner or  
39 operator required to establish the remediation funding source, petition  
40 the department, in writing, with a copy being sent to the owner and  
41 operator, for authority to perform the remediation at the industrial  
42 establishment. The department, upon a determination that the  
43 transferee is competent to do so, may grant that petition which shall  
44 authorize the transferee to perform the remediation as specified in an  
45 approved remedial action workplan, or to perform the activities as  
46 required in a remediation agreement, and to avail itself of the moneys

1 in the remediation trust fund or line of credit or to make claims upon  
2 the environmental insurance policy for these purposes. The petition  
3 of the transferee shall not be granted by the department if the owner  
4 or operator continues or begins to perform its obligations within 14  
5 days of the petition being filed with the department.

6 (3) After the department has begun to perform the remediation in  
7 the place of the person required to establish the remediation funding  
8 source or has granted the petition of the transferee to perform the  
9 remediation, the person required to establish the remediation funding  
10 source shall not be permitted by the department to continue its  
11 performance obligations except upon the agreement of the department  
12 or the transferee, as applicable, or except upon a determination by the  
13 department that the transferee is not adequately performing the  
14 remediation.

15 (cf: P.L.1993, c.139, s.25)

16

17 12. Section 26 of P.L.1993, c.139 (C.58:10B-4) is amended to  
18 read as follows:

19 26. a. There is established in the New Jersey Economic  
20 Development Authority a special, revolving fund to be known as the  
21 Hazardous Discharge Site Remediation Fund. Moneys in the  
22 remediation fund shall be dedicated for the provision of financial  
23 assistance or grants to municipal governmental entities, the New  
24 Jersey Redevelopment Authority, individuals, corporations,  
25 partnerships, and other private business entities, for the purpose of  
26 financing remediation activities at sites at which there is, or is  
27 suspected of being, a discharge of hazardous substances or hazardous  
28 wastes.

29 b. The remediation fund shall be credited with:

30 (1) moneys as are appropriated by the Legislature;

31 (2) moneys deposited into the fund as repayment of principal and  
32 interest on outstanding loans made from the fund;

33 (3) any return on investment of moneys deposited in the fund;

34 (4) remediation funding source surcharges imposed pursuant to  
35 section 33 of P.L.1993, c.139 (C.58:10B-11);

36 (5) moneys deposited into the fund from cost recovery  
37 subrogation actions; and

38 (6) moneys made available to the authority for the purposes of the  
39 fund.

40 (cf: P.L.1993, c.139, s.26)

41

42 13. Section 27 of P.L.1993, c.139 (C.58:10B-5) is amended  
43 to read as follows:

44 27. a. (1) Financial assistance from the remediation fund [, made  
45 to persons other than municipal governmental entities, the New Jersey  
46 Redevelopment Authority, or to persons who voluntarily undertake a

1 remediation,] may only be rendered to persons who cannot establish  
2 a remediation funding source for the full amount of a remediation.  
3 Financial assistance pursuant to this act may be rendered only for that  
4 amount of the cost of a remediation for which the person cannot  
5 establish a remediation funding source. The limitations on receiving  
6 financial assistance established in this paragraph (1) shall not limit the  
7 ability of municipal governmental entities, the New Jersey  
8 Redevelopment Authority, persons who are not required to establish  
9 a remediation funding source for the part of the remediation involving  
10 an innovative technology, an unrestricted use remedial action or a  
11 limited restricted use remedial action, persons performing a  
12 remediation in an environmental opportunity zone, or persons who  
13 voluntarily perform a remediation, to receive financial assistance from  
14 the fund.

15 (2) Financial assistance rendered to persons who voluntarily  
16 [undertake] perform a remediation or perform a remediation in an  
17 environmental opportunity zone may only be made for that amount of  
18 the cost of the remediation that the person cannot otherwise fund by  
19 any of the authorized methods to establish a remediation funding  
20 source.

21 (3) Financial assistance rendered to persons who do not have to  
22 provide financial assurance for the part of the remediation that  
23 involves an innovative technology, an unrestricted use remedial action,  
24 or a limited restricted use remedial action may only be made for that  
25 amount of the cost of the remediation that the person cannot otherwise  
26 fund by any of the authorized methods to establish a remediation  
27 funding source.

28 b. Financial assistance may be rendered from the remediation fund  
29 to (1) owners or operators of industrial establishments who are  
30 required to perform remediation activities pursuant to P.L.1983, c.330  
31 (C.13:1K-6 et al.), upon closing operations or prior to the transfer of  
32 ownership or operations of an industrial establishment, (2) persons  
33 who [have discharged a hazardous substance or who are in any way  
34 responsible for] are liable for the cleanup and removal costs of a  
35 hazardous substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et  
36 seq.), and (3) persons who voluntarily [undertake the] perform a  
37 remediation of a discharge of a hazardous substance or hazardous  
38 waste [and who have not been ordered or directed to perform the  
39 remediation by the department or by a court].

40 c. Financial assistance and grants may be made from the  
41 remediation fund to municipal governmental entities or the New Jersey  
42 Redevelopment Authority that own or hold a tax sale certificate on  
43 real property or that have acquired real property through foreclosure  
44 or other similar means, or by voluntary conveyance for the purpose of  
45 redevelopment, and on which there has been a discharge or on which  
46 there is a suspected discharge of a hazardous substance or hazardous

1 waste [or the New Jersey Redevelopment Authority established  
2 pursuant to P.L.1996, c.62 (C.55:19-20 et al.) for any such real  
3 property upon which the New Jersey Redevelopment Authority owns  
4 or holds the tax sale certificate]. Financial assistance and grants may  
5 not be made to any entity listed in this subsection for any real property  
6 used by that entity for the conduct of its official business.

7 d. Grants may be made from the remediation fund to persons [,  
8 including] and the New Jersey Redevelopment Authority, [other than  
9 other governmental entities] who own real property on which there  
10 has been a discharge of a hazardous substance or a hazardous waste  
11 and that person or the authority qualifies for an innocent party grant  
12 pursuant to section 28 of P.L.1993, c.139 (C.58:10B-6).

13 e. Grants may be made from the remediation fund to qualifying  
14 persons who propose to perform a remedial action that uses an  
15 innovative technology or that would result in an unrestricted use  
16 remedial action or a limited restricted use remedial action.

17 For the purposes of this section, "person" shall not include [the  
18 New Jersey Redevelopment Authority established pursuant to  
19 P.L.1996, c.62 (C.55:19-20 et al.)] any governmental entity.

20 (cf: P.L.1996, c.62, s.64)

21

22 14. Section 28 of P.L.1993, c.139 (C.58:10B-6) is amended to  
23 read as follows:

24 28. a. Except for moneys deposited in the remediation fund for  
25 specific purposes, financial assistance and grants from the remediation  
26 fund shall be rendered for the following purposes and, on an annual  
27 basis, obligated in the percentages as provided in this subsection.  
28 Upon a written joint determination by the authority and the department  
29 that [it is in the public interest] the demand for financial assistance or  
30 grants for moneys allocated in any paragraph exceeds the percentage  
31 of funds allocated for that paragraph, financial assistance and grants  
32 dedicated for the purposes and in the percentages set forth in any other  
33 paragraph [(1), (2), or (3)] of this subsection, may, for any particular  
34 year, if the demand for financial assistance or grants for moneys  
35 allocated in that paragraph is less than the percentage of funds  
36 allocated for that paragraph, be obligated to [other] the purposes set  
37 forth in [this subsection] the over allocated paragraph. The written  
38 determination shall be sent to the Senate Environment Committee, and  
39 the Assembly Agriculture and Waste Management Committee, or their  
40 successors. For the purposes of this section, "person" shall not  
41 include [the New Jersey Redevelopment Authority established  
42 pursuant to P.L.1996, c.62 (C.55:19-20 et al.)] any governmental  
43 entity.

44 (1) At least 15% of the moneys shall be allocated for financial  
45 assistance to persons, [including] and the New Jersey Redevelopment  
46 Authority [other than other governmental entities,] established

1 pursuant to P.L.1996, c.62 (C.55:19-20 et al.), for remediation of real  
2 property located in a qualifying municipality as defined in section 1 of  
3 P.L.1978, c.14 (C.52:27D-178);

4 (2) At least 10% of the moneys shall be allocated for financial  
5 assistance and grants to municipal governmental entities and the New  
6 Jersey Redevelopment Authority that [hold] owns or holds a tax sale  
7 certificate on real property or have acquired real property through  
8 foreclosure or other similar means [real property] , or by voluntary  
9 conveyance for the purpose of redevelopment, on which there has been  
10 or on which there is suspected of being a discharge of hazardous  
11 substances or hazardous wastes [or the New Jersey Redevelopment  
12 Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.),  
13 for any such real property upon which the New Jersey Redevelopment  
14 Authority owns or holds the tax sale certificate]. Grants provided  
15 pursuant to this paragraph shall be used for performing preliminary  
16 assessments, site investigations, and remedial investigations on real  
17 property [acquired by a municipal governmental entity the New Jersey  
18 Redevelopment Authority, as the case may be, or on which the  
19 municipality the New Jersey Redevelopment Authority owns or holds  
20 a tax sale certificate,] in order to determine the existence or extent of  
21 any hazardous substance or hazardous waste contamination on those  
22 properties. A municipal governmental entity or the New Jersey  
23 Redevelopment Authority that has performed, or on which there has  
24 been performed, a preliminary assessment, site investigation [and] or  
25 remedial investigation on property [or the New Jersey Redevelopment  
26 Authority, in any case where the New Jersey Redevelopment Authority  
27 has performed the preliminary assessment, site investigation, and  
28 remedial investigation] may obtain a loan for the purpose of continuing  
29 the remediation on those properties [it owns] as necessary to comply  
30 with the applicable remediation [standards] regulations adopted by  
31 the department;

32 (3) At least 15% of the moneys shall be allocated for financial  
33 assistance to persons, [including] the New Jersey Redevelopment  
34 Authority, or municipal governmental entities for remediation activities  
35 at sites that have been contaminated by a discharge of a hazardous  
36 substance or hazardous waste, or at which there is an imminent and  
37 significant threat of a discharge of a hazardous substance or hazardous  
38 waste, and the discharge or threatened discharge poses or would pose  
39 an imminent and significant threat to a drinking water source, to  
40 human health, or to a sensitive or significant ecological area;

41 (4) At least 10% of the moneys shall be allocated for financial  
42 assistance to persons [, other than municipal governmental entities,]  
43 who voluntarily [undertake the] perform a remediation of a hazardous  
44 substance or hazardous waste discharge [, and who have not been  
45 ordered to undertake the remediation by the department or by a  
46 court];

1 (5) At least [~~20%~~] 15% of the moneys shall be allocated for  
2 financial assistance to persons [, other than municipal governmental  
3 entities,] who are required to perform remediation activities at an  
4 industrial establishment pursuant to P.L.1983, c.330 (C.13:1K-6 et  
5 al.), as a condition of the closure, transfer, or termination of  
6 operations at that industrial establishment;

7 (6) At least [~~20%~~] 15% of the moneys shall be allocated for grants  
8 to persons [, other than municipal governmental entities,] who own  
9 real property on which there has been a discharge of a hazardous  
10 substance or a hazardous waste and that person qualifies for an  
11 innocent party grant. A person qualifies for an innocent party grant if  
12 that person acquired the property prior to December 31, 1983, except  
13 as provided hereunder, the hazardous substance or hazardous waste  
14 that was discharged at the property was not used by the person at that  
15 site, and that person certifies that he did not discharge any hazardous  
16 substance or hazardous waste at an area where a discharge is  
17 discovered; provided, however, that [if the person is] notwithstanding  
18 any other provision of this section the New Jersey Redevelopment  
19 Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.),  
20 [the authority] shall qualify for an innocent party grant pursuant to this  
21 paragraph where the immediate predecessor in title to the authority  
22 would have qualified for but failed to apply for or receive such grant.  
23 A grant authorized pursuant to this paragraph may be for up to 50%  
24 of the remediation costs at the area of concern for which the person  
25 qualifies for an innocent party grant, except that no grant awarded  
26 pursuant to this paragraph to any person [including] or the New Jersey  
27 Redevelopment Authority may exceed \$1,000,000;

28 (7) At least 5% of the moneys shall be allocated for [loans]  
29 financial assistance to persons [, other than municipal governmental  
30 entities,] who own and plan to remediate an environmental opportunity  
31 zone for which an exemption from real property taxes has been  
32 granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154);  
33 [and]

34 (8) At least 5% of the moneys shall be allocated for matching  
35 grants for up to 25% of the project costs to qualifying persons who  
36 propose to perform a remedial action that uses an innovative  
37 technology except that no grant awarded pursuant to this paragraph  
38 to any qualifying person may exceed \$100,000;

39 (9) At least 5% of the moneys shall be allocated for matching  
40 grants for up to 25% of the project costs to qualifying persons for the  
41 implementation of a limited restricted use remedial action or an  
42 unrestricted use remedial action except that no grant awarded pursuant  
43 to this paragraph to any qualifying person may exceed \$100,000. The  
44 authority may use money allocated pursuant to this paragraph to  
45 provide loan guarantees to encourage financial institutions to provide  
46 loans to any person who may receive financial assistance from the fund



1 who plans to implement a limited restricted use remedial action or an  
2 unrestricted use remedial action; and

3 (10) Five percent of the moneys in the remediation fund shall be  
4 allocated for financial assistance or grants for any of the purposes  
5 enumerated in paragraphs (1) through [(7)] (9) of this subsection,  
6 except that where moneys in the fund are insufficient to fund all the  
7 applications in any calendar year that would otherwise qualify for  
8 financial assistance or a grant pursuant to this paragraph, the authority  
9 shall give priority to financial assistance applications that meet the  
10 criteria enumerated in paragraph (3) of this subsection.

11 For the purposes of paragraphs (8) and (9) of this subsection,  
12 "qualifying persons" means any person who has a net worth of not  
13 more than \$2,000,000 and "project costs" means that portion of the  
14 total costs of a remediation that is specifically for the use of an  
15 innovative technology or to implement an unrestricted use remedial  
16 action or a limited restricted use remedial action, as applicable.

17 b. Loans issued from the remediation fund shall be for a term not  
18 to exceed ten years, except that upon the transfer of ownership of any  
19 real property for which the loan was made, the unpaid balance of the  
20 loan shall become immediately payable in full. Loans to municipal  
21 governmental entities and the New Jersey Redevelopment Authority  
22 established pursuant to P.L.1996, c.62 (C.55:19-20 et al.), shall bear  
23 an interest rate equal to 2 points below the Federal Discount Rate at  
24 the time of approval or at the time of loan closing, whichever is lower,  
25 except that the rate shall be no lower than 3 percent. All other loans  
26 shall bear an interest rate equal to the Federal Discount Rate at the  
27 time of approval or at the time of the loan closing, whichever is lower,  
28 except that the rate on such loans shall be no lower than five percent.  
29 Financial assistance and grants may be issued for up to 100% of the  
30 estimated applicable remediation cost, except that the cumulative  
31 maximum amount of financial assistance which may be issued to a  
32 person [other than a governmental entity, including the New Jersey  
33 Redevelopment Authority], in any calendar year, for one or more  
34 properties, shall be \$1,000,000. Financial assistance and grants to any  
35 one municipal governmental entity [, including] or the New Jersey  
36 Redevelopment Authority [.] may not exceed \$2,000,000 in any  
37 calendar year. Repayments of principal and interest on the loans  
38 issued from the remediation fund shall be paid to the authority and  
39 shall be deposited into the remediation fund.

40 c. No person, other than [a municipal governmental entity, the  
41 New Jersey Redevelopment Authority] a qualified person planning to  
42 use an innovative technology for the cost of that technology, a  
43 qualified person planning to use a limited restricted use remedial  
44 action or an unrestricted use remedial action for the cost of the  
45 remedial action, a person performing a remediation in an  
46 environmental opportunity zone, or a person [engaging in a

1 voluntary] voluntarily performing a remediation, shall be eligible for  
2 financial assistance from the remediation fund to the extent that person  
3 is capable of establishing a remediation funding source for the  
4 remediation as required pursuant to section 25 of P.L.1993, c.139  
5 (C.58:10B-3).

6 d. The authority may use a sum that represents up to 2% of the  
7 moneys issued as financial assistance or grants from the remediation  
8 fund each year for administrative expenses incurred in connection with  
9 the operation of the fund and the issuance of financial assistance and  
10 grants.

11 e. Prior to March 1 of each year, the authority shall submit to the  
12 Senate Environment Committee and the Assembly Agriculture and  
13 Waste Management Committee, or their successors, a report detailing  
14 the amount of money that was available for financial assistance and  
15 grants from the remediation fund for the previous calendar year, the  
16 amount of money estimated to be available for financial assistance and  
17 grants for the current calendar year, the amount of financial assistance  
18 and grants issued for the previous calendar year and the category for  
19 which each financial assistance and grant was rendered, and any  
20 suggestions for legislative action the authority deems advisable to  
21 further the legislative intent to facilitate remediation and promote the  
22 redevelopment and use of existing industrial sites.

23 (cf: P.L.1996, c.62, s.65)

24

25 15. Section 30 of P.L.1993, c.139 (C.58:10B-8) is amended to  
26 read as follows:

27 30. a. The authority shall, by rule or regulation:

28 (1) require a financial assistance or grant recipient to provide to  
29 the authority, as necessary or upon request, evidence that financial  
30 assistance or grant moneys are being spent for the purposes for which  
31 the financial assistance or grant was made, and that the applicant is  
32 adhering to all of the terms and conditions of the financial assistance  
33 or grant agreement;

34 (2) require the financial assistance or grant recipient to provide  
35 access at reasonable times to the subject property to determine  
36 compliance with the terms and conditions of the financial assistance or  
37 grant;

38 (3) establish a priority system for rendering financial assistance or  
39 grants for remediations identified by the department as involving an  
40 imminent and significant threat to a public water source, human health,  
41 or to a sensitive or significant ecological area pursuant to paragraph  
42 [(7)] (3) of subsection a. of section 28 of P.L.1993, c.139  
43 (C.58:10B-6);

44 (4) provide that payment of a grant shall be conditioned upon the  
45 subrogation to the department of all rights of the recipient to recover  
46 remediation costs from the discharger or other [responsible party]

1 liable parties. All moneys collected in a cost recovery subrogation  
2 action shall be deposited into the remediation fund;

3 (5) provide that an applicant for financial assistance or a grant pay  
4 a reasonable fee for the application which shall be used by the  
5 authority for the administration of the loan and grant program;

6 (6) provide that where financial assistance to a person other than  
7 a municipal governmental entity [,] or the New Jersey Redevelopment  
8 Authority is for a portion of the remediation cost, that the proceeds  
9 thereof not be disbursed to the applicant until the costs of the  
10 remediation for which a remediation funding source has been  
11 established has been expended;

12 (7) adopt such other requirements as the authority shall deem  
13 necessary or appropriate in carrying out the purposes for which the  
14 Hazardous Discharge Site Remediation Fund was created.

15 b. An applicant for financial assistance or a grant shall be required  
16 to:

17 (1) provide proof, as determined sufficient by the authority, that  
18 the applicant, where applicable, cannot establish a remediation funding  
19 source for all or part of the remediation costs, as required by section  
20 25 of P.L.1993, c.139 (C.58:10B-3). The provisions of this paragraph  
21 do not apply to grants to innocent persons, grants for the use of  
22 innovative technologies, or grants for the implementation of  
23 unrestricted use remedial actions or limited restricted use remedial  
24 actions or to financial assistance or grants to municipal governmental  
25 entities or the New Jersey Redevelopment Authority; and

26 (2) demonstrate the ability to repay the amount of the financial  
27 assistance and interest, and, if necessary, to provide adequate  
28 collateral to secure the financial assistance amount.

29 c. Information submitted as part of a loan or grant application or  
30 agreement shall be deemed a public record subject to the provisions of  
31 P.L.1963, c.73 (C.47:1A-1 et seq.).

32 d. In establishing requirements for financial assistance or grant  
33 applications and financial assistance or grant agreements, the  
34 authority:

35 (1) shall minimize the complexity and costs to applicants or  
36 recipients of complying with such requirements;

37 (2) may not require financial assistance or grant conditions that  
38 interfere with the everyday normal operations of the recipient's  
39 business activities, except to the extent necessary to ensure the  
40 recipient's ability to repay the financial assistance and to preserve the  
41 value of the loan collateral; and

42 (3) shall expeditiously process all financial assistance or grant  
43 applications in accordance with a schedule established by the authority  
44 for the review and the taking of final action on the application, which  
45 schedule shall reflect the degree of complexity of a financial assistance  
46 or grant application.

1 (cf: P.L.1993, c.139, s.30)

2

3 16. Section 33 of P.L.1993, c.139 (C.58:10B-11) is amended to  
4 read as follows:

5 33. a. There is imposed upon every person who is required to  
6 establish a remediation funding source pursuant to section 25 of  
7 P.L.1993, c.139 (C.58:10B-3) a remediation funding source surcharge.  
8 The remediation funding source surcharge shall be in an amount equal  
9 to 1% of the required amount of the remediation funding source  
10 required by the department to be maintained. No surcharge, however,  
11 may be imposed upon (1) that amount of the remediation funding  
12 source that is met by a self-guarantee as provided in subsection f. of  
13 section 25 of P.L.1993, c.139 (C.58:10B-3), (2) that amount of the  
14 remediation funding source that is met by financial assistance or a  
15 grant from the remediation fund, (3) any person who voluntarily  
16 [undertakes] performs a remediation [without being so ordered or  
17 directed by the department or by a court or] pursuant to an  
18 administrative consent order, [or] (4) any person who entered  
19 voluntarily into a memorandum of understanding with the department  
20 to remediate real property, as long as that person continues the  
21 remediation in a reasonable manner, or as required by law, even if  
22 subsequent to initiation of the memorandum of understanding, the  
23 person received an order by the department or entered into an  
24 administrative consent order to perform the remediation, (5) any  
25 person performing a remediation in an environmental opportunity  
26 zone, or (6) that portion of the cost of the remediation that is  
27 specifically for the use of an innovative technology or to implement a  
28 limited restricted use remedial action or an unrestricted use remedial  
29 action. The surcharge shall be based on the cost of remediation work  
30 remaining to be completed and shall be paid on an annual basis as long  
31 as the remediation continues and until the Department of  
32 Environmental Protection [and Energy] issues a no further action  
33 letter for the property subject to the remediation. The remediation  
34 funding source surcharge shall be due and payable within 14 days of  
35 the time of the department's approval of a remedial action workplan or  
36 signing an administrative consent order or as otherwise provided by  
37 law. The department shall collect the surcharge and shall remit all  
38 moneys collected to the Economic Development Authority for deposit  
39 into the Hazardous Discharge Site Remediation Fund.

40 b. By February 1 of each year, the department shall issue a report  
41 to the Senate Environment Committee and to the Assembly [Energy  
42 and Hazardous Waste] Agriculture and Waste Management  
43 Committee, or their successors, listing, for the prior calendar year,  
44 each person who owed the remediation funding source surcharge, the  
45 amount of the surcharge paid, and the total amount collected.

46 (cf: P.L.1993, c.139, s.33)

1       17. Section 35 of P.L.1993, c.139 (C.58:10B-12) is amended to  
2 read as follows:

3       35. a. The Department of Environmental Protection [and Energy]  
4 shall adopt minimum remediation standards for soil, groundwater, and  
5 surface water quality necessary for the remediation of contamination  
6 of real property. The remediation standards shall be developed to  
7 ensure that the potential for harm to public health and safety and to the  
8 environment is minimized to acceptable levels, taking into  
9 consideration the location, the surroundings, the intended use of the  
10 property, the potential exposure to the discharge, and the surrounding  
11 ambient conditions, whether naturally occurring or man-made.

12       Until the minimum remediation standards for the protection of  
13 public health and safety as described herein are adopted, the  
14 department shall apply public health and safety remediation standards  
15 for contamination at a site on a case-by-case basis based upon the  
16 considerations and criteria enumerated in this section.

17       The department shall not propose or adopt remediation standards  
18 protective of the environment pursuant to this section, except  
19 standards for groundwater or surface water, until recommendations  
20 are made by the Environment Advisory Task Force created pursuant  
21 to section 37 of P.L.1993, c.139. Until the Environment Advisory  
22 Task Force issues its recommendations and the department adopts  
23 remediation standards protective of the environment as required by  
24 this section, the department shall continue to determine the need for  
25 and the application of remediation standards protective of the  
26 environment on a case-by-case basis in accordance with the guidance  
27 and regulations of the United States Environmental Protection Agency  
28 pursuant to the "Comprehensive Environmental Response,  
29 Compensation and Liability Act of 1980," 42 U.S.C. §9601 et seq. and  
30 other statutory authorities as applicable.

31       The department may not require any person to perform an  
32 ecological evaluation of any area of concern that consists of an  
33 underground storage tank storing heating oil for on-site consumption  
34 in a one to four family residential building.

35       b. In developing minimum remediation standards the department  
36 shall:

37       (1) base the standards on generally accepted and peer reviewed  
38 scientific evidence or methodologies;

39       (2) base the standards upon reasonable assumptions of exposure  
40 scenarios as to amounts of contaminants to which humans or other  
41 receptors will be exposed, when and where those exposures will occur,  
42 and the amount of that exposure;

43       (3) avoid the use of redundant conservative assumptions. The  
44 department shall avoid the use of redundant conservative assumptions  
45 by the use of parameters that provide an adequate margin of safety and  
46 which avoid the use of unrealistic conservative exposure parameters

1 and which guidelines make use of the guidance and regulations for  
2 exposure assessment developed by the United States Environmental  
3 Protection Agency pursuant to the "Comprehensive Environmental  
4 Response, Compensation, and Liability Act of 1980," 42 U.S.C. §9601  
5 et seq. and other statutory authorities as applicable; [and]

6 (4) where feasible, establish the remediation standards as numeric  
7 or narrative standards setting forth acceptable levels or concentrations  
8 for particular contaminants ; and

9 (5) consider and utilize, in the absence of other standards used or  
10 developed by the Department of Environmental Protection and the  
11 United States Environmental Protection Agency, the toxicity factors,  
12 slope factors for carcinogens and reference doses for non-carcinogens  
13 from the United States Environmental Protection Agency's Integrated  
14 Risk Information System (IRIS).

15 c. (1) The department shall develop residential and nonresidential  
16 soil remediation standards that are protective of public health and  
17 safety. For contaminants that are mobile and transportable to  
18 groundwater or surface water, the residential and nonresidential soil  
19 remediation standards shall be protective of groundwater and surface  
20 water. Residential soil remediation standards shall be set at levels or  
21 concentrations of contamination for real property based upon the use  
22 of that property for residential or similar uses and which will allow the  
23 unrestricted use of that property without the need of engineering  
24 devices or any institutional controls and without exceeding a health  
25 risk [level] standard greater than that provided in subsection d. of this  
26 section. Nonresidential soil remediation standards shall be set at levels  
27 or concentrations of contaminants that recognize the lower likelihood  
28 of exposure to contamination on property that will not be used for  
29 residential or similar uses , which will allow for the unrestricted use of  
30 that property for nonresidential purposes, and that can be met without  
31 the need of engineering controls. Whenever real property is  
32 remediated to a nonresidential soil remediation standard, except as  
33 otherwise provided in paragraph (3) of subsection g. of this section,  
34 the department shall require, pursuant to section 36 of P.L.1993, c.139  
35 (C.58:10B-13), that the use of the property be restricted to  
36 nonresidential or other uses compatible with the extent of the  
37 contamination of the soil and that access to that site be restricted in a  
38 manner compatible with the allowable use of that property.

39 (2) The department may develop differential remediation standards  
40 for surface water or groundwater that take into account the current,  
41 planned, or potential use of that water in accordance with the "Clean  
42 Water Act" (33 U.S.C.§1251 et seq.) and the "Water Pollution Control  
43 Act," P.L.1977, c.74 (C.58:10A-1 et seq.).

44 d. [In developing] The department shall develop minimum  
45 remediation standards for soil, groundwater, and surface water  
46 intended to be protective of public health and safety [,] taking into

1 account the provisions of this section. In developing these minimum  
2 health risk remediation standards the department shall identify the  
3 hazards posed by a contaminant to determine whether exposure to that  
4 contaminant can cause an increase in the incidence of an adverse health  
5 effect and whether the adverse health effect may occur in humans.  
6 The department shall set minimum soil remediation health risk  
7 standards for both residential and nonresidential uses that:

8 (1) for human carcinogens, as categorized by the United States  
9 Environmental Protection Agency, will result in an additional cancer  
10 risk of one in one million;

11 (2) for noncarcinogens, will limit the Hazard Index for any given  
12 effect to a value not exceeding one.

13 The health risk [levels] standards established in this subsection are  
14 for any particular contaminant and not for the cumulative effects of  
15 more than one contaminant at a site.

16 e. Remediation standards and other remediation requirements  
17 established pursuant to this section and regulations adopted pursuant  
18 thereto shall apply to remediation activities required pursuant to the  
19 "Spill Compensation and Control Act," P.L.1976, c.141  
20 (C.58:10-23.11 et seq.), the "Water Pollution Control Act," P.L.1977,  
21 c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21 et seq.), the  
22 "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), the  
23 "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.),  
24 the "Comprehensive Regulated Medical Waste Management Act,"  
25 P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous Waste  
26 Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the  
27 "Sanitary Landfill Facility Closure and Contingency Fund Act,"  
28 P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level  
29 Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333  
30 (C.13:1E-177 et seq.), or any other law or regulation by which the  
31 State may compel a person to perform remediation activities on  
32 contaminated property. However, nothing in this subsection shall be  
33 construed to limit the authority of the department to establish  
34 discharge limits for pollutants or to prescribe penalties for violations  
35 of those limits pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), or to  
36 require the complete removal of nonhazardous solid waste pursuant to  
37 law.

38 f. (1) A person performing a remediation of contaminated real  
39 property, in lieu of using the established minimum soil remediation  
40 standard for either residential use or nonresidential use adopted by the  
41 department pursuant to subsection c. of this section, may submit to the  
42 department a request to use an alternative residential use or  
43 nonresidential use soil remediation standard. The use of an alternative  
44 soil remediation standard shall be based upon site specific factors  
45 which may include (1) physical site characteristics which may vary  
46 from those used by the department in the development of the soil

1 remediation standards adopted pursuant to this section; or (2) a site  
2 specific risk assessment. If a person performing a remediation  
3 requests to use an alternative soil remediation standard based upon a  
4 site specific risk assessment, that person shall demonstrate to the  
5 department that the requested deviation from the risk assessment  
6 protocol used by the department in the development of soil  
7 remediation standards pursuant to this section is consistent with the  
8 guidance and regulations for exposure assessment developed by the  
9 United States Environmental Protection Agency pursuant to the  
10 "Comprehensive Environmental Response, Compensation, and  
11 Liability Act of 1980," 42 U.S.C. §9601 et seq. and other statutory  
12 authorities as applicable. A site specific risk assessment may consider  
13 exposure scenarios and assumptions that take into account the form of  
14 the contaminant present, natural biodegradation, fate and transport of  
15 the contaminant, [and] available toxicological data that are based upon  
16 generally accepted and peer reviewed scientific evidence or  
17 methodologies, and physical characteristics of the site, including, but  
18 not limited to, climatic conditions and topographic conditions.  
19 Nothing in this subsection shall be construed to authorize the use of  
20 an alternative soil remediation standard in those instances where an  
21 engineering control is the appropriate remedial action, as determined  
22 by the department, to prevent exposure to contamination.

23 Upon a determination by the department that the requested  
24 alternative remediation standard satisfies the department's regulations,  
25 is protective of public health and safety, as established in subsection  
26 d. of this section, and is protective of the environment pursuant to  
27 subsection a. of this section, the alternative residential use or  
28 nonresidential use soil remediation standard shall be approved by the  
29 department. The burden to demonstrate that the requested alternative  
30 remediation standard is protective rests with the person requesting the  
31 alternative standard and the department may require the submission of  
32 any documentation as the department determines to be necessary in  
33 order for the person to meet that burden.

34 (2) The department may, upon its own initiative, require an  
35 alternative remediation standard for a particular contaminant for a  
36 specific real property site, in lieu of using the established minimum  
37 residential use or nonresidential use soil remediation standard adopted  
38 by the department for a particular contaminant pursuant to this  
39 section. The department may require an alternative remediation  
40 standard pursuant to this paragraph upon a determination by the  
41 department, based on the weight of the scientific evidence, that due to  
42 specific physical site characteristics of the subject real property,  
43 including, but not limited to, its proximity to surface water, the use of  
44 the adopted residential use or nonresidential use soil remediation  
45 standards would not be protective, or would be unnecessarily  
46 overprotective, of public health or safety or of the environment, as



1 appropriate.

2 g. The development, selection, and implementation of any  
3 remediation standard or remedial action shall ensure that it is  
4 protective of public health, safety, and the environment, as applicable,  
5 as provided in this section. In determining the appropriate remediation  
6 standard or remedial action that shall occur at a site [in order to meet  
7 the established remediation standards], the department [, or] and any  
8 person performing the remediation, shall base [its] the decision on the  
9 following factors:

10 (1) [Permanent and nonpermanent] Unrestricted use remedial  
11 actions, limited restricted use remedial actions and restricted use  
12 [remedies] remedial actions shall be allowed except that [permanent  
13 remedies] unrestricted use remedial actions and limited restricted use  
14 remedial actions shall be preferred over [nonpermanent remedies for]  
15 restricted use remedial actions. The department, however, may not  
16 disapprove the use of a restricted use remedial action or a limited  
17 restricted use remedial action so long as the selected remedial action  
18 meets the health risk standard established in subsection d. of this  
19 section, and where, as applicable, is protective of the environment.  
20 The choice of the remedial action to be implemented shall be made by  
21 the person performing the remediation in accordance with regulations  
22 adopted by the department and that choice of the remedial action shall  
23 be approved by the department if all the criteria for remedial action  
24 selection enumerated in this section, as applicable, are met. The  
25 department may not require a person to compare or investigate any  
26 alternative remedial action as part of its review of the selected  
27 remedial action.

28 (2) Contamination may, upon the department's approval, be left  
29 onsite at levels or concentrations that exceed the minimum soil  
30 remediation standards for residential use [or nonresidential use] if the  
31 implementation of institutional or engineering controls at that site will  
32 result in the protection of public health, safety and the environment at  
33 the health risk [level] standard established in subsection d. of this  
34 section and if the requirements established in subsections a., b., c. and  
35 d. of section 36 of P.L.1993, c.139 (C.58:10B-13) are met;

36 (3) Real property on which there is soil that has not been  
37 remediated to the residential soil remediation standards, or real  
38 property on which the soil, groundwater, or surface water has been  
39 remediated to meet the required health risk [level] standard by the use  
40 of engineering or institutional controls, may be developed or used for  
41 residential purposes, or for any other similar purpose, if (a) all areas  
42 of that real property at which a person may come into contact with soil  
43 are remediated to meet the residential soil remediation standards and  
44 (b) it is clearly demonstrated that for all areas of the real property,  
45 other than those described in subparagraph (a) above, engineering and  
46 institutional controls can be implemented and maintained on the real

1 property sufficient to meet the health risk [level] standard as  
2 established in subsection d. of this section;

3 (4) Remediation shall not be required beyond the regional natural  
4 background levels for any particular contaminant. The department  
5 shall develop regulations that set forth a process to identify  
6 background levels of contaminants for a particular region. For the  
7 purpose of this paragraph "regional natural background levels" means  
8 the concentration of a contaminant consistently present in the  
9 environment of the region of the site and which has not been  
10 influenced by localized human activities;

11 (5) Remediation shall not be required of the owner or operator of  
12 real property for contamination coming onto the site from another  
13 property owned and operated by another person, unless the owner or  
14 operator is the person who [ in any way responsible for the discharge]  
15 is liable for cleanup and removal costs pursuant to P.L.1976, c.141  
16 (C.58:10-23.11 et seq.) ;

17 (6) Groundwater that is contaminated shall not be required to be  
18 remediated to a level or concentration for any particular contaminant  
19 lower than the level or concentration that is migrating onto the  
20 property from another property owned and operated by another  
21 person;

22 (7) The technical performance, effectiveness and reliability of the  
23 proposed remedial action in attaining and maintaining compliance with  
24 applicable remediation standards and required health risk [levels]  
25 standards shall be considered. In reviewing a proposed remedial  
26 action, the department shall also consider the ability of the owner or  
27 operator to implement the proposed remedial action within a  
28 reasonable time frame without jeopardizing public health, safety or the  
29 environment;

30 (8) [In the case of a proposed remedial action that will not meet  
31 the established minimum residential use soil remediation standards, the  
32 cost of all available permanent remedies is unreasonable, as determined  
33 by department rules designed to provide a cost-based preference for  
34 the use of permanent remedies. The department shall adopt  
35 regulations, no later than 18 months after the effective date of this act,  
36 establishing criteria and procedures for allowing a person to  
37 demonstrate that the cost of all available permanent remedies is  
38 unreasonable. Until the department adopts those regulations, it shall  
39 not require a person performing a remedial action to implement a  
40 permanent remedy, unless the cost of implementing a nonpermanent  
41 remedy is 50 percent or more than the cost of implementing a  
42 permanent remedy; provided, however, that the preceding provision  
43 shall not apply to any owner or operator of an industrial establishment  
44 who is implementing a remedial action pursuant to subsection i. of  
45 section 4 of P.L.1983, c.330;] The use of a remedial action for soil  
46 contamination that is determined by the department to be effective in

1 its guidance document created pursuant to section 38 of P.L.1993,  
2 c.139 (C.58:10B-14), is presumed to be an appropriate remedial action  
3 if it is to be implemented on a site in the manner described by the  
4 department in the guidance document and applicable regulations and  
5 if all of the conditions for remedy selection provided for in this section  
6 are met. The burden to prove compliance with the criteria in the  
7 guidance document is with the person performing the remediation.

8 (9) [The use of the established nonresidential soil remediation  
9 standard shall not be unreasonably disapproved by the department.]  
10 (Deleted by amendment P.L. , c. )

11 The burden to demonstrate that a remedial action is protective of  
12 public health, safety and the environment, as applicable, and has been  
13 selected in conformance with the provisions of this subsection is with  
14 the person proposing the remedial action.

15 The department may require the person performing the remediation  
16 to supply the information required pursuant to this subsection as is  
17 necessary for the department to make a determination.

18 h. (1) The department shall adopt regulations which establish a  
19 procedure for a person to demonstrate that a particular parcel of land  
20 contains large quantities of historical fill material. Upon a  
21 determination by the department that large quantities of historic fill  
22 material exist on that parcel of land, there is a rebuttable presumption  
23 that the department shall not require any person to remove or treat the  
24 fill material in order to comply with [a remediation standard]  
25 applicable health risk or environmental standards. In these areas the  
26 department shall establish by regulation the requirement for  
27 engineering or institutional controls that are designed to prevent  
28 exposure of these contaminants to humans, that allow for the  
29 continued use of the property, that are less costly than removal or  
30 treatment, which maintain the health risk [levels] standards as  
31 established in subsection d. of this section, and, as applicable, are  
32 protective of the environment. The department may rebut the  
33 presumption only upon a finding by the preponderance of the evidence  
34 that the use of engineering or institutional controls would not be  
35 effective in protecting public health, safety, and the environment. The  
36 department may not adopt any rule or regulation that has the effect of  
37 shifting the burden of rebutting the presumption. For the purposes of  
38 this paragraph "historic fill material" means generally large volumes of  
39 non-indigenous material, no matter what date they were emplaced on  
40 the site, used to raise the topographic elevation of a site, which were  
41 contaminated prior to emplacement and are in no way connected with  
42 the operations at the location of emplacement and which include, but  
43 are not limited to, construction debris, dredge spoils, incinerator  
44 residue, demolition debris, fly ash, and non-hazardous solid waste.  
45 Historic fill material shall not include any material which is  
46 substantially chromate chemical production waste or any other

1 chemical production waste or waste from processing of metal or  
2 mineral ores, residues, slags or tailings.

3 (2) The department shall develop recommendations for remedial  
4 actions in large areas of historic industrial contamination. These  
5 recommendations shall be designed to meet the health risk [levels]  
6 standards established in subsection d. of this section, and to be  
7 protective of the environment and shall take into account the industrial  
8 history of these sites, the extent of the contamination that may exist,  
9 the costs of remedial actions, the economic impacts of these policies,  
10 and the anticipated uses of these properties. The department [, within  
11 one year of the enactment of this act,] shall issue a report to the  
12 Senate Environment Committee and to the Assembly [Energy and  
13 Hazardous Waste] Agriculture and Waste Management Committee, or  
14 their successors, explaining these recommendations and making any  
15 recommendations for legislative or regulatory action.

16 (3) The department may not, as a condition of allowing the use of  
17 a nonresidential use soil remediation standard, or the use of  
18 institutional or engineering controls, require the owner of that real  
19 property, except as provided in section 36 of P.L.1993, c.139  
20 (C.58:10B-13), to restrict the use of that property through the filing  
21 of a deed easement, covenant, or condition.

22 i. The department may not require a remedial action workplan to  
23 be prepared or implemented or engineering or institutional controls to  
24 be imposed upon any real property unless sampling performed at that  
25 real property demonstrates the existence of contamination above the  
26 applicable remediation standards.

27 j. Upon the approval by the department of a remedial action  
28 workplan, or similar plan that describes the extent of contamination at  
29 a site and the remedial action to be implemented to address that  
30 contamination, the department may not subsequently require a change  
31 to that workplan or similar plan in order to compel a different  
32 remediation standard due to the fact that the established remediation  
33 standards have changed; however, the department may compel a  
34 different remediation standard if the difference between the new  
35 remediation standard and the remediation standard approved in the  
36 workplan or other plan differs by an order of magnitude. The  
37 limitation to the department's authority to change a workplan or  
38 similar plan pursuant to this subsection shall only apply if the workplan  
39 or similar plan is being implemented in a reasonable timeframe, as may  
40 be indicated in the approved remedial action workplan or similar plan.

41 k. Notwithstanding any other provisions of this section, all  
42 remediation standards and remedial actions that involve real property  
43 located in the Pinelands area shall be consistent with the provisions of  
44 the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.),  
45 any rules and regulations promulgated pursuant thereto, and with  
46 section 502 of the "National Parks and Recreation Act of 1978," 16

1 U.S.C.§[4711] 471i.

2 1. Upon the adoption of a remediation standard for a particular  
3 contaminant in soil, groundwater, or surface water pursuant to this  
4 section, the department may amend that remediation standard only  
5 upon a finding that a new standard is necessary to maintain the health  
6 risk [levels] standards established in subsection d. of section 35 of  
7 P.L.1993, c.139 (C.58:10B-12) or to protect the environment, as  
8 applicable. The department may not amend a public health based soil  
9 remediation standard to a level that would result in a health risk [level]  
10 standard more protective than that provided for in subsection d. of  
11 section 35 of P.L.1993, c.139 (C.58:10B-12).

12 m. Nothing in P.L.1993, c.139 shall be construed to restrict or in  
13 any way diminish the public participation which is otherwise provided  
14 under the provisions of the "Spill Compensation and Control Act,"  
15 P.L.1976, c.141 (C.58:10-23.11 et seq.).

16 n. Notwithstanding any provision of subsection a. of section 36 of  
17 P.L.1993, c.139 (C.58:10B-13) to the contrary, the department may  
18 not require a person intending to implement a remedial action at an  
19 underground storage tank facility storing heating oil for on-site  
20 consumption at a one to four family residential dwelling to provide  
21 advance notice to a municipality prior to implementing that remedial  
22 action.

23 o. A person who has remediated a site pursuant to the provisions  
24 of this section, who was liable for the cleanup and removal costs of  
25 that discharge pursuant to the provisions of paragraph (1) of  
26 subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), and  
27 who remains liable for the discharge on that site due to a possibility  
28 that a remediation standard may change, undiscovered contamination  
29 may be found, or because an engineering control was used to  
30 remediate the discharge, shall maintain with the department a current  
31 address at which that person may be contacted in the event additional  
32 remediation needs to be performed at the site. The requirement to  
33 maintain the current address shall be made part of the conditions of the  
34 no further action letter issued by the department.

35 (cf: P.L.1993, c.139, s.35)

36

37 18. Section 36 of P.L.1993, c.139 (C.58:10B-13) is amended to  
38 read as follows:

39 36. a. When real property is remediated to a nonresidential soil  
40 remediation standard or engineering or institutional controls are used  
41 in lieu of remediating a site to meet an established remediation  
42 standard for soil, groundwater, or surface water, the department shall,  
43 as a condition of the use of that standard or control measure:

44 (1) require the establishment of any engineering or institutional  
45 controls the department determines are reasonably necessary to  
46 prevent exposure to the contaminants, require maintenance, as

1 necessary, of those controls, and require the restriction of the use of  
2 the property in a manner that prevents exposure;

3 (2) require, with the consent of the owner of the real property, the  
4 recording with the office of the county recording officer, in the county  
5 in which the property is located, a notice to inform prospective holders  
6 of an interest in the property that contamination exists on the property  
7 at a level that may statutorily restrict certain uses of or access to all or  
8 part of that property, a delineation of those restrictions, a description  
9 of all specific engineering or institutional controls at the property that  
10 exist and that shall be maintained in order to prevent exposure to  
11 contaminants remaining on the property, and the written consent to the  
12 notice by the owner of the property. The notice shall be recorded in  
13 the same manner as are deeds and other interests in real property. The  
14 department shall develop a uniform deed notice that ensures the proper  
15 filing of the deed notice. The provisions of this paragraph do not  
16 apply to restrictions on the use of surface water or groundwater;

17 (3) require a notice to the governing body of each municipality in  
18 which the property is located that contaminants will exist at the  
19 property above residential use soil remediation standards or any other  
20 remediation standards and specifying the restrictions on the use of or  
21 access to all or part of that property and of the specific engineering or  
22 institutional controls at the property that exist and that shall be  
23 maintained;

24 (4) require, when determined necessary by the department, that  
25 signs be posted at any location at the site where access is restricted or  
26 in those areas that must be maintained in a prescribed manner, to  
27 inform persons on the property that there are restrictions on the use of  
28 that property or restrictions on access to any part of the site;

29 (5) require that a list of the restrictions be kept on site for  
30 inspection by governmental enforcement officials; and

31 (6) require a person, prior to commencing a remedial action, to  
32 notify the governing body of each municipality wherein the property  
33 being remediated is located. The notice shall include, but not be  
34 limited to, the commencement date for the remedial action; the name,  
35 mailing address and business telephone number of the person  
36 implementing the remedial action, or his designated representative; and  
37 a brief description of the remedial action.

38 b. If the owner of the real property does not consent to the  
39 recording of a notice pursuant to paragraph (2) of subsection a. of this  
40 section, the department shall require the use of a residential soil  
41 remediation standard in the remediation of that real property.

42 c. Whenever engineering or institutional controls on property as  
43 provided in subsection a. of this section are no longer required, or  
44 whenever the engineering or institutional controls are changed because  
45 of the performance of subsequent remedial activities, a change in  
46 conditions at the site, or the adoption of revised remediation

1 standards, the department shall require that the owner or operator of  
2 that property record with the office of the county recording officer a  
3 notice that the use of the property is no longer restricted or delineating  
4 the new restrictions. The department shall also require that the owner  
5 or operator notify, in writing, the municipality in which the property  
6 is located of the removal or change of the restrictive use conditions.

7 d. The owner or lessee of any real property, or any person  
8 operating a business on real property, which has been remediated to  
9 a nonresidential use soil remediation standard or on which the  
10 department has allowed engineering or institutional controls for soil,  
11 groundwater, or surface water to protect the public health, safety, or  
12 the environment, as applicable, shall maintain the engineering or  
13 institutional controls as required by the department. An owner, lessee,  
14 or operator who takes any action that results in the improper alteration  
15 or removal of engineering or institutional controls or who fails to  
16 maintain the engineering or institutional controls as required by the  
17 department, shall be subject to the penalties and actions set forth in  
18 section 22 of P.L.1976, c.141 (C.58:10-23.11u) and, where applicable,  
19 shall be liable for any additional remediation and damages pursuant to  
20 the provisions of section 8 of P.L.1976, c.141 (C.58:10-23.11g). The  
21 provisions of this subsection shall not apply if a notification received  
22 pursuant to subsection b. of this section authorizes all restrictions or  
23 controls to be removed from the subject property.

24 e. Notwithstanding the provisions of any other law, or any rule,  
25 regulation, or order adopted pursuant thereto to the contrary,  
26 whenever contamination at a property is remediated in compliance  
27 with any soil, or any groundwater [,] or surface water remediation  
28 standards that were in effect or approved by the department at the  
29 completion of the remediation, [the owner or operator of the property  
30 or person performing the remediation] no person, except as otherwise  
31 provided in this section, shall [not] be liable for the cost of any  
32 additional remediation that may be required by a subsequent adoption  
33 by the department of a more stringent remediation standard for a  
34 particular contaminant. Upon the adoption of a regulation that amends  
35 a remediation standard, or where the adoption of a regulation would  
36 change a remediation standard which was otherwise approved by the  
37 department, only a person who is liable to clean up and remove that  
38 contamination pursuant to section 8 of P.L.1976, c.141  
39 (C.58:10-23.11g), and who does not have a defense to liability  
40 pursuant to subsection d. of that section, shall be liable for any  
41 additional remediation costs necessary to bring the site into  
42 compliance with the new remediation standards except that no person  
43 shall be so liable unless the difference between the new remediation  
44 standard and the level or concentration of a contaminant at the  
45 property differs by an order of magnitude. The department may  
46 compel a person who is liable for the additional remediation costs to

1 perform additional remediation activities to meet the new remediation  
2 standard except that a person may not be compelled to perform any  
3 additional remediation activities on the site if that person can  
4 demonstrate that the existing engineering or institutional controls on  
5 the site prevent exposure to the contamination and that the site  
6 remains protective of public health, safety and the environment  
7 pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12). The burden  
8 to prove that a site remains protective is on the person liable for the  
9 additional remediation costs. A person liable for the additional  
10 remediation costs who is relying on engineering or institutional  
11 controls to make a site protective, shall comply with the provisions of  
12 subsections a., b., c. and d. of this section.

13 Nothing in the provisions of this subsection shall be construed to  
14 affect the authority of the department, pursuant to subsection f. of this  
15 section, to require additional remediation on real property where  
16 engineering [or institutional] controls were implemented.

17 Nothing in the provisions of this subsection shall limit the rights of  
18 a person, other than the State, or any department or agency thereof,  
19 to bring a civil action for damages, contribution, or indemnification as  
20 provided by statutory or common law.

21 f. Whenever the department approves or has approved the use of  
22 engineering [or institutional] controls for the remediation of soil,  
23 groundwater, or surface water, to protect public health, safety or the  
24 environment [in lieu of remediating a site to a condition that meets an  
25 established residential remediation standard], the department [shall  
26 not] may require additional remediation of that site [unless] only if  
27 the engineering [or institutional] controls no longer are protective of  
28 public health, safety, or the environment.

29 g. Whenever the department approves or has approved the use of  
30 engineering or institutional controls for the remediation of soil,  
31 groundwater, or surface water, to protect public health, safety or the  
32 environment, the department shall inspect that site at least once every  
33 five years in order to ensure that the engineering and institutional  
34 controls are being properly maintained and that the controls remain  
35 protective of public health and safety and of the environment.

36 h. A property owner of a site on which a deed notice has been  
37 recorded shall notify any person who intends to excavate on the site  
38 of the nature and location of any contamination existing on the site and  
39 of any conditions or measures necessary to prevent exposure to  
40 contaminants.

41 (cf: P.L.1993, c.139, s.36)

42

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

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



1 "Act of God" means an act exclusively occasioned by an  
2 unanticipated, grave natural disaster without the interference of any  
3 human agency;

4 "Administrator" means the chief executive of the New Jersey Spill  
5 Compensation Fund;

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

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

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

33 "Commissioner" means the Commissioner of Environmental  
34 Protection;

35 "Department" means the Department of Environmental Protection;

36 "Director" means the Director of the Division of Taxation in the  
37 Department of the Treasury;

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

44 "Emergency response action" means those activities conducted by  
45 a local unit to clean up, remove, prevent, contain, or mitigate a  
46 discharge that poses an immediate threat to the environment or to the

1 public health, safety, or welfare;

2 "Fair market value" means the invoice price of the hazardous  
3 substances transferred, including transportation charges; but where no  
4 price is so fixed, "fair market value" shall mean the market price as of  
5 the close of the nearest day to the transfer, paid for similar hazardous  
6 substances, as shall be determined by the taxpayer pursuant to rules of  
7 the director;

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

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

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

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

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

45 (1) 20,000 gallons or more for hazardous substances which are  
46 other than petroleum or petroleum products, or

1 (2) 200,000 gallons or more for hazardous substances of all kinds.

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

7 For the purposes of this definition, "storage capacity" shall mean  
8 only that total combined capacity which is dedicated to, used for or  
9 intended to be used for storage of hazardous substances of all kinds.  
10 Where appropriate to the nature of the facility, storage capacity may  
11 be determined by the intended or actual use of open land or  
12 unenclosed space as well as by the capacities of tanks or other  
13 enclosed storage spaces;

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

17 "Owner" or "operator" means, with respect to a vessel, any person  
18 owning, operating or chartering by demise such vessel; with respect to  
19 any major facility, any person owning such facility, or operating it by  
20 lease, contract or other form of agreement; with respect to abandoned  
21 or derelict major facilities, the person who owned or operated such  
22 facility immediately prior to such abandonment, or the owner at the  
23 time of discharge;

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

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

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

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

43 "Transfer" means unloading or offloading between major facilities  
44 and vessels, or vessels and major facilities, and from vessel to vessel  
45 or major facility to major facility, except for fueling or refueling  
46 operations and except that with regard to the movement of hazardous

1 substances other than petroleum, it shall also include any unloading of  
2 or offloading from a major facility;

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

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

11 (cf: P.L.1995, c.16, s.1)

12

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

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

18 (1) The cost of restoring, repairing, or replacing any real or  
19 personal property damaged or destroyed by a discharge, any income  
20 lost from the time such property is damaged to the time such property  
21 is restored, repaired or replaced, and any reduction in value of such  
22 property caused by such discharge by comparison with its value prior  
23 thereto;

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

26 (3) Loss of income or impairment of earning capacity due to  
27 damage to real or personal property, including natural resources  
28 destroyed or damaged by a discharge; provided that such loss or  
29 impairment exceeds 10% of the amount which claimant derives, based  
30 upon income or business records, exclusive of other sources of  
31 income, from activities related to the particular real or personal  
32 property or natural resources damaged or destroyed by such discharge  
33 during the week, month or year for which the claim is filed;

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

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

41 b. The damages which may be recovered by the fund, without  
42 regard to fault, subject to the defenses enumerated in subsection d. of  
43 this section against the owner or operator of a major facility or vessel,  
44 shall not exceed \$50,000,000.00 for each major facility or \$150.00 per  
45 gross ton for each vessel, except that such maximum limitation shall  
46 not apply and the owner or operator shall be liable, jointly and

1 severally, for the full amount of such damages if it can be shown that  
2 such discharge was the result of (1) gross negligence or willful  
3 misconduct, within the knowledge and privity of the owner, operator  
4 or person in charge, or (2) a gross or willful violation of applicable  
5 safety, construction or operating standards or regulations. Damages  
6 which may be recovered from, or by, any other person shall be limited  
7 to those authorized by common or statutory law.

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

16 (2) In addition to the persons liable pursuant to [paragraph (1) of]  
17 this subsection, in the case of a discharge of a hazardous substance  
18 from a vessel into the waters of the State, the owner or operator of a  
19 refinery, storage, transfer, or pipeline facility to which the vessel was  
20 en route to deliver the hazardous substance who, by contract,  
21 agreement, or otherwise, was scheduled to assume ownership of the  
22 discharged hazardous substance, and any other person who was so  
23 scheduled to assume ownership of the discharged hazardous substance,  
24 shall be strictly liable, jointly and severally, without regard to fault, for  
25 all cleanup and removal costs if the owner or operator of the vessel did  
26 not have the evidence of financial responsibility required pursuant to  
27 section 2 of P.L.1991, c.58 (C.58:10-23.11g2).

28 Where a person is liable for cleanup and removal costs as provided  
29 in this paragraph, any expenditures made by the administrator for that  
30 cleanup and removal shall constitute a debt of that person to the fund.  
31 The debt shall constitute a lien on all property owned by that person  
32 when a notice of lien identifying the nature of the discharge and the  
33 amount of the cleanup, removal and related costs expended from the  
34 fund is duly filed with the clerk of the Superior Court. The clerk shall  
35 promptly enter upon the civil judgment or order docket the name and  
36 address of the liable person and the amount of the lien as set forth in  
37 the notice of lien. Upon entry by the clerk, the lien, to the amount  
38 committed by the administrator for cleanup and removal, shall attach  
39 to the revenues and all real and personal property of the liable person,  
40 whether or not that person is insolvent.

41 For the purpose of determining priority of this lien over all other  
42 claims or liens which are or have been filed against the property of an  
43 owner or operator of a refinery, storage, transfer, or pipeline facility,  
44 the lien on the facility to which the discharged hazardous substance  
45 was en route shall have priority over all other claims or liens which are  
46 or have been filed against the property. The notice of lien filed

1 pursuant to this paragraph which affects any property of a person  
2 liable pursuant to this paragraph other than the property of an owner  
3 or operator of a refinery, storage, transfer, or pipeline facility to which  
4 the discharged hazardous substance was en route, shall have priority  
5 from the day of the filing of the notice of the lien over all claims and  
6 liens filed against the property, but shall not affect any valid lien, right,  
7 or interest in the property filed in accordance with established  
8 procedure prior to the filing of a notice of lien pursuant to this  
9 paragraph.

10 To the extent that a person liable pursuant to this paragraph is not  
11 otherwise liable pursuant to paragraph (1) of this subsection, or under  
12 any other provision of law or under common law, that person may  
13 bring an action for indemnification for costs paid pursuant to this  
14 paragraph against any other person who is strictly liable pursuant to  
15 paragraph (1) of this subsection.

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

19 (3) In addition to the persons liable pursuant to this subsection,  
20 any person who owns real property acquired on or after September 14,  
21 1993 on which there has been a discharge prior to the person's  
22 acquisition of that property and who knew or should have known that  
23 a hazardous substance had been discharged at the real property, shall  
24 be strictly liable, jointly and severally, without regard to fault, for all  
25 cleanup and removal costs no matter by whom incurred. Such person  
26 shall also be strictly liable, jointly and severally, without regard to  
27 fault, for all cleanup and removal costs incurred by the department or  
28 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141  
29 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter  
30 liability of any person who acquired real property prior to September  
31 14, 1993.

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

37 (2) A person, including an owner or operator of a major facility,  
38 who owns real property acquired on or after [the effective date of  
39 P.L.1993, c.139 (C.13:1K-9.6 et al.),] September 14, 1993 on which  
40 there has been a discharge, shall not be [considered a person in any  
41 way responsible] liable for cleanup and removal costs or for any other  
42 damages to the State or to any other person for the discharged  
43 hazardous substance pursuant to subsection c. of this section or  
44 pursuant to civil common law, [unless] if that person can establish by  
45 a preponderance of the evidence that [all of the following]  
46 subparagraphs (a) through (d) apply, or if applicable, subparagraphs

1 (a) through (e) apply:

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

4 (b) (i) at the time the person acquired the real property, the person  
5 did not know and had no reason to know that any hazardous substance  
6 had been discharged at the real property, or (ii) the person acquired  
7 the real property by devise or succession, except that any other funds  
8 or property received by that person from the deceased real property  
9 owner who discharged a hazardous substance or was in any way  
10 responsible for a hazardous substance, shall be made available to  
11 satisfy the requirements of P.L.1976, c.141, or (iii) the person  
12 complies with the provisions of subparagraph (e) of paragraph (2) of  
13 this subsection;

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

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

21 To establish that a person had no reason to know that any  
22 hazardous substance had been discharged for the purposes of this  
23 paragraph (2), the person must have undertaken, at the time of  
24 acquisition, all appropriate inquiry into the previous ownership and  
25 uses of the property. For the purposes of this paragraph (2), all  
26 appropriate inquiry shall mean the performance of a preliminary  
27 assessment, and site investigation [( ], if the preliminary assessment  
28 indicates that a site investigation is necessary [ ]], as defined in section  
29 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance  
30 with rules and regulations promulgated by the department defining  
31 these terms.

32 Nothing in this paragraph (2) shall be construed to alter liability of  
33 any person who acquired real property prior to [the effective date of  
34 P.L.1993, c.139 (C.13:1K-9.6 et al.)] September 14, 1993.

35 (e) For the purposes of this subparagraph the person must have (i)  
36 acquired the property subsequent to a hazardous substance being  
37 discharged on the site and which discharge was discovered at the time  
38 of acquisition as a result of the appropriate inquiry, as defined in this  
39 paragraph (2), (ii) performed, following the effective date of P.L. ,  
40 c. (before the legislature as this bill), a remediation of the site or  
41 discharge consistent with the provisions of section 35 of P.L.1993,  
42 c.139 (C.58:10B-12), or, relied upon a valid no further action letter  
43 from the department for a remediation performed prior to acquisition,  
44 or obtained approval of a remedial action workplan by the department  
45 after the effective date of P.L. , c. (before the Legislature as this  
46 bill) and continued to comply with the conditions of that workplan.

1 and (iii) established and maintained all engineering and institutional  
2 controls as may be required pursuant sections 35 and 36 of P.L.1993,  
3 c.139. A person who complies with the provisions of this  
4 subparagraph by actually performing a remediation of the site or  
5 discharge as set forth in (ii) above shall be issued, upon application,  
6 a no further action letter by the department. A person who complies  
7 with the provisions of this subparagraph either by receipt of a no  
8 further action letter from the department following the effective date  
9 of P.L. , c. (before the Legislature as this bill), or by relying on a  
10 previously issued no further action letter shall not be liable for any  
11 further remediation including any changes in a remediation standard or  
12 for the subsequent discovery of a hazardous substance at the site, if  
13 the remediation was for the entire site, and the hazardous substance  
14 was discharged prior to the person acquiring the property.  
15 Notwithstanding any other provisions of this subparagraph, a person  
16 who complies with the provisions of this subparagraph only by virtue  
17 of the existence of a previously issued no further action letter shall  
18 receive no liability protections for any discharge which occurred  
19 during the time period between the issuance of the no further action  
20 letter and the property acquisition. Compliance with the provisions of  
21 this subparagraph (e) shall not relieve any person of any liability for a  
22 discharge that is off the site of the property covered by the no further  
23 action letter, for a discharge that occurs at that property after the  
24 person acquires the property, for any actions that person negligently  
25 takes that aggravates or contributes to a discharge of a hazardous  
26 substance, for failure to comply in the future with laws and  
27 regulations, or if that person fails to maintain the institutional or  
28 engineering controls on the property or to otherwise comply with the  
29 provisions of the no further action letter.

30 (3) Notwithstanding the provisions of paragraph (2) of this  
31 subsection to the contrary, if a person who owns real property obtains  
32 actual knowledge of a discharge of a hazardous substance at the real  
33 property during the period of that person's ownership and  
34 subsequently transfers ownership of the property to another person  
35 without disclosing that knowledge, the transferor shall be strictly liable  
36 for the cleanup and removal costs of the discharge and no defense  
37 under this subsection shall be available to that person.

38 (4) Any federal, State, or local governmental entity which acquires  
39 ownership of real property through bankruptcy, tax delinquency,  
40 abandonment, escheat, eminent domain, condemnation or any  
41 circumstance in which the [government] governmental entity  
42 involuntarily acquires title by virtue of its function as sovereign, or  
43 where the governmental entity acquires the property by any means for  
44 the purpose of promoting the redevelopment of that property, shall not  
45 be liable [for the cleanup and removal costs of], pursuant to  
46 subsection c. of this section or pursuant to common law, to the State



1 or to any other person for any discharge which occurred or began  
2 prior to that ownership. This paragraph shall not [apply]provide any  
3 liability protection to any federal, State or local governmental entity  
4 which has caused or contributed to the discharge of a hazardous  
5 substance. This paragraph shall not provide any liability protection to  
6 any federal, State, or local government entity that acquires ownership  
7 of real property by condemnation or eminent domain where the real  
8 property is being remediated in a timely manner at the time of the  
9 condemnation or eminent domain action.

10 e. [(1) If the Department of Environmental Protection issues a no  
11 further action letter or approves a remedial action workplan after the  
12 effective date of P.L.1996, c.62 (C.55:19-20 et al.) for a site at which  
13 a discharge occurred prior to or after the effective date of P.L.1996,  
14 c.62 (C.55:19-20 et al.), then any person who is not otherwise liable  
15 for any discharge at the site which occurred prior to the department's  
16 approval of the no further action letter or remedial action workplan  
17 shall not be liable for the discharge based solely on that person  
18 becoming an owner or operator of the site of the discharge after the  
19 discharge has occurred. For the purposes of this paragraph, a site  
20 shall constitute the real property defined in the remedial action  
21 workplan or, if no remedial action workplan is required, the no further  
22 action letter. The provisions of this paragraph shall only apply when  
23 the site is located in a qualified municipality as defined pursuant to  
24 section 3 of P.L.1996, c.62 (C.55:19-22) and there is continued  
25 compliance with all of the conditions of the no further action letter, the  
26 remedial action workplan and all applicable engineering and  
27 institutional controls.

28 (2) The] Neither the fund [established pursuant to the "Spill  
29 Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et  
30 seq.),] nor the Sanitary Landfill Contingency Fund established pursuant  
31 to P.L.1981, c.306 (C.13:1E-100 et seq) shall [not] be liable for any  
32 damages incurred by any person who is relieved from liability pursuant  
33 to [this] subsection d. or f. of this section for a remediation that  
34 involves the use of engineering controls but the fund and the Sanitary  
35 Landfill Contingency Fund shall be liable for any remediation that  
36 involves only the use of institutional controls if after a valid no further  
37 action letter has been issued the department orders additional  
38 remediation except that the fund and the Sanitary Landfill Contingency  
39 Fund shall not be liable for any additional remediation that is required  
40 to remove an institutional control.

41 f. Notwithstanding any other provision of this section, a person,  
42 who owns real property acquired on or after the effective date of  
43 P.L. , c. (C. )(before the Legislature as this bill), shall not be  
44 liable for any cleanup and removal costs or damages, under this section  
45 or pursuant to any other statutory or civil common law, to any person,  
46 other than the State and the federal government, harmed by any

1 hazardous substance discharged on that property prior to acquisition,  
2 and any migration off that property related to that discharge, provided  
3 all the conditions of this subsection are met:

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

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

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

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

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

21 The provisions of this subsection shall not relieve any person of  
22 any liability:

23 (1) for a discharge that occurs at that property after the person  
24 acquired the property;

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

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

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

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

37 g. Nothing in the amendatory provisions to this section adopted  
38 pursuant to P.L. \_\_\_\_\_, c. \_\_\_\_\_ (before the Legislature as this bill) shall be  
39 construed to remove any defense to liability that a person may have  
40 had pursuant to subsection e. of this section that existed prior to the  
41 effective date of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (before the Legislature as this bill).

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

44 (cf: P.L.1996, c.62, s.56)

45

46 21. Section 2 of P.L.1995, c.413 (C.54:4-3.151) is amended to

1 read as follows:

2 2. The Legislature finds that there are numerous properties that  
3 are underutilized or that have been abandoned and that are not being  
4 utilized for any commercial use because of contamination that exists  
5 at those properties; that abandoned contaminated properties harm  
6 society by causing a burden on municipal services while failing to  
7 contribute to the funding of those services; that a disproportionate  
8 percentage of these properties are located in older urban municipalities  
9 given the fact that these municipalities were once the center for  
10 industrial production; that the revitalization of these properties will not  
11 only bring tax ratables to the municipality and other local  
12 governments, but will result in job creation and foster urban  
13 redevelopment; that one of the central tenets of the State Development  
14 and Redevelopment Plan is to redevelop urban areas with existing  
15 utilities and infrastructure and that the use of these now abandoned or  
16 underutilized sites for commercial purposes will make a significant  
17 contribution toward implementing the plan; that the federal "Clean Air  
18 Act" encourages the reindustrialization of urban areas as this would  
19 provide jobs near where people live thus reducing harmful air  
20 pollutants emitted from automobiles needed to travel distances to  
21 places of employment; and that it is in the economic interest of the  
22 State and the municipalities in which abandoned or underutilized  
23 contaminated properties are located to encourage the remediation of  
24 these properties so that they can be reused or fully used for  
25 commercial, residential, or other productive purposes.

26 (cf: P.L.1995, c.413, s.2)

27

28 22. Section 3 of P.L.1995, c.413, (C.54:4-3.152) is amended to  
29 read as follows:

30 3. As used in this act:

31 "Assessor" means the municipal tax assessor appointed pursuant  
32 to the provisions of chapter 9 of Title 40A of the New Jersey Statutes;

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

38 "Environmental opportunity zone" means any qualified real  
39 property that has been designated by the governing body as an  
40 environmental opportunity zone pursuant to section 4 of P.L.1995,  
41 c.413 (C.54:4-3.153);

42 "Limited restricted use remedial action" means any remedial action  
43 that requires the continued use of institutional controls but does not  
44 require the use of an engineering control;

45 "Qualified real property" means any parcel of real property that is  
46 now vacant or underutilized, which is in need of a remediation due to

1 a discharge or threatened discharge of a contaminant [, and which is  
2 listed in the most recent Department of Environmental Protection  
3 publication of known hazardous discharge sites in New Jersey  
4 prepared pursuant to P.L.1982, c.202 (C.58:10-23.15 et seq.)];

5 "Remediation" means all necessary actions to investigate and clean  
6 up or respond to any known, suspected, or threatened discharge of  
7 contaminants, including, as necessary, the preliminary assessment, site  
8 investigation, remedial investigation, and remedial action [.] ;

9 "Remediation cost" means cost associated with the implementation  
10 of a remediation, including all direct and indirect legal, administrative  
11 and capital costs, engineering costs, and annual operation, maintenance,  
12 and monitoring costs;

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

17 (cf: P.L.1995, c.413, s.3)

18  
19 23. Section 5 of P.L.1995, c.413 (C.54:4-3.154) is amended to  
20 read as follows:

21 5. The governing body of a municipality which has adopted an  
22 ordinance pursuant to section 4 of P.L.1995, c.413 (C.54:4-3.153),  
23 [may] shall, by ordinance, provide for exemptions of real property  
24 taxes for environmental opportunity zones. The governing body shall  
25 include the following items in its enabling ordinance:

26 a. A property tax exemption term of ten years except that a tax  
27 exemption may be extended up to fifteen years, at the municipality's  
28 option, if the qualified real property is to be remediated with a limited  
29 restricted use remedial action or an unrestricted use remedial action .  
30 The property tax exemption shall end if the difference between the  
31 real property taxes otherwise due and payments made in lieu of those  
32 taxes equals the total remediation cost for the qualified real property;

33 b. The application procedure for an exemption authorized under  
34 P.L.1995, c.413 (C.54:4-3.150 et seq.);

35 c. The method of computing payments in lieu of real property  
36 taxes pursuant to subsection b. of section 7 of P.L.1995, c.413  
37 (C.54:4-3.156);

38 d. An approval method for exemption applications by the assessor  
39 or by ordinance on a per application basis; and

40 e. A requirement that the environmental opportunity zone will be  
41 remediated in compliance with the remediation [standards] regulations  
42 adopted by the Department of Environmental Protection pursuant to  
43 P.L.1993, c.139 (C.58:10B-1 et al.), that the owner of the property  
44 will enter into a memorandum of agreement or administrative consent  
45 order with the department to perform the remediation and will  
46 complete the remediation pursuant to the agreement or order, and that,

1 once remediated, the environmental opportunity zone will be used for  
2 a commercial [or] , industrial, residential, or other productive purpose  
3 during the time period for which the real property tax exemption is  
4 given.

5 (cf: P.L.1995, c.413, s.5)

6

7 24. Section 7 of P.L.1995, c.413 (C.54:4-3.156) is amended to  
8 read as follows:

9 7. a. Each approved exemption shall be evidenced by a financial  
10 agreement between the municipality and the applicant. The agreement  
11 shall be prepared by the applicant and shall contain the representations  
12 that are required by the enabling ordinance. The agreement shall  
13 provide for the applicant to annually pay to the municipality an amount  
14 in lieu of real property taxes, to be computed according to subsection  
15 b. of this section. With the approval of the governing body, the  
16 agreement may be assigned to a subsequent owner of the  
17 environmental opportunity zone.

18 b. Payments in lieu of real property taxes may be computed as a  
19 portion of the real property taxes otherwise due, according to the  
20 following schedule:

21 (1) In the first tax year following execution of a memorandum of  
22 agreement or administrative consent order, no payment in lieu of taxes  
23 otherwise due;

24 (2) In the second tax year following execution of a memorandum  
25 of agreement or administrative consent order, an amount not less than  
26 10% of taxes otherwise due;

27 (3) In the third tax year following execution of a memorandum of  
28 agreement or administrative consent order, an amount not less than  
29 20% of taxes otherwise due;

30 (4) In the fourth tax year following execution of a memorandum of  
31 agreement or administrative consent order, an amount not less than  
32 30% of taxes otherwise due;

33 (5) In the fifth tax year following execution of a memorandum of  
34 agreement or administrative consent order, an amount not less than  
35 40% of taxes otherwise due;

36 (6) In the sixth tax year following execution of a memorandum of  
37 agreement or administrative consent order, an amount not less than  
38 50% of the taxes otherwise due;

39 (7) In the seventh tax year following execution of a memorandum  
40 of agreement or administrative consent order, an amount not less than  
41 60% of the taxes otherwise due;

42 (8) In the eighth tax year following execution of a memorandum of  
43 agreement or administrative consent order, an amount not less than  
44 70% of the taxes otherwise due;

45 (9) In the ninth tax year following execution of a memorandum of  
46 agreement or administrative consent order, an amount not less than

1 80% of the taxes otherwise due;

2 (10) In the tenth and all subsequent tax years following execution  
3 of a memorandum of agreement or administrative consent order, the  
4 exemption shall expire and the full amount of the assessed real  
5 property taxes, taking into account the value of the real property in its  
6 remediated state, shall be due.

7 Where a property tax exemption has been extended because of the  
8 proposed implementation of a limited restricted use remedial action or  
9 unrestricted use remedial action, the municipality may provide for a  
10 different schedule for the payment in lieu of real property taxes which  
11 payments may not exceed the length of the property tax exemption.

12 c. For the purposes of this section, only the amount of "taxes  
13 otherwise due" shall be determined by using the assessed valuation of  
14 the environmental opportunity zone at the time of the approval by the  
15 assessor of the exemption, regardless of any improvement made to the  
16 environmental opportunity zone thereafter and as if the designation of  
17 the environmental opportunity zone had not occurred.

18 d. Notwithstanding any other provision in P.L.1995, c.413  
19 (C.54:4-3.150 et seq.), if at any time the governing body of the  
20 municipality finds that the memorandum of agreement for remediation  
21 of the environmental opportunity zone has been terminated at the  
22 option of the applicant, unless if an administrative consent order is  
23 issued in its place, or that any of the conditions in the ordinance as  
24 required by subsection e. of section 5 of P.L.1995, c.413  
25 (C.54:4-3.154) are not met, the period of the property tax exemption  
26 shall end.

27 (cf: P.L.1995, c.413, s.7)

28

29 25. (New Section) The Department of Environmental Protection  
30 shall:

31 (1) Prepare materials for dissemination to the public that explain  
32 the environmental and health risks associated with site remediations in  
33 general and which are designed to assist local governments and the  
34 public in assessing the risks associated with particular site remediation  
35 projects;

36 (2) Serve as an informational resource for county improvement  
37 authorities who are involved in remediating and redeveloping  
38 contaminated redevelopment areas and for municipalities and residents  
39 of this State who may be impacted by the remediation or  
40 redevelopment of contaminated real property regardless of who is  
41 undertaking the remediation or redevelopment;

42 (3) Work with residents and municipalities to form neighborhood  
43 informational groups whose purpose is to research, understand and  
44 disseminate information in neighborhoods concerning the public health  
45 and environmental risks associated with site remediations and  
46 redevelopment, as well as the economic benefits to be gained; and

1 (4) Make recommendations to the Legislature and the Governor  
2 in order to improve the public understanding, perception and risk  
3 associated with site remediations in the State.

4  
5 26. Section 12 of P.L.1970, c.33 (C.13:1D-9) is amended to read  
6 as follows:

7 12. The department shall formulate comprehensive policies for the  
8 conservation of the natural resources of the State, the promotion of  
9 environmental protection and the prevention of pollution of the  
10 environment of the State. The department shall in addition to the  
11 powers and duties vested in it by this act or by any other law have the  
12 power to:

13 a. Conduct and supervise research programs for the purpose of  
14 determining the causes, effects and hazards to the environment and its  
15 ecology;

16 b. Conduct and supervise Statewide programs of education,  
17 including the preparation and distribution of information relating to  
18 conservation, environmental protection and ecology;

19 c. Require the registration of persons engaged in operations which  
20 may result in pollution of the environment and the filing of reports by  
21 them containing such information as the department may prescribe to  
22 be filed relative to pollution of the environment, all in accordance with  
23 applicable codes, rules or regulations established by the department;

24 d. Enter and inspect any building or place for the purpose of  
25 investigating an actual or suspected source of pollution of the  
26 environment and ascertaining compliance or noncompliance with any  
27 codes, rules and regulations of the department. Any information  
28 relating to secret processes concerning methods of manufacture or  
29 production, obtained in the course of such inspection, investigation or  
30 determination, shall be kept confidential, except this information shall  
31 be available to the department for use, when relevant, in any  
32 administrative or judicial proceedings undertaken to administer,  
33 implement, and enforce State environmental law, but shall remain  
34 subject only to those confidentiality protections otherwise afforded by  
35 federal law and by the specific State environmental laws and  
36 regulations that the department is administering, implementing and  
37 enforcing in that particular case or instance. In addition, this  
38 information shall be available upon request to the United States  
39 Government for use in administering, implementing, and enforcing  
40 federal environmental law, but shall remain subject to the  
41 confidentiality protection afforded by federal law. If samples are  
42 taken for analysis, a duplicate of the analytical report shall be furnished  
43 promptly to the person suspected of causing pollution of the  
44 environment;

45 e. Receive or initiate complaints of pollution of the environment,  
46 including thermal pollution, hold hearings in connection therewith and

1 institute legal proceedings for the prevention of pollution of the  
2 environment and abatement of nuisances in connection therewith and  
3 shall have the authority to seek and obtain injunctive relief and the  
4 recovery of fines and penalties in summary proceedings in the  
5 Superior Court;

6 f. Prepare, administer and supervise Statewide, regional and local  
7 programs of conservation and environmental protection, giving due  
8 regard for the ecology of the varied areas of the State and the  
9 relationship thereof to the environment, and in connection therewith  
10 prepare and make available to appropriate agencies in the State  
11 technical information concerning conservation and environmental  
12 protection, cooperate with the Commissioner of Health in the  
13 preparation and distribution of environmental protection and health  
14 bulletins for the purpose of educating the public, and cooperate with  
15 the Commissioner of Health in the preparation of a program of  
16 environmental protection;

17 g. Encourage, direct and aid in coordinating State, regional and  
18 local plans and programs concerning conservation and environmental  
19 protection in accordance with a unified Statewide plan which shall be  
20 formulated, approved and supervised by the department. In reviewing  
21 such plans and programs and in determining conditions under which  
22 such plans may be approved, the department shall give due  
23 consideration to the development of a comprehensive ecological and  
24 environmental plan in order to be assured insofar as is practicable that  
25 all proposed plans and programs shall conform to reasonably  
26 contemplated conservation and environmental protection plans for the  
27 State and the varied areas thereof;

28 h. Administer or supervise programs of conservation and  
29 environmental protection, prescribe the minimum qualifications of all  
30 persons engaged in official environmental protection work, and  
31 encourage and aid in coordinating local environmental protection  
32 services;

33 i. Establish and maintain adequate bacteriological, radiological and  
34 chemical laboratories with such expert assistance and such facilities as  
35 are necessary for routine examinations and analyses, and for original  
36 investigations and research in matters affecting the environment and  
37 ecology;

38 j. Administer or supervise a program of industrial planning for  
39 environmental protection; encourage industrial plants in the State to  
40 undertake environmental and ecological engineering programs; and  
41 cooperate with the State Departments of Health, Labor, and  
42 Commerce and Economic Development in formulating rules and  
43 regulations concerning industrial sanitary conditions;

44 k. Supervise sanitary engineering facilities and projects within the  
45 State, authority for which is now or may hereafter be vested by law  
46 in the department, and shall, in the exercise of such supervision, make



1 and enforce rules and regulations concerning plans and specifications,  
2 or either, for the construction, improvement, alteration or operation  
3 of all public water supplies, all public bathing places, landfill  
4 operations and of sewerage systems and disposal plants for treatment  
5 of sewage, wastes and other deleterious matter, liquid, solid or  
6 gaseous, require all such plans or specifications, or either, to be first  
7 approved by it before any work thereunder shall be commenced,  
8 inspect all such projects during the progress thereof and enforce  
9 compliance with such approved plans and specifications;

10 l. Undertake programs of research and development for the  
11 purpose of determining the most efficient, sanitary and economical  
12 ways of collecting, disposing or utilizing of solid waste;

13 m. Construct and operate, on an experimental basis, incinerators  
14 or other facilities for the disposal of solid waste, provide the various  
15 municipalities and counties of this State, the Board of Public Utilities,  
16 and the Division of Local Government Services in the Department of  
17 Community Affairs with statistical data on costs and methods of solid  
18 waste collection, disposal and utilization;

19 n. Enforce the State air pollution, water pollution, conservation,  
20 environmental protection, waste and refuse disposal laws, rules and  
21 regulations, including the making and signing of a complaint and  
22 summons for their violation by serving the summons upon the violator  
23 and thereafter filing the complaint promptly with a court having  
24 jurisdiction;

25 o. Acquire by purchase, grant, contract or condemnation, title to  
26 real property, for the purpose of demonstrating new methods and  
27 techniques for the collection or disposal of solid waste;

28 p. Purchase, operate and maintain, pursuant to the provisions of  
29 this act, any facility, site, laboratory, equipment or machinery  
30 necessary to the performance of its duties pursuant to this act;

31 q. Contract with any other public agency or corporation  
32 incorporated under the laws of this or any other state for the  
33 performance of any function under this act;

34 r. With the approval of the Governor, cooperate with, apply for,  
35 receive and expend funds from, the federal government, the State  
36 Government, or any county or municipal government or from any  
37 public or private sources for any of the objects of this act;

38 s. Make annual and such other reports as it may deem proper to  
39 the Governor and the Legislature, evaluating the demonstrations  
40 conducted during each calendar year;

41 t. Keep complete and accurate minutes of all hearings held before  
42 the commissioner or any member of the department pursuant to the  
43 provisions of this act. All such minutes shall be retained in a  
44 permanent record, and shall be available for public inspection at all  
45 times during the office hours of the department;

46 u. Require any person subject to a lawful order of the department,

1 which provides for a period of time during which such person subject  
2 to the order is permitted to correct a violation, to post a performance  
3 bond or other security with the department in such form and amount  
4 as shall be determined by the department. Such bond need not be for  
5 the full amount of the estimated cost to correct the violation but may  
6 be in such amount as will tend to insure good faith compliance with  
7 said order. The department shall not require such a bond or security  
8 from any public body, agency or authority. In the event of a failure  
9 to meet the schedule prescribed by the department, the sum named in  
10 the bond or other security shall be forfeited unless the department  
11 shall find that the failure is excusable in whole or in part for good  
12 cause shown, in which case the department shall determine what  
13 amount of said bond or security, if any, is a reasonable forfeiture  
14 under the circumstances. Any amount so forfeited shall be utilized by  
15 the department for the correction of the violation or violations, or for  
16 any other action required to insure compliance with the order ; and  
17 v. Encourage and aid in coordinating State, regional and local  
18 plans, efforts and programs concerning the remediation and reuse of  
19 former industrial or commercial properties that are currently  
20 underutilized or abandoned and at which there has been, or is  
21 perceived to have been, a discharge, or threat of a discharge, of a  
22 contaminant. For the purposes of this subsection, "underutilized  
23 property" shall not include properties undergoing a reasonably timely  
24 remediation or redevelopment process.

25 (cf: P.L.1984, c.5, s.1)

26

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

29 2. The Legislature finds and declares: that New Jersey's lands and  
30 waters constitute a unique and delicately balanced resource; that the  
31 protection and preservation of these lands and waters promote the  
32 health, safety and welfare of the people of this State; that the tourist  
33 and recreation industry dependent on clean waters and beaches is vital  
34 to the economy of this State; that the State is the trustee, for the  
35 benefit of its citizens, of all natural resources within its jurisdiction;  
36 and that the storage and transfer of petroleum products and other  
37 hazardous substances between vessels, between facilities and vessels,  
38 and between facilities, whether onshore or offshore, is a hazardous  
39 undertaking and imposes risk of damage to persons and property  
40 within this State.

41 The Legislature finds and declares that the discharge of petroleum  
42 products and other hazardous substances within or outside the  
43 jurisdiction of this State constitutes a threat to the economy and  
44 environment of this State. The Legislature intends by the passage of  
45 this act to exercise the powers of this State to control the transfer and  
46 storage of hazardous substances and to provide liability for damage

1 sustained within this State as a result of any discharge of said  
2 substances, by requiring the prompt containment and removal of such  
3 pollution and substances, and to provide a fund for swift and adequate  
4 compensation to resort businesses and other persons damaged by such  
5 discharges, and to provide for the defense and indemnification of  
6 certain persons under contract with the State for claims or actions  
7 resulting from the provision of services or work to mitigate or clean  
8 up a release or discharge of hazardous substances.

9 The Legislature further finds and declares that many former  
10 industrial sites in the State remain vacant or underutilized in part  
11 because they have been contaminated by a discharge of a hazardous  
12 substance; that these properties constitute an economic drain on the  
13 State and the municipalities in which they exist; that it is in the public  
14 interest to have these properties cleaned up sufficiently so that they  
15 can be safely returned to productive use; and that it should be a  
16 function of the Department of Environmental Protection to facilitate  
17 and coordinate activities and functions designed to clean up  
18 contaminated sites in this State.

19 (cf: P.L.1991, c.373, s.12)

20

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

23 7. a. (1) Whenever any hazardous substance is discharged, the  
24 department may, in its discretion, act to clean up and remove or  
25 arrange for the cleanup and removal of [such] the discharge or may  
26 direct the discharger to clean up and remove, or arrange for the  
27 cleanup and removal of, [such] the discharge. If the discharge occurs  
28 at any hazardous waste facility or solid waste [disposal] facility, the  
29 department may order the hazardous waste facility or solid waste  
30 facility closed for the duration of the cleanup and removal operations.  
31 The department may monitor the discharger's compliance with any  
32 such directive. Any discharger who fails to comply with such a  
33 directive shall be liable to the department in an amount equal to three  
34 times the cost of such cleanup and removal, and shall be subject to the  
35 revocation or suspension of any license issued or permit [he holds]  
36 held authorizing [him] that person to operate a hazardous waste  
37 facility or solid waste [disposal] facility.

38 (2) Whenever one or more dischargers or persons cleans up and  
39 removes a discharge of a hazardous substance, those dischargers and  
40 persons shall have a right of contribution against all other dischargers  
41 and persons in any way responsible for a discharged hazardous  
42 substance or other persons who are liable for the cost of the cleanup  
43 and removal of that discharge of a hazardous substance. In an action  
44 for contribution, the contribution plaintiffs need prove only that a  
45 discharge occurred for which the contribution defendant or defendants  
46 are liable pursuant to the provisions of subsection c. of section 8 of

1 P.L.1976, c.141 (C.58:10-23.11g), and the contribution defendant  
2 shall have only the defenses to liability available to parties pursuant to  
3 subsection d. of section 8 of P.L.1976, c.141 (C.58:10-23.11g). In  
4 resolving contribution claims, a court may allocate the costs of cleanup  
5 and removal among liable parties using such equitable factors as the  
6 court determines are appropriate. Nothing in this subsection shall  
7 affect the right of any party to seek contribution pursuant to any other  
8 statute or under common law.

9 (3) [The department may, in its sole discretion, when it will  
10 expedite the cleanup and removal of any discharged hazardous  
11 substance, and when the department determines that it is in the public  
12 interest, authorize parties who have entered into an agreement with the  
13 department to clean up and remove or arrange for the cleanup and  
14 removal of a hazardous substance and who seek contribution, to  
15 collect treble damages from any contribution defendant who has failed  
16 or refused to comply with any directive, was named on the directive,  
17 and who is subject to contribution pursuant to this subsection. The  
18 treble damages shall be based on the amount of contribution owed by  
19 a contribution defendant, which share of contribution shall be  
20 determined by the court. A contribution defendant from whom treble  
21 damages is sought in a contribution action shall not be assessed treble  
22 damages by any court where the contribution defendant, for good  
23 cause shown, failed or refused to enter the settlement agreement with  
24 the department or with the contribution plaintiffs or where principles  
25 of fundamental fairness will be violated. One third of an award of  
26 treble damages in a contribution action pursuant to this paragraph shall  
27 be paid to the department, which sum shall be deposited in the New  
28 Jersey Spill Compensation Fund. The other two thirds of the treble  
29 damages award shall be shared by the contribution plaintiffs in the  
30 proportion of the responsibility for the cost of the cleanup and removal  
31 that the contribution plaintiffs have agreed to with the department or  
32 in an amount as has been agreed to by those parties. Nothing in this  
33 subsection affects the rights of any party to seek contribution pursuant  
34 to any other statute or under common law.]

35 In an action for contribution taken pursuant to this subsection, a  
36 contribution plaintiff may file a claim with the court for treble  
37 damages. A contribution plaintiff may be granted an award of treble  
38 damages by the court from one or more contribution defendants only  
39 upon a finding by the court that: (a) the contribution defendant is a  
40 person who was named on or subject to a directive issued by the  
41 department, who failed or refused to comply with such a directive, and  
42 who is subject to contribution pursuant to this subsection; (b) the  
43 contribution plaintiff gave 30 days notice to the contribution defendant  
44 of the plaintiff's intention to seek treble damages pursuant to this  
45 subsection and gave the contribution defendant an opportunity to  
46 participate in the cleanup; (c) the contribution defendant failed or

1 refused to enter into a settlement agreement with the contribution  
2 plaintiff; and (d) the contribution plaintiff entered into an agreement  
3 with the department to remediate the site. Notwithstanding the  
4 foregoing requirements, any authorization to seek treble damages  
5 made by the department prior to the effective date of P.L. . . . , c.  
6 (pending in the Legislature as this bill) shall remain in effect, provided  
7 that the department or the contribution plaintiff gave notice to the  
8 contribution defendant of the plaintiff's request to the department for  
9 authorization to seek treble damages.

10 A contribution defendant from whom treble damages is sought in  
11 a contribution action shall not be assessed treble damages by any court  
12 where the contribution defendant, for good cause shown, failed or  
13 refused to enter the settlement agreement with the contribution  
14 plaintiff or where principles of fundamental fairness will be violated.  
15 One third of an award of treble damages in a contribution action  
16 pursuant to this paragraph shall be paid to the department, which sum  
17 shall be deposited in the New Jersey Spill Compensation Fund. The  
18 other two thirds of the treble damages award shall be shared by the  
19 contribution plaintiffs in the proportion of the responsibility for the  
20 cost of the cleanup and removal that the contribution plaintiffs have  
21 agreed to with the department or in an amount as has been agreed to  
22 by those parties.

23 Cleanup and removal of hazardous substances and actions to  
24 minimize damage from discharges shall, to the greatest extent possible,  
25 be in accordance with the National Contingency Plan for cleanup and  
26 removal of oil and hazardous substances established pursuant to  
27 section 311(c)(2) of the federal Water Pollution Control Act  
28 Amendments of 1972 (Pub.L.92-500, 33 U.S.C. s.1251 et seq.).

29 Whenever the department acts to clean up and remove a discharge  
30 or contracts to secure prospective cleanup and removal services, it is  
31 authorized to draw upon the money available in the fund. Such money  
32 shall be used to pay promptly for all cleanup and removal costs  
33 incurred by the department in cleaning up, in removing or in  
34 minimizing damage caused by such discharge.

35 Nothing in this section is intended to preclude removal and cleanup  
36 operations by any person threatened by such discharges, provided such  
37 persons coordinate and obtain approval for such actions with ongoing  
38 State or federal operations. No action taken by any person to contain  
39 or clean up and remove a discharge shall be construed as an admission  
40 of liability for said discharge. No person who renders assistance in  
41 containing or cleaning up and removing a discharge shall be liable for  
42 any civil damages to third parties resulting solely from acts or  
43 omissions of such person in rendering such assistance, except for acts  
44 or omissions of gross negligence or willful misconduct. In the course  
45 of cleanup or removal operations, no person shall discharge any  
46 detergent into the waters of this State without prior authorization of

1 the commissioner.

2 b. Notwithstanding any other provisions of P.L.1976, c.141  
3 (C.58:10-23.11 et seq.), the department, subject to the approval of the  
4 administrator with regard to the availability of funds therefor, or a  
5 local unit as a part of an emergency response action and with the  
6 approval of the department, may clean up and remove or arrange for  
7 the cleanup and removal of any hazardous substance which:

8 (1) Has not been discharged from a grounded or disabled vessel,  
9 if the department determines that such cleanup and removal is  
10 necessary to prevent an imminent discharge of such hazardous  
11 substance; or

12 (2) Has not been discharged, if the department determines that  
13 such substance is not satisfactorily stored or contained and said  
14 substance possesses any one or more of the following characteristics:

15 (a) Explosiveness;  
16 (b) High flammability;  
17 (c) Radioactivity;  
18 (d) Chemical properties which in combination with any discharged  
19 hazardous substance at the same storage facility would create a  
20 substantial risk of imminent damage to public health or safety or an  
21 imminent and severe damage to the environment;

22 (e) Is stored in a container from which its discharge is imminent  
23 as a result of contact with a hazardous substance which has already  
24 been discharged and such additional discharge would create a  
25 substantial risk of imminent damage to public health or safety or  
26 imminent and severe damage to the environment; or

27 (f) High toxicity and is stored or being transported in a container  
28 or motor vehicle, truck, rail car or other mechanized conveyance from  
29 which its discharge is imminent as a result of the significant  
30 deterioration or the precarious location of the container, motor  
31 vehicle, truck, rail car or other mechanized conveyance, and such  
32 discharge would create a substantial risk of imminent damage to public  
33 health or safety or imminent and severe damage to the environment;  
34 or

35 (3) Has been discharged prior to the effective date of P.L.1976,  
36 c.141.

37 c. If and to the extent that he determines that funds are available,  
38 the administrator shall approve and make payments for any cleanup  
39 and removal costs incurred by the department for the cleanup and  
40 removal of a hazardous substance other than petroleum as authorized  
41 by subsection b. of this section; provided that in determining the  
42 availability of funds, the administrator shall not include as available  
43 funds revenues realized or to be realized from the tax on the transfer  
44 of petroleum, to the extent that such revenues result from a tax levied  
45 at a rate in excess of \$0.01 per barrel, pursuant to subsection b. of  
46 section 9 of P.L.1976, c.141 (C.58:10-23.11h), unless the

1 administrator determines that the sum of claims paid by the fund on  
2 behalf of petroleum discharges or cleanup and removals plus pending  
3 reasonable claims against the fund on behalf of petroleum discharges  
4 or cleanup and removals is greater than 30% of the sum of all claims  
5 paid by the fund plus all pending reasonable claims against the fund.

6 d. The administrator may only approve and make payments for any  
7 cleanup and removal costs incurred by the department for the cleanup  
8 and removal of a hazardous substance discharged prior to the effective  
9 date of P.L.1976, c.141, pursuant to subsection b. of this section, if,  
10 and to the extent that, he determines that adequate funds from another  
11 source are not or will not be available; and provided further, with  
12 regard to the cleanup and removal costs incurred for discharges which  
13 occurred prior to the effective date of P.L.1976, c.141, the  
14 administrator may not during any one-year period pay more than  
15 \$18,000,000 in total or more than \$3,000,000 for any discharge or  
16 related set or series of discharges.

17 e. Notwithstanding any other provisions of P.L.1976, c.141, the  
18 administrator, after considering, among any other relevant factors, the  
19 department's priorities for spending funds pursuant to P.L.1976, c.141,  
20 and within the limits of available funds, shall make payments for the  
21 restoration or replacement of, or connection to an alternative water  
22 supply for, any private residential well destroyed, contaminated, or  
23 impaired as a result of a discharge prior to the effective date of  
24 P.L.1976, c.141; provided, however, total payments for said purpose  
25 shall not exceed \$500,000 for the period between the effective date of  
26 this subsection e. and January 1, 1983, and in any calendar year  
27 thereafter.

28 f. Any expenditures made by the administrator pursuant to this act  
29 shall constitute, in each instance, a debt of the discharger to the fund.  
30 The debt shall constitute a lien on all property owned by the discharger  
31 when a notice of lien, incorporating a description of the property of  
32 the discharger subject to the cleanup and removal and an identification  
33 of the amount of cleanup, removal and related costs expended from  
34 the fund, is duly filed with the clerk of the Superior Court. The clerk  
35 shall promptly enter upon the civil judgment or order docket the name  
36 and address of the discharger and the amount of the lien as set forth  
37 in the notice of lien. Upon entry by the clerk, the lien, to the amount  
38 committed by the administrator for cleanup and removal, shall attach  
39 to the revenues and all real and personal property of the discharger,  
40 whether or not the discharger is insolvent.

41 The notice of lien filed pursuant to this subsection which affects  
42 the property of a discharger subject to the cleanup and removal of a  
43 discharge shall create a lien with priority over all other claims or liens  
44 which are or have been filed against the property, except if the  
45 property comprises six dwelling units or less and is used exclusively  
46 for residential purposes, this notice of lien shall not affect any valid

1 lien, right or interest in the property filed in accordance with  
2 established procedure prior to the filing of this notice of lien. The  
3 notice of lien filed pursuant to this subsection which affects any  
4 property of a discharger, other than the property subject to the cleanup  
5 and removal, shall have priority from the day of the filing of the notice  
6 of the lien over all other claims and liens filed against the property, but  
7 shall not affect any valid lien, right, or interest in the property filed in  
8 accordance with established procedure prior to the filing of a notice of  
9 lien pursuant to this subsection.

10 g. In the event a vessel discharges a hazardous substance into the  
11 waters of the State, the cleanup and removal and related costs  
12 resulting from that discharge that constitute a maritime lien on the  
13 discharging vessel pursuant to 33 U.S.C. s.1321 or any other law, may  
14 be recovered by the Department of Environmental Protection in an  
15 action in rem brought in the district court of the United States. An  
16 impoundment of a vessel resulting from this action shall continue until:

17 (1) the claim against the owner or operator of the vessel for the  
18 cleanup and removal and related costs of the discharge is satisfied;

19 (2) the owner or operator of the vessel, or a representative of the  
20 owner or operator, provides evidence of financial responsibility as  
21 provided in section 2 of P.L.1991, c.58 (C.58:10-23.11g2) and  
22 satisfactorily guarantees that these costs will be paid; or

23 (3) the impoundment is otherwise vacated by a court order. The  
24 remedy provided in this subsection is in addition to any other remedy  
25 or enforcement power that the department may have under any other  
26 law.

27 Any action brought by the State pursuant to this subsection and  
28 any impoundment of a vessel resulting therefrom shall not subject the  
29 State to be in any way liable for a subsequent or continued discharge  
30 of a hazardous substance from that vessel.

31 (cf: P.L.1991, c.373, s.14)

32

33 29. Section 1 of P.L.1993, c.112 (C.58:10-23.11g4) is amended  
34 to read as follows:

35 1. For purposes of sections 1 through 5 of [this act] P.L.1993,  
36 c.112 (C.58:10-23.11g4 through 58:10-23.11g8):

37 "Active participation in the management" or "participation in the  
38 management" means actual participation in the management or  
39 operational affairs by the holder of the security interest and shall not  
40 include the mere capacity, or ability to influence, or the unexercised  
41 right to control vessel [or] , facility , or underground storage tank  
42 facility operations.

43 (1) A holder of a security interest shall be considered to be in  
44 active participation in the management, while the borrower is still in  
45 possession, only if the holder either:

46 (a) exercises decision making control over the borrower's



1 environmental compliance, such that the holder has undertaken  
2 responsibility for the borrower's waste disposal or hazardous substance  
3 handling practices; or

4 (b) exercises control at a level comparable to that of a manager of  
5 the borrower's enterprise, such that the holder has assumed or  
6 manifested responsibility for the overall management of the enterprise  
7 encompassing the day-to-day decision making of the enterprise with  
8 respect to:

9 (i) environmental compliance; or

10 (ii) all, or substantially all, of the operational (as opposed to  
11 financial or administrative) aspects of the enterprise other than  
12 environmental compliance. Operational aspects of the enterprise  
13 include functions such as that of facility manager, underground  
14 storage tank facility manager, or plant manager, operations manager,  
15 chief operating officer, or chief executive officer. Financial or  
16 administrative aspects include functions such as that of credit manager,  
17 accounts payable or receivable manager, or both, personnel manager,  
18 controller, chief financial officer, or similar functions.

19 (2) No act or omission prior to the time that indicia of ownership  
20 are held primarily to protect a security interest constitutes evidence of  
21 participation in management. A prospective holder who undertakes or  
22 requires an environmental inspection of the vessel [or] facility, or  
23 underground storage tank facility in which indicia of ownership are to  
24 be held, or requires a prospective borrower to clean up a vessel [or],  
25 facility, or underground storage tank facility or to comply or come  
26 into compliance (whether prior or subsequent to the time that indicia  
27 of ownership are held primarily to protect a security interest) with any  
28 applicable law or regulation, is not by such action considered to be  
29 participating in the vessel's [or], facility's, or underground storage tank  
30 facility's management, provided however, that a holder shall not be  
31 required to conduct or require an inspection to qualify for the  
32 protection for holders granted pursuant to sections 1 through 5 of [this  
33 act] P.L.1993, c.112 (C.58:10-23.11g4 through 58:10-23.11g8), and  
34 the liability of a holder shall not be based on or affected by the holder  
35 not conducting or not requiring an inspection.

36 (3) Actions that are consistent with holding ownership indicia  
37 primarily to protect a security interest do not constitute participation  
38 in management for purposes of sections 1 through 5 of [this act]  
39 P.L.1993, c.112 (C.58:10-23.11g4 through 58:10-23.11g8). The  
40 authority for the holder to make such actions may, but need not, be  
41 contained in contractual or other documents specifying requirements  
42 for financial, environmental, and other warranties, covenants,  
43 conditions, representations or promises from the borrower. Loan  
44 policing and work out activities cover and include all activities up to  
45 foreclosure and its equivalents.

46 (a) A holder who engages in policing activities prior to foreclosure

1 shall remain within the exemption provided that the holder does not by  
2 such actions participate in the management of the vessel [or], facility,  
3 or underground storage tank facility. Such actions include, but are not  
4 limited to, requiring the borrower to clean up the vessel [or], facility,  
5 or underground storage tank facility during the term of the security  
6 interest; requiring the borrower to comply or come into compliance  
7 with applicable federal, State, and local environmental and other laws,  
8 rules and regulations during the term of the security interest; securing  
9 or exercising authority to monitor or inspect the vessel [or], facility,  
10 or underground storage tank facility (including on-site inspections) in  
11 which indicia of ownership are maintained, or the borrower's business  
12 or financial conditions during the term of the security interest; or  
13 taking other actions to adequately police the loan or security interest  
14 (such as requiring a borrower to comply with any warranties,  
15 covenants, conditions, representations or promises from the  
16 borrower).

17 (b) A holder who engages in work out activities prior to  
18 foreclosure and its equivalents shall remain within the exemption  
19 provided that the holder does not by such action participate in the  
20 management of the vessel [or], facility, or underground storage tank  
21 facility. For purposes of this act, "work out" refers to those actions  
22 by which a holder, at any time prior to foreclosure and its equivalents,  
23 seeks to: prevent, cure, or mitigate a default by the borrower or  
24 obligor; or preserve or prevent the diminution of the value of the  
25 security. Work out activities include, but are not limited to:  
26 restructuring or renegotiating the terms of the security interest;  
27 requiring payment of additional rent or interest; exercising  
28 forbearance; requiring or exercising rights pursuant to an assignment  
29 of accounts or other amounts owing to an obligor; requiring or  
30 exercising rights pursuant to an escrow agreement pertaining to  
31 amounts owing to an obligor; providing specific or general financial or  
32 other advice, suggestions, counseling, or guidance; and exercising any  
33 right or remedy the holder is entitled to by law or under any  
34 warranties, covenants, conditions, representations or promises from  
35 the borrower.

36 (4) A holder does not participate in the management of a vessel  
37 [or], facility, or underground storage tank facility by making any  
38 response or performing any response action or undertaking any  
39 cleanup or removal or similar action under the federal "Comprehensive  
40 Environmental Response, Compensation, and Liability Act of 1980,"  
41 Pub.L.96-510 (42 U.S.C. §9601 et seq.), the "Spill Compensation and

1 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), P.L.1986,  
2 c.102 (C.58:10A-21 et seq.), or any other State or federal  
3 environmental law or regulation.

4 "Date of foreclosure" means the date on which the holder obtains  
5 legal or equitable title to the vessel or facility pursuant to or incident  
6 to foreclosure.

7 "Fair consideration" means the value of the security interest when  
8 calculated as an amount equal to or in excess of the sum of the  
9 outstanding principal (or comparable amount in the cases of a lease  
10 that constitutes a security interest) owed to the holder immediately  
11 preceding the acquisition of full title (or possession in the case of  
12 property subject to a lease financing transaction) pursuant to  
13 foreclosure and its equivalents, plus any unpaid interest, rent or  
14 penalties (whether arising before or after foreclosure and its  
15 equivalents), plus all reasonable and necessary costs, fees, or other  
16 charges incurred by the holder incident to work out, foreclosure and  
17 its equivalents, retention, maintaining the business activities of the  
18 enterprise, preserving, protecting and preparing the vessel [or],  
19 facility, or underground storage tank facility prior to sale, re-release of  
20 property held pursuant to a lease financing transaction (whether by a  
21 new lease financing transaction or substitution of the lessee) or other  
22 disposition, plus response costs incurred under applicable federal or  
23 State environmental cleanup laws or regulations, or at the direction of  
24 an on-scene coordinator, less any amounts received by the holder in  
25 connection with any partial disposition of the property, net revenues  
26 received as a result of maintaining the business activities of the  
27 enterprise, and any amounts paid by the borrower subsequent to the  
28 acquisition of full title (or possession in the case of property subject  
29 to a lease financing transaction) pursuant to foreclosure and its  
30 equivalents. In the case of a holder maintaining indicia of ownership  
31 primarily to protect a junior security interest, fair consideration is the  
32 value of all outstanding higher priority security interests plus the value  
33 of the security interest held by the junior holder, each calculated as set  
34 forth in this definition.

35 "Foreclosure" or "foreclosure and its equivalents" means purchase  
36 at foreclosure sale; acquisition or assignment of title in lieu of  
37 foreclosure; termination of a lease or other repossession; acquisition  
38 of a right to title or possession; an agreement in satisfaction of the  
39 obligation; or any other form or informal manner (whether pursuant to  
40 law or under warranties, covenants, conditions, representations or  
41 promises from the borrower) by which the holder acquires title to or  
42 possession of the secured property.

43 "Holder" is a person who maintains indicia of ownership primarily  
44 to protect a security interest. A holder includes the initial holder (such  
45 as a loan originator), any subsequent holder (such as a  
46 successor-in-interest or subsequent purchaser of the security interest

1 on the secondary market), a guarantor of an obligation, surety, or any  
2 other person who holds ownership indicia primarily to protect a  
3 security interest, or a receiver or other person who acts on behalf or  
4 for the benefit of a holder.

5 "Indicia of ownership" means evidence of a security interest,  
6 evidence of an interest in a security interest, or evidence of an interest  
7 in real or personal property securing a loan or other obligation,  
8 including any legal or equitable title to real or personal property  
9 acquired incident to foreclosure and its equivalents. Evidence of such  
10 interests include, but are not limited to, mortgages, deeds of trust,  
11 liens, surety bonds and guarantees of obligations, title held pursuant  
12 to a lease financing transaction in which the lessor does not select  
13 initially the leased property (hereinafter "lease financing transaction"),  
14 legal or equitable title obtained pursuant to foreclosure and their  
15 equivalents. Evidence of such interests also includes assignments,  
16 pledges, or other rights to or other forms of encumbrance against  
17 property that are held primarily to protect a security interest. A  
18 person is not required to hold title or a security interest in order to  
19 maintain indicia of ownership.

20 "Primarily to protect a security interest" means that the holder's  
21 indicia of ownership are held primarily for the purpose of securing  
22 payment or performance of an obligation but does not include indicia  
23 of ownership held primarily for investment purposes, nor ownership  
24 indicia held primarily for purposes other than as a protection for a  
25 security interest. A holder may have other, secondary reasons for  
26 maintaining indicia of ownership, but the primary reasons why any  
27 ownership indicia are held shall be as protection for a security interest.

28 "Security interest" means an interest in a vessel or facility created  
29 or established for the purpose of securing a loan or other obligation.  
30 Security interests include, but are not limited to, mortgages, deeds of  
31 trusts, liens, and title pursuant to lease financing transactions.  
32 Security interests may also arise from transactions such as sale and  
33 leasebacks, conditional sales, installment sales, trusts receipt  
34 transactions, certain assignments, factoring agreements, accounts  
35 receivable financing arrangements, and consignments, if the transaction  
36 creates or establishes an interest in a vessel or facility for the purpose  
37 of securing a loan or other obligation.

38 "Underground storage tank" shall have the same meaning as set  
39 forth in section 2 of P.L.1986, c.102 (C.58:10A-22).

40 "Underground storage tank facility" shall mean one or more  
41 underground storage tanks.

42 (cf: P.L.1993,c.112,s.1)

43

44 30. Section 2 of P.L.1993, c.112 (58:10-23.11g5) is amended to  
45 read as follows:

46 2. A person who maintains indicia of ownership of a vessel [or],

1 facility, or underground storage tank facility primarily to protect a  
2 security interest in a vessel [or], facility, or underground storage tank  
3 facility and who does not participate in the management of the vessel  
4 or facility or underground storage tank facility is not deemed to be an  
5 owner or operator of the vessel [or], facility, or underground storage  
6 tank facility, shall not be deemed the discharger or responsible party  
7 for a discharge from the vessel [or], facility, or underground storage  
8 tank facility and shall not be liable for cleanup costs or damages  
9 resulting from discharges from the vessel or facility pursuant to  
10 sections 8, 18, and 22 of P.L.1976, c.141 (C.58:10-23.11g,  
11 58:10-23.11q and 58:10-23.11u) [or] , section 2 of P.L.1990, c.75  
12 (C.58:10-23.11u1), or section 8 of P.L.1986, c.102 (C.58:10A-28)  
13 except to the extent that liability may still apply to holders after  
14 foreclosure as set forth in section 3 of [this act] P.L.1993, c.112  
15 (C.58:10-23.11g6).

16 (cf: P.L.1993,c.112,s.2)

17

18 31. Section 3 of P.L.1993, c.112 (C.58:10-23.11g6) is amended  
19 to read as follows:

20 3. The indicia of ownership, held after foreclosure, continue to be  
21 maintained primarily as a protection for a security interest provided  
22 that the holder did not participate in management prior to foreclosure  
23 and that the holder undertakes to sell, re-lease property held pursuant  
24 to a lease financing transaction (whether by a new lease financing  
25 transaction or substitution of the lessee) or otherwise divest itself of  
26 the vessel [or], facility, or underground storage tank facility in a  
27 reasonably expeditious manner in accordance with the means and  
28 procedures specified in this section. Such a holder may liquidate,  
29 maintain business operations, undertake environmental response  
30 actions pursuant to State and federal law, and take measures to  
31 preserve, protect or prepare the secured asset prior to sale or other  
32 disposition, without losing status as a person who maintains indicia of  
33 ownership primarily to protect a security pursuant to section 2 of [this  
34 act] P.L.1993, c.112 (C.58:10-23.11g5).

35 a. For purposes of establishing that a holder is seeking to sell,  
36 re-lease property held pursuant to a new lease financing transaction  
37 (whether by a new lease financing transaction or substitution of the  
38 lessee), or divest a vessel [or], facility, or underground storage tank  
39 facility in a reasonably expeditious manner, the holder may use  
40 whatever commercially reasonable means are relevant or appropriate  
41 with respect to the vessel [or], facility, or underground storage tank  
42 facility, or may employ the means specified in this section.

43 b. (1) A holder that outbids, rejects or fails to act upon a written  
44 bona fide, firm offer of fair consideration within 90 days of receipt of  
45 the offer, and which offer is received at any time after six months  
46 following the date of foreclosure, shall not be deemed to be using a

1 commercially reasonable means for the purpose of this section. A  
2 "written bona fide, firm offer" means a legally enforceable,  
3 commercially reasonable, cash offer solely for the foreclosed vessel  
4 [or], facility, or underground storage tank facility, including all  
5 material terms of the transaction, from a ready, willing, and able  
6 purchaser who demonstrates to the holder's satisfaction the ability to  
7 perform. For purposes of this subsection, the six-month period begins  
8 to run from the time that the holder acquires a marketable title,  
9 provided that the holder, after the expiration of any redemption or  
10 other waiting period provided by law, was acting diligently to acquire  
11 marketable title.

12 (2) A holder that outbids, rejects, or fails to act upon an offer of  
13 fair consideration for the vessel [or], facility, or underground storage  
14 tank facility within the 90-day period, establishes that the ownership  
15 indicia in the secured property are not held primarily to protect the  
16 security interest, unless the holder is required, in order to avoid  
17 liability under federal or State law, to make a higher bid, to obtain a  
18 higher offer, or to seek or obtain an offer in a different manner.

19 c. A holder establishes that it is proceeding in a commercially  
20 reasonable manner after foreclosure by, within 12 months following  
21 foreclosure, listing the vessel [or], facility, or underground storage  
22 tank facility with a broker, dealer, or agent who deals with the type of  
23 property in question, or by advertising the vessel [or], facility, or  
24 underground storage tank facility as being for sale or disposition on  
25 at least a monthly basis in either a real estate publication or a trade or  
26 other publication suitable for the vessel [or], facility, or underground  
27 storage tank facility in question, or a newspaper of general circulation  
28 (defined as one with a circulation over 10,000, or one suitable under  
29 any applicable federal, State, or local rules of court for publication  
30 required by court order or rules of civil procedure) covering the area  
31 where the property is located. For purposes of this subsection, the  
32 12-month period begins to run from the time that the holder acquires  
33 marketable title, provided that the holder, after the expiration of any  
34 redemption or other waiting period provided by law, was acting  
35 diligently to acquire marketable title.

36 d. A holder shall sell, re-lease the property held pursuant to a new  
37 lease financing transaction, or otherwise divest such vessel [or],  
38 facility, or underground storage tank facility in a reasonably  
39 expeditious manner, but not later than five years after the date of  
40 foreclosure, except that a holder may continue to hold the property for  
41 a time period longer than five years without losing status as a person  
42 who maintains indicia of ownership primarily to protect a security  
43 interest if (1) the holder has made a good faith effort to sell, re-lease  
44 or otherwise divest itself of the property using commercially  
45 reasonable means or other procedures prescribed by this act; (2) the  
46 holder has obtained any approvals required pursuant to applicable

1 federal or State banking or other lending laws to continue its  
2 possession of the property; and (3) the holder has exercised reasonable  
3 custodial care to prevent or mitigate any new discharges from the  
4 vessel ~~[or], facility, or underground storage tank facility~~ that could  
5 substantially diminish the market value of the property.

6 e. (1) The exemption granted to holders pursuant to this section  
7 shall not apply to the liability for any new discharge from the vessel  
8 ~~[or], facility, or underground storage tank facility~~, occurring after the  
9 date of foreclosure, that is caused by acts or omissions of the holder  
10 which can be shown, based on a preponderance of the evidence, to  
11 have been negligent. In the event a property has both preexisting and  
12 new discharges, the liability, if any, allocable to the holder pursuant to  
13 this subsection shall be limited to those cleanup costs or damages that  
14 relate directly to the new discharge. In the event there is a substantial  
15 commingling of a new discharge with a preexisting discharge, the  
16 liability, if any, allocable to the holder pursuant to this subsection shall  
17 be limited to the cleanup costs or damages in excess of those cleanup  
18 costs or damages relating to the preexisting discharge.

19 In order to establish that a discharge occurred or began prior to the  
20 date of foreclosure, a holder may perform, but shall not be required to  
21 perform, an environmental audit, in accordance with any applicable  
22 Department of Environmental Protection [and Energy] regulations and  
23 guidelines, to identify such discharges at the vessel ~~[or], facility, or~~  
24 ~~underground storage tank facility~~. Upon receipt of a complete audit  
25 from the holder, the Department of Environmental Protection [and  
26 Energy] shall, within 90 days of its receipt of the audit, review the  
27 audit and transmit its findings to the holder. The Department of  
28 Environmental Protection [and Energy] may charge reasonable fees  
29 and adopt any additional regulations necessary to provide guidelines  
30 for the submission and review of such audits.

31 (2) Nothing in this subsection shall be deemed to impose liability  
32 for a new discharge from the vessel ~~[or], facility, or underground~~  
33 ~~storage tank facility~~ that is authorized pursuant to a federal or State  
34 permit or cleanup procedure.

35 (3) The exemption granted to holders of indicia of ownership to  
36 protect a security interest shall not apply to liability, if any, pursuant  
37 to applicable law and regulation, for arranging for the offsite disposal  
38 or treatment of a hazardous substance or by accepting for  
39 transportation and disposing of a hazardous substance at an offsite  
40 facility selected by the holder.

41 f. (1) A holder who acquires an underground storage tank  
42 continues to hold the exemption granted to holders pursuant to this  
43 section if there is an operator of the underground storage tank, other  
44 than the holder, who is in control of the underground storage tank or

1 has responsibility for compliance with applicable federal and State  
2 requirements.

3 (2) If an operator does not exist, a holder continues to maintain  
4 the exemption from liability granted to holders pursuant to this section  
5 if the holder: ( i) empties all underground storage tanks within 60  
6 days after foreclosure or within 60 days after the effective date of  
7 P.L. , c. (now in the Legislature as this bill), whichever is later, so  
8 that no more than one inch of residue, or .3 percent by weight of the  
9 total capacity of the underground storage tank remains in the  
10 underground storage tank, leaves vent lines open and functioning, and  
11 caps and secures all other lines, pumps, manways, and ancillary  
12 equipment; (ii) empties those underground storage tanks that are  
13 discovered after foreclosure within 60 days of discovery or within 60  
14 days of the effective date of P.L. , c. (now in the Legislature as this  
15 bill), whichever is later, so that no more than one inch of residue, or  
16 .3 percent by weight of the total capacity of the underground storage  
17 tank remains in the system, leaves vent lines open and functioning, and  
18 caps and secures all other lines, pumps, manways, and ancillary  
19 equipment; and (iii) permanently closes the underground storage tank  
20 pursuant to the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.)  
21 or temporarily closes the underground storage tank.

22 g. An underground storage tank may be temporarily closed until  
23 a subsequent purchaser has acquired marketable title to the  
24 underground storage tank. When a subsequent purchaser acquires  
25 marketable title to the facility, the purchaser shall operate the  
26 underground storage tank in accordance with applicable State and  
27 federal laws or shall permanently close or remove the underground  
28 storage tank in accordance with the provisions of P.L.1986. c.102  
29 (C.58:10A-21 et seq.).

30 For the purposes of this section, an underground storage tank shall  
31 be considered temporarily closed if a holder installs or continues to  
32 operate and maintain corrosion protection and reports suspected  
33 releases to the Department of Environmental Protection. If the  
34 underground storage tank has not been upgraded to comply with the  
35 provisions of P.L.1986, c.102 and the applicable federal law or does  
36 not comply with the standards for new underground storage tanks  
37 pursuant to State and federal law except for spill and overfill  
38 protection, and is temporarily closed for 12 months or more, the  
39 holder shall conduct a site investigation in accordance with rules and  
40 regulations adopted by the department.

41 (cf: P.L.1993, c.112, s.3)

42

43 32. Section 4 of P.L.1993, c.112 (C.58:10-23.11g7) is amended  
44 to read as follows:

45 4. a. Nothing in sections 1 through 5 of [this act] P.L. 1993,  
46 c.112 (C.58:10-23.11g4 through 58:10-23.11g8) shall be deemed to



1 prohibit or limit the rights of the Department of Environmental  
2 Protection [and Energy] to clean up a property or to obtain a lien on  
3 the property of a discharger or holder in order to recover cleanup  
4 costs pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f). Any  
5 recovery of cleanup costs from a holder pursuant to a lien obtained by  
6 the Department of Environmental Protection [and Energy] shall be  
7 limited to the actual financial benefit conferred on such holder by a  
8 cleanup or removal action, and shall not exceed the amount realized  
9 by the holder on the sale or other disposition of the property.

10 b. Nothing in sections 1 through 5 of [this act] P.L.1993, c.112  
11 (C.58:10-23.11g4 through 58:10-23.11g8) shall be deemed to prohibit  
12 or limit the rights of the Department of Environmental Protection [and  
13 Energy], pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f),  
14 to direct the holder to take any emergency response actions, including  
15 closure of the vessel [or], facility, or underground storage tank  
16 facility, necessary to prevent, contain or mitigate a continuing or new  
17 discharge that poses an immediate threat to the environment or to the  
18 public health, safety or welfare.

19 c. (1) If a holder forecloses on a vessel [or], facility, or  
20 underground storage tank facility at which it has actual knowledge a  
21 discharge occurred or began prior to the date of foreclosure, the  
22 holder shall, within 30 days of the date of foreclosure, notify the  
23 Department of Environmental Protection [and Energy] that  
24 foreclosure has occurred. Any person who fails to give notice  
25 required pursuant to this subsection or knowingly gives or causes to  
26 be given false information in any such report, shall be subject to a civil  
27 penalty not to exceed \$25,000. A court, in determining the amount of  
28 the penalty to be imposed, shall consider, among other relevant  
29 factors, the amount of any damages caused by the failure to give  
30 timely notice and whether the failure to notify was inadvertent or  
31 intentional.

32 (2) The holder shall immediately notify the Department of  
33 Environmental Protection [and Energy] of any new discharge, of  
34 which it has actual knowledge, occurring after the date of foreclosure,  
35 from the vessel [or], facility, or underground storage tank facility.  
36 Any person who fails to give notice required pursuant to this  
37 subsection or knowingly gives or causes to be given any false  
38 information in any such report, shall be subject to a civil penalty not  
39 to exceed \$10,000 per day for each violation. A court, in determining  
40 the amount of the penalty to be imposed and the appropriateness of  
41 imposing multiple penalties for a continuing offense, shall consider,  
42 among other relevant factors, the amount of any damages caused by  
43 the failure to give timely notice and whether the failure to notify was  
44 inadvertent or intentional.

45 (3) Any penalty incurred under this section may be recovered with  
46 costs in a summary proceeding pursuant to "the penalty enforcement

1 law," N.J.S.2A:58-1 et seq., in the Superior Court or a municipal  
2 court. Failure to give any required notice pursuant to this subsection  
3 shall not cause the holder to lose its status as a person who maintains  
4 indicia of ownership primarily to protect a security interest.  
5 (cf: P.L.1993, c.112, s.4)

6

7 33. (New section) A holder of an interest in an underground  
8 storage tank shall not be required to comply with the provisions of  
9 P.L.1986, c.102 (C.58:10A-21 et seq.) unless the holder loses the  
10 exemption under P.L.1993, c.112 (C.58:10-23.11g4 et seq.).

11

12 34. (New section) As used in sections 34 through 39 of P.L. ,  
13 c. (C. )(now before the Legislature as this bill):

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

19 "Developer" means any person that enters or proposes to enter into  
20 a redevelopment agreement with the State pursuant to the provisions  
21 of section 35 of P.L. , c. (C. )(pending in the Legislature as  
22 this bill).

23 "Director" means the Director of the Division of Taxation in the  
24 Department of the Treasury.

25 "Project" or "redevelopment project" means a specific work or  
26 improvement, including lands, buildings, improvements, real and  
27 personal property or any interest therein, including lands under water,  
28 riparian rights, space rights and air rights, acquired, owned, developed  
29 or redeveloped, constructed, reconstructed, rehabilitated or improved,  
30 undertaken by a developer within an area of land whereon a  
31 contaminated site is located, under a redevelopment agreement with  
32 the State pursuant to section 35 of P.L. , c. (C. ) (pending in the  
33 Legislature as this bill).

34 "Redevelopment agreement" means an agreement between the  
35 State and a developer under which the developer agrees to perform  
36 any work or undertaking necessary for the remediation of the  
37 contaminated site located at the site of the redevelopment project, and  
38 for the clearance, development or redevelopment, construction or  
39 rehabilitation of any structure or improvement of commercial,  
40 industrial or public structures or improvements within an area of land  
41 whereon a contaminated site is located pursuant to section 35 of  
42 P.L. , c. (C. ) (pending in the Legislature as this bill), and the  
43 State agrees that the developer shall be eligible for the reimbursement  
44 of up to 75% of the costs of remediation of the contaminated site from  
45 the fund established pursuant to section 38 of P.L. c. (C. )  
46 (pending in the Legislature as this bill) as authorized pursuant to

1 section 36 of P.L. , c. (C. )(pending in the Legislature as this  
2 bill).

3 "Remediation" or "remediate" means all necessary actions to  
4 investigate and clean up or respond to any known, suspected, or  
5 threatened discharge of contaminants, including, as necessary, the  
6 preliminary assessment, site investigation, remedial investigation, and  
7 remedial action, as those terms are defined in section 23 of P.L.1993,  
8 c.139 (C.58:10B-1).

9 "Remediation costs" means all reasonable costs associated with the  
10 remediation of a contaminated site except that "remediation costs"  
11 shall not include any costs incurred in financing the remediation.

12

13 35. (New section) a. The provisions of any other law, or rule or  
14 regulation adopted pursuant thereto, to the contrary notwithstanding,  
15 any developer may enter into a redevelopment agreement with the  
16 State pursuant to the provisions of this section. The State may not  
17 enter into a redevelopment agreement with a developer who is liable,  
18 pursuant to paragraph (1) of subsection c. of section 8 of P.L.1976,  
19 c.141 (C.58:10-23.11g), for the contamination at the site proposed to  
20 be in the redevelopment agreement.

21 The decision whether or not to enter into a redevelopment  
22 agreement is solely within the discretion of the Commissioner of  
23 Commerce and Economic Development and the State Treasurer and  
24 both must agree to enter into the redevelopment agreement. Nothing  
25 in P.L. , c. (C. )(now before the Legislature as this bill) may  
26 be construed to compel the commissioner and the State Treasurer to  
27 enter into any redevelopment agreement.

28 The Commissioner of Commerce and Economic Development in  
29 consultation with the State Treasurer shall negotiate the terms and  
30 conditions of any redevelopment agreement on behalf of the State.  
31 The redevelopment agreement shall specify the amount of the  
32 reimbursement to be awarded the developer, the frequency of  
33 payments and the length of time in which that reimbursement shall be  
34 granted. In no event shall the amount of the reimbursement, when  
35 taken together with the property tax exemption received pursuant to  
36 the "Environmental Opportunity Zone Act," P.L.1995, c.413 (C.54:4-  
37 3.151), less any in lieu of tax payments made pursuant to that act, or  
38 any other State, local, or federal tax incentive or grant to remediate a  
39 site, exceed 75% of the total cost of the remediation.

40 The commissioner and the State Treasurer may only enter into a  
41 redevelopment agreement if they make a finding that the State tax  
42 revenues to be realized from the redevelopment project will be in  
43 excess of the amount necessary to reimburse the developer. This  
44 finding may be made by an estimation based upon the professional  
45 judgment of the commissioner and the State Treasurer.

46 The percentage of each payment to be made to the developer

1 pursuant to the redevelopment agreement shall be conditioned on the  
2 occupancy rate of the buildings or other work areas located on the  
3 property. The redevelopment agreement shall provide for the  
4 payments made in order to reimburse the developer to be in the same  
5 percentages as the occupancy rate at the site except that upon the  
6 attainment of a 90% occupancy rate, the developer shall be entitled to  
7 the entire amount of each payment toward the reimbursement as set  
8 forth in the redevelopment agreement. The redevelopment agreement  
9 shall provide for the frequency of the director's finding of the  
10 occupancy rate during the payment schedule.

11 b. In deciding whether or not to enter into a redevelopment  
12 agreement and in negotiating a redevelopment agreement with a  
13 developer, the commissioner shall consider the following factors:

14 (1) the economic feasibility of the redevelopment project;

15 (2) the extent of economic and related social distress in the  
16 municipality and the area to be affected by the redevelopment project;

17 (3) the degree to which the redevelopment project will advance  
18 State, regional and local development and planning strategies;

19 (4) the likelihood that the redevelopment project shall, upon  
20 completion, be capable of generating new tax revenue in an amount in  
21 excess of the amount necessary to reimburse the developer for the  
22 remediation costs incurred as provided in the redevelopment  
23 agreement;

24 (5) the relationship of the redevelopment project to a  
25 comprehensive local development strategy, including other major  
26 projects undertaken within the municipality;

27 (6) the need of the redevelopment agreement to the viability of the  
28 redevelopment project; and

29 (7) the degree to which the redevelopment project enhances and  
30 promotes job creation and economic development.

31

32 36. (New section) a. The provisions of any other law, or rule or  
33 regulation adopted pursuant thereto, to the contrary notwithstanding,  
34 any developer that enters into a redevelopment agreement pursuant to  
35 section 35 of P.L. , c. (C. ) (pending in the Legislature as this  
36 bill), may be eligible for reimbursement of up to 75% of the costs of  
37 the remediation of the subject real property pursuant to the provisions  
38 of this section upon the commencement of a business operation within  
39 a redevelopment project.

40 b. To be eligible for reimbursement of the costs of remediation, a  
41 developer shall submit an application, in writing, to the director for  
42 review and certification of the reimbursement. The director shall  
43 review the request for the reimbursement upon receipt of an  
44 application therefor, and shall approve or deny the application for  
45 certification on a timely basis. The director shall also make a finding  
46 of the occupancy rate of the property subject to the redevelopment

1 agreement in the frequency set forth in the redevelopment agreement as  
2 provided in section 35 of P.L. , c. (C. ) (in the Legislature as this  
3 bill).

4 The director shall certify a developer to be eligible for the  
5 reimbursement if the director finds that:

6 (1) a place of business is located in the area subject to the  
7 redevelopment agreement that has generated new tax revenues;

8 (2) the developer had entered into a memorandum of agreement  
9 with the Commissioner of Environmental Protection, after the  
10 developer entered into the redevelopment agreement, for the  
11 remediation of contamination located on the site of the redevelopment  
12 project pursuant to section 37 of P.L. , c. (C. ) (pending in  
13 the Legislature as this bill) and the developer is in compliance with the  
14 memorandum of agreement; and

15 (3) the costs of the remediation were actually and reasonably  
16 incurred. In making this finding the director may consult with the  
17 Department of Environment Protection.

18 c. When filing an application for certification for a reimbursement  
19 pursuant to this section, the developer shall submit to the director a  
20 certification of the total remediation costs incurred by the developer  
21 for the remediation of the subject property located at the site of the  
22 redevelopment project as provided in the redevelopment agreement ,  
23 information concerning the occupancy rate of the buildings or other  
24 work areas located on the property subject to the redevelopment  
25 agreement, and such other information as the director deems necessary  
26 in order to make the certifications and findings pursuant to this  
27 section.

28

29 37. (New section) a. To qualify for the certification of  
30 reimbursement of the remediation costs authorized pursuant to section  
31 36 of P.L. , c. (C. ) (pending in the Legislature as this bill),  
32 a developer shall enter into a memorandum of agreement with the  
33 Commissioner of Environmental Protection for the remediation of the  
34 site of the redevelopment project.

35 b. Under the memorandum of agreement, the developer shall agree  
36 to perform and complete any remediation activity as may be required  
37 by the Department of Environmental Protection to ensure the  
38 remediation is conducted pursuant to the regulations adopted by the  
39 Department of Environmental Protection pursuant to P.L.1993, c.139  
40 (C.58:10B-1 et seq.).

41 c. After the developer has entered into a memorandum of  
42 agreement with the Commissioner of Environmental Protection, the  
43 commissioner shall submit a copy thereof to the developer, the clerk  
44 of the municipality in which the subject property is located, the  
45 Commissioner of the Department of Commerce and Economic  
46 Development, and the director.

1 38. (New section) a. There is created in the Department of  
2 Treasury a special fund to be known as the Brownfield Site  
3 Reimbursement Fund. Moneys in the fund shall be dedicated to the  
4 purpose of reimbursing a developer who enters into a redevelopment  
5 agreement pursuant to section 35 of P.L. c. (C. ) (pending in the  
6 Legislature as this bill) and is certified for reimbursement pursuant to  
7 section 36 of P.L. c. (C. ) (pending in the Legislature as this bill).  
8 A special account within the fund shall be created for each developer  
9 upon approval of a certification pursuant to section 36 of P.L. , c.  
10 (C. ) (pending in the Legislature as this bill). The Legislature shall  
11 annually appropriate the entire balance of the fund for the purposes of  
12 reimbursement of remediation costs as provided in section 39 of  
13 P.L. , c. (C. ) (pending in the Legislature as this bill).

14 b. The fund shall be credited with an amount from the General  
15 Fund, determined sufficient by the Commissioner of Commerce and  
16 Economic Development, to provide the negotiated reimbursement to  
17 the developer. Monies credited to the fund shall be an amount that  
18 equals the percent of the remediation costs expected to be reimbursed  
19 pursuant to the redevelopment agreement. In estimating the amount of  
20 new State taxes that is anticipated to be derived from a redevelopment  
21 project pursuant to section 35 of P.L. , c. (C. )(now before  
22 the Legislature as this bill), the Commissioner of Commerce and  
23 Economic Development and the State Treasurer shall consider taxes  
24 from the following: the Corporation Business Tax Act (1945),  
25 P.L.1945, c.162 (C.54:10A-1 et seq.), "The Savings Institution Tax  
26 Act," P.L.1973, c.31 (C.54:10D-1 et seq.), the tax imposed on marine  
27 insurance companies pursuant to R.S.54:16-1 et seq., the tax imposed  
28 on fire insurance companies pursuant to R.S.54:17-4 et al., the tax  
29 imposed on insurers generally, pursuant to P.L.1945, c.132  
30 (C.54:18A-1 et seq.), the public utility franchise tax, public utilities  
31 gross receipts tax and public utility excise tax imposed pursuant to  
32 P.L.1940, c.4, and P.L.1940, c.5 (C.54:30A-16 et seq. and  
33 C.54:30A-49 et seq.), that is a taxpayer in respect of net profits from  
34 business, a distributive share of partnership income, or a prorata share  
35 of S corporation income under the "New Jersey Gross Income Tax  
36 Act," N.J.S.54A:1-1 et seq., or who is required to collect the tax  
37 pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1  
38 et seq.).

39  
40 39. (New section) a. The State Treasurer shall reimburse the  
41 developer the amount of the remediation costs agreed upon in the  
42 redevelopment agreement , and as provided in sections 35 and 36 of  
43 P.L. , c. (C. )(now before the Legislature as this bill) upon  
44 issuance of the certification by the director pursuant to section 36 of  
45 P.L. , c. (C. ) (pending in the Legislature as this bill). The  
46 developer shall be entitled to periodic payments from the fund in an

1 amount, in the frequency, and over the time period as provided in the  
2 redevelopment agreement. Notwithstanding any other provision of  
3 sections 34 through 39 of P.L. ,c. (C. )(before the Legislature  
4 ast this bill), the State Treasurer may not reimburse the developer any  
5 amount of the remediation costs from the fund until the State  
6 Treasurer is satisfied that the anticipated tax revenues from the  
7 redevelopment project have been realized by the State in an amount  
8 sufficient to pay for the cost of the reimuborsements.

9 b. A developer shall submit to the director updated remediation  
10 costs actually incurred by the developer for the remediation of the  
11 contaminated property located at the site of the redevelopment project  
12 as provided in the redevelopment agreement. The reimbursement  
13 authorized pursuant to this section shall continue until such time as the  
14 aggregate dollar amount of the agreed upon reimbursement. To remain  
15 entitled to the reimbursement authorized pursuant to this section, the  
16 developer shall perform and complete all remediation activities as may  
17 be required pursuant to the memorandum of agreement entered into  
18 with the Commissioner of Environmental Protection pursuant to  
19 section 37 of P.L. , c. (C. )(pending in the Legislature as this  
20 bill). The Department of Environmental Protection may review the  
21 remediation costs incurred by the developer to determine if they are  
22 reasonable.

23  
24 40. (New Section) a. There is established a Legislative  
25 Underground Storage Tank Remediation Task Force. The task force  
26 shall consist of seven members as follows: one member of the Senate  
27 to be appointed by the Senate President; one member of the General  
28 Assembly to be appointed by the Speaker of the General Assembly;  
29 the Commissioner of Environmental Protection or a designee; an  
30 environmental consultant with a degree in hydrogeology and  
31 experience in petroleum underground storage tank remediations to be  
32 appointed by the Senate President; a representative of an  
33 environmental interest group to be appointed by the Senate President;  
34 a small business representative who owns or operates an underground  
35 storage tank to be appointed by the Speaker of the General Assembly;  
36 and a representative from a major oil company to be appointed by the  
37 Speaker of the General Assembly.

38 The chairman of the task force shall be jointly appointed by the  
39 Senate President and the Speaker of the General Assembly. Vacancies  
40 shall be filled in the same manner as the original appointments are  
41 made.

42 b. The task force shall evaluate the use of expanded risk based  
43 decision making that allows for alternative remediation standards and  
44 natural attenuation in all environmental media at petroleum  
45 underground storage tank discharge sites; consider the use of standard  
46 probablistic approaches in the development of minimum remediation

1 standards; examine and evaluate the State policy's that are preventing  
2 the development and use of alternative remediation standards for soil  
3 and groundwater and the implementation of the Risk Based Corrective  
4 Action decision making process described in ASTM standard 1739-95.

5       Within six months of the first meeting, the task force shall prepare  
6 a written report to the Legislature and the Chairman of the Senate  
7 Environment Committee, and the Assembly Agriculture and Waste  
8 Management Committee or their successor committees. The report  
9 shall include a comparison of the department's process for remediating  
10 petroleum underground storage tanks with the process recommended  
11 in the the Risk Based Corrective Action decision making process  
12 described in ASTM standard 1739-95 or that used by other states, an  
13 examination of the process that could be used to develop alternative  
14 remediation standards, a review and discussion of any policy changes  
15 necessary in order to allow for natural attenuation in all environmental  
16 media; together with any recommendations for further legislative  
17 remedies regarding expanded risk based decision making at petroleum  
18 underground storage tank discharge sites.

19       (3) The task force shall convene its first meeting within sixty days  
20 of the effective date of P.L.1997, c. (now in the Legislature as this  
21 bill).

22

23       41. There is appropriated to the Department of Environmental  
24 Protection from the "1996 Environmental Cleanup Fund" created  
25 pursuant to section 19 of the "Port of New Jersey Revitalization,  
26 Dredging, Environmental Cleanup, Lake Restoration, and Delaware  
27 Bay Area Economic Development Bond of 1996," P.L.1996, c.70, the  
28 sum of \$3,000,000 for the investigations, determinations, and data  
29 collection and entry into the geographic information system as  
30 provided in section 3 of this act.

31

32       42. There is appropriated to the Department of Environmental  
33 Protection from the "1996 Environmental Cleanup Fund" created  
34 pursuant to section 19 of the "Port of New Jersey Revitalization,  
35 Dredging, Environmental Cleanup, Lake Restoration, and Delaware  
36 Bay Area Economic Development Bond of 1996," P.L.1996, c.70, the  
37 sum of \$2,000,000 for the data collection and entry into the  
38 geographic information system as provided in section 4 of this act.

39

40       43. Section 14 of P.L.1993, c.139 (C.3:1K-11.3) is amended to  
41 read as follows:

42       14. a. The owner or operator of an industrial establishment  
43 planning to close operations or transfer ownership or operations of the  
44 industrial establishment may, in lieu of complying with the provisions  
45 of subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9), apply to  
46 the department for a limited site review. An application for a limited



1 site review pursuant to this section shall include:

2 (1) the notice required pursuant to the provisions of subsection a.  
3 of section 4 of P.L.1983, c.330 (C.13:1K-9);

4 (2) a certification that for the industrial establishment, a remedial  
5 action workplan has previously been implemented and a no further  
6 action letter has been issued pursuant to P.L.1983, c.330, a negative  
7 declaration has been previously approved by the department pursuant  
8 to P.L.1983, c.330, or the department or the United States  
9 Environmental Protection Agency, pursuant to the "Resource  
10 Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the  
11 "Comprehensive Environmental Response, Compensation, and  
12 Liability Act of 1980," 42 U.S.C. §9601 et seq., or any other law, has  
13 previously approved a remediation of the industrial establishment  
14 equivalent to that performed pursuant to the provisions of P.L.1983,  
15 c.330;

16 (3) a certification that the owner or operator has performed  
17 remediation activities at the industrial establishment that are consistent  
18 with current regulations established by the department in order to  
19 identify areas of concern and, based on those remediation activities,  
20 that subsequent to the issuance of the negative declaration, no further  
21 action letter or remediation approval described in paragraph (2) of this  
22 subsection, a discharge has occurred at the industrial establishment  
23 that was not remediated in accordance with the procedures established  
24 by the department or that any remediation performed has not been  
25 approved by the department and that no other discharge of a  
26 hazardous substance or hazardous waste has occurred at the industrial  
27 establishment;

28 (4) a certification that for any underground storage tank covered  
29 by the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), an  
30 approved method of secondary containment or a monitoring system as  
31 required by P.L.1986, c.102, has been installed;

32 (5) a copy of the most recent negative declaration, no further  
33 action letter, or other approval, as applicable, approved by the  
34 department for the industrial establishment; and

35 (6) a proposed negative declaration, if applicable.

36 b. Upon the submission of a complete application, and after an  
37 inspection if necessary, the department may:

38 (1) approve the negative declaration upon a finding that any  
39 discharge of a hazardous substance or hazardous waste, as certified to  
40 pursuant to paragraph (3) of subsection a. of this section, has been  
41 remediated consistent with the applicable remediation [standards]  
42 regulations as established by the department; or

43 (2) require that the owner or operator perform a remediation as  
44 set forth in subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9)  
45 only for those areas of concern identified by the information provided  
46 pursuant to paragraph (3) of subsection a. of this section upon a

1 finding that further investigation or remediation is necessary to bring  
2 the industrial establishment into compliance with the applicable  
3 remediation [standards] regulations.

4 c. The owner or operator of an industrial establishment subject to  
5 the provisions of this section shall not close operations or transfer  
6 ownership or operations until a remedial action workplan, or a  
7 negative declaration, as applicable, has been approved by the  
8 department or upon approval of a remediation agreement as provided  
9 in subsection e. of section 4 of P.L.1983, c.330.

10 (cf: P.L.1993, c.139, s.14)

11  
12 44. Section 43 of P.L.1993, c.139 (C.58:10B-19) is amended to  
13 read as follows:

14 43. The owner or operator of an industrial establishment who has  
15 submitted a notice to the department pursuant to subsection a. of  
16 section 4 of P.L.1983, c.330 (C.13:1K-9), or any person who has  
17 discharged a hazardous substance or is liable for the remediation of  
18 that discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), or  
19 any person who has been directed to or has entered into an agreement  
20 with the department to remediate a discharge, may implement an  
21 interim response action prior to departmental approval of that action.  
22 The interim response action may be implemented when the expeditious  
23 temporary or partial remediation of a discharged hazardous substance  
24 or hazardous waste is necessary to contain or stabilize a discharge  
25 prior to implementation of an approved remedial action workplan in  
26 order to prevent, minimize, or mitigate damage to public health or  
27 safety or to the environment which may otherwise result from a  
28 discharge. The interim response action shall be implemented in  
29 compliance with the procedures and standards established by the  
30 department. The department may require submission of a notice of  
31 intent to implement an interim response action, what those actions will  
32 be, and may require, subsequent to completion of the interim response  
33 action, a report detailing the actions taken and a certification that the  
34 interim response action was implemented in accordance with all  
35 applicable laws and regulations. The department shall review these  
36 submissions to verify whether the interim response action was  
37 implemented in accordance with applicable laws and regulations. The  
38 department shall not require that additional remediation be undertaken  
39 at an area of concern subject to the interim response action except in  
40 instances when further remediation is necessary to bring that area of  
41 concern into compliance with the applicable remediation [standards]  
42 regulations.

43 The department may, pursuant to the "Administrative Procedure  
44 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and  
45 regulations establishing a fee schedule, as necessary, reflecting the  
46 actual costs associated with the review of the interim response action

1 and any implementation thereof.

2 (cf: P.L.1993, c.139, s.43)

3

4 45. Section 6 of P.L.1993, c.112 (C.58:10-23.11g9) is amended  
5 to read as follows:

6 6. In the event of the discharge of a hazardous substance from a  
7 vessel [or] , facility, or underground storage tank facility, which vessel  
8 [or] , facility , or underground storage tank facility is all or part of a  
9 trust, receivership estate, guardianship estate or estate of a deceased  
10 person, only the assets of the trust or estate, or assets of any  
11 discharger other than the fiduciary of such trust or estate, shall be  
12 subject to the obligation to pay for the cleanup of the discharge as set  
13 forth in the "Spill Compensation and Control Act," P.L.1976, c.141  
14 (C.58:10-23.11 et seq.) or subject to any obligations imposed pursuant  
15 to P.L.1986, c.102 (C.58:10A-21 et seq.).

16 (cf: P.L.1993, c.112, s.6)

17

18 46. Section 20 of P.L.1993, c.139 (C.13:1K-11.9) is amended to  
19 read as follows:

20 20. a. Where the owner of an industrial establishment is a  
21 landlord and the operator of the industrial establishment is a tenant,  
22 the landlord shall be responsible for providing any information that is  
23 requested by the tenant that is not otherwise available through a  
24 diligent inquiry by the tenant, and the tenant shall be responsible for  
25 providing any information that is requested by the landlord that is not  
26 otherwise available through a diligent inquiry by the landlord.

27 b. Where the owner of an industrial establishment is a landlord  
28 and the operator of the industrial establishment is a tenant, the person  
29 that remediates the industrial establishment shall provide copies to the  
30 other person of all submissions to the department concerning the  
31 remediation.

32 c. Where the owner of an industrial establishment is a landlord and  
33 the operator of the industrial establishment is a tenant, and there has  
34 been a failure to comply with the provisions of P.L.1983, c.330, the  
35 landlord or the tenant may petition the department, in writing, to first  
36 compel that party who is responsible pursuant to the provisions of the  
37 lease, to comply with the requirements of P.L.1983, c.330. [The  
38 petition shall include a copy of the signed lease between the landlord  
39 and the tenant.] The department shall develop a form for a petition  
40 made pursuant to this section, and shall establish a list of documents  
41 required to be submitted with the petition which shall include, but not  
42 be limited to: (1) a copy of the notice required pursuant to subsection  
43 a. of section 4 of P.L.1983, c.330 (C.13:1K-9); (2) the names and  
44 addresses of the landlord and the tenant; (3) a copy of the signed lease  
45 between the landlord and the tenant; (4) a certification by the  
46 petitioner that includes the relevant facts concerning noncompliance

1 with the act; and (5) any other documents the department deems  
2 relevant. The department shall make a determination that the  
3 provisions of the lease are unclear within 30 days of receipt of a  
4 complete petition. Upon a determination by the department that the  
5 provisions of the lease are unclear as it relates to the responsibility of  
6 either party to comply with the provisions of P.L.1983, c.330, or upon  
7 the failure by the person responsible pursuant to the provisions of the  
8 lease to comply, the department may compel compliance by all persons  
9 subject to the requirements of P.L.1983, c.330 for the industrial  
10 establishment.

11 (cf: P.L.1993, c.139, s.20)

12

13 47. Section 8 of P.L.1983, c.330 (C.13:1K-13) is amended to read  
14 as follows:

15 8. a. Failure of the transferor to perform a remediation and obtain  
16 department approval thereof as required pursuant to the provisions of  
17 this act is grounds for voiding the sale or transfer of an industrial  
18 establishment or any real property utilized in connection therewith by  
19 the transferee, entitles the transferee to recover damages from the  
20 transferor, and renders the owner or operator of the industrial  
21 establishment strictly liable, without regard to fault, for all remediation  
22 costs and for all direct and indirect damages resulting from the failure  
23 to implement the remedial action workplan. A transferee may not act  
24 to void the sale or transfer of an industrial establishment or any real  
25 property except upon providing notice to the transferor of the failure  
26 to perform and affording the transferor a reasonable amount of time  
27 to comply with the provisions of this act. A transferee may bring an  
28 action in Superior Court to void the sale or transfer of an industrial  
29 establishment or any real property or to recover damages from the  
30 transferor, pursuant to this section.

31 b. Any person who knowingly gives or causes to be given any  
32 false information or who fails to comply with the provisions of this act  
33 is liable for a penalty of not more than \$25,000.00 for each offense.  
34 If the violation is of a continuing nature, each day during which it  
35 continues shall constitute an additional and separate offense. Penalties  
36 shall be collected in a civil action by a summary proceeding under "the  
37 penalty enforcement law" (N.J.S.2A:58-1 et seq.). Any officer or  
38 management official of an industrial establishment who knowingly  
39 directs or authorizes the violation of any provisions of this act shall be  
40 personally liable for the penalties established in this subsection.

41 (cf: P.L.1993, c.139, s.12)

42

43 48. (New section) Pursuant to section 941 of the federal  
44 "Taxpayer Relief Act of 1997," Pub. L. 105-34, the Governor shall  
45 designate the Department of Environmental Protection as the  
46 appropriate State environmental agency to issue statements that an

1 area is within a targeted area and that there has been a release, or  
2 threat of release, or disposal of any hazardous substance at or on that  
3 area. For the purposes of this section "targeted area" and "hazardous  
4 substance" shall have the meanings given to them in the federal act.

5

6 49. This act shall take effect immediately.

7

8

9

10

11 Makes various changes in the law in order to facilitate the remediation  
12 of contaminated real property; appropriates \$5 million.