

[Passed Both Houses]

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1830

STATE OF NEW JERSEY

ADOPTED SEPTEMBER 19, 1996

**Sponsored by Assemblymen AZZOLINA, GIBSON, Corodemus,
Cottrell, Blee, LeFevre, Senators Singer and Bryant**

1 AN ACT concerning aquaculture, ¹and¹ amending and supplementing
2 parts of the statutory law ¹[, and making an appropriation]¹.

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,

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted March 3, 1997.

1 discusses specific suggestions to remove barriers impeding the
2 development of the industry and methods for achieving the
3 interdepartmental cooperation necessary to developing aquaculture.

4 The Legislature therefore determines that in order to foster
5 development of an aquaculture industry in New Jersey it is in the best
6 interest of the citizens of this State that the recommendations
7 contained in the "Aquaculture Development Plan" be adopted by the
8 Legislature.

9

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

11 "Aquaculture" means the propagation, rearing, and ¹subsequent¹
12 harvesting of aquatic organisms in controlled or selected
13 environments, and the subsequent processing, packaging and
14 marketing, and shall include, but need not be limited to, activities to
15 intervene in the rearing process to increase production such as
16 stocking, feeding, transplanting and providing for protection from
17 predators. ¹"Aquaculture" shall not include the construction of
18 facilities and appurtenant structures that might otherwise be regulated
19 pursuant to any State or federal law or regulation.¹

20 "Aquaculture Development Plan" means the plan prepared by the
21 Aquaculture Development Task Force, established pursuant to
22 Executive Order No. 104 (1993).

23 "Aquaculturist" means a person engaging in aquaculture.

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

27 "Council" means the Aquaculture Advisory Council established
28 pursuant to section 5 of this act.

29 "Office" means the Office of Aquaculture Coordination established
30 pursuant to section 4 of this act.

31 "Secretary" means the Secretary of Agriculture.

32

33 4. (New section) There is established in the Department of
34 Agriculture the Office of Aquaculture Coordination. The office shall,
35 in consultation with the Department of Environmental Protection,
36 prepare a guidebook explaining the permit process for receiving all
37 necessary permits or other approvals or exemptions to engage in an
38 aquaculture project in the State. The guidebook shall include a list
39 that identifies the permits or other approvals that may be necessary for
40 an aquaculture project. The list shall identify the application form or
41 forms required for an application to be deemed complete, any
42 documents or other written submissions required to be filed with the
43 application, and any filing, notice, hearing or other requirement that is
44 a precondition for review of an application. The guidebook shall also
45 describe management practices for aquaculture. The guidebook shall

1 be updated as often as necessary. The office shall serve as resource
2 for applicants and prospective applicants for aquaculture projects.

3 The office shall establish, in cooperation with other permitting
4 agencies, a permit coordination system whose purpose is to assist the
5 applicant in the completion of the application and to assist in
6 processing the application. The goal of the system shall be the
7 processing of applications within 90 days of their completion, and at
8 ¹[an] a reasonable¹ application cost ¹[not prohibitive to a single
9 proprietor] consistent with the goals and objectives of this act¹ .

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

12

13 5. (New section) a. There is established in the Department of
14 Agriculture an Aquaculture Advisory Council which shall consist of 13
15 1 voting and two non-voting¹ members ¹[, seven of whom shall be] .
16 The voting members shall include¹ the Secretary of Agriculture, who
17 shall serve as chairman, the Commissioner of Environmental
18 Protection, the Commissioner of Commerce and Economic
19 Development, the Commissioner of Health, the director of the
20 Aquaculture Technology Transfer Center, the director of the
21 Aquaculture Training and Information Center, the 1 executive¹ director
22 of the ¹[Fisheries and Aquaculture Technology Extension Center] ¹
23 New Jersey Agricultural Experiment Station¹ , or their designees, who
24 shall serve ex officio, and six citizens of the State, to be appointed as
25 follows: two by the President of the Senate, one of whom shall be a
26 representative from recognized aquaculture organizations or an
27 operator of an aquaculture farm and one of whom shall be a
28 representative of the seafood industry; two by the Speaker of the
29 General Assembly, one of whom shall be a representative of
30 recognized aquaculture organizations or an operator of an aquaculture
31 farm and one of whom shall be a representative of farmers; and two by
32 the Governor from the public at large. 1 The chairman of the Marine
33 Fisheries Council and the chairman of the Fish and Game Council shall
34 serve ex officio and as non-voting members.¹

35 b. The term of office of each public member shall be three years;
36 except that of the first members to be appointed, one appointed by the
37 Governor, one by the President of the Senate and one by the Speaker
38 of the General Assembly shall be appointed for a term of two years,
39 and the remaining two members shall be appointed for a term of three
40 years. Each member shall serve until a successor has been appointed
41 and qualified, and vacancies shall be filled in the same manner as the
42 original appointments for the remainder of the unexpired term. A
43 member is eligible for reappointment to the council.

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

1 d. Members of the advisory council shall serve without
2 compensation, but shall be entitled to reimbursement for expenses
3 incurred in attendance at meetings to the extent funds are available
4 therefor.

5 e. The advisory council shall act in an advisory capacity to the
6 department and other state agencies on aquaculture matters. The
7 advisory council shall assist the various departments in the evaluation
8 of proposed and existing rules and regulations and the development of
9 policies mandated by provisions of this act. The advisory council shall
10 seek to ensure that aquaculture market development activities and
11 policies reflect the changing needs and characteristics of the
12 aquaculture industry. The advisory council shall review the
13 Aquaculture Development Plan and update the plan as appropriate, but
14 no less frequently than every five years.

15
16 6. (New section) a. Notwithstanding any law, rule, or regulation
17 to the contrary, aquaculture shall be considered a component of
18 agriculture in the State, and aquacultured plants and animals shall be
19 considered to be agriculture crops and animals.

20 b. Notwithstanding any law, rule, or regulation to the contrary, a
21 person engaged in aquaculture shall have exclusive ownership of the
22 aquatic organisms being aquacultured by that person.

23 c. The Department of Agriculture shall be the lead State agency
24 for the development, marketing, promotion, and advocacy of
25 aquaculture in the State.

26 d. The Department of Environmental Protection shall be the lead
27 State agency with respect to regulation of aquaculture activities in
28 ¹[public fresh and marine] the¹ waters of the State.

29 e. The Aquaculture Technology Transfer Center, composed of the
30 Multispecies Aquaculture Demonstration Facility at Rutgers, The State
31 University, the Aquaculture Training and Information Center at
32 Cumberland County College, and the ¹[Fisheries and Aquaculture
33 Technology Extension Center] Rutgers Cooperative Extension¹, shall
34 be the primary State facility for aquaculture education, extension,
35 demonstration, and industry development and commercialization in the
36 State.

37
38 7. (New section) Within one year of the effective date of this act,
39 the Department of Agriculture, the Department of Environmental
40 Protection, the Department of Commerce and Economic Development,
41 and the Department of Health shall, after consultation with the
42 Aquaculture Advisory Council, enter into interagency memoranda of
43 agreement concerning the implementation of the Aquaculture
44 Development Plan, and delineating the financial and regulatory
45 responsibility based upon the provisions of this act and any other

1 applicable laws. In developing the interagency memoranda of
2 agreement, the departments shall seek to develop provisions that foster
3 the development of aquaculture in the State.

4
5 8. (New section) Within 180 days of the effective date of this act,
6 the Department of Environmental Protection and the Department of
7 Agriculture, in consultation with the Aquaculture Advisory Council ¹,
8 the Shell Fisheries Council and the Pinelands Commission as it affects
9 the pinelands area designated pursuant to section 10 of P.L.1979,
10 c.111 (C.13:18A-11)¹, jointly shall establish, according to rules and
11 regulations adopted pursuant to the "Administrative Procedure Act,"
12 P.L.1968, c.410 (C.52:14B-1 et seq.), appropriate policies for the use
13 of aquaculture leases in waters of the State and for lands underneath
14 waters of the State, including but not limited to lease specifications,
15 fees, royalty payments, and assignability and termination of lease
16 agreements. The policies shall provide for an expeditious procedure
17 for finalizing lease agreements. Lease agreements shall convey a
18 necessary degree of exclusivity to minimize the risks to the
19 aquaculturists caused by pollution, vandalism, theft, and other forms
20 of encroachment, while protecting common use rights of the public,
21 and assuring the integrity and protection of the natural wild stocks and
22 their habitat.

23
24 9. (New section) The Department of Environmental Protection
25 and the Department of Agriculture, after consultation with the
26 Aquaculture Advisory Council, shall establish an interagency
27 memorandum of agreement to expand current leasing programs for
28 waters of the State and lands underneath waters of the State to include
29 a statewide aquaculture leasing system. The memorandum of
30 agreement shall determine which additional waters, lands, and aquatic
31 organisms are appropriate for aquaculture development. The
32 Department of Environmental Protection and the Department of
33 Agriculture shall jointly adopt, pursuant to the "Administrative
34 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such additions
35 within one year of the date of enactment of this act.

36
37 10. (New section) a. The Department of Environmental
38 Protection, in consultation with the Department of Agriculture ¹[and],
39 the Fish and Game Council, the Marine Fisheries Council and¹ the
40 Aquaculture Advisory Council, shall review the laws, rules, and
41 regulations pertaining to the taking, harvesting, possession, and use of
42 fish, wildlife, shellfish, and plants with regard to the effect of those
43 laws, rules, and regulations on the taking, harvesting, possession, use,
44 importation, containment, transport, and marketing of aquaculture
45 products from public waters of the State. The review shall include,

1 but need not be limited to, such factors as gear, season, area, size
2 limits, and all rules and regulations adopted by the ¹[department or]
3 Department of Environmental Protection,¹ the Fish and Game
4 Council ¹, or the Marine Fisheries Council¹ that may impede the
5 potential use of any species in aquaculture.

6 b. Based upon the review performed pursuant to subsection a. of
7 this section ¹[and taking into consideration comments from the Fish
8 and Game Council and the Marine Fisheries Council on the proposed
9 changes to laws, regulations, and rules,]¹ the Department of
10 Environmental Protection ¹or the Fish and Game Council, as
11 appropriate¹, shall adopt, pursuant to the "Administrative Procedure
12 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and within one year of the
13 effective date of this act, modifications that would not cause
14 significant harm to wild stocks, natural habitat, or the environment, so
15 as to either exempt specific types of aquacultural practices from those
16 rules and regulations or reduce any negative impact upon those
17 practices to the maximum extent practicable and feasible. To the
18 extent that modifications in the law are required to accomplish the
19 purposes of this section, the Department of Environmental Protection
20 and the various other entities conducting the review shall make
21 recommendations accordingly to the Governor and the Legislature.

22 c. The Department of Environmental Protection ¹or the Fish and
23 Game Council, as appropriate¹, in consultation with the Department
24 of Agriculture and the Aquaculture Advisory Council, shall establish
25 a program within one year of the effective date of this act and pursuant
26 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
27 et seq.), regulating the importation and transport of species used in
28 aquaculture.

29
30 11. (New section) The Department of Environmental Protection,
31 in consultation with the Department of Agriculture ¹, the Pinelands
32 Commission as it affects the pinelands area designated pursuant to
33 section 10 of P.L.1979, c.111 (C.13:18A-11),¹ and the Aquaculture
34 Advisory Council, shall review the laws, rules, and regulations
35 pertaining to endangered and nongame species, migratory birds, and
36 fish and game species with regard to the application and effectiveness
37 of those laws, rules, and regulations in the prevention of predation at
38 aquaculture facilities or sites. Based upon that review, the Department
39 of Environmental Protection in conjunction with the various other
40 entities conducting the review, after allowing for a period of public
41 review and comment and within one year of the effective date of this
42 act, shall make recommendations to all appropriate governmental
43 entities concerning implementation, to the extent permitted by law and
44 as soon as may be practical and feasible, of procedures and
45 mechanisms for the timely and cost effective resolution of specific

1 predation problems occurring at aquaculture facilities or sites.

2

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

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

17

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

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

31

32 14. (New section) Notwithstanding any law, or regulations to the
33 contrary, all State grant and loan, financial, and insurance programs
34 that apply to agriculture as of the effective date of this act shall apply
35 also to aquaculture.

36

37 15. (New section) The Department of Agriculture:

38 a. in consultation with the Aquaculture Technology Transfer
39 Center, the ¹[New Jersey Cooperative Extension Service] Rutgers
40 Cooperative Extension¹ and the Department of Environmental
41 Protection, shall implement an aquaculture statistics reporting program
42 which may include the collection of information on the numbers of
43 jobs being created in aquaculture, the amount, value and type of
44 product being produced, and the overall economic activity in the
45 aquaculture industry;

1 b. in consultation with the Aquaculture Technology Transfer
2 Center, and the ¹[New Jersey Cooperative Extension Service] Rutgers
3 Cooperative Extension¹, shall assist aquaculturists in obtaining
4 coverage from ¹[the Federal Crop Insurance Program] federal crop
5 insurance programs¹;

6 c. in consultation with the Aquaculture Technology Transfer
7 Center and the ¹[New Jersey Cooperative Extension Service] Rutgers
8 Cooperative Extension¹, shall assist aquaculturists in completing the
9 proper paperwork and other information necessary to develop
10 eligibility for economic emergency loans for disaster relief through the
11 Farmers Services Agency and other programs;

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

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

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

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

33

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

40

41 17. (New section) The Department of Agriculture, in consultation
42 with the Department of Environmental Protection and the Aquaculture
43 Advisory Council, shall establish, pursuant to the "Administrative
44 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a program for
45 the licensure of the possession and ownership of aquacultured

1 organisms.

2

3 18. (New section) The Department of Agriculture, in consultation
4 with the Department of Environmental Protection and the Aquaculture
5 Advisory Council, shall develop and adopt, within one year of the
6 effective date of this act and in accordance with the "Administrative
7 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
8 regulations establishing an aquatic health management plan designed
9 to protect public and private aquaculturists and wild aquatic
10 populations from the importation of non-endemic disease causing
11 organisms, and to assist in facilitating the exportation and importation
12 of aquatic species in to and out of the State.

13

14 19. (New section) The Department of Agriculture, in consultation
15 with the Department of Environmental Protection, shall adopt, within
16 one year of the effective date of this act and pursuant to the
17 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
18 seq.), a comprehensive animal waste management program that shall
19 provide for the proper disposal of animal wastes, including wastes
20 generated from aquaculture. The animal waste management program
21 shall include, but need not be limited to, criteria and standards for the
22 composting, handling, storage, processing, utilization and disposal of
23 animal wastes,¹[requirements and procedures for permitting such
24 animal waste facilities and activities,]¹ the establishment of program
25 compliance provisions including appropriate penalties for program
26 noncompliance and violations, and may include provisions for the
27 assessment of fees to cover reasonable administrative costs.

28

29 20. (New section) The Office of State Planning¹[,]¹established
30 pursuant to section 6 of P.L.1985, c.398 (C.52:18A-201) ¹in
31 consultation with the Pinelands Commission as it affects the pinelands
32 area designated pursuant to section 10 of P.L.1979, c.111 (C.13:18A-
33 11)¹, shall develop, pursuant to the "Administrative Procedure Act,"
34 P.L.1968, c.410 (C.52:14B-1 et seq.), an aquaculture component for
35 model planning and zoning ordinances.

36

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

43

44 22. (New section) The Department of Commerce and Economic
45 Development, in conjunction with the Department of Agriculture, the

1 Department of Environmental Protection, the Aquaculture Technology
2 Transfer Center, and the aquaculture industry, shall, to the extent
3 feasible, develop and implement an information campaign to promote
4 in-State and outside investments in aquaculture operations located or
5 based in New Jersey within one year of the appointment of the
6 Aquaculture Advisory Council pursuant to section 5 of this act.

7

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

15

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

23

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

25 4:1-6. Each county board of agriculture shall be entitled to be
26 represented in the annual convention by two delegates.

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

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

1 P.L.1972, c.42 (C.58:11-49 et seq.);

2 p. "Schedule of compliance" means a schedule of remedial
3 measures including an enforceable sequence of actions or operations
4 leading to compliance with water quality standards, an effluent
5 limitation or other limitation, prohibition or standard;

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

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

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

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

38 u. "Hazardous pollutant" means:

39 (1) Any toxic pollutant;

40 (2) Any substance regulated as a pesticide under the Federal
41 Insecticide, Fungicide, and Rodenticide Act, Pub.L.92-516 (7 U.S.C.
42 § 136 et seq.);

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

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

3 (5) Any hazardous waste as designated pursuant to section 3 of
4 P.L.1981, c.279 (C.13:1E-51) or the "Resource Conservation and
5 Recovery Act," Pub.L.94-580 (42 U.S.C. § 6901 et seq.); or

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

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

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

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

45 y. "Delegated local agency" means a local agency with an

1 industrial pretreatment program approved by the department;

2 z. "Upset" means an exceptional incident in which there is
3 unintentional and temporary noncompliance with an effluent limitation
4 because of an event beyond the reasonable control of the permittee,
5 including fire, riot, sabotage, or a flood, storm event, natural cause, or
6 other act of God, or other similar circumstance, which is the cause of
7 the violation. "Upset" also includes noncompliance consequent to the
8 performance of maintenance operations for which a prior exception
9 has been granted by the department or a delegated local agency;

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

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

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

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

24 ee. "Aquaculture" means the propagation, rearing, and
25 'subsequent' 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 to
28 intervene in the rearing process to increase production such as
29 stocking, feeding, transplanting, and providing for protection from
30 predators ¹. "Aquaculture" shall not include the construction of
31 facilities and appurtenant structures that might otherwise be regulated
32 pursuant to any State or federal law or regulation¹ ;

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

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

37

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

40 6. a. It shall be unlawful for any person to discharge any
41 pollutant, except as provided pursuant to subsections d. and p. of this
42 section, or when the discharge conforms with a valid New Jersey
43 Pollutant Discharge Elimination System permit that has been issued by
44 the commissioner pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.) or
45 a valid National Pollutant Discharge Elimination System permit issued

1 by the administrator pursuant to the Federal Act, as the case may be.

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

6 c. The commissioner is hereby authorized to grant, deny, modify,
7 suspend, revoke, and reissue NJPDES permits in accordance with
8 P.L.1977, c.74, and with regulations to be adopted by him. The
9 commissioner may reissue, with or without modifications, an NPDES
10 permit duly issued by the federal government as the NJPDES permit
11 required by P.L.1977, c.74 .

12 d. The commissioner may, by regulation, exempt the following
13 categories of discharge, in whole or in part, from the requirement of
14 obtaining a permit under P.L.1977, c.74; provided, however, that an
15 exemption afforded under this section shall not limit the civil or
16 criminal liability of any discharger nor exempt any discharger from
17 approval or permit requirements under any other provision ¹of State
18 or federal¹ of law:

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

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

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

27 (4) Discharges of dredged or fill materials into waters for which
28 the State could not be authorized to administer the section 404
29 program under section 404(g) of the "Federal Water Pollution Control
30 Act Amendments of 1972," as amended by the "Clean Water Act of
31 1977" (33 U.S.C. § 1344) and implementing regulations;

32 (5) Nonpoint source discharges;

33 (6) Uncontrolled nonpoint source discharges composed entirely of
34 storm water runoff when these discharges are uncontaminated by any
35 industrial or commercial activity unless these particular storm water
36 runoff discharges have been identified by the administrator or the
37 department as a significant contributor of pollution;

38 (7) Discharges conforming to a national contingency plan for
39 removal of oil and hazardous substances, published pursuant to section
40 311(c)(2) of the Federal Act[.];

41 (8) Discharges resulting from agriculture, including aquaculture,
42 activities.

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

44 (1) The discharge of any radiological, chemical or biological
45 warfare agent or high-level radioactive waste into the waters of this

1 State;

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

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

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

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

11 (1) To achieve effluent limitations based upon guidelines or
12 standards established pursuant to the Federal Act or to P.L.1977, c.74,
13 together with such further discharge restrictions and safeguards
14 against unauthorized discharge as may be necessary to meet water
15 quality standards, areawide plans adopted pursuant to law, or other
16 legally applicable requirements;

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

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

24 (4) To submit application for a new permit in the event of any
25 contemplated facility expansion or process modification that would
26 result in new or increased discharges or, if these would not violate
27 effluent limitations or other restrictions specified in the permit, to
28 notify the commissioner, or delegated local agency, of such new or
29 increased discharges;

30 (5) To install, use and maintain such monitoring equipment and
31 methods, to sample in accordance with such methods, to maintain and
32 retain such records of information from monitoring activities, and to
33 submit to the commissioner, or to the delegated local agency, reports
34 of monitoring results for surface waters, as may be stipulated in the
35 permit, or required by the commissioner or delegated local agency
36 pursuant to paragraph (9) of this subsection, or as the commissioner
37 or the delegated local agency may prescribe for ground water.
38 Significant indirect users, major industrial dischargers, and local
39 agencies, other than those discharging only stormwater or noncontact
40 cooling water, shall, however, report their monitoring results for
41 discharges to surface waters monthly to the commissioner, or the
42 delegated local agency. Discharge monitoring reports for discharges
43 to surface waters shall be signed by the highest ranking official having
44 day-to-day managerial and operational responsibilities for the
45 discharging facility, who may, in his absence, authorize another

1 responsible high ranking official to sign a monthly monitoring report
2 if a report is required to be filed during that period of time. The
3 highest ranking official shall, however, be liable in all instances for the
4 accuracy of all the information provided in the monitoring report;
5 provided, however, that the highest ranking official may file, within
6 seven days of his return, amendments to the monitoring report to
7 which he was not a signatory. The highest ranking official having
8 day-to-day managerial and operational responsibilities for the
9 discharging facility of a local agency shall be the highest ranking
10 licensed operator of the municipal treatment works in those instances
11 where a licensed operator is required by law to operate the facility. In
12 those instances where a local agency has contracted with another
13 entity to operate a municipal treatment works, the highest ranking
14 official who signs the discharge monitoring report shall be an
15 employee of the contract operator and not of the local agency.
16 Notwithstanding that an employee of a contract operator is the official
17 who signs the discharge monitoring report, the local agency, as the
18 permittee, shall remain liable for compliance with all permit conditions.
19 In those instances where the highest ranking official having day-to-day
20 managerial and operational responsibilities for a discharging facility of
21 a local agency does not have the responsibility to authorize capital
22 expenditures and hire personnel, a person having that responsibility,
23 or a person designated by that person, shall submit to the department,
24 along with the discharge monitoring report, a certification that that
25 person has received and reviewed the discharge monitoring report. The
26 person submitting the certification to the department shall not be liable
27 for the accuracy of the information on the discharge monitoring report
28 due to the submittal of the certification. Whenever a local agency has
29 contracted with another entity to operate the municipal treatment
30 works, the person submitting the certification shall be an employee of
31 the permittee and not of the contract operator. The filing of
32 amendments to a monitoring report in accordance with this paragraph
33 shall not be considered a late filing of a report for purposes of
34 subsection d. of section 6 of P.L.1990, c.28 (C.58:10A-10.1), or for
35 purposes of determining a significant noncomplier;

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

39 (7) To limit concentrations of heavy metal, pesticides, organic
40 chemicals and other contaminants in the sludge in conformance with
41 the land-based sludge management criteria established by the
42 department in the Statewide Sludge Management Plan adopted
43 pursuant to the "Solid Waste Management Act," P.L.1970, c.39
44 (C.13:1E-1 et seq.) or established pursuant to the Federal Water
45 Pollution Control Act Amendments of 1972 (33 U.S.C. § 1251 et

1 seq.), or any regulations adopted pursuant thereto;

2 (8) To report to the department or delegated local agency, as
3 appropriate, any exceedance of an effluent limitation that causes injury
4 to persons, or damage to the environment, or poses a threat to human
5 health or the environment, within two hours of its occurrence, or of
6 the permittee becoming aware of the occurrence. Within 24 hours
7 thereof, or of an exceedance, or of becoming aware of an exceedance,
8 of an effluent limitation for a toxic pollutant, a permittee shall provide
9 the department or delegated local agency with such additional
10 information on the discharge as may be required by the department or
11 delegated local agency, including an estimate of the danger posed by
12 the discharge to the environment, whether the discharge is continuing,
13 and the measures taken, or being taken, to remediate the problem and
14 any damage to the environment, and to avoid a repetition of the
15 problem;

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

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

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

27 The commissioner or delegated local agency may restore the
28 reporting requirements stipulated in the permit if the permittee has not
29 committed any of the violations identified in this paragraph for six
30 consecutive months;

31 (10) To report to the department or delegated local agency, as
32 appropriate, any serious violation within 30 days of the violation,
33 together with a statement indicating that the permittee understands the
34 civil administrative penalties required to be assessed for serious
35 violations, and explaining the nature of the serious violation and the
36 measures taken to remedy the cause or prevent a recurrence of the
37 serious violation.

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

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

44 (1) To notify the commissioner or local agency in advance of the
45 quality and quantity of all new introductions of pollutants into a

1 facility and of any substantial change in the pollutants introduced into
2 a facility by an existing user of the facility, except for such
3 introductions of nonindustrial pollutants as the commissioner or local
4 agency may exempt from this notification requirement when ample
5 capacity remains in the facility to accommodate new inflows. The
6 notification shall estimate the effects of the changes on the effluents to
7 be discharged into the facility.

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

14 (3) As actual flows to the facility approach design flow or design
15 loading limits, to submit to the commissioner or local agency for
16 approval, a program which the permittee and the persons responsible
17 for building and maintaining the contributory collection system shall
18 pursue in order to prevent overload of the facilities.

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

41 (2) Of the amount of any penalty assessed and collected pursuant
42 to an action brought by a local agency in accordance with section 10
43 of P.L.1977, c.74 or section 6 of P.L.1990, c.28 (C.58:10A-10.1),
44 10% shall be deposited in the "Wastewater Treatment Operators'
45 Training Account," established in accordance with section 13 of

1 P.L.1990, c.28 (C.58:10A-14.5), and used to finance the cost of
2 training operators of municipal treatment works. The remainder shall
3 be used by the local agency solely for enforcement purposes, and for
4 upgrading municipal treatment works.

5 j. In reviewing permits submitted in compliance with P.L.1977,
6 c.74 and in determining conditions under which such permits may be
7 approved, the commissioner shall encourage the development of
8 comprehensive regional sewerage planning or facilities, which serve
9 the needs of the regional community, conform to the adopted
10 area-wide water quality management plan for that region, and protect
11 the needs of the regional community for water quality, aquifer storage,
12 aquifer recharge, and dry weather based stream flows.

13 k. No permit may be issued, renewed, or modified by the
14 department or a delegated local agency so as to relax any water quality
15 standard or effluent limitation until the applicant, or permit holder, as
16 the case may be, has paid all fees, penalties or fines due and owing
17 pursuant to P.L.1977, c.74, or has entered into an agreement with the
18 department establishing a payment schedule therefor; except that if a
19 penalty or fine is contested, the applicant or permit holder shall satisfy
20 the provisions of this section by posting financial security as required
21 pursuant to paragraph (5) of subsection d. of section 10 of P.L.1977,
22 c.74 (C.58:10A-10). The provisions of this subsection with respect to
23 penalties or fines shall not apply to a local agency contesting a penalty
24 or fine.

25 l. Each permitted facility or municipal treatment works, other than
26 one discharging only stormwater or non-contact cooling water, shall
27 be inspected by the department at least once a year; except that each
28 permitted facility discharging into the municipal treatment works of a
29 delegated local agency, other than a facility discharging only
30 stormwater or non-contact cooling water, shall be inspected by the
31 delegated local agency at least once a year. Except as hereinafter
32 provided, an inspection required under this subsection shall be
33 conducted within six months following a permittee's submission of an
34 application for a permit, permit renewal, or, in the case of a new
35 facility or municipal treatment works, issuance of a permit therefor,
36 except that if for any reason, a scheduled inspection cannot be made
37 the inspection shall be rescheduled to be performed within 30 days of
38 the originally scheduled inspection or, in the case of a temporary
39 shutdown, of resumed operation. Exemption of stormwater facilities
40 from the provisions of this subsection shall not apply to any permitted
41 facility or municipal treatment works discharging or receiving
42 stormwater runoff having come into contact with a hazardous
43 discharge site on the federal National Priorities List adopted by the
44 United States Environmental Protection Agency pursuant to the
45 "Comprehensive Environmental Response, Compensation, and

1 Liability Act," Pub.L.96-510 (42 U.S.C.A.§9601 et seq.), or any other
2 hazardous discharge site included by the department on the master list
3 for hazardous discharge site cleanups adopted pursuant to section 2 of
4 P.L.1982, c.202 (C.58:10-23.16). Inspections shall include:

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

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

14 (3) An evaluation of the maintenance record of the permittee's
15 treatment equipment;

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

17 (5) A random check of written summaries of test results, prepared
18 by the certified laboratory providing the test results, for the
19 immediately preceding 12-month period, signed by a responsible
20 official of the certified laboratory, certifying the accuracy of the test
21 results; and

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

24 The department may inspect a facility required to be inspected by
25 a delegated local agency pursuant to this subsection. Nothing in this
26 subsection shall require the department to conduct more than one
27 inspection per year.

28 m. The facility or municipal treatment works of a permittee
29 identified as a significant noncomplier shall be subject to an inspection
30 by the department, or the delegated local agency, as the case may be,
31 which inspection shall be in addition to the requirements of subsection
32 l. of this section. The inspection shall be conducted within 60 days of
33 receipt of the discharge monitoring report that initially results in the
34 permittee being identified as a significant noncomplier. The inspection
35 shall include a random check of written summaries of test results,
36 prepared by the certified laboratory providing the test results, for the
37 immediately preceding 12-month period, signed by a responsible
38 official of the certified laboratory, certifying the accuracy of the test
39 results. A copy of each summary shall be maintained by the permittee.
40 The inspection shall be for the purpose of determining compliance.
41 The department or delegated local agency is required to conduct only
42 one inspection per year pursuant to this subsection, and is not required
43 to make an inspection hereunder if an inspection has been made
44 pursuant to subsection l. of this section within six months of the period
45 within which an inspection is required to be conducted under this

1 subsection.

2 n. To assist the commissioner in assessing a municipal treatment
3 works' NJPDES permit in accordance with paragraph (3) of subsection
4 b. of section 7 of P.L.1977, c.74 (C.58:10A-7), a delegated local
5 agency shall perform a complete analysis that includes a complete
6 priority pollutant analysis of the discharge from, and inflow to, the
7 municipal treatment works. The analysis shall be performed by a
8 delegated local agency as often as the priority pollutant scan is
9 required under the permit, but not less than once a year, and shall be
10 based upon data acquired in the priority pollutant scan and from
11 applicable sludge quality analysis reports. The results of the analysis
12 shall be included in a report to be attached to the annual report
13 required to be submitted to the commissioner by the delegated local
14 agency.

15 o. Except as otherwise provided in section 3 of P.L.1963, c.73
16 (C.47:1A-3), any records, reports or other information obtained by
17 the commissioner or a local agency pursuant to this section or section
18 5 of P.L.1972, c.42 (C.58:11-53), including any correspondence
19 relating thereto, shall be available to the public; however, upon a
20 showing satisfactory to the commissioner by any person that the
21 making public of any record, report or information, or a part thereof,
22 other than effluent data, would divulge methods or processes entitled
23 to protection as trade secrets, the commissioner or local agency shall
24 consider such record, report, or information, or part thereof, to be
25 confidential, and access thereto shall be limited to authorized officers
26 or employees of the department, the local agency, and the federal
27 government.

28 p. The provisions of this section shall not apply to a discharge of
29 petroleum to the surface waters of the State that occurs as a result of
30 the process of recovering, containing, cleaning up or removing a
31 discharge of petroleum in the surface waters of the State and that is
32 undertaken in compliance with the instructions of a federal on-scene
33 coordinator or of the commissioner or the commissioner's designee.

34 q. The commissioner shall, in consultation with the Department of
35 Agriculture and the Aquaculture Advisory Council, provide for the
36 issuance of general permits for the discharge of pollutants from
37 concentrated aquatic animal production facilities and aquacultural
38 projects. In establishing general permits the commissioner shall take
39 into consideration the source and receiving water quality and the type
40 of aquaculture activity being conducted. The general permits issued
41 pursuant to this subsection shall ¹[require the permittee] give priority¹
42 to ¹[meet] meeting¹ best management practices rather than ¹[to attain
43 a] attaining¹ numeric pollutant discharge parameter ¹[level] levels¹ .
44 If the commissioner determines that a permittee cannot perform the
45 best management practices in order to obtain a general permit or that

1 the performance of best management practices will not be protective
2 of water quality as required by P.L.1977, c.74, the commissioner may
3 require the permittee to obtain an individual permit which may contain
4 numeric pollutant parameter discharge limits. ¹[In setting any numeric
5 pollutant parameter discharge limits, the commissioner shall rely on the
6 development of categorical standards that are applicable to specific
7 types of aquaculture activities.]¹

8 (cf: P.L.1995, c.16, s.3)

9

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

12 2. After December 31, 1991, the department may not issue a
13 permit to any private, commercial, or industrial applicant for the
14 discharge of any solid, semi-solid, or liquid wastes into the ocean
15 waters of the State, the provisions of any other law, or rule or
16 regulation to the contrary notwithstanding. Any permit issued by the
17 department for the discharge of any such waste prior to January 1,
18 1992 shall expire on January 1, 1992, the provisions of any such
19 permit to the contrary notwithstanding. The provisions of [this act]
20 P.L.1989, c.119 shall not apply to permits applied for, or issued to,
21 municipal treatment works [or] , seafood processing facilities¹, public
22 water supply desalinization plants¹ , or ¹[for]¹ aquaculture activities.
23 As used in this act, "ocean waters" means those waters of the open
24 seas lying seaward of the base line from which the territorial sea is
25 measured, as provided for in the Convention on the Territorial Sea and
26 the Contiguous Zone (15 UST 1606; TIAS 5639).

27 As used in this section, "aquaculture" means the propagation,
28 rearing, and ¹subsequent¹ harvesting of aquatic organisms in controlled
29 or selected environments, and the subsequent processing, packaging
30 and marketing, and shall include, but need not be limited to, activities
31 such as stocking, intervention in the rearing process to increase
32 production, feeding, transplanting, and providing for protection from
33 predators ¹and shall not include the construction of facilities and
34 appurtenant structures that might otherwise be regulated pursuant to
35 any State or federal law or regulation,¹ and "aquatic organism" means
36 and includes, but need not be limited to, finfish, mollusks, crustaceans,
37 and aquatic plants which are the property of a person engaged in
38 aquaculture.

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

40

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

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

45 a. "Commissioner" means the Commissioner of the Department of

1 Environmental Protection or his designated representative;

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

5 c. "Department" means the Department of Environmental
6 Protection;

7 d. "Diversion" means the taking or impoundment of water from a
8 river, stream, lake, pond, aquifer, well, other underground source, or
9 other water body, whether or not the water is returned thereto,
10 consumed, made to flow into another stream or basin, or discharged
11 elsewhere;

12 e. "Nonconsumptive use" means the use of water diverted from
13 surface or ground waters in such a manner that it is returned to the
14 surface or ground water at or near the point from which it was taken
15 without substantial diminution in quantity or substantial impairment of
16 quality;

17 f. "Person" means any individual, corporation, company,
18 partnership, firm, association, owner or operator of a water supply
19 facility, political subdivision of the State and any state, or interstate
20 agency or Federal agency;

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

23 h. "Safe or dependable yield" or "safe yield" means that
24 maintainable yield of water from a surface or ground water source or
25 sources which is available continuously during projected future
26 conditions, including a repetition of the most severe drought of record,
27 without creating undesirable effects, as determined by the department;

28 i. "Aquaculture" means the propagation¹ [and] .¹ rearing and
29 subsequent harvesting¹ of aquatic species in controlled or selected
30 environments, and the subsequent processing, packaging and
31 marketing, and shall include, but need not be limited to, activities to
32 intervene in the rearing process to increase production such as
33 stocking, feeding, transplanting, and providing for protection from
34 predators. ¹"Aquaculture" shall not include the construction of
35 facilities and appurtenant structures that might otherwise be regulated
36 pursuant to any State or federal law or regulation.¹

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

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

41

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

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

1 (1) Permit privileges previously allowed pursuant to lawful
2 legislative or administrative action, except that the department may,
3 after notice and public hearing, limit the exercise of these privileges to
4 the extent currently exercised, subject to contract, or reasonably
5 required for a demonstrated future need. All diversion permits issued
6 by the Water Policy and Supply Council prior to August 13, 1981 shall
7 remain in effect until modified by the department pursuant to
8 P.L.1981, c.262 (C.58:1A-1 et al.). Persons having or claiming a right
9 to divert more than 100,000 gallons of water per day pursuant to prior
10 legislative or administrative action, including persons previously
11 exempted from the requirement to obtain a permit, shall renew that
12 right by applying for a diversion permit, or water usage certification,
13 as the case may be, no later than February 9, 1982. Thereafter, the
14 conditions of the new diversion permit or water usage certification
15 shall be deemed conclusive evidence of such previously allowed
16 privileges.

17 (2) Require any person diverting 100,000 or more gallons of water
18 per day for agricultural or horticultural purposes to obtain approval of
19 the appropriate county agricultural agent of a five-year water usage
20 certification program. This approval shall be based on standards and
21 procedures established by the department. This program shall include
22 the right to construct, repair or reconstruct dams or other structures,
23 the right to divert water for irrigation, frost protection, harvesting and
24 other agriculturally-related purposes, including aquaculture, and the
25 right to measure the amount of water diverted by means of a log or
26 other appropriate record, and shall be obtained in lieu of any permit
27 which would otherwise be required by P.L.1981, c.262 (C.58:1A-1 et
28 al.).

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

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

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

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

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

- 18 (1) study water supply availability;
- 19 (2) estimate future water supply needs;
- 20 (3) identify appropriate and reasonable alternative water supply
21 management strategies;
- 22 (4) select and adopt appropriate water supply alternatives; and
- 23 (5) require affected permittees to prepare water supply plans
24 consistent with the adopted water supply management alternatives.

25 d. Following implementation of the adopted water supply
26 management alternatives, the department shall monitor water levels
27 and water quality within the designated area of critical water supply
28 concern to determine the effectiveness of the alternative water supply
29 management strategies selected. If the department determines that the
30 alternatives selected are not effective in protecting the water supply
31 source of concern, the department may revise the designation and
32 impose further restrictions in accordance with the procedures set forth
33 in this section. The results of all monitoring conducted pursuant to
34 this section shall be reported to all affected permittees on an annual
35 basis.

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

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

44

45 31. Section 2 of P.L.1981, c.277 (C.58:1A-7.2) is amended to

1 read as follows:

2 2. The provisions of any law, rule or regulation to the contrary
3 notwithstanding, no tax, fee or other charge shall be imposed on the
4 diversion, for agricultural or horticultural purposes, including
5 aquaculture, of any ground or surface water of this State; provided,
6 however, that nothing in this section shall prohibit the imposition of a
7 fee, pursuant to law, for the cost of processing, monitoring and
8 administering a water usage certification program for persons who
9 divert any ground or surface water for agricultural and horticultural
10 purposes, or other agriculturally-related purposes, including
11 aquaculture.

12 As used in this section, "aquaculture" means the propagation,
13 rearing, and ¹subsequent¹ harvesting of aquatic organisms in controlled
14 or selected environments, and the subsequent processing, packaging
15 and marketing, and shall include, but need not be limited to, activities
16 such as stocking, intervention in the rearing process to increase
17 production, feeding, transplanting, and providing for protection from
18 predators ¹and shall not include the construction of facilities and
19 appurtenant structures that might otherwise be regulated pursuant to
20 any State or federal law or regulation,¹ and "aquatic organism" means
21 and includes, but need not be limited to, finfish, mollusks, crustaceans,
22 and aquatic plants which are the property of a person engaged in
23 aquaculture.

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

25

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

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

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

33 (1) An identification of existing Statewide and regional ground
34 and surface water supply sources, both interstate and intrastate, and
35 the current usage thereof;

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

38 (3) Recommendations for improvements to existing State water
39 supply facilities, the construction of additional State water supply
40 facilities, and for the interconnection or consolidation of existing water
41 supply systems; [and]

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

45 (5) Recommendations for legislative and administrative actions to

1 provide for the maintenance and protection of watershed areas.

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

3 (1) Prepare and make available to all interested persons a
4 proposed plan;

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

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

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

11

12 33. Section 12 of P.L.1989, c.151 (C.4:9-38) is amended to read
13 as follows:

14 12. The Department of Agriculture shall, by rule or regulation and
15 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
16 (C.52:14B-1 et seq.), establish criteria and standards for the
17 composting ~~[and], handling, storage, processing, utilization and~~
18 disposal of animal wastes as provided in section 19 of P.L. .c. (now
19 before the Legislature as this bill).

20 (cf: P.L.1989, c.151, s.12)

21

22 34. Section 13 of P.L.1989, c.151 (C.13:1E-99.21f) is amended
23 to read as follows:

24 13. The Department of Environmental Protection shall, pursuant
25 to the "Administrative Procedure Act," adopt rules and regulations
26 necessary to implement ~~[this act]~~ sections 5 through 11 of P.L.1989,
27 c.151 (C.13:1E-99.21a through C.13:1E-99.21e and C.4:24-22.1).

28 (cf: P.L.1989, c.151, s.13)

29

30 ¹[35. (New section) There is appropriated from the General Fund
31 to the Department of Agriculture the sum of \$250,000 to implement
32 their responsibilities pursuant to this act.]¹

33

34 ¹35. Section 3 of P.L.1979, C.111 (C.13:18A-3) is amended to
35 read as follows:

36 3. As used in this act:

37 a. "Agricultural or horticultural purposes" or "agricultural or
38 horticultural use" means any production of plants or animals useful to
39 man, including but not limited to: forages or sod crops; grains and
40 feed crops; dairy animals and dairy products; poultry and poultry
41 products; livestock, including beef cattle, sheep, swine, horses,
42 ponies, mules or goats, and including the breeding and grazing of any
43 or all of such animals; bees and apiary products; fur animals; aquatic
44 organisms as part of aquaculture; trees and forest products; fruits of
45 all kinds, including grapes, nuts and berries; vegetables; nursery,

1 floral, ornamental and greenhouse products; or any land devoted to
2 and meeting the requirements and qualifications for payments or other
3 compensation pursuant to a soil conservation program under an
4 agency of the Federal Government;

5 b. "Application for development" means the application form and
6 all accompanying documents required by municipal ordinance for
7 approval of a subdivision plat, site plan, planned development,
8 conditional use, zoning variance or other permit as provided in the
9 "Municipal Land Use Law," P.L.1975, c. 291 (C. 40:55D-1 et seq.),
10 for any use, development or construction other than the improvement,
11 expansion or reconstruction of any single-family dwelling unit or
12 appurtenance thereto, or the improvement, expansion, construction or
13 reconstruction of any structure used exclusively for agricultural or
14 horticultural purposes;

15 c. "Commission" means the Pinelands Commission created by
16 section 4 of this act;

17 d. "Comprehensive management plan" means the plan prepared
18 and adopted by the commission pursuant to section 7 of this act;

19 e. "Council" means the Pinelands Municipal Council created by
20 section 6.1 of this act;

21 f. "Federal Act" means section 502 of the "National Parks and
22 Recreation Act of 1978" (PL 95-625);

23 g. "Major development" means any division or subdivision of
24 land into five or more parcels; any construction or expansion of any
25 housing development of five or more dwelling units; any construction
26 or expansion of any commercial or industrial use or structure on a site
27 of more than 3 acres; or any grading, clearing or disturbance of any
28 area in excess of 5,000 square feet for other than agricultural or
29 horticultural purposes;

30 h. "Pinelands area" means that area so designated by subsection
31 a. of section 10 of this act;

32 i. "Pinelands National Reserve" means the approximately
33 1,000,000 acre area so designated by the Federal Act and generally
34 depicted on the map entitled "Pinelands National Reserve Boundary
35 Map" numbered NPS/80,011A and dated September, 1978;

36 j. "Preservation area" means that portion of the pinelands area so
37 designated by subsection b. of section 10 of this act;

38 k. "Protection area" means that portion of the pinelands area not
39 included within the preservation area ;

40 l. "Aquaculture" means the propagation, rearing, and subsequent
41 harvesting of aquatic organisms in controlled or selected
42 environments, and the subsequent processing, packaging and
43 marketing and shall include but need not be limited to, activities to
44 intervene in the rearing process to increase production such as
45 stocking, feeding, transplanting and providing for protection from

1 predators. "Aquaculture" shall not include the construction of facilities
2 and appurtenant structures that might otherwise be regulated pursuant
3 to any other State or federal law or regulation;

4 m. "Aquatic organism " means and includes, but need not be
5 limited to, finfish, mollusks, crustaceans, and aquatic plants which are
6 the property of a person engaged in aquaculture .¹

7 (cf: P.L.1979, c.111, s.3)

8
9 ¹36. (New section) Except as provided in section 3 of P.L.1979,
10 c.111 (C.13:18A-3) as amended by section 35 of P.L. .c. (C.)
11 (pending in the Legislature as this bill), nothing in this act shall be
12 construed to modify the provisions of the "Pinelands Protection Act,"
13 P.L.1979, c.111 (C.13:18A-1 et seq.) or any regulations promulgated
14 pursuant thereto and section 502 of the "National Parks and
15 Recreation Act of 1978" (Pub.L. 95-625).¹

16
17 ¹[36.] 37.¹ This act shall take effect immediately.

18
19
20 _____
21
22 The "New Jersey Aquaculture Development Act."