

ASSEMBLY, No. 1830

STATE OF NEW JERSEY

INTRODUCED MAY 2, 1996

By Assemblyman AZZOLINA

1 AN ACT concerning aquaculture, and amending and supplementing
2 parts of the statutory law.

3

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

6

7 1. (New section) Sections 1 through 24 of this act shall be known,
8 and may be cited, as the "New Jersey Aquaculture Development Act."

9

10 2. (New section) The Legislature finds and declares that
11 aquaculture is the fastest growing segment of agriculture in the nation;
12 and that the development of an economically viable aquaculture
13 industry in New Jersey has the potential to augment existing fisheries,
14 and to produce a significant number of jobs and revenue in a new
15 economic activity.

16 The Legislature further finds and declares that the Aquaculture
17 Development Task Force, established by Executive Order No. 104
18 (1993), was directed to prepare an aquaculture development plan; that
19 the "Aquaculture Development Plan" asserts that legislative and
20 regulatory obstacles are major impediments to aquaculture growth and
21 development in New Jersey, and that the lack of specific legislation
22 defining and permitting various aquaculture activities has greatly
23 hindered aquaculture development in New Jersey; and that the plan
24 also presents a compelling case for State investment in aquaculture,
25 discusses specific suggestions to remove barriers impeding the
26 development of the industry and methods for achieving the
27 interdepartmental cooperation necessary to developing aquaculture.

28 The Legislature therefore determines that in order to foster
29 development of an aquaculture industry in New Jersey it is in the best
30 interest of the citizens of this State that the recommendations
31 contained in the "Aquaculture Development Plan" be adopted by the
32 Legislature.

33

34 3. (New section) As used in sections 1 through 24 of this act:

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

Matter underlined thus is new matter.

1 "Aquaculture" means the propagation, rearing, and harvesting of
2 aquatic organisms in controlled or selected environments, and the
3 subsequent processing, packaging and marketing, and shall include,
4 but need not be limited to, activities to intervene in the rearing process
5 to increase production such as stocking, feeding, transplanting and
6 providing for protection from predators.

7 "Aquaculture Development Plan" means the plan prepared by the
8 Aquaculture Development Task Force, established pursuant to
9 Executive Order No. 104 (1993).

10 "Aquaculturist" means a person engaging in aquaculture.

11 "Aquatic organism" means and includes, but need not be limited to,
12 finfish, mollusks, crustaceans, and aquatic plants which are the
13 property of a person engaged in aquaculture.

14 "Council" means the Aquaculture Advisory Council established
15 pursuant to section 5 of this act.

16 "Office" means the Office of Aquaculture Coordination established
17 pursuant to section 4 of this act.

18 "Secretary" means the Secretary of Agriculture.

19

20 4. (New section) There is established in the Department of
21 Agriculture the Office of Aquaculture Coordination. The office shall
22 prepare a guidebook explaining the permit process for receiving all
23 necessary permits or other approvals or exemptions to engage in an
24 aquaculture project in the State. The guidebook shall include a list
25 that identifies the permits or other approvals that may be necessary for
26 an aquaculture project. The list shall identify the application form or
27 forms required for an application to be deemed complete, any
28 documents or other written submissions required to be filed with the
29 application, and any filing, notice, hearing or other requirement that is
30 a precondition for review of an application. The guidebook shall also
31 describe management practices for aquaculture. The guidebook shall
32 be updated as often as necessary. The office shall serve as resource
33 for applicants and prospective applicants for aquaculture projects.

34 The office shall establish, in cooperation with other permitting
35 agencies, a permit coordination system whose purpose is to assist the
36 applicant in the completion of the application and to assist in
37 processing the application. The goal of the system shall be the
38 processing of applications within 90 days of their completion, and at
39 an application cost not prohibitive to a single proprietor.

40 The office shall develop a protocol for authorizing an individual to
41 engage in an aquaculture demonstration project.

42

43 5. (New section) a. There is established in the Department of
44 Agriculture an Aquaculture Advisory Council which shall consist of 11
45 members, six of whom shall be the Secretary of Agriculture, who shall
46 serve as chairman, the Commissioner of Environmental Protection, the

1 Commissioner of Commerce and Economic Development, the
2 Commissioner of Health, the director of the Aquaculture Technology
3 Transfer Center, the director of the Aquaculture Training and
4 Information Center or their designees, who shall serve ex officio, and
5 five citizens of the State, to be appointed as follows: two by the
6 President of the Senate, one of whom shall be a representative from
7 recognized aquaculture organizations and one of whom shall be a
8 representative of the seafood industry; two by the Speaker of the
9 General Assembly, one of whom shall be a representative of
10 recognized aquaculture organizations and one of whom shall be a
11 representative of farmers; and one by the Governor from the public at
12 large.

13 b. The term of office of each public member shall be three years;
14 except that of the first members to be appointed, one appointed by the
15 Governor, one by the President of the Senate and one by the Speaker
16 of the General Assembly shall be appointed for a term of two years,
17 and the remaining two members shall be appointed for a term of three
18 years. Each member shall serve until a successor has been appointed
19 and qualified, and vacancies shall be filled in the same manner as the
20 original appointments for the remainder of the unexpired term. A
21 member is eligible for reappointment to the council.

22 c. A majority of the membership of the advisory council shall
23 constitute a quorum for the transaction of advisory council business.

24 d. Members of the advisory council shall serve without
25 compensation, but shall be entitled to reimbursement for expenses
26 incurred in attendance at meetings to the extent funds are available
27 therefor.

28 e. The advisory council shall act in an advisory capacity to the
29 department and other state agencies on aquaculture matters. The
30 advisory council shall assist the various departments in the evaluation
31 of proposed and existing rules and regulations and the development of
32 policies mandated by provisions of this act. The advisory council shall
33 seek to ensure that aquaculture market development activities and
34 policies reflect the changing needs and characteristics of the
35 aquaculture industry. The advisory council shall review the
36 Aquaculture Development Plan and update the plan as appropriate, but
37 no less frequently than every five years.

38

39 6. (New section) a. Notwithstanding any law, rule, or regulation
40 to the contrary, aquaculture shall be considered a component of
41 agriculture in the State, and aquacultured plants and animals shall be
42 considered to be agriculture crops and animals.

43 b. Notwithstanding any law, rule, or regulation to the contrary, a
44 person engaged in aquaculture shall have exclusive ownership of and
45 right to the aquatic organisms being aquacultured by that person.

46 c. The Department of Agriculture shall be the lead State agency for

1 the development, marketing, promotion, and advocacy of aquaculture
2 in the State.

3 d. The Department of Environmental Protection shall be the lead
4 State agency with respect to regulation of the use of waters of the
5 State and the lands underneath waters of the State used for
6 aquaculture.

7 e. The Aquaculture Technology Transfer Center, composed of the
8 Multispecies Aquaculture Demonstration Facility at Rutgers, The State
9 University, the Aquaculture Training and Information Center at
10 Cumberland County College, and the Fisheries and Aquaculture
11 Technology Extension Center, shall be the primary State facility for
12 aquaculture education, extension, demonstration, and industry
13 development and commercialization in the State.

14

15 7. (New section) Within 180 days of the date of enactment of this
16 act, the Department of Agriculture, the Department of Environmental
17 Protection, the Department of Commerce and Economic Development,
18 and the Department of Health shall, after consultation with the
19 Aquaculture Advisory Council, enter into interagency memoranda of
20 agreement concerning the implementation of the Aquaculture
21 Development Plan, and delineating the financial and regulatory
22 responsibility based upon the provisions of this act and any other
23 applicable laws. In developing the interagency memoranda of
24 agreement, the departments shall seek to develop provisions that foster
25 the development of aquaculture in the State.

26

27 8. (New section) Within 180 days of the date of enactment of this
28 act, the Department of Environmental Protection and the Department
29 of Agriculture, in consultation with the Aquaculture Advisory Council,
30 jointly shall establish, according to rules and regulations adopted
31 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
32 (C.52:14B-1 et seq.), appropriate policies for the use of aquaculture
33 leases in waters of the State and for lands underneath waters of the
34 State, including but not limited to lease specifications, fees, royalty
35 payments, and assignability and termination of lease agreements. The
36 policies shall provide for an expeditious procedure for finalizing lease
37 agreements. Lease agreements shall convey a necessary degree of
38 exclusivity to minimize the risks to the aquaculturists caused by
39 pollution, vandalism, theft, and other forms of encroachment, while
40 protecting common use rights of the public, and assuring the integrity
41 and protection of the natural wild stocks and their habitat.

42

43 9. (New section) The Department of Environmental Protection and
44 the Department of Agriculture, after consultation with the Aquaculture
45 Advisory Council, shall establish an interagency memorandum of
46 agreement to expand current leasing programs for waters of the State

1 and lands underneath waters of the State to include a statewide
2 aquaculture leasing system. The memorandum of agreement shall
3 determine which additional waters, lands, and aquatic organisms are
4 appropriate for aquaculture development. The Department of
5 Environmental Protection and the Department of Agriculture shall
6 jointly adopt, pursuant to the "Administrative Procedure Act,"
7 P.L.1968, c.410 (C.52:14B-1 et seq.), such additions within one year
8 of the date of enactment of this act.

9
10 10. (New section) a. The Department of Environmental
11 Protection, in consultation with the Department of Agriculture and the
12 Aquaculture Advisory Council, shall review the laws, rules, and
13 regulations pertaining to the taking, harvesting, possession, and use of
14 fish, wildlife, shellfish, and plants with regard to the effect of those
15 laws, rules, and regulations on the taking, harvesting, possession, use,
16 importation, containment, transport, and marketing of aquaculture
17 products. The review shall include, but need not be limited to, such
18 factors as gear, season, area, size limits, and all rules and regulations
19 adopted by the department that may impede the potential use of any
20 species in aquaculture.

21 b. Based upon the review performed pursuant to subsection a. of
22 this section, the Department of Environmental Protection, shall adopt,
23 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
24 (C.52:14B-1 et seq.) and within 180 days of the date of enactment of
25 this act, modifications that would not cause significant harm to wild
26 stocks, natural habitat, or the environment, so as to either exempt
27 specific types of aquacultural practices from those rules and
28 regulations or reduce any negative impact upon those practices to the
29 maximum extent practicable and feasible. To the extent that
30 modifications in the law are required to accomplish the purposes of
31 this section, the Department of Environmental Protection and the
32 various other entities conducting the review shall make
33 recommendations accordingly to the Governor and the Legislature.

34 c. The Department of Environmental Protection, in consultation
35 with the Department of Agriculture and the Aquaculture Advisory
36 Council, shall establish a program, pursuant to the "Administrative
37 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), regulating the
38 importation and transport of species used in aquaculture.

39
40 11. (New section) The Department of Environmental Protection,
41 in consultation with the Department of Agriculture and the
42 Aquaculture Advisory Council, shall review the laws, rules, and
43 regulations pertaining to endangered and nongame species, migratory
44 birds, and fish and game species with regard to the application and
45 effectiveness of those laws, rules, and regulations in the prevention of
46 predation at aquaculture facilities or sites. Based upon that review,

1 the Department of Environmental Protection in conjunction with the
2 various other entities conducting the review, after allowing for a
3 period of public review and comment and within 180 days of the date
4 of enactment of this act, shall make recommendations to all
5 appropriate governmental entities concerning implementation, to the
6 extent permitted by law and as soon as may be practical and feasible,
7 of procedures and mechanisms for the timely and cost effective
8 resolution of specific predation problems occurring at aquaculture
9 facilities or sites.

10
11 12. (New section) a. Notwithstanding any law, rule, or regulation
12 to the contrary, an aquaculture site, for which all appropriate permits
13 required by law have been obtained, that was not originally a
14 freshwater wetland as defined pursuant to the "Freshwater Wetlands
15 Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.) or any other law,
16 or any rule or regulation adopted pursuant thereto, prior to being
17 utilized for aquaculture shall not be designated a freshwater wetland
18 because of the subsequent growth of aquatic organisms at the
19 aquaculture site.

20 b. Within 180 days of the date of enactment of this act, the
21 Department of Environmental Protection, in consultation with the
22 Department of Agriculture and pursuant to the "Administrative
23 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall develop
24 appropriate methods and procedures to implement this section.

25
26 13. (New section) a. Notwithstanding any law, rule, or regulation
27 to the contrary, an aquaculture site, for which all appropriate permits
28 required by law have been obtained, that was not originally a coastal
29 wetland as defined pursuant to the "The Wetlands Act of 1970,"
30 P.L.1970, c.272 (C.13:9A-1 et seq.) or any other law, or any rule or
31 regulation adopted pursuant thereto, prior to being utilized for
32 aquaculture shall not be designated a coastal wetland because of the
33 subsequent growth of aquatic organisms at the aquaculture site.

34 b. Within 180 days of the date of enactment of this act, the
35 Department of Environmental Protection, in consultation with the
36 Department of Agriculture and pursuant to the "Administrative
37 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall develop
38 appropriate methods and procedures to implement this section.

39
40 14. (New section) Notwithstanding any law, or regulations to the
41 contrary, all State grant and loan, financial, and insurance programs
42 that apply to agriculture as of the effective date of this act shall apply
43 also to aquaculture.

44
45 15. (New section) The Department of Agriculture:

46 a. in consultation with the Aquaculture Technology Transfer

1 Center, the New Jersey Cooperative Extension Service and the
2 Department of Environmental Protection, shall implement an
3 aquaculture statistics reporting program which may include the
4 collection of information on the numbers of jobs being created in
5 aquaculture, the amount, value and type of product being produced,
6 and the overall economic activity in the aquaculture industry;

7 b. in consultation with the Aquaculture Technology Transfer
8 Center, and the New Jersey Cooperative Extension Service, shall assist
9 aquaculturists in obtaining coverage from the Federal Crop Insurance
10 Program;

11 c. in consultation with the Aquaculture Technology Transfer
12 Center and the New Jersey Cooperative Extension Service, shall assist
13 aquaculturists in completing the proper paperwork and other
14 information necessary to develop eligibility for economic emergency
15 loans for disaster relief through the Farmers Services Agency and
16 other programs;

17 d. in consultation with the United States Department of Agriculture
18 and the National Association of State Aquaculture Coordinators, shall
19 develop a monthly wholesale market report for aquaculture products;

20 e. in conjunction with the Aquaculture Technology Transfer Center
21 and the Department of Health, shall assist the aquaculture industry in
22 the development of necessary quality control guidelines and
23 specifications for production, processing, and marketing of
24 aquaculture products;

25 f. in conjunction with the Aquaculture Technology Transfer
26 Center, shall assist (1) the aquaculture industry in promoting its
27 products through techniques that may include the establishment and
28 use of a trademark and other specialized marketing efforts; and (2)
29 aquaculturists interested in developing coordinated efforts or
30 arrangements, including producer cooperatives, joint ventures, market
31 orders, and other forms of association; and

32 g. in conjunction with the Department of Health, the Department
33 of Commerce and Economic Development, and the Department of
34 Environmental Protection, shall explore the possibilities of establishing
35 private sector joint processing facilities to accommodate agriculture,
36 seafood, and aquaculture products.

37

38 16. (New section) The State Soil Conservation Committee in
39 consultation with the Department of Environmental Protection and the
40 Aquaculture Advisory Council, shall develop, pursuant to the
41 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
42 seq.), management practices for control of soil erosion and
43 sedimentation for aquacultural systems.

44

45 17. (New section) The Department of Agriculture, in consultation
46 with the Aquaculture Advisory Council, shall establish, pursuant to the

1 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
2 seq.), a program for the licensure of the possession and ownership of
3 aquacultured species.

4
5 18. (New section) The Department of Agriculture, in consultation
6 with the Department of Environmental Protection and the Aquaculture
7 Advisory Council, shall prepare a cost effective aquatic health
8 management plan designed to protect public and private aquaculturists
9 and wild aquatic populations from the importation of non-endemic
10 disease causing organisms. The department shall adopt the plan
11 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
12 (C.52:14B-1 et seq.) within 180 days of the date of enactment of this
13 act.

14
15 19. (New section) The Department of Agriculture, in consultation
16 with the Department of Environmental Protection, shall adopt,
17 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
18 (C.52:14B-1 et seq.), an animal waste management system that shall
19 provide for the proper disposal of animal wastes, including wastes
20 generated from aquaculture. The animal waste management system
21 shall include an aquaculture component that includes, but need not be
22 limited to, a requirement that aquaculture wastes be classified into
23 those generated in fresh water or salt water environments.

24 As used in this section, "aquaculture" means the propagation,
25 rearing, and harvesting of aquatic organisms in controlled or selected
26 environments, and the subsequent processing, packaging and
27 marketing, and shall include, but need not be limited to, activities such
28 as stocking, intervention in the rearing process to increase production,
29 feeding, transplanting, and providing for protection from predators,
30 and "aquatic organism" means and includes, but need not be limited to,
31 finfish, mollusks, crustaceans, and aquatic plants which are the
32 property of a person engaged in aquaculture.

33
34 20. (New section) The Office of State Planning, established
35 pursuant to section 6 of P.L.1985, c.398 (C.52:18A-201), shall
36 develop, pursuant to the "Administrative Procedure Act," P.L.1968,
37 c.410 (C.52:14B-1 et seq.), an aquaculture component for model
38 planning and zoning ordinances.

39
40 21. (New section) The Department of Labor, in conjunction with
41 the Department of Agriculture and the aquaculture industry, shall
42 review worker's compensation package coverages to assess their
43 general applicability to aquaculture industry needs, and make
44 recommendations accordingly to all appropriate entities with respect
45 to any needed modifications.

1 22. (New section) The Department of Commerce and Economic
2 Development, in conjunction with the Department of Agriculture, the
3 Department of Environmental Protection, the Aquaculture Technology
4 Transfer Center, and the aquaculture industry, shall, to the extent
5 feasible, develop and implement an information campaign to promote
6 in-State and outside investments in aquaculture operations located or
7 based in New Jersey.

8
9 23. (New section) The Department of Commerce and Economic
10 Development and the Aquaculture Advisory Council, in consultation
11 with the Department of Agriculture, shall develop mechanisms for
12 providing tax credits or reduced loan payments to a new aquaculture
13 enterprise, and make recommendations accordingly to the Governor
14 and the Legislature for any legislative action that may be necessary to
15 implement those mechanisms.

16
17 24. (New section) The Department of Insurance, in consultation
18 with the Aquaculture Advisory Council, shall review product liability
19 insurance within the State and determine how the coverage might be
20 extended to various segments of the aquaculture industry, and make
21 recommendations accordingly to all appropriate entities regarding any
22 modifications that should be made to existing insurance coverage
23 plans.

24
25 25. R.S.4:1-6 is amended to read as follows:

26 4:1-6. Each county board of agriculture shall be entitled to be
27 represented in the annual convention by two delegates.

28 Each of the following organizations shall be entitled to be
29 represented in the annual convention by one delegate: American
30 Cranberry Growers' Association, Board of Managers of the New
31 Jersey Agricultural Experiment Station, Cook College of Rutgers, The
32 State University, The Cooperative Marketing Associations in New
33 Jersey, Inc., Cultivated Sod Association of New Jersey, Inc., Garden
34 State Dairy Goat Association, Inc., Garden State Milk Council,
35 Garden State Service Cooperative Association, Inc., Horse Park of
36 New Jersey at Store Tavern Inc., Morgan Horse Association of New
37 Jersey, New Jersey Angus Association, Inc., New Jersey Agricultural
38 Society, Inc., New Jersey Apple Institute, Inc., New Jersey
39 Aquaculture Association, New Jersey Association of Agricultural
40 Fairs, New Jersey Beekeepers' Association, Inc., New Jersey
41 Christmas Tree Growers' Association, New Jersey Commercial
42 Fisherman's Association, New Jersey Farmers Direct Marketing
43 Association, Inc., New Jersey Farm Bureau, Inc., New Jersey FFA
44 Alumni Association, Grain and Forage Producers' Association of New
45 Jersey, Inc., New Jersey Guernsey Breeders' Association, Inc., New
46 Jersey Hereford Association, New Jersey Holstein-Friesian

1 Association, Inc., New Jersey Horse Council, New Jersey Livestock
2 Cooperative Association, Inc., New Jersey Nursery and Landscape
3 Association, New Jersey Nursery and Landscape Association --
4 Metropolitan Chapter, New Jersey Peach Council, New Jersey Peach
5 Promotion Council, Inc., New Jersey Plant and Flower Growers
6 Association, Inc., New Jersey Pony Breeders and Owners, Inc., New
7 Jersey Quarter Horse Association, New Jersey Sheep and Wool
8 Cooperative Association, Inc., New Jersey State Florists' Association,
9 Inc., New Jersey State Grange, Patrons of Husbandry, Inc., New
10 Jersey State Horticultural Society, Inc., New Jersey State Potato
11 Association, Inc., New Jersey State Poultry Association, Inc., New
12 Jersey State Sweet Potato Industry Association, Inc., New Jersey
13 Turkey Association, New Jersey Veterinary Medical Association, New
14 Jersey Vocational Agriculture Teachers Association, each Pomona
15 Grange, Patrons of Husbandry, Standardbred Breeders and Owners
16 Association of New Jersey, Inc., Thoroughbred Breeders' Association
17 of New Jersey, Tru-Blu Cooperative Association, Inc., South Jersey
18 Flower Growers Association, Inc., and the Vegetable Growers
19 Association of New Jersey, Inc.

20 Prior to the time fixed for the holding of the annual convention each
21 of the organizations named in this section shall choose from its
22 members the authorized number of delegates and certify to the
23 convention their qualifications as such. The credentials shall be filed
24 with the proper convention officer or committee, and upon the
25 acceptance thereof by the convention such persons shall have all the
26 rights and powers of delegates.

27 (cf: P.L.1993, c.265, s.1)

28

29 26. Section 3 of P.L.1977, c.74 (C.58:10A-3) is amended to read
30 as follows:

31 3. As used in this act, unless the context clearly requires a different
32 meaning, the following words and terms shall have the following
33 meanings:

34 a. "Administrator" means the Administrator of the United States
35 Environmental Protection Agency or his authorized representative;

36 b. "Areawide plan" means any plan prepared pursuant to section
37 208 of the Federal Act;

38 c. "Commissioner" means the Commissioner of Environmental
39 Protection or his authorized representative;

40 d. "Department" means the Department of Environmental
41 Protection;

42 e. "Discharge" means an intentional or unintentional action or
43 omission resulting in the releasing, spilling, leaking, pumping, pouring,
44 emitting, emptying, or dumping of a pollutant into the waters of the
45 State, onto land or into wells from which it might flow or drain into
46 said waters or into waters or onto lands outside the jurisdiction of the

- 1 State, which pollutant enters the waters of the State. "Discharge"
2 includes the release of any pollutant into a municipal treatment works;
- 3 f. "Effluent limitation" means any restriction on quantities, quality,
4 rates and concentration of chemical, physical, thermal, biological, and
5 other constituents of pollutants established by permit, or imposed as
6 an interim enforcement limit pursuant to an administrative order,
7 including an administrative consent order;
- 8 g. "Federal Act" means the "Federal Water Pollution Control Act
9 Amendments of 1972" (Public Law 92-500; 33 U.S.C. § 1251 et seq.);
- 10 h. "Municipal treatment works" means the treatment works of any
11 municipal, county, or State agency or any agency or subdivision
12 created by one or more municipal, county or State governments and
13 the treatment works of any public utility as defined in R.S.48:2-13;
- 14 i. "National Pollutant Discharge Elimination System" or "NPDES"
15 means the national system for the issuance of permits under the
16 Federal Act;
- 17 j. "New Jersey Pollutant Discharge Elimination System" or
18 "NJPDES" means the New Jersey system for the issuance of permits
19 under this act;
- 20 k. "Permit" means a NJPDES permit issued pursuant to section 6
21 of this act. "Permit" includes a letter of agreement entered into
22 between a delegated local agency and a user of its municipal treatment
23 works, setting effluent limitations and other conditions on the user of
24 the agency's municipal treatment works;
- 25 l. "Person" means any individual, corporation, company,
26 partnership, firm, association, owner or operator of a treatment works,
27 political subdivision of this State and any state or interstate agency.
28 "Person" shall also mean any responsible corporate official for the
29 purpose of enforcement action under section 10 of this act;
- 30 m. "Point source" means any discernible, confined and discrete
31 conveyance, including but not limited to, any pipe, ditch, channel,
32 tunnel, conduit, well, discrete fissure, container, rolling stock,
33 concentrated animal feeding operation, or vessel or other floating
34 craft, from which pollutants are or may be discharged;
- 35 n. "Pollutant" means any dredged spoil, solid waste, incinerator
36 residue, sewage, garbage, refuse, oil, grease, sewage sludge,
37 munitions, chemical wastes, biological materials, radioactive
38 substance, thermal waste, wrecked or discarded equipment, rock,
39 sand, cellar dirt, and industrial, municipal or agricultural waste or
40 other residue discharged into the waters of the State. "Pollutant"
41 includes both hazardous and nonhazardous pollutants;
- 42 o. "Pretreatment standards" means any restriction on quantities,
43 quality, rates, or concentrations of pollutants discharged into
44 municipal or privately owned treatment works adopted pursuant to
45 P.L.1972, c.42 (C.58:11-49 et seq.);
- 46 p. "Schedule of compliance" means a schedule of remedial

1 measures including an enforceable sequence of actions or operations
2 leading to compliance with water quality standards, an effluent
3 limitation or other limitation, prohibition or standard;

4 q. "Substantial modification of a permit" means any significant
5 change in any effluent limitation, schedule of compliance, compliance
6 monitoring requirement, or any other provision in any permit which
7 permits, allows, or requires more or less stringent or more or less
8 timely compliance by the permittee;

9 r. "Toxic pollutant" means any pollutant identified pursuant to the
10 Federal Act, or any pollutant or combination of pollutants, including
11 disease causing agents, which after discharge and upon exposure,
12 ingestion, inhalation or assimilation into any organism, either directly
13 or indirectly by ingestion through food chains, will, on the basis of
14 information available to the commissioner, cause death, disease,
15 behavioral abnormalities, cancer, genetic mutations, physiological
16 malfunctions, including malfunctions in reproduction, or physical
17 deformation, in such organisms or their offspring;

18 s. "Treatment works" means any device or systems, whether public
19 or private, used in the storage, treatment, recycling, or reclamation of
20 municipal or industrial waste of a liquid nature including intercepting
21 sewers, outfall sewers, sewage collection systems, cooling towers and
22 ponds, pumping, power and other equipment and their appurtenances;
23 extensions, improvements, remodeling, additions, and alterations
24 thereof; elements essential to provide a reliable recycled supply such
25 as standby treatment units and clear well facilities; and any other
26 works including sites for the treatment process or for ultimate disposal
27 of residues resulting from such treatment. "Treatment works" includes
28 any other method or system for preventing, abating, reducing, storing,
29 treating, separating, or disposing of pollutants, including storm water
30 runoff, or industrial waste in combined or separate storm water and
31 sanitary sewer systems;

32 t. "Waters of the State" means the ocean and its estuaries, all
33 springs, streams and bodies of surface or ground water, whether
34 natural or artificial, within the boundaries of this State or subject to its
35 jurisdiction;

36 u. "Hazardous pollutant" means:

37 (1) Any toxic pollutant;

38 (2) Any substance regulated as a pesticide under the Federal
39 Insecticide, Fungicide, and Rodenticide Act, Pub.L.92-516 (7 U.S.C.
40 § 136 et seq.);

41 (3) Any substance the use or manufacture of which is prohibited
42 under the federal Toxic Substances Control Act, Pub.L.94-469 (15
43 U.S.C. § 2601 et seq.);

44 (4) Any substance identified as a known carcinogen by the
45 International Agency for Research on Cancer;

46 (5) Any hazardous waste as designated pursuant to section 3 of

1 P.L.1981, c.279 (C.13:1E-51) or the "Resource Conservation and
2 Recovery Act," Pub.L.94-580 (42 U.S.C. § 6901 et seq.); or

3 (6) Any hazardous substance as defined pursuant to section 3 of
4 P.L.1976, c.141 (C.58:10-23.11b);

5 v. "Serious violation" means an exceedance of an effluent limitation
6 for a discharge point source set forth in a permit, administrative order,
7 or administrative consent agreement, including interim enforcement
8 limits, by 20 percent or more for a hazardous pollutant, or by 40
9 percent or more for a nonhazardous pollutant, calculated on the basis
10 of the monthly average for a pollutant for which the effluent limitation
11 is expressed as a monthly average, or, in the case of an effluent
12 limitation expressed as a daily maximum and without a monthly
13 average, on the basis of the monthly average of all maximum daily test
14 results for that pollutant in any month; in the case of an effluent
15 limitation for a pollutant that is not measured by mass or
16 concentration, the department shall prescribe an equivalent exceedance
17 factor therefor. The department may utilize, on a case-by-case basis,
18 a more stringent factor of exceedance to determine a serious violation
19 if the department states the specific reasons therefor, which may
20 include the potential for harm to human health or the environment.
21 "Serious violation" shall not include a violation of a permit limitation
22 for color;

23 w. "Significant noncomplier" means any person who commits a
24 serious violation for the same hazardous pollutant or the same
25 nonhazardous pollutant, at the same discharge point source, in any two
26 months of any six month period, or who exceeds the monthly average
27 or, in a case of a pollutant for which no monthly average has been
28 established, the monthly average of the daily maximums for an effluent
29 limitation for the same pollutant at the same discharge point source by
30 any amount in any four months of any six month period, or who fails
31 to submit a completed discharge monitoring report in any two months
32 of any six month period. The department may utilize, on a
33 case-by-case basis, a more stringent frequency or factor of exceedance
34 to determine a significant noncomplier, if the department states the
35 specific reasons therefor, which may include the potential for harm to
36 human health or the environment. A local agency shall not be deemed
37 a "significant noncomplier" due to an exceedance of an effluent
38 limitation established in a permit for flow;

39 x. "Local agency" means a political subdivision of the State, or an
40 agency or instrumentality thereof, that owns or operates a municipal
41 treatment works;

42 y. "Delegated local agency" means a local agency with an industrial
43 pretreatment program approved by the department;

44 z. "Upset" means an exceptional incident in which there is
45 unintentional and temporary noncompliance with an effluent limitation
46 because of an event beyond the reasonable control of the permittee,

1 including fire, riot, sabotage, or a flood, storm event, natural cause, or
2 other act of God, or other similar circumstance, which is the cause of
3 the violation. "Upset" also includes noncompliance consequent to the
4 performance of maintenance operations for which a prior exception
5 has been granted by the department or a delegated local agency;

6 aa. "Bypass" means the anticipated or unanticipated intentional
7 diversion of waste streams from any portion of a treatment works;

8 bb. "Major facility" means any facility or activity classified as such
9 by the Administrator of the United States Environmental Protection
10 Agency, or his representative, in conjunction with the department, and
11 includes industrial facilities and municipal treatment works;

12 cc. "Significant indirect user" means a discharger of industrial or
13 other pollutants into a municipal treatment works, as defined by the
14 department, including, but not limited to, industrial dischargers, but
15 excluding the collection system of a municipal treatment works;

16 dd. "Violation of this act" means a violation of any provisions of
17 this act, and shall include a violation of any rule or regulation, water
18 quality standard, effluent limitation or other condition of a permit, or
19 order adopted, issued, or entered into pursuant to this act;

20 ee. "Aquaculture" means the propagation, rearing, and harvesting
21 of aquatic organisms in controlled or selected environments, and the
22 subsequent processing, packaging and marketing, and shall include,
23 but need not be limited to, activities to intervene in the rearing process
24 to increase production such as stocking, feeding, transplanting, and
25 providing for protection from predators;

26 ff. "Aquatic organism" means and includes, but need not be limited
27 to, finfish, mollusks, crustaceans, and aquatic plants which are the
28 property of a person engaged in aquaculture.

29 (cf: P.L.1990, c.28, s.1)

30

31 27. Section 6 of P.L.1977, c.74 (C.58:10A-6) is amended to read
32 as follows:

33 6. a. It shall be unlawful for any person to discharge any pollutant,
34 except as provided pursuant to subsections d. and p. of this section, or
35 when the discharge conforms with a valid New Jersey Pollutant
36 Discharge Elimination System permit that has been issued by the
37 commissioner pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.) or a
38 valid National Pollutant Discharge Elimination System permit issued
39 by the administrator pursuant to the Federal Act, as the case may be.

40 b. It shall be unlawful for any person to build, install, modify or
41 operate any facility for the collection, treatment or discharge of any
42 pollutant, except after approval by the department pursuant to
43 regulations adopted by the commissioner.

44 c. The commissioner is hereby authorized to grant, deny, modify,
45 suspend, revoke, and reissue NJPDES permits in accordance with
46 P.L.1977, c.74, and with regulations to be adopted by him. The

1 commissioner may reissue, with or without modifications, an NPDES
2 permit duly issued by the federal government as the NJPDES permit
3 required by P.L.1977, c.74 .

4 d. The commissioner may, by regulation, exempt the following
5 categories of discharge, in whole or in part, from the requirement of
6 obtaining a permit under P.L.1977, c.74; provided, however, that an
7 exemption afforded under this section shall not limit the civil or
8 criminal liability of any discharger nor exempt any discharger from
9 approval or permit requirements under any other provision of law:

10 (1) Additions of sewage, industrial wastes or other materials into
11 a publicly owned sewage treatment works which is regulated by
12 pretreatment standards;

13 (2) Discharges of any pollutant from a marine vessel or other
14 discharges incidental to the normal operation of marine vessels;

15 (3) Discharges from septic tanks, or other individual waste disposal
16 systems, sanitary landfills, and other means of land disposal of wastes;

17 (4) Discharges of dredged or fill materials into waters for which
18 the State could not be authorized to administer the section 404
19 program under section 404(g) of the "Federal Water Pollution Control
20 Act Amendments of 1972," as amended by the "Clean Water Act of
21 1977" (33 U.S.C. § 1344) and implementing regulations;

22 (5) Nonpoint source discharges;

23 (6) Uncontrolled nonpoint source discharges composed entirely of
24 storm water runoff when these discharges are uncontaminated by any
25 industrial or commercial activity unless these particular storm water
26 runoff discharges have been identified by the administrator or the
27 department as a significant contributor of pollution;

28 (7) Discharges conforming to a national contingency plan for
29 removal of oil and hazardous substances, published pursuant to section
30 311(c)(2) of the Federal Act[.];

31 (8) Discharges resulting from agriculture, including aquaculture,
32 activities.

33 e. The commissioner shall not issue any permit for:

34 (1) The discharge of any radiological, chemical or biological
35 warfare agent or high-level radioactive waste into the waters of this
36 State;

37 (2) Any discharge which the United States Secretary of the Army,
38 acting through the Chief of Engineers, finds would substantially impair
39 anchorage or navigation;

40 (3) Any discharge to which the administrator has objected in
41 writing pursuant to the Federal Act;

42 (4) Any discharge which conflicts with an areawide plan adopted
43 pursuant to law.

44 f. A permit issued by the department or a delegated local agency
45 pursuant to P.L.1977, c.74 shall require the permittee:

46 (1) To achieve effluent limitations based upon guidelines or

1 standards established pursuant to the Federal Act or to P.L.1977, c.74,
2 together with such further discharge restrictions and safeguards
3 against unauthorized discharge as may be necessary to meet water
4 quality standards, areawide plans adopted pursuant to law, or other
5 legally applicable requirements;

6 (2) Where appropriate, to meet schedules for compliance with the
7 terms of the permit and interim deadlines for progress or reports of
8 progress towards compliance;

9 (3) To insure that all discharges are consistent at all times with the
10 terms and conditions of the permit and that no pollutant will be
11 discharged more frequently than authorized or at a level in excess of
12 that which is authorized by the permit;

13 (4) To submit application for a new permit in the event of any
14 contemplated facility expansion or process modification that would
15 result in new or increased discharges or, if these would not violate
16 effluent limitations or other restrictions specified in the permit, to
17 notify the commissioner, or delegated local agency, of such new or
18 increased discharges;

19 (5) To install, use and maintain such monitoring equipment and
20 methods, to sample in accordance with such methods, to maintain and
21 retain such records of information from monitoring activities, and to
22 submit to the commissioner, or to the delegated local agency, reports
23 of monitoring results for surface waters, as may be stipulated in the
24 permit, or required by the commissioner or delegated local agency
25 pursuant to paragraph (9) of this subsection, or as the commissioner
26 or the delegated local agency may prescribe for ground water.
27 Significant indirect users, major industrial dischargers, and local
28 agencies, other than those discharging only stormwater or noncontact
29 cooling water, shall, however, report their monitoring results for
30 discharges to surface waters monthly to the commissioner, or the
31 delegated local agency. Discharge monitoring reports for discharges
32 to surface waters shall be signed by the highest ranking official having
33 day-to-day managerial and operational responsibilities for the
34 discharging facility, who may, in his absence, authorize another
35 responsible high ranking official to sign a monthly monitoring report
36 if a report is required to be filed during that period of time. The
37 highest ranking official shall, however, be liable in all instances for the
38 accuracy of all the information provided in the monitoring report;
39 provided, however, that the highest ranking official may file, within
40 seven days of his return, amendments to the monitoring report to
41 which he was not a signatory. The highest ranking official having
42 day-to-day managerial and operational responsibilities for the
43 discharging facility of a local agency shall be the highest ranking
44 licensed operator of the municipal treatment works in those instances
45 where a licensed operator is required by law to operate the facility. In
46 those instances where a local agency has contracted with another

1 entity to operate a municipal treatment works, the highest ranking
2 official who signs the discharge monitoring report shall be an
3 employee of the contract operator and not of the local agency.
4 Notwithstanding that an employee of a contract operator is the official
5 who signs the discharge monitoring report, the local agency, as the
6 permittee, shall remain liable for compliance with all permit conditions.
7 In those instances where the highest ranking official having day-to-day
8 managerial and operational responsibilities for a discharging facility of
9 a local agency does not have the responsibility to authorize capital
10 expenditures and hire personnel, a person having that responsibility,
11 or a person designated by that person, shall submit to the department,
12 along with the discharge monitoring report, a certification that that
13 person has received and reviewed the discharge monitoring report. The
14 person submitting the certification to the department shall not be liable
15 for the accuracy of the information on the discharge monitoring report
16 due to the submittal of the certification. Whenever a local agency has
17 contracted with another entity to operate the municipal treatment
18 works, the person submitting the certification shall be an employee of
19 the permittee and not of the contract operator. The filing of
20 amendments to a monitoring report in accordance with this paragraph
21 shall not be considered a late filing of a report for purposes of
22 subsection d. of section 6 of P.L.1990, c.28 (C.58:10A-10.1), or for
23 purposes of determining a significant noncomplier;

24 (6) At all times, to maintain in good working order and operate as
25 effectively as possible, any facilities or systems of control installed to
26 achieve compliance with the terms and conditions of the permit;

27 (7) To limit concentrations of heavy metal, pesticides, organic
28 chemicals and other contaminants in the sludge in conformance with
29 the land-based sludge management criteria established by the
30 department in the Statewide Sludge Management Plan adopted
31 pursuant to the "Solid Waste Management Act," P.L.1970, c.39
32 (C.13:1E-1 et seq.) or established pursuant to the Federal Water
33 Pollution Control Act Amendments of 1972 (33 U.S.C. § 1251 et
34 seq.), or any regulations adopted pursuant thereto;

35 (8) To report to the department or delegated local agency, as
36 appropriate, any exceedance of an effluent limitation that causes injury
37 to persons, or damage to the environment, or poses a threat to human
38 health or the environment, within two hours of its occurrence, or of
39 the permittee becoming aware of the occurrence. Within 24 hours
40 thereof, or of an exceedance, or of becoming aware of an exceedance,
41 of an effluent limitation for a toxic pollutant, a permittee shall provide
42 the department or delegated local agency with such additional
43 information on the discharge as may be required by the department or
44 delegated local agency, including an estimate of the danger posed by
45 the discharge to the environment, whether the discharge is continuing,
46 and the measures taken, or being taken, to remediate the problem and

1 any damage to the environment, and to avoid a repetition of the
2 problem;

3 (9) Notwithstanding the reporting requirements stipulated in a
4 permit for discharges to surface waters, a permittee shall be required
5 to file monthly reports with the commissioner or delegated local
6 agency if the permittee:

7 (a) in any month commits a serious violation or fails to submit a
8 completed discharge monitoring report and does not contest, or
9 unsuccessfully contests, the assessment of a civil administrative
10 penalty therefor; or

11 (b) exceeds an effluent limitation for the same pollutant at the same
12 discharge point source by any amount for four out of six consecutive
13 months.

14 The commissioner or delegated local agency may restore the
15 reporting requirements stipulated in the permit if the permittee has not
16 committed any of the violations identified in this paragraph for six
17 consecutive months;

18 (10) To report to the department or delegated local agency, as
19 appropriate, any serious violation within 30 days of the violation,
20 together with a statement indicating that the permittee understands the
21 civil administrative penalties required to be assessed for serious
22 violations, and explaining the nature of the serious violation and the
23 measures taken to remedy the cause or prevent a recurrence of the
24 serious violation.

25 g. The commissioner and a local agency shall have a right of entry
26 to all premises in which a discharge source is or might be located or
27 in which monitoring equipment or records required by a permit are
28 kept, for purposes of inspection, sampling, copying or photographing.

29 h. In addition, any permit issued for a discharge from a municipal
30 treatment works shall require the permittee:

31 (1) To notify the commissioner or local agency in advance of the
32 quality and quantity of all new introductions of pollutants into a
33 facility and of any substantial change in the pollutants introduced into
34 a facility by an existing user of the facility, except for such
35 introductions of nonindustrial pollutants as the commissioner or local
36 agency may exempt from this notification requirement when ample
37 capacity remains in the facility to accommodate new inflows. The
38 notification shall estimate the effects of the changes on the effluents to
39 be discharged into the facility.

40 (2) To establish an effective regulatory program, alone or in
41 conjunction with the operators of sewage collection systems, that will
42 assure compliance and monitor progress toward compliance by
43 industrial users of the facilities with user charge and cost recovery
44 requirements of the Federal Act or State law and toxicity standards
45 adopted pursuant to P.L.1977, c.74 and pretreatment standards.

46 (3) As actual flows to the facility approach design flow or design

1 loading limits, to submit to the commissioner or local agency for
2 approval, a program which the permittee and the persons responsible
3 for building and maintaining the contributory collection system shall
4 pursue in order to prevent overload of the facilities.

5 i. (1) All local agencies shall prescribe terms and conditions,
6 consistent with applicable State and federal law, or requirements
7 adopted pursuant thereto by the department, upon which pollutants
8 may be introduced into treatment works, and shall have the authority
9 to exercise the same right of entry, inspection, sampling, and copying,
10 and to impose the same remedies, fines and penalties, and to recover
11 costs and compensatory damages as authorized pursuant to subsection
12 a. of section 10 of P.L.1977, c.74 (C.58:10A-10) and section 6 of
13 P.L.1990, c.28 (C.58:10A-10.1), with respect to users of such works,
14 as are vested in the commissioner by P.L.1977, c.74, or by any other
15 provision of State law, except that a local agency, except as provided
16 in P.L.1991, c.8 (C.58:10-10.4 et seq.), may not impose civil
17 administrative penalties, and shall petition the county prosecutor or the
18 Attorney General for a criminal prosecution under that section. Terms
19 and conditions shall include limits for heavy metals, pesticides, organic
20 chemicals and other contaminants in industrial wastewater discharges
21 based upon the attainment of land-based sludge management criteria
22 established by the department in the Statewide Sludge Management
23 Plan adopted pursuant to the "Solid Waste Management Act,"
24 P.L.1970, c.39 (C.13:1E-1 et seq.) or established pursuant to the
25 Federal Water Pollution Control Act Amendments of 1972 (33
26 U.S.C.§1251 et seq.), or any regulations adopted pursuant thereto.

27 (2) Of the amount of any penalty assessed and collected pursuant
28 to an action brought by a local agency in accordance with section 10
29 of P.L.1977, c.74 or section 6 of P.L.1990, c.28 (C.58:10A-10.1),
30 10% shall be deposited in the "Wastewater Treatment Operators'
31 Training Account," established in accordance with section 13 of
32 P.L.1990, c.28 (C.58:10A-14.5), and used to finance the cost of
33 training operators of municipal treatment works. The remainder shall
34 be used by the local agency solely for enforcement purposes, and for
35 upgrading municipal treatment works.

36 j. In reviewing permits submitted in compliance with P.L.1977,
37 c.74 and in determining conditions under which such permits may be
38 approved, the commissioner shall encourage the development of
39 comprehensive regional sewerage planning or facilities, which serve
40 the needs of the regional community, conform to the adopted
41 area-wide water quality management plan for that region, and protect
42 the needs of the regional community for water quality, aquifer storage,
43 aquifer recharge, and dry weather based stream flows.

44 k. No permit may be issued, renewed, or modified by the
45 department or a delegated local agency so as to relax any water quality
46 standard or effluent limitation until the applicant, or permit holder, as

1 the case may be, has paid all fees, penalties or fines due and owing
2 pursuant to P.L.1977, c.74, or has entered into an agreement with the
3 department establishing a payment schedule therefor; except that if a
4 penalty or fine is contested, the applicant or permit holder shall satisfy
5 the provisions of this section by posting financial security as required
6 pursuant to paragraph (5) of subsection d. of section 10 of P.L.1977,
7 c.74 (C.58:10A-10). The provisions of this subsection with respect to
8 penalties or fines shall not apply to a local agency contesting a penalty
9 or fine.

10 1. Each permitted facility or municipal treatment works, other than
11 one discharging only stormwater or non-contact cooling water, shall
12 be inspected by the department at least once a year; except that each
13 permitted facility discharging into the municipal treatment works of a
14 delegated local agency, other than a facility discharging only
15 stormwater or non-contact cooling water, shall be inspected by the
16 delegated local agency at least once a year. Except as hereinafter
17 provided, an inspection required under this subsection shall be
18 conducted within six months following a permittee's submission of an
19 application for a permit, permit renewal, or, in the case of a new
20 facility or municipal treatment works, issuance of a permit therefor,
21 except that if for any reason, a scheduled inspection cannot be made
22 the inspection shall be rescheduled to be performed within 30 days of
23 the originally scheduled inspection or, in the case of a temporary
24 shutdown, of resumed operation. Exemption of stormwater facilities
25 from the provisions of this subsection shall not apply to any permitted
26 facility or municipal treatment works discharging or receiving
27 stormwater runoff having come into contact with a hazardous
28 discharge site on the federal National Priorities List adopted by the
29 United States Environmental Protection Agency pursuant to the
30 "Comprehensive Environmental Response, Compensation, and
31 Liability Act," Pub.L.96-510 (42 U.S.C.A. §9601 et seq.), or any other
32 hazardous discharge site included by the department on the master list
33 for hazardous discharge site cleanups adopted pursuant to section 2 of
34 P.L.1982, c.202 (C.58:10-23.16). Inspections shall include:

35 (1) A representative sampling of the effluent for each permitted
36 facility or municipal treatment works, except that in the case of
37 facilities or works that are not major facilities or significant indirect
38 users, sampling pursuant to this paragraph shall be conducted at least
39 once every three years;

40 (2) An analysis of all collected samples by a State owned and
41 operated laboratory, or a certified laboratory other than one that has
42 been or is being used by the permittee, or that is directly or indirectly
43 owned, operated or managed by the permittee;

44 (3) An evaluation of the maintenance record of the permittee's
45 treatment equipment;

46 (4) An evaluation of the permittee's sampling techniques;

1 (5) A random check of written summaries of test results, prepared
2 by the certified laboratory providing the test results, for the
3 immediately preceding 12-month period, signed by a responsible
4 official of the certified laboratory, certifying the accuracy of the test
5 results; and

6 (6) An inspection of the permittee's sample storage facilities and
7 techniques if the sampling is normally performed by the permittee.

8 The department may inspect a facility required to be inspected by
9 a delegated local agency pursuant to this subsection. Nothing in this
10 subsection shall require the department to conduct more than one
11 inspection per year.

12 m. The facility or municipal treatment works of a permittee
13 identified as a significant noncomplier shall be subject to an inspection
14 by the department, or the delegated local agency, as the case may be,
15 which inspection shall be in addition to the requirements of subsection
16 l. of this section. The inspection shall be conducted within 60 days of
17 receipt of the discharge monitoring report that initially results in the
18 permittee being identified as a significant noncomplier. The inspection
19 shall include a random check of written summaries of test results,
20 prepared by the certified laboratory providing the test results, for the
21 immediately preceding 12-month period, signed by a responsible
22 official of the certified laboratory, certifying the accuracy of the test
23 results. A copy of each summary shall be maintained by the permittee.
24 The inspection shall be for the purpose of determining compliance.
25 The department or delegated local agency is required to conduct only
26 one inspection per year pursuant to this subsection, and is not required
27 to make an inspection hereunder if an inspection has been made
28 pursuant to subsection l. of this section within six months of the period
29 within which an inspection is required to be conducted under this
30 subsection.

31 n. To assist the commissioner in assessing a municipal treatment
32 works' NJPDES permit in accordance with paragraph (3) of subsection
33 b. of section 7 of P.L.1977, c.74 (C.58:10A-7), a delegated local
34 agency shall perform a complete analysis that includes a complete
35 priority pollutant analysis of the discharge from, and inflow to, the
36 municipal treatment works. The analysis shall be performed by a
37 delegated local agency as often as the priority pollutant scan is
38 required under the permit, but not less than once a year, and shall be
39 based upon data acquired in the priority pollutant scan and from
40 applicable sludge quality analysis reports. The results of the analysis
41 shall be included in a report to be attached to the annual report
42 required to be submitted to the commissioner by the delegated local
43 agency.

44 o. Except as otherwise provided in section 3 of P.L.1963, c.73
45 (C.47:1A-3), any records, reports or other information obtained by
46 the commissioner or a local agency pursuant to this section or section

1 5 of P.L.1972, c.42 (C.58:11-53), including any correspondence
2 relating thereto, shall be available to the public; however, upon a
3 showing satisfactory to the commissioner by any person that the
4 making public of any record, report or information, or a part thereof,
5 other than effluent data, would divulge methods or processes entitled
6 to protection as trade secrets, the commissioner or local agency shall
7 consider such record, report, or information, or part thereof, to be
8 confidential, and access thereto shall be limited to authorized officers
9 or employees of the department, the local agency, and the federal
10 government.

11 p. The provisions of this section shall not apply to a discharge of
12 petroleum to the surface waters of the State that occurs as a result of
13 the process of recovering, containing, cleaning up or removing a
14 discharge of petroleum in the surface waters of the State and that is
15 undertaken in compliance with the instructions of a federal on-scene
16 coordinator or of the commissioner or the commissioner's designee.

17 q. The commissioner shall, in consultation with the Department of
18 Agriculture and the Aquaculture Advisory Council, provide for the
19 issuance of general permits for the discharge of pollutants from
20 concentrated aquatic animal production facilities and aquacultural
21 projects. In establishing general permits the commissioner shall take
22 into consideration the source and receiving water quality and the type
23 of aquaculture activity being conducted. The general permits issued
24 pursuant to this subsection shall require the permittee to meet best
25 management practices rather than to attain a numeric pollutant
26 discharge parameter level. If the commissioner determines that a
27 permittee cannot perform the best management practices in order to
28 obtain a general permit or that the performance of best management
29 practices will not be protective of water quality as required by
30 P.L.1977, c.74, the commissioner may require the permittee to obtain
31 an individual permit which may contain numeric pollutant parameter
32 discharge limits. In setting any numeric pollutant parameter discharge
33 limits, the commissioner shall rely on the development of categorical
34 standards that are applicable to specific types of aquaculture activities.
35 (cf: P.L.1995, c.16, s.3)

36

37 28. Section 2 of P.L.1989, c.119 (C.58:10A-7.1) is amended to
38 read as follows:

39 2. After December 31, 1991, the department may not issue a
40 permit to any private, commercial, or industrial applicant for the
41 discharge of any solid, semi-solid, or liquid wastes into the ocean
42 waters of the State, the provisions of any other law, or rule or
43 regulation to the contrary notwithstanding. Any permit issued by the
44 department for the discharge of any such waste prior to January 1,
45 1992 shall expire on January 1, 1992, the provisions of any such
46 permit to the contrary notwithstanding. The provisions of [this act]

1 P.L.1989, c.119 shall not apply to permits applied for, or issued to,
2 municipal treatment works [or] , seafood processing facilities , or for
3 aquaculture activities. As used in this act, "ocean waters" means those
4 waters of the open seas lying seaward of the base line from which the
5 territorial sea is measured, as provided for in the Convention on the
6 Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

7 As used in this section, "aquaculture" means the propagation,
8 rearing, and harvesting of aquatic organisms in controlled or selected
9 environments, and the subsequent processing, packaging and
10 marketing, and shall include, but need not be limited to, activities such
11 as stocking, intervention in the rearing process to increase production,
12 feeding, transplanting, and providing for protection from predators and
13 "aquatic organism" means and includes, but need not be limited to,
14 finfish, mollusks, crustaceans, and aquatic plants which are the
15 property of a person engaged in aquaculture.

16 (cf: P.L.1989, c.119, s.2)

17

18 29. Section 3 of P.L.1981, c.262 (C.58:1A-3) is amended to read
19 as follows:

20 3. As used in the provisions of P.L.1981, c.262 (C.58:1A-1 et seq.)
21 and P.L.1993, c.202 (C.58:1A-7.3 et al.):

22 a. "Commissioner" means the Commissioner of the Department of
23 Environmental Protection or his designated representative;

24 b. "Consumptive use" means any use of water diverted from
25 surface or ground waters other than a nonconsumptive use as defined
26 in this act;

27 c. "Department" means the Department of Environmental
28 Protection;

29 d. "Diversion" means the taking or impoundment of water from a
30 river, stream, lake, pond, aquifer, well, other underground source, or
31 other water body, whether or not the water is returned thereto,
32 consumed, made to flow into another stream or basin, or discharged
33 elsewhere;

34 e. "Nonconsumptive use" means the use of water diverted from
35 surface or ground waters in such a manner that it is returned to the
36 surface or ground water at or near the point from which it was taken
37 without substantial diminution in quantity or substantial impairment of
38 quality;

39 f. "Person" means any individual, corporation, company,
40 partnership, firm, association, owner or operator of a water supply
41 facility, political subdivision of the State and any state, or interstate
42 agency or Federal agency;

43 g. "Waters" or "waters of the State" means all surface waters and
44 ground waters in the State;

45 h. "Safe or dependable yield" or "safe yield" means that
46 maintainable yield of water from a surface or ground water source or

1 sources which is available continuously during projected future
2 conditions, including a repetition of the most severe drought of record,
3 without creating undesirable effects, as determined by the department;

4 i. "Aquaculture" means the propagation and rearing of aquatic
5 species in controlled or selected environments, and the subsequent
6 processing, packaging and marketing, and shall include, but need not
7 be limited to, activities to intervene in the rearing process to increase
8 production such as stocking, feeding, transplanting, and providing for
9 protection from predators.

10 j. "Aquatic organism" means and includes, but need not be limited
11 to, finfish, mollusks, crustaceans, and aquatic plants which are the
12 property of a person engaged in aquaculture.

13 (cf: P.L.1993, c.202, s.11)

14

15 30. Section 6 of P.L.1981, c.262 (C.58:1A-6) is amended to read
16 as follows:

17 6. a. The department in developing the permit system established
18 by P.L.1981, c.262 (C.58:1A-1 et al.) shall:

19 (1) Permit privileges previously allowed pursuant to lawful
20 legislative or administrative action, except that the department may,
21 after notice and public hearing, limit the exercise of these privileges to
22 the extent currently exercised, subject to contract, or reasonably
23 required for a demonstrated future need. All diversion permits issued
24 by the Water Policy and Supply Council prior to August 13, 1981 shall
25 remain in effect until modified by the department pursuant to
26 P.L.1981, c.262 (C.58:1A-1 et al.). Persons having or claiming a right
27 to divert more than 100,000 gallons of water per day pursuant to prior
28 legislative or administrative action, including persons previously
29 exempted from the requirement to obtain a permit, shall renew that
30 right by applying for a diversion permit, or water usage certification,
31 as the case may be, no later than February 9, 1982. Thereafter, the
32 conditions of the new diversion permit or water usage certification
33 shall be deemed conclusive evidence of such previously allowed
34 privileges.

35 (2) Require any person diverting 100,000 or more gallons of water
36 per day for agricultural or horticultural purposes to obtain approval of
37 the appropriate county agricultural agent of a five-year water usage
38 certification program. This approval shall be based on standards and
39 procedures established by the department. This program shall include
40 the right to construct, repair or reconstruct dams or other structures,
41 the right to divert water for irrigation, frost protection, harvesting and
42 other agriculturally-related purposes, including aquaculture, and the
43 right to measure the amount of water diverted by means of a log or
44 other appropriate record, and shall be obtained in lieu of any permit
45 which would otherwise be required by P.L.1981, c.262 (C.58:1A-1 et
46 al.).

1 (3) Require any person diverting more than 100,000 gallons per
2 day of any waters of the State or proposing to construct any building
3 or structure which may require a diversion of water to obtain a
4 diversion permit. Prior to issuing a diversion permit, the department
5 shall afford the general public with reasonable notice of a permit
6 application, and with the opportunity to be heard thereon at a public
7 hearing held by the department.

8 b. In exercising the water supply management and planning
9 functions authorized by P.L.1981, c.262 (C.58:1A-1 et al.),
10 particularly in a region of the State where excessive water usage or
11 diversion present undue stress, or wherein conditions pose a significant
12 threat to the long-term integrity of a water supply source, including a
13 diminution of surface water supply due to excess groundwater
14 diversion, the commissioner shall, after notice and public hearing as
15 provided by and required pursuant to the "Administrative Procedure
16 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), designate that region as
17 an area of critical water supply concern.

18 In designating an area of critical water supply concern, the
19 department shall be required to demonstrate that the specific area is
20 stressed to a degree which jeopardizes the integrity and viability of the
21 water supply source or poses a threat to the public health, safety, or
22 welfare. This designation shall conform to and satisfy the criteria of an
23 area of critical water supply concern as defined in rules and regulations
24 adopted by the department pursuant to the "Administrative Procedure
25 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

26 Those specific areas previously designated by the department as
27 water supply critical and margin areas, considered as Depleted or
28 Threatened Zones, respectively, prior to the effective date of
29 P.L.1993, c.202 shall be considered to be areas of critical water supply
30 concern for the purposes of P.L.1981, c.262 (C.58:1A-1 et al.) or
31 P.L.1993, c.202 (C.58:1A-7.3 et al.).

32 c. In designated areas of critical water supply concern, the
33 department, in consultation with affected permittees and local
34 governing bodies and after notice and public hearing, shall:

- 35 (1) study water supply availability;
- 36 (2) estimate future water supply needs;
- 37 (3) identify appropriate and reasonable alternative water supply
38 management strategies;
- 39 (4) select and adopt appropriate water supply alternatives; and
- 40 (5) require affected permittees to prepare water supply plans
41 consistent with the adopted water supply management alternatives.

42 d. Following implementation of the adopted water supply
43 management alternatives, the department shall monitor water levels
44 and water quality within the designated area of critical water supply
45 concern to determine the effectiveness of the alternative water supply
46 management strategies selected. If the department determines that the

1 alternatives selected are not effective in protecting the water supply
2 source of concern, the department may revise the designation and
3 impose further restrictions in accordance with the procedures set forth
4 in this section. The results of all monitoring conducted pursuant to
5 this section shall be reported to all affected permittees on an annual
6 basis.

7 e. Nothing in P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993,
8 c.202 (C.58:1A-7.3 et al.) shall prevent the department from including,
9 or require the department to include, the presently non-utilized
10 existing privileges in any new, modified or future diversion permit
11 issued to the present holder of these privileges, except as otherwise
12 expressly provided in subsection b. of section 7 of P.L.1981, c.262
13 (C.58:1A-7).

14 (cf: P.L.1993, c.202, s.1)

15

16 31. Section 2 of P.L.1981, c.277 (C.58:1A-7.2) is amended to read
17 as follows:

18 2. The provisions of any law, rule or regulation to the contrary
19 notwithstanding, no tax, fee or other charge shall be imposed on the
20 diversion, for agricultural or horticultural purposes, including
21 aquaculture, of any ground or surface water of this State; provided,
22 however, that nothing in this section shall prohibit the imposition of a
23 fee, pursuant to law, for the cost of processing, monitoring and
24 administering a water usage certification program for persons who
25 divert any ground or surface water for agricultural and horticultural
26 purposes, or other agriculturally-related purposes, including
27 aquaculture.

28 As used in this section, "aquaculture" means the propagation,
29 rearing, and harvesting of aquatic organisms in controlled or selected
30 environments, and the subsequent processing, packaging and
31 marketing, and shall include, but need not be limited to, activities such
32 as stocking, intervention in the rearing process to increase production,
33 feeding, transplanting, and providing for protection from predators and
34 "aquatic organism" means and includes, but need not be limited to,
35 finfish, mollusks, crustaceans, and aquatic plants which are the
36 property of a person engaged in aquaculture.

37 (cf: P.L.1981, c.277, s.2)

38

39 32. Section 13 of P.L.1981, c.262 (C.58:1A-13) is amended to
40 read as follows:

41 13. a. [Within 180 days of the effective date of this act, the] The
42 department shall prepare and adopt the New Jersey Statewide Water
43 Supply Plan, which plan shall be revised and updated at least once
44 every 5 years.

45 b. The plan shall include, but need not be limited to, the following:

46 (1) An identification of existing Statewide and regional ground and

1 surface water supply sources, both interstate and intrastate, and the
2 current usage thereof;

3 (2) Projections of Statewide and regional water supply demands
4 for the duration of the plan;

5 (3) Recommendations for improvements to existing State water
6 supply facilities, the construction of additional State water supply
7 facilities, and for the interconnection or consolidation of existing water
8 supply systems; [and]

9 (4) Recommendations for the diversion or use of fresh surface or
10 ground waters and saline ground water for aquaculture purposes; and

11 (5) Recommendations for legislative and administrative actions to
12 provide for the maintenance and protection of watershed areas.

13 c. Prior to adopting the plan, the department shall:

14 (1) Prepare and make available to all interested persons a proposed
15 plan;

16 (2) Conduct public meetings in the several geographic areas of the
17 State on the proposed plan; and

18 (3) Consider the comments made at these meetings, make any
19 revisions to the proposed plan as it deems necessary, and adopt the
20 plan.

21 (cf: P.L.1981, c.262, s.13)

22

23 33. This act shall take effect immediately.

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STATEMENT

27

28 This bill, the "New Jersey Aquaculture Development Act," would
29 establish a program to encourage the development of an aquaculture
30 industry in the State. Aquaculture is an important and growing
31 segment of agriculture. The bill would implement, in part, the
32 "Aquaculture Development Plan," prepared by the Aquaculture
33 Development Task Force pursuant to Executive Order No. 104
34 (1993). The plan presents a strong case for State investment in
35 aquaculture and provides an approach for developing the industry.

36 The bill would codify a definition of aquaculture and clearly identify
37 aquaculture as a component of agriculture. The bill would designate
38 the Department of Agriculture as the lead agency for aquaculture
39 marketing, promotion, advocacy and business development in New
40 Jersey, and continue the regulatory role of the Department of
41 Environmental Protection in waters of the State. The bill also would
42 designate the Aquaculture Technology Transfer Center, composed of
43 the Multispecies Aquaculture Demonstration Facility at Rutgers, The
44 State University, the Aquaculture Training and Information Center at
45 Cumberland County College, and the Fisheries and Aquaculture
46 Technology Extension Center, as the primary State facility for

1 aquaculture education, extension, demonstration, and industry
2 development and commercialization in the State. The bill also would
3 declare that any person engaged in aquaculture shall have exclusive
4 ownership of and right to the aquatic organisms being aquacultured by
5 that person.

6 The bill would establish the Office of Aquaculture Coordination in
7 the Department of Agriculture. The office would be directed to
8 prepare a guidebook explaining the permit process for receiving all
9 necessary permits or other approvals or exemptions to engage in an
10 aquaculture project in the State. The office would serve as resource
11 for applicants and prospective applicants for aquaculture projects.
12 The office shall establish, in cooperation with other permitting
13 agencies, a permit coordination system whose purpose is to the
14 applicant in the completion of the application and to assist in the
15 processing of the application. Finally, the office shall develop a
16 protocol for authorizing an individual to engage in an aquaculture
17 demonstration project.

18 Under provisions of the bill, an 11-member Aquaculture Advisory
19 Council would be established. The advisory council would function in
20 an advisory capacity to the Department of Agriculture and other state
21 agencies on aquaculture matters. The advisory council is directed to
22 review and update the Aquaculture Development Plan.

23 The bill would direct the Department of Agriculture, the
24 Department of Environmental Protection, the Department of
25 Commerce and Economic Development, and the Department of
26 Health, after consultation with the Aquaculture Advisory Council, to
27 enter into interagency memoranda of agreement concerning the
28 implementation of the Aquaculture Development Plan, and delineating
29 the financial and regulatory responsibility for aquaculture based upon
30 the provisions of this act and any other applicable laws. In developing
31 the interagency memoranda of agreement, the departments shall seek
32 to develop provisions that foster the development of aquaculture in the
33 State.

34 The bill would direct the Department of Environmental Protection
35 to establish appropriate policies for the use of aquaculture leases in
36 public waters and for lands underneath public waters, including but not
37 limited to lease specifications, fees, royalty payments, and assignability
38 and termination of lease agreements. The bill also would direct the
39 Department of Environmental Protection and the Department of
40 Agriculture to establish an interagency memorandum of agreement to
41 expand current leasing programs for waters of the State and lands
42 underneath waters of the State to include a statewide aquaculture
43 leasing system.

44 The bill would direct the Department of Environmental Protection
45 to review the laws, rules, and regulations pertaining to the taking,
46 harvesting, possession, and use of fish, wildlife, shellfish, and plants

1 with regard to the effect of those laws, rules, and regulations on the
2 taking, harvesting, possession, use, and marketing of aquaculture
3 products. The review shall include, but need not be limited to, such
4 factors as gear, season, area, and size limits. Based upon that review,
5 the Department of Environmental Protection shall adopt modifications
6 that would not cause significant harm to wild stocks, natural habitat,
7 or the environment, so as to either exempt specific types of
8 aquacultural practices from those rules and regulations or reduce any
9 negative impact upon those practices to the maximum extent
10 practicable and feasible. To the extent that modifications in the law
11 are required to accomplish the purposes of this section, the
12 Department of Environmental Protection and the various other entities
13 conducting the review shall make recommendations accordingly to the
14 Governor and the Legislature. The Department of Environmental
15 Protection would be directed to establish a program regulating the
16 importation and transport of species used in aquaculture.

17 The bill would direct the Department of Environmental Protection
18 to review the laws, rules, and regulations pertaining to endangered and
19 nongame species, migratory birds, and fish and game species with
20 regard to the application and effectiveness of those laws, rules, and
21 regulations in the prevention of predation at aquaculture facilities or
22 sites.

23 The bill would provide that an aquaculture site that was not
24 originally a wetlands shall not be considered a wetlands because of
25 subsequent growth or invasion of aquatic organisms at that site.

26 The bill would declare that all State financial and insurance
27 programs that apply to agriculture would also apply to aquaculture.
28 The bill also would direct the Department of Agriculture to provide,
29 in conjunction with other relevant State and federal agencies, business
30 and other technical assistance to the aquaculture industry.

31 The bill would direct the Department of Agriculture to prepare an
32 aquatic health management plan designed to protect public and private
33 aquaculturists and wild aquatic populations from the importation of
34 non-endemic disease causing organisms.

35 The bill would direct the State Soil Conservation Committee to
36 develop management practices for control of soil erosion and
37 sedimentation for aquacultural systems.

38 The bill would direct the Department of Agriculture to establish a
39 program for the licensure of the possession and ownership of
40 aquacultured species.

41 The bill would direct the Office of State Planning to develop an
42 aquaculture component for model planning and zoning ordinances.

43 The bill would direct the Department of Labor to review worker's
44 compensation package coverages to assess their general applicability
45 to aquaculture industry needs, and make recommendations accordingly
46 to all appropriate entities with respect to any needed modifications.

1 The bill would direct the Department of Commerce and Economic
2 Development, to the extent feasible, to develop and implement an
3 information campaign to promote in-State and outside investments in
4 aquaculture operations located or based in New Jersey.

5 The bill would direct the Department of Commerce and Economic
6 Development to develop mechanisms for providing tax credits or
7 reduced loan payments to a new aquaculture enterprise, and make
8 recommendations accordingly to the Governor and the Legislature for
9 any legislative action that may be necessary to implement those
10 mechanisms.

11 The bill would direct the Department of Insurance to review
12 product liability insurance within the State and determine how the
13 coverage might be extended to various segments of the aquaculture
14 industry, and make recommendations accordingly to all appropriate
15 entities regarding any modifications that should be made to existing
16 insurance coverage plans.

17 The bill would add the New Jersey Aquaculture Association to the
18 list of organizations represented at the annual State Agricultural
19 Convention.

20 Finally, the bill would direct the Department of Environmental
21 Protection to provide for the issuance of general permits for the
22 discharge of pollutants from concentrated aquatic animal production
23 facilities and aquacultural projects. The bill would also amend existing
24 law regarding water diversion to treat aquaculture in the same manner
25 as agriculture.

26

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30 The "New Jersey Aquaculture Development Act."