

ASSEMBLY, No. 2724

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 10, 1997

By Assemblyman DiGAETANO

1 AN ACT concerning the remediation of contaminated sites amending
2 and supplementing P.L.1976, c.141, P.L.1993, c.139 and P.L.1960,
3 c.183, amending P.L.1983, c.303, P.L.1995, c.413, P.L.1970, c.33
4 and P.L.1983, c.330 and making appropriations.
5

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

9 1. (New section) Sections 23 through 43 and section 45 of
10 P.L.1993, c.139 (C.58:10B-1 et seq.), as may be amended and
11 supplemented, shall be known and may be cited as the "Brownfields
12 Redevelopment Act."
13

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

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

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 3. (New section) The Department of Environmental Protection, in
2 cooperation with the Department of Community Affairs, Department
3 of Transportation, the Department of Labor and Department of
4 Commerce and Economic Development, shall obtain data and
5 information relevant to the economic redevelopment of present or
6 former industrial or commercial areas in the State that are now
7 abandoned or underutilized and at which there is located large areas
8 of contaminated property in need of remediation. The data obtained
9 shall be made available to the public by entering it into the Department
10 of Environmental Protection's existing geographic information system,
11 making this information available on the system and making copies of
12 any maps and data available to the public. The data and its integration
13 into the geographic information system shall be designed to assist the
14 State, local governmental entities and other persons in making
15 decisions concerning the remediation and redevelopment of
16 contaminated properties. The collection and integration of the data
17 shall be considered a site remediation obligation of the State. The
18 department may charge a reasonable fee for the reproduction of the
19 maps and data, which fee shall reflect the cost of their reproduction.
20

21 4. (New Section) a. There is established the Brownfields
22 Environmental Risk Communication Council. The council shall be
23 comprised of nine members who shall have experience in site
24 remediation processes or the assessment and communication of health
25 and environmental risks associated with site remediations. The
26 members shall include the Commissioner of Environmental Protection
27 or a representative, a representative from the Environmental and
28 Occupational Safety and Health Institute, a representative from the
29 New Jersey Institute of Technology, a representative from a public
30 interest environmental organization, a person employed by a
31 municipality of this State, a representative from the financial
32 community, a person employed as an environmental consultant, a
33 member of industry engaged in contaminated site redevelopment as a
34 responsible party and a person employed as a public health official.
35 The members of the council, other than the Commissioner, shall be
36 appointed by the Governor with the advice and consent of the Senate.
37 All of the members shall be appointed and qualified within six months
38 of the enactment of P.L. , c. (C.) (now pending before the
39 Legislature as this bill).

40 b. Members of the council shall serve terms of two years or until
41 a successor has been appointed and qualified. Members of the council
42 may be reappointed. Members of the council may be removed for
43 cause. Vacancies in the council shall be filled in the same manner as
44 the original appointments were made.

45 c. Members of the council shall serve without compensation, but
46 may be reimbursed for all reasonable expenses incurred in the

1 performance of their duties.

2 d. The council shall organize as soon as may be practicable after
3 the appointment and qualification of a majority of its members. The
4 members of the council shall select a chairperson, vice-chairperson and
5 secretary from among its members. A majority of the membership of
6 the council shall constitute a quorum for the transaction of council
7 business. Action may be taken and motions and resolutions adopted
8 by the council at any meeting thereof by the affirmative vote of a
9 majority of the full membership of the council. The council shall meet
10 regularly as it may determine and shall also meet at the call of the
11 chairperson of the council or the Governor.

12

13 5. (New Section) It shall be the duty of the council to:

14 a. Prepare materials for dissemination to the public that explain the
15 environmental and health risks associated with site remediations in
16 general and which are designed to assist local governments and the
17 public in assessing the risks associated with particular site remediation
18 projects;

19 b. Serve as an informational resource for county improvement
20 authorities who are involved in remediating and redeveloping
21 contaminated redevelopment areas and for municipalities and residents
22 of this State who may be impacted by the remediation or
23 redevelopment of contaminated real property regardless of who is
24 undertaking the remediation or redevelopment;

25 c. Work with residents and municipalities to form neighborhood
26 informational groups whose purpose is to research, understand and
27 disseminate information in neighborhoods concerning the public health
28 and environmental risks associated with site remediations and
29 redevelopment, as well as the economic benefits to be gained;

30 d. Advise the Department of Environmental Protection concerning
31 public risk communication involving site remediation; and

32 e. Make recommendations to the Legislature and the Governor in
33 order to improve the public understanding, perception and risk
34 associated with site remediations in the State.

35

36 6. (New Section) The council shall be entitled to call to its
37 assistance and avail itself of the services of employees of any State,
38 county or municipal department, authority, board, bureau, commission
39 or agency or any public institution of higher education in the State, as
40 it may require and as may be made available to it for the purpose of
41 carrying out its duties. The council may hire consultants and employ
42 such professional, clerical and other staff and incur such traveling and
43 other miscellaneous expenses as it may deem necessary in order to
44 perform its duties, and as may be within the limits of funds
45 appropriated or otherwise made available to it for those purposes.

1 7. (New section) There is appropriated to the Brownfields
2 Environmental Risk Communication Council the sum of \$150,000
3 from the New Jersey Spill Compensation Fund for the purposes for
4 which the council was established.

5
6 8. (New section) a. Whenever the Department of Environmental
7 Protection has issued a no further action letter pursuant to a
8 remediation, it shall also issue to the person performing the
9 remediation a covenant not to sue. The covenant not to sue shall be
10 consistent with the remedial action performed and with any conditions
11 and limitations contained in the no further action letter. The covenant
12 remains effective only for as long as the real property for which the
13 covenant was issued continues to comply with the conditions of the no
14 further action letter. Upon a finding by the department that real
15 property or a portion thereof to which a covenant not to sue pertains
16 no longer complies with the conditions of the no further action letter,
17 the department shall provide notice of that fact to the person
18 responsible for maintaining compliance with the no further action
19 letter. The department shall allow the person a reasonable time to
20 comply with the terms of the original no further action letter. If the
21 person fails to comply within the allocated time period, and the non-
22 compliance results in an unacceptable risk to human health or the
23 environment, the department may issue an order revoking the covenant
24 not to sue.

25 A covenant not to sue shall contain the following, as applicable:

26 (1) A provision releasing the person who undertook the remediation
27 from all civil liability to the State to perform any additional remedial
28 activities; and,

29 (2) If the remediation involves the use of engineering or
30 institutional controls:

31 (a) a provision requiring the person to maintain those controls,
32 conduct periodic monitoring for compliance, and submit to the
33 department, as appropriate, a certification that the engineering and
34 institutional controls are being properly maintained and continue to be
35 protective of public health and safety of the environment; and

36 (b) a provision revoking the covenant if the engineering or
37 institutional controls are not being maintained or are no longer in
38 place.

39 b. Unless a covenant not to sue issued under this section is revoked
40 by the department, the covenant shall remain effective. The covenant
41 not to sue shall apply to all successors in ownership of the property.

42 c. A covenant not to sue shall not be applicable to the extent that
43 a person is liable under statutory law for contamination discovered
44 subsequent to the issuance of the no further action letter but which
45 contamination existed prior to the issuance of the no further action
46 letter or for any change in a remediation standard.

1 d. The department shall issue a covenant not to sue to a person
2 performing a remediation if the department did not approve that
3 person's request to perform some remedial effort and subsequent
4 environmental or public health issues arise from the condition which
5 would have been addressed by the person's proposed remedial action.
6

7 9. (New section) a. The Environmental Risk Assessment and Risk
8 Management Study Commission shall, within three months of the
9 enactment of P.L. , c. (C.) (now pending before the
10 Legislature as this bill) issue its final report as required pursuant to
11 section 47 of P.L.1993, c.139. If the commission fails to adopt these
12 regulations within the prescribed time period, the Senate Environment
13 Committee and the Assembly Agriculture and Waste Management
14 Committee, or their successors, are instructed to hold a joint public
15 hearing to investigate why the final report was not adopted within the
16 prescribed time period.

17 b. The Department of Environmental Protection shall, within one
18 year following the Legislature's response to the recommendations of
19 the Environmental Risk Assessment and Risk Management Study
20 Commission, and after soliciting and receiving input from interested
21 stakeholders, adopt minimum remediation standards for soil,
22 groundwater, and surface water quality as required pursuant to section
23 35 of P.L. 1993, c.139 (C.58:10B-12) and technical remediation
24 guidance as required in subsection a. or section 24 of P.L. 1993, c.139
25 (C.58:10B-2), as amended by P.L. , c. (C.) (now pending
26 before the Legislature as this bill). To facilitate the process of
27 soliciting input, the department shall assemble a work group comprised
28 of stakeholders or their representatives to assist in the process of
29 developing the remediation standards. If the department fails to adopt
30 these regulations and guidance within the prescribed time period, the
31 Senate Environment Committee and the Assembly Agriculture and
32 Waste Management Committee, or their successors, are instructed to
33 hold a joint public hearing to investigate why the regulations and
34 guidance were not adopted within the prescribed time period.

35 c. The department shall, within three months of the enactment of
36 P.L. , c. (C.) (now pending before the Legislature as this bill),
37 issue the report concerning strict, joint and several liability as required
38 pursuant to section 48 of P.L.1993, c.139. If the department fails to
39 issue this report within the prescribed time period, the Senate
40 Environment Committee and the Assembly Agriculture and Waste
41 Management Committee, or their successors, are instructed to hold a
42 joint public hearing to investigate why the report was not issued within
43 the prescribed time period.

44 d. The department shall, within one year of the enactment of
45 P.L. , c. (C.) (now before the Legislature as this bill), develop
46 recommendations for remedial actions in large areas of historic

1 contamination and issue its report to the Legislature as required
2 pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12). If the
3 department fails to issue its report within the prescribed time period,
4 the Senate Environment Committee and the Assembly Agriculture and
5 Waste Management Committee, or their successors, are instructed to
6 hold a joint public hearing to investigate why the report was not issued
7 within the prescribed time period.

8 e. The department shall, within six months of the enactment of
9 P.L. , c. (C.) (now pending before the Legislature as this bill),
10 issue a report to the Governor and the Legislature providing an
11 evaluation, recommendations and a plan of action for developing and
12 implementing a certification program and developing a privatization
13 program for persons engaging in the remediation of contaminated
14 sites. In preparing this report, the commissioner shall review the
15 certification programs for persons engaging in the remediation of
16 contaminated sites implemented by other states which may be relevant.

17 If the department fails to issue this evaluation, along with the
18 recommendations and plan, within the prescribed time period, the
19 Senate Environmental Committee and the Assembly Agriculture and
20 Waste Management Committee, or their successors, are instructed to
21 hold a joint public hearing to investigate why the evaluation,
22 recommendations and plan were not issued within the prescribed time
23 period.

24 f. For the purposes of carrying out their charge under this section,
25 the committees shall have all the powers conferred pursuant to
26 Chapter 13 of Title 52 of the Revised Statutes.

27 g. There shall be established in the department an office of
28 Brownfields Redevelopment Initiatives. The function of this office
29 shall be to facilitate and expedite the investigation and remediation of
30 brownfields sites. Those sites selected by the department shall be
31 submitted and endorsed by the municipality in which the site is located.
32 The office shall take the necessary actions consistent with the
33 provisions of this act required to streamline the remediation of these
34 sites, including permit coordination, evaluation of technical approaches
35 to site remediation and implementation of practical remediation
36 efforts. The department shall report annually to the Legislature on
37 the actions and achievements of this office.

38

39 10. Section 12 of P.L.1970, c.33 (C.13:1D-9) is amended to read
40 as follows:

41 12. The department shall formulate comprehensive policies for the
42 conservation of the natural resources of the State, the promotion of
43 environmental protection and the prevention of pollution of the
44 environment of the State. The department shall, in addition to the
45 powers and duties vested in it by this act or by any other law, have the
46 power to:

- 1 a. Conduct and supervise research programs for the purpose of
2 determining the causes, effects and hazards to the environment and its
3 ecology;
- 4 b. Conduct and supervise Statewide programs of education,
5 including the preparation and distribution of information relating to
6 conservation, environmental protection and ecology;
- 7 c. Require the registration of persons engaged in operations which
8 may result in pollution of the environment and the filing of reports by
9 them containing such information as the department may prescribe to
10 be filed relative to pollution of the environment, all in accordance with
11 applicable codes, rules or regulations established by the department;
- 12 d. Enter and inspect any building or place for the purpose of
13 investigating an actual or suspected source of pollution of the
14 environment and ascertaining compliance or noncompliance with any
15 codes, rules and regulations of the department. Any information
16 relating to secret processes concerning methods of manufacture or
17 production, obtained in the course of such inspection, investigation or
18 determination, shall be kept confidential, except this information shall
19 be available to the department for use, when relevant, in any
20 administrative or judicial proceedings undertaken to administer,
21 implement, and enforce State environmental law, but shall remain
22 subject only to those confidentiality protections otherwise afforded by
23 federal law and by the specific State environmental laws and
24 regulations that the department is administering, implementing and
25 enforcing in that particular case or instance. In addition, this
26 information shall be available upon request to the United States
27 Government for use in administering, implementing, and enforcing
28 federal environmental law, but shall remain subject to the
29 confidentiality protection afforded by federal law. If samples are
30 taken for analysis, a duplicate of the analytical report shall be furnished
31 promptly to the person suspected of causing pollution of the
32 environment;
- 33 e. Receive or initiate complaints of pollution of the environment,
34 including thermal pollution, hold hearings in connection therewith and
35 institute legal proceedings for the prevention of pollution of the
36 environment and abatement of nuisances in connection therewith and
37 shall have the authority to seek and obtain injunctive relief and the
38 recovery of fines and penalties in summary proceedings in the
39 Superior Court;
- 40 f. Prepare, administer and supervise Statewide, regional and local
41 programs of conservation and environmental protection, giving due
42 regard for the ecology of the varied areas of the State and the
43 relationship thereof to the environment, and in connection therewith
44 prepare and make available to appropriate agencies in the State
45 technical information concerning conservation and environmental
46 protection, cooperate with the Commissioner of Health in the

1 preparation and distribution of environmental protection and health
2 bulletins for the purpose of educating the public, and cooperate with
3 the Commissioner of Health in the preparation of a program of
4 environmental protection;

5 g. Encourage, direct and aid in coordinating State, regional and
6 local plans and programs concerning conservation and environmental
7 protection in accordance with a unified Statewide plan which shall be
8 formulated, approved and supervised by the department. In reviewing
9 such plans and programs and in determining conditions under which
10 such plans may be approved, the department shall give due
11 consideration to the development of a comprehensive ecological and
12 environmental plan in order to be assured insofar as is practicable that
13 all proposed plans and programs shall conform to reasonably
14 contemplated conservation and environmental protection plans for the
15 State and the varied areas thereof;

16 h. Administer or supervise programs of conservation and
17 environmental protection, prescribe the minimum qualifications of all
18 persons engaged in official environmental protection work, and
19 encourage and aid in coordinating local environmental protection
20 services;

21 i. Establish and maintain adequate bacteriological, radiological and
22 chemical laboratories with such expert assistance and such facilities as
23 are necessary for routine examinations and analyses, and for original
24 investigations and research in matters affecting the environment and
25 ecology;

26 j. Administer or supervise a program of industrial planning for
27 environmental protection; encourage industrial plants in the State to
28 undertake environmental and ecological engineering programs; and
29 cooperate with the State Departments of Health, Labor, and
30 Commerce and Economic Development in formulating rules and
31 regulations concerning industrial sanitary conditions;

32 k. Supervise sanitary engineering facilities and projects within the
33 State, authority for which is now or may hereafter be vested by law
34 in the department, and shall, in the exercise of such supervision, make
35 and enforce rules and regulations concerning plans and specifications,
36 or either, for the construction, improvement, alteration or operation
37 of all public water supplies, all public bathing places, landfill
38 operations and of sewerage systems and disposal plants for treatment
39 of sewage, wastes and other deleterious matter, liquid, solid or
40 gaseous, require all such plans or specifications, or either, to be first
41 approved by it before any work thereunder shall be commenced,
42 inspect all such projects during the progress thereof and enforce
43 compliance with such approved plans and specifications;

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

- 1 m. Construct and operate, on an experimental basis, incinerators
2 or other facilities for the disposal of solid waste, provide the various
3 municipalities and counties of this State, the Board of Public Utilities,
4 and the Division of Local Government Services in the Department of
5 Community Affairs with statistical data on costs and methods of solid
6 waste collection, disposal and utilization;
- 7 n. Enforce the State air pollution, water pollution, conservation,
8 environmental protection, waste and refuse disposal laws, rules and
9 regulations, including the making and signing of a complaint and
10 summons for their violation by serving the summons upon the violator
11 and thereafter filing the complaint promptly with a court having
12 jurisdiction;
- 13 o. Acquire by purchase, grant, contract or condemnation, title to
14 real property, for the purpose of demonstrating new methods and
15 techniques for the collection or disposal of solid waste;
- 16 p. Purchase, operate and maintain, pursuant to the provisions of
17 this act, any facility, site, laboratory, equipment or machinery
18 necessary to the performance of its duties pursuant to this act;
- 19 q. Contract with any other public agency or corporation
20 incorporated under the laws of this or any other state for the
21 performance of any function under this act;
- 22 r. With the approval of the Governor, cooperate with, apply for,
23 receive and expend funds from, the federal government, the State
24 Government, or any county or municipal government or from any
25 public or private sources for any of the objects of this act;
- 26 s. Make annual and such other reports as it may deem proper to the
27 Governor and the Legislature, evaluating the demonstrations
28 conducted during each calendar year;
- 29 t. Keep complete and accurate minutes of all hearings held before
30 the commissioner or any member of the department pursuant to the
31 provisions of this act. All such minutes shall be retained in a
32 permanent record, and shall be available for public inspection at all
33 times during the office hours of the department;
- 34 u. Require any person subject to a lawful order of the department,
35 which provides for a period of time during which such person subject
36 to the order is permitted to correct a violation, to post a performance
37 bond or other security with the department in such form and amount
38 as shall be determined by the department. Such bond need not be for
39 the full amount of the estimated cost to correct the violation but may
40 be in such amount as will tend to insure good faith compliance with
41 said order. The department shall not require such a bond or security
42 from any public body, agency or authority. In the event of a failure
43 to meet the schedule prescribed by the department, the sum named in
44 the bond or other security shall be forfeited unless the department
45 shall find that the failure is excusable in whole or in part for good
46 cause shown, in which case the department shall determine what

1 amount of said bond or security, if any, is a reasonable forfeiture
2 under the circumstances. Any amount so forfeited shall be utilized by
3 the department for the correction of the violation or violations, or for
4 any other action required to insure compliance with the order [.]; and
5 v. Encourage, direct and aid in coordinating State, regional and
6 local plans, efforts and programs concerning the remediation and reuse
7 of former industrial or commercial properties that are currently
8 underutilized or abandoned and at which there has been, or is
9 perceived to have been, a discharge, or threat of a discharge, of a
10 hazardous substance. For the purposes of this subsection,
11 "underutilized property" shall not include properties undergoing a
12 reasonably timely remediation or redevelopment process.

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

14

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

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

39 b. (1) Subsequent to the submittal of the notice required pursuant
40 to subsection a. of this section, the owner or operator of an industrial
41 establishment shall, except as otherwise provided by P.L.1983, c.330
42 or P.L.1993, c.139 (C.13:1K-9.6 et al.), remediate the industrial
43 establishment. The remediation shall be conducted in accordance with
44 this guidance, criteria, procedures, and time schedules established by
45 the department.

46 (2) The owner or operator shall attach a copy of any approved

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

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

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

36 d. (1) Upon the submission of the results of either the preliminary
37 assessment, site investigation, remedial investigation, or remedial
38 action, where applicable, which demonstrate that there are no
39 discharged hazardous substances or hazardous wastes at the industrial
40 establishment, or that have migrated from or are migrating from the
41 industrial establishment, in violation of the applicable remediation
42 standards selected consistent with the intended use of the site, the
43 owner or operator may submit to the department for approval a
44 proposed negative declaration as provided in subsection c. of this
45 section.

46 (2) After the submission and review of the information submitted

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

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

38 The department may require in the remediation agreement that all
39 plans for and results of the preliminary assessment, site investigation,
40 remedial investigation, and the implementation of the remedial action
41 workplan, prepared or initiated subsequent to the transfer of
42 ownership or operations, be submitted to the department, for review
43 purposes only, at the completion of each phase of the remediation.

44 The department shall [adopt regulations establishing] develop
45 guidance identifying the manner in which the documents required
46 pursuant to paragraphs (1) through (5), inclusive, of this subsection

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

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

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

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

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

43 Nothing in this subsection shall be construed to authorize the
44 closing of operations or the transfer of ownership or operations of an
45 industrial establishment without the department's approval of a
46 negative declaration, a remedial action workplan or a remediation

1 agreement.

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

6 (1) The soil remediation standards proposed for the industrial
7 establishment are protective of public health, safety and the
8 environment;

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

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

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

15 (5) The difference in cost between the use of the residential use
16 soil remediation standards and the nonresidential use soil remediation
17 standards; and

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

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

42 At any time after the effective date of P.L.1993, c.139, an owner or
43 operator may request the department to provide a determination as to
44 whether a proposed remedial action is consistent with the standards
45 and criteria set forth [above in paragraphs (1) through (6)] in section
46 35 of P.L.1993, c.139 (C.58:10B-12). The department shall make that

1 determination based upon the standards and criteria set forth in that
2 section. The department shall provide any such determination within
3 30 calendar days of the department's receipt of the request.

4 j. [An owner or operator proposing to implement a soil remedial
5 action other than one which is set forth in subsection h. of this section
6 must receive department approval prior to implementation of the
7 remedial action.

8 k. An owner or operator of an industrial establishment shall not
9 implement a remedial action involving the remediation of groundwater
10 or surface water without the prior review and approval by the
11 department of a remedial action workplan.

12 l.] Submissions of a preliminary assessment, site investigation,
13 remedial investigation, remedial action workplan, and the results of a
14 remedial action shall be in a manner and form, and shall contain any
15 relevant information relating to the remediation, as may be [required
16 by the department] referenced in the department's guidance .

17 Upon receipt of a complete and accurate submission, the
18 department shall review and approve or disapprove the submission in
19 accordance with the review schedules established pursuant to section
20 2 of P.L.1991, c.423 (C.13:1D-106). The owner or operator shall not
21 be required to wait for a response by the department before continuing
22 remediation activities, except as otherwise provided in this section.
23 Upon completion of the remediation, the plans for and results of the
24 preliminary assessment, site investigation, remedial investigation,
25 remedial action workplan, and remedial action and any other
26 information required to be submitted as provided in section 35 of
27 P.L.1993, c.139 (C.58:10B-12), that has not previously been
28 submitted to the department, shall be submitted to the department for
29 its review and approval.

30 The department shall review all information submitted to it by the
31 owner or operator at the completion of the remediation to determine
32 whether the actions taken were in compliance with [rules and
33 regulations] the guidance of the department regarding remediation.

34 The department may review and approve or disapprove every
35 remedial action workplan, no matter when submitted, to determine, in
36 accordance with the criteria listed in subsection g. of section 35 of
37 P.L.1993, c.139 (C.58:10B-12) if the remedial action that has
38 occurred or that will occur is appropriate to meet the applicable
39 remediation standards selected consistent with the intended land use.

40 The department may order additional remediation activities at the
41 industrial establishment, or offsite where necessary, or may require the
42 submission of additional information, where (a) the department
43 determines that the remediation activities undertaken were not in
44 compliance with the applicable guidance, rules or regulations of the
45 department; (b) all documents required to be submitted to the
46 department were not submitted or, if submitted, were inaccurate, or

1 deficient; or (c) discharged hazardous substances or hazardous wastes
2 remain at the industrial establishment, or have migrated or are
3 migrating offsite, at levels or concentrations in violation of the
4 applicable remediation standards selected consistent with the intended
5 use of the site. Upon a finding by the department that the remediation
6 conducted at the industrial establishment was in compliance with all
7 applicable guidance or regulations, that no hazardous substances or
8 hazardous wastes remain at the industrial establishment in violation of
9 the applicable remediation standards selected consistent with the
10 intended use of the site, and that all hazardous substances or
11 hazardous wastes that migrated from the industrial establishment have
12 been remediated in conformance with the applicable remediation
13 standards selected consistent with the intended use of the site, the
14 department shall approve the remediation for that industrial
15 establishment by the issuance of a no further action letter.

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

17

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

20 23. As used in sections 23 through 43 of P.L.1993, c.139
21 (C.58:10B-1 et seq.):

22 "Area of concern" means any location where contaminants are or
23 were known or suspected to have been discharged, generated,
24 manufactured, refined, transported, stored, handled, treated, or
25 disposed, or where contaminants have or may have migrated;

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

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

33 "Department" means the Department of Environmental Protection
34 [and Energy];

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

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

44 "Financial assistance" means loans or loan guarantees;

45 "Institutional controls" means a mechanism used to limit human
46 activities at or near a contaminated site, or to ensure the effectiveness

1 of the remedial action over time, when contaminants remain at a
2 contaminated site in levels or concentrations above the applicable
3 remediation standard that would allow unrestricted use of that
4 property. Institutional controls may include, without limitation,
5 structure, land, and natural resource use restrictions, well restriction
6 areas, and deed notices;

7 "No further action letter" means a written determination by the
8 department that based upon an evaluation of the historical use of a
9 particular site, or of an area of concern or areas of concern at that site,
10 as applicable, and any other investigation or action the department
11 deems necessary, there are no discharged contaminants present at the
12 site, at the area of concern or areas of concern, at any other site to
13 which a discharge originating at the site has migrated, or that any
14 discharged contaminants present at the site or that have migrated from
15 the site have been remediated in accordance with applicable
16 remediation [regulations] guidance;

17 "Nonpermanent remedial action" means any remedial action that
18 requires the continued use of engineering controls in order to meet the
19 established health risk levels;

20 "Permanent remedial action" means any remedial action that does
21 not require the continued use of engineering controls in order to meet
22 the established health risk levels. A remedial action may be considered
23 permanent even if institutional controls are employed at the site;

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

36 "Presumptive remedies" means historically acceptable technologies
37 for common categories of sites, based on historical patterns of remedy
38 selection and the department's scientific and engineering evaluation of
39 performance data on technology implementation;

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

1 with the [applicable] remediation standards selected consistent with
2 the intended land use;

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

11 "Remediation" or "remediate" means all necessary actions to
12 investigate and [clean up] address any known, suspected, or
13 threatened discharge of contaminants, including, as necessary, the
14 preliminary assessment, site investigation, remedial investigation, and
15 remedial action;

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

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

26 "Subsurface soil" means the soil that is two feet or more below the
27 existing ground surface or below the bottom of the unsaturated zone,
28 whichever is shallower;

29 "Surface soil" means the soil at the existing ground surface to a
30 depth of two feet below the existing ground surface or below the
31 bottom of the unsaturated zone, whichever is shallower;

32 "Remedial action workplan" means a plan for the remedial action to
33 be undertaken at a site, or at any area to which a discharge originating
34 at a site is migrating or has migrated; a description of the remedial
35 action to be used to remediate a site; a time schedule and cost estimate
36 of the implementation of the remedial action; [and any other
37 information the department deems necessary;]

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

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

45 "Remediation standards" means the combination of numeric and
46 narrative standards to which contaminants must be remediated for

1 surface and subsurface soil, groundwater, or surface water as provided
2 by the department pursuant to section 35 of P.L.1993, c.139
3 (C.58:10B-12).

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

5
6 13. Section 24 of P.L.1993, c.139 (C.58:10B-2) is amended to
7 read as follows:

8 24. a. The department shall[, pursuant to the "Administrative
9 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and
10 regulations establishing criteria and minimum standards] develop
11 guidance identifying the purpose and establishing the goals necessary
12 for the [submission, evaluation and approval of plans or results]
13 performance of preliminary assessments, site investigations, remedial
14 investigations[,] and remedial [action workplans] actions and for the
15 implementation thereof. [The documents for the preliminary
16 assessment, site investigation, remedial investigation, and remedial
17 action workplan required to be submitted for a remediation, shall not
18 be identical to the criteria and standards used for similar documents
19 submitted pursuant to federal law, except as may be required by
20 federal law. In establishing criteria and minimum standards for these
21 terms the department shall strive to avoid duplicate or unnecessarily
22 costly or time consuming conditions or standards.] The guidance shall
23 allow the intended land use for the site to guide the site and remedial
24 investigation processes. Where there exists a presumption of
25 reasonably predictable remedy, such remedy shall be used to focus the
26 remedial investigation goals and objectives. The guidance shall also
27 incorporate the intended land use in selecting remedial action goals
28 and objectives. The guidance shall be focused to ensure that an
29 adequate amount of information is gathered to support that the
30 selected remedy is protective of human health and the environment,
31 without the increased cost of unnecessary investigation.

32 b. To the extent practicable and in conformance with the standards
33 for remediations as provided in section 35 of P.L.1993, c.139
34 (C.58:10-12), the department shall issue guidance allowing for
35 remediation activities to be undertaken without having to obtain prior
36 approval from, or submit detailed documentation to, the department.
37 To the extent that a responsible party or other person performs such
38 remediation activities in a manner protective of human health and the
39 environment, the department shall issue a no further action letter for
40 that particular remediation activity and adopt rules and regulations that
41 allow for certain remediation activities that pose an insignificant risk
42 to the public health, safety and the environment to be undertaken in
43 a manner prescribed by the department without having to obtain prior
44 approval from, or submit detailed documentation to, the department.
45 A person who performs a remediation in the manner prescribed in the
46 rules and regulations of the department, and who certifies this fact to

1 the department, shall obtain a no further action letter from the
2 department for that particular remediation activity.
3 c. The department shall develop regulatory procedures that
4 encourage the use of innovative technologies in the performance of
5 remedial actions. Such innovative technologies may apply to either
6 permanent or nonpermanent remedies. The procedures shall include,
7 but need not be limited to, an expedited review process for document
8 submissions. Nothing in this subsection shall be construed to
9 compromise the timeliness of reviews of other remedial submissions to
10 the department. Upon submittal of the administratively and technically
11 complete and accurate remedial action workplan that proposes the use
12 of an innovative technology, the department shall review and approve
13 that plan within 90 days. The submittal of subsequent administratively
14 and technically complete and accurate remedial action progress reports
15 shall be reviewed within 30 days and the submittal of an
16 administratively and technically complete and accurate remedial action
17 final report shall be reviewed within 45 days. Failure of the
18 department to disapprove or conditionally approve these plans or
19 reports within the period of time allowed for its review shall be
20 deemed to be approval of that plan by the department.

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

22

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

25 25. a. The owner or operator of an industrial establishment or any
26 other person required to perform remediation activities pursuant to
27 P.L.1983, c.330 (C.13:1K-6 et al.), or a discharger or person in any
28 way responsible for a hazardous substance who has been issued a
29 directive or an order by a State agency, who has entered into an
30 administrative consent order with a State agency, or who has been
31 ordered by a court to clean up and remove a hazardous substance or
32 hazardous waste discharge pursuant to P.L.1976, c.141
33 (C.58:10-23.11 et seq.), shall establish and maintain a remediation
34 funding source in the amount necessary to pay the estimated cost of
35 the required remediation. A person who voluntarily undertakes a
36 remediation pursuant to a memorandum of agreement with the
37 department, or without the department's oversight, is not required to
38 establish or maintain a remediation funding source. A person who
39 uses an innovative technology for all or part of a remedial action is not
40 required to establish a remediation funding source for the cost of the
41 remediation involving the innovative technology. A person required
42 to establish a remediation funding source pursuant to this section shall
43 provide to the department satisfactory documentation that the
44 requirement has been met.

45 The remediation funding source shall be established in an amount
46 equal to or greater than the cost estimate of the implementation of the

1 remediation (1) as approved by the department, (2) as provided in an
2 administrative consent order or remediation agreement as required
3 pursuant to subsection e. of section 4 of P.L.1983, c.330, (3) as stated
4 in a departmental order or directive, or (4) as agreed to by a court, and
5 shall be in effect for a term not less than the actual time necessary to
6 perform the remediation at the site. Whenever the remediation cost
7 estimate increases, the person required to establish the remediation
8 funding source shall cause the amount of the remediation funding
9 source to be increased to an amount at least equal to the new estimate.
10 Whenever the remediation or cost estimate decreases, the person
11 required to obtain the remediation funding source may file a written
12 request to the department to decrease the amount in the remediation
13 funding source. The department shall review and respond to the
14 request to decrease the remediation funding source within 90 days.
15 The remediation funding source may be decreased to the amount of the
16 new estimate upon written approval by the department delivered to the
17 person who established the remediation funding source and to the
18 trustee or the person or institution providing the remediation trust, the
19 environmental insurance policy, or the line of credit, as applicable.
20 The department shall approve the request upon a finding that the
21 remediation cost estimate decreased by the requested amount.

22 b. The person responsible for performing the remediation and who
23 established the remediation funding source may use the remediation
24 funding source to pay for the actual cost of the remediation. The
25 department may not require any other financial assurance by the
26 person responsible for performing the remediation other than that
27 required in this section. In the case of a remediation performed
28 pursuant to P.L.1983, c.330, the remediation funding source shall be
29 established no more than 14 days after the approval by the department
30 of a remedial action workplan or upon approval of a remediation
31 agreement pursuant to subsection e. of section 4 of P.L.1983, c.330
32 (C.13:1K-9), unless the department approves an extension. In the case
33 of a remediation performed pursuant to P.L.1976, c.141, the
34 remediation funding source shall be established as provided in an
35 administrative consent order signed by the parties, as provided by a
36 court, or as directed or ordered by the department. The establishment
37 of a remediation funding source for that part of the remediation
38 funding source to be established by a grant or financial assistance from
39 the remediation fund may be established for the purposes of this
40 subsection by the application for a grant or financial assistance from
41 the remediation fund and satisfactory evidence submitted to the
42 department that the grant or financial assistance will be awarded.
43 However, if the financial assistance or grant is denied or the
44 department finds that the person responsible for establishing the
45 remediation funding source did not take reasonable action to obtain
46 the grant or financial assistance, the department shall require that the

1 full amount of the remediation funding source be established within 14
2 days of the denial or finding. The remediation funding source shall be
3 evidenced by the establishment and maintenance of (1) a remediation
4 trust fund, (2) an environmental insurance policy, issued by an entity
5 licensed by the Department of Insurance to transact business in the
6 State of New Jersey, to fund the remediation, (3) a line of credit from
7 a person or institution satisfactory to the department authorizing the
8 person responsible for performing the remediation to borrow money,
9 or (4) a self-guarantee, or by any combination thereof. Where it can
10 be demonstrated that a person cannot establish and maintain a
11 remediation funding source for the full cost of the remediation by a
12 method specified in this subsection, that person may establish the
13 remediation funding source for all or a portion of the remediation, by
14 securing financial assistance from the Hazardous Discharge Site
15 Remediation Fund as provided in section 29 of P.L.1993, c.139
16 (C.58:10B-7).

17 c. A remediation trust fund shall be established pursuant to the
18 provisions of this subsection. An originally signed duplicate of the
19 trust agreement shall be delivered to the department by certified mail
20 within 14 days of receipt of notice from the department that the
21 remedial action workplan or remediation agreement as provided in
22 subsection e. of section 4 of P.L.1983, c.330 is approved or as
23 specified in an administrative consent order, civil order, or order of the
24 department, as applicable. The remediation trust fund agreement shall
25 conform to a model trust fund agreement as established by the
26 department and shall be accompanied by a certification of
27 acknowledgment that conforms to a model established by the
28 department. The trustee shall be an entity which has the authority to
29 act as a trustee and whose trust operations are regulated and examined
30 by a federal or New Jersey agency.

31 The trust fund agreement shall provide that the remediation trust
32 fund may not be revoked or terminated by the person required to
33 establish the remediation funding source or by the trustee without the
34 written consent of the department. The trustee shall release to the
35 person required to establish the remediation funding source, or to the
36 department or transferee of the property, as appropriate, only those
37 moneys as the department authorizes, in writing, to be released. The
38 person entitled to receive money from the remediation trust fund shall
39 submit documentation to the department detailing the costs incurred
40 or to be incurred as part of the remediation. Upon a determination by
41 the department that the costs are consistent with the remediation of
42 the site, the department shall, in writing, authorize a disbursement of
43 moneys from the remediation trust fund in the amount of the
44 documented costs.

45 The department shall return the original remediation trust fund
46 agreement to the trustee for termination after the person required to

1 establish the remediation funding source substitutes an alternative
2 remediation funding source as specified in this section or the
3 department notifies the person that person is no longer required to
4 maintain a remediation funding source for remediation of the
5 contaminated site.

6 d. An environmental insurance policy shall be established pursuant
7 to the provisions of this subsection. An originally signed duplicate of
8 the insurance policy shall be delivered to the department by certified
9 mail, overnight delivery, or personal service within 30 days of receipt
10 of notice from the department that the remedial action workplan or
11 remediation agreement, as provided in subsection e. of section 4 of
12 P.L.1983, c.330, is approved or as specified in an administrative
13 consent order, civil order, or order of the department, as applicable.

14 The environmental insurance policy may not be revoked or
15 terminated without the written consent of the department. The
16 insurance company shall release to the person required to establish the
17 remediation funding source, or to the department or transferee of the
18 property, as appropriate, only those moneys as the department
19 authorizes, in writing, to be released. The person entitled to receive
20 money from the environmental insurance policy shall submit
21 documentation to the department detailing the costs incurred or to be
22 incurred as part of the remediation.

23 e. A line of credit shall be established pursuant to the provisions
24 of this subsection. A line of credit shall allow the person establishing
25 it to borrow money up to a limit established in a written agreement in
26 order to pay for the cost of the remediation for which the line of credit
27 was established. An originally signed duplicate of the line of credit
28 agreement shall be delivered to the department by certified mail,
29 overnight delivery, or personal service within 14 days of receipt of
30 notice from the department that the remedial action workplan or
31 remediation agreement as provided in subsection e. of section 4 of
32 P.L.1983, c.330 is approved, or as specified in an administrative
33 consent order, civil order, or order of the department, as applicable.
34 The line of credit agreement shall conform to a model agreement as
35 established by the department and shall be accompanied by a
36 certification of acknowledgment that conforms to a model established
37 by the department.

38 A line of credit agreement shall provide that the line of credit may
39 not be revoked or terminated by the person required to obtain the
40 remediation funding source or the person or institution providing the
41 line of credit without the written consent of the department. The
42 person or institution providing the line of credit shall release to the
43 person required to establish the remediation funding source, or to the
44 department or transferee of the property as appropriate, only those
45 moneys as the department authorizes, in writing, to be released. The
46 person entitled to draw upon the line of credit shall submit

1 documentation to the department detailing the costs incurred or to be
2 incurred as part of the remediation. Upon a determination that the
3 costs are consistent with the remediation of the site, the department
4 shall, in writing, authorize a disbursement from the line of credit in the
5 amount of the documented costs.

6 The department shall return the original line of credit agreement to
7 the person or institution providing the line of credit for termination
8 after the person required to establish the remediation funding source
9 substitutes an alternative remediation funding source as specified in
10 this section, or after the department notifies the person that that
11 person is no longer required to maintain a remediation funding source
12 for remediation of the contaminated site.

13 f. A person may self-guarantee a remediation funding source upon
14 the submittal of documentation to the department demonstrating that
15 the cost of the remediation as estimated in the remedial action
16 workplan, in the remediation agreement as provided in subsection e.
17 of section 4 of P.L.1983, c.330, in an administrative consent order, or
18 as provided in a departmental or court order, would not exceed
19 one-third of the tangible net worth of the person required to establish
20 the remediation funding source, and that the person has a cash flow
21 sufficient to assure the availability of sufficient moneys for the
22 remediation during the time necessary for the remediation. Satisfactory
23 documentation of a person's capacity to self-guarantee a remediation
24 funding source shall consist only of a statement of income and
25 expenses or similar statement of that person and the balance sheet or
26 similar statement of assets and liabilities as used by that person for the
27 fiscal year of the person making the application that ended closest in
28 time to the date of the self-guarantee application. The self-guarantee
29 application shall be certified as true to the best of the applicant's
30 information, knowledge, and belief, by the chief financial, or similar
31 officer or employee, or general partner, or principal of the person
32 making the self-guarantee application. A person shall be deemed by
33 the department to possess the required cash flow pursuant to this
34 section if that person's gross receipts exceed its gross payments in that
35 fiscal year in an amount at least equal to the estimated costs of
36 completing the remedial action workplan schedule to be performed in
37 the 12 month period following the date on which the application for
38 self-guarantee is made. In the event that a self-guarantee is required
39 for a period of more than one year, applications for a self-guarantee
40 shall be renewed annually pursuant to this subsection for each
41 successive year. The department may establish requirements and
42 reporting obligations to ensure that the person proposing to
43 self-guarantee a remediation funding source meets the criteria for
44 self-guaranteeing prior to the initiation of remedial action and until
45 completion of the remediation.

46 g. (1) If the person required to establish the remediation funding

1 source fails to perform the remediation as required, the department
2 shall make a written determination of this fact. A copy of the
3 determination by the department shall be delivered to the person
4 required to establish the remediation funding source and, in the case
5 of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6
6 et al.), to any transferee of the property. Following this written
7 determination, the department may perform the remediation in place
8 of the person required to establish the remediation funding source. In
9 order to finance the cost of the remediation the department may make
10 disbursements from the remediation trust fund or the line of credit or
11 claims upon the environmental insurance policy, as appropriate, or, if
12 sufficient moneys are not available from those funds, from the
13 remediation guarantee fund created pursuant to section 45 of
14 P.L.1993, c.139 (C.58:10B-20).

15 (2) The transferee of property subject to a remediation conducted
16 pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), may, at any time after
17 the department's determination of nonperformance by the owner or
18 operator required to establish the remediation funding source, petition
19 the department, in writing, with a copy being sent to the owner and
20 operator, for authority to perform the remediation at the industrial
21 establishment. The department, upon a determination that the
22 transferee is competent to do so, may grant that petition which shall
23 authorize the transferee to perform the remediation as specified in an
24 approved remedial action workplan, or to perform the activities as
25 required in a remediation agreement, and to avail itself of the moneys
26 in the remediation trust fund or line of credit or to make claims upon
27 the environmental insurance policy for these purposes. The petition
28 of the transferee shall not be granted by the department if the owner
29 or operator continues or begins to perform its obligations within 14
30 days of the petition being filed with the department.

31 (3) After the department has begun to perform the remediation in
32 the place of the person required to establish the remediation funding
33 source or has granted the petition of the transferee to perform the
34 remediation, the person required to establish the remediation funding
35 source shall not be permitted by the department to continue its
36 performance obligations except upon the agreement of the department
37 or the transferee, as applicable, or except upon a determination by the
38 department that the transferee is not adequately performing the
39 remediation.

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

41

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

44 26. a. There is established in the New Jersey Economic
45 Development Authority a special, revolving fund to be known as the
46 Hazardous Discharge Site Remediation Fund. Moneys in the

1 remediation fund shall be dedicated for the provision of financial
2 assistance or grants to municipal governmental entities, established
3 pursuant to P.L.1996, c.62 (C.55:19-20 et al.), and any county
4 improvement authority established pursuant to P.L.1960, c.183
5 (C.40:37A-44), individuals, corporations, partnerships, and other
6 private business entities, for the purpose of financing remediation
7 activities at sites at which there is, or is suspected of being, a
8 discharge of hazardous substances or hazardous wastes.

9 b. The remediation fund shall be credited with:

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

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

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

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

16 (5) moneys deposited into the fund from cost recovery subrogation
17 actions; and

18 (6) moneys made available to the authority for the purposes of the
19 fund.

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

21

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

24 27. a. (1) Financial assistance from the remediation fund [, made
25 to persons other than municipal governmental entities, the New Jersey
26 Redevelopment Authority, or to persons who voluntarily undertake a
27 remediation,] may only be rendered to persons who cannot establish
28 a remediation funding source for the full amount of a remediation.
29 Financial assistance pursuant to this act may be rendered only for that
30 amount of the cost of a remediation for which the person cannot
31 establish a remediation funding source. The limitations on receiving
32 financial assistance established in this paragraph (1) shall not limit the
33 ability of municipal governmental entities, established pursuant to
34 P.L.1996, c.62 (C.55:19-20 et al.), and any county improvement
35 authority established pursuant to P.L.1960, c.183 (C.40:37A-44),
36 persons who are not required to establish a remediation funding source
37 for the part of the remediation involving an innovative technology, or
38 persons who voluntarily undertake a remediation to receive financial
39 assistance from the fund.

40 (2) Financial assistance rendered to persons who voluntarily
41 undertake a remediation may only be made for that amount of the cost
42 of the remediation that the person cannot otherwise fund by any of the
43 authorized methods to establish a remediation funding source.

44 (3) Financial assistance rendered to persons who do not have to
45 provide financial assurance for the part of the remediation that
46 involves an innovative technology may only be made for that amount

1 of the cost of the remediation that the person cannot otherwise fund
2 by any of the authorized methods to establish a remediation funding
3 source.

4 b. Financial assistance may be rendered from the remediation fund
5 to (1) owners or operators of industrial establishments who are
6 required to perform remediation activities pursuant to P.L.1983, c.330
7 (C.13:1K-6 et al.), upon closing operations or prior to the transfer of
8 ownership or operations of an industrial establishment, (2) persons
9 who have discharged a hazardous substance or who are in any way
10 responsible for a hazardous substance pursuant to P.L.1976, c.141
11 (C.58:10-23.11 et seq.), and (3) persons who voluntarily undertake the
12 remediation of a discharge of a hazardous substance or hazardous
13 waste and who have not been ordered or directed to perform the
14 remediation by the department or by a court.

15 c. Financial assistance and grants may be made from the
16 remediation fund to municipal governmental entities, the New Jersey
17 Redevelopment Authority, or to county improvement authorities that
18 own or hold a tax sale certificate on real property or that have
19 acquired real property through foreclosure or other similar means or
20 by voluntary conveyance and on which there has been a discharge or
21 on which there is a suspected discharge of a hazardous substance or
22 hazardous waste [or the New Jersey Redevelopment Authority
23 established pursuant to P.L.1996, c.62 (C.55:19-20 et al.) for any such
24 real property upon which the New Jersey Redevelopment Authority
25 owns or holds the tax sale certificate].

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

32 e. Grants may be made from the remediation fund to persons who
33 propose to perform a remedial action that uses an innovative
34 technology.

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

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

39

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

42 28. a. Except for moneys deposited in the remediation fund for
43 specific purposes, financial assistance and grants from the remediation
44 fund shall be rendered for the following purposes and, on an annual
45 basis, obligated in the percentages as provided in this subsection.
46 Upon a written joint determination by the authority and the department

1 that it is in the public interest, financial assistance and grants dedicated
2 for the purposes and in the percentages set forth in any paragraph [(1),
3 (2), or (3)] of this subsection, may, for any particular year, be
4 obligated to other purposes set forth in this subsection. The written
5 determination shall be sent to the Senate Environment Committee, and
6 the Assembly Agriculture and Waste Management Committee, or their
7 successors. For the purposes of this section, "person" shall not
8 include [the New Jersey Redevelopment Authority established
9 pursuant to P.L.1996, c.62 (C.55:19-20 et al.)] a governmental entity.

10 (1) At least 15% of the moneys shall be allocated for financial
11 assistance to persons, [including] the New Jersey Redevelopment
12 Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.),
13 and to any county improvement authority established pursuant to
14 P.L.1960, c.183 (C.40:37A-44), [other than other governmental
15 entities,] for remediation of real property located in a qualifying
16 municipality as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

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

45 (3) At least 15% of the moneys shall be allocated for financial
46 assistance to persons, [including] the New Jersey Redevelopment

1 Authority, county improvement authorities or municipal governmental
2 entities for remediation activities at sites that have been contaminated
3 by a discharge of a hazardous substance or hazardous waste, or at
4 which there is an imminent and significant threat of a discharge of a
5 hazardous substance or hazardous waste, and the discharge or
6 threatened discharge poses or would pose an imminent and significant
7 threat to a drinking water source, to human health, or to a sensitive or
8 significant ecological area;

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

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

20 (6) At least 20% of the moneys shall be allocated for grants to
21 persons [, other than municipal governmental entities,] who own real
22 property on which there has been a discharge of a hazardous
23 substance or a hazardous waste and that person qualifies for an
24 innocent party grant. A person qualifies for an innocent party grant if
25 that person acquired the property prior to December 31, 1983, except
26 as provided hereunder, the hazardous substance or hazardous waste
27 that was discharged at the property was not used by the person at that
28 site, and that person certifies that he did not discharge any hazardous
29 substance or hazardous waste at an area where a discharge is
30 discovered; provided, however, that [if the person is] notwithstanding
31 any other provision of this section or of section 27 of P.L.1993, c.139
32 (C.58:10B-5), the New Jersey Redevelopment Authority established
33 pursuant to P.L.1996, c.62 (C.55:19-20 et al.), [the authority] shall
34 qualify for an innocent party grant pursuant to this paragraph where
35 the immediate predecessor in title to the authority would have
36 qualified for but failed to apply for or receive such grant. A grant
37 authorized pursuant to this paragraph may be for up to 50% of the
38 remediation costs at the area of concern for which the person qualifies
39 for an innocent party grant, except that no grant awarded pursuant to
40 this paragraph to any person [including] or the New Jersey
41 Redevelopment Authority may exceed \$1,000,000;

42 (7) At least 5% of the moneys shall be allocated for loans to
43 persons [, other than municipal governmental entities,] or county
44 improvement authorities who own and plan to remediate an
45 environmental opportunity zone for which an exemption from real
46 property taxes has been granted pursuant to section 5 of P.L.1995,

1 c.413 (C.54:4-3.154); [and]

2 (8) At least 5% of the moneys shall be allocated for 25% matching
3 grants to persons who propose to perform a remedial action that uses
4 an innovative technology; and

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

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

37 c. No person, other than [a municipal governmental entity, the
38 New Jersey Redevelopment Authority] a person planning to use an
39 innovative technology for the cost of that technology or a person
40 engaging in a voluntary remediation, shall be eligible for financial
41 assistance from the remediation fund to the extent that person is
42 capable of establishing a remediation funding source for the
43 remediation as required pursuant to section 25 of P.L.1993, c.139
44 (C.58:10B-3).

45 d. The authority may use a sum that represents up to 2% of the
46 moneys issued as financial assistance or grants from the remediation

1 fund each year for administrative expenses incurred in connection with
2 the operation of the fund and the issuance of financial assistance and
3 grants.

4 e. Prior to March 1 of each year, the authority shall submit to the
5 Senate Environment Committee and the Assembly Agriculture and
6 Waste Management Committee, or their successors, a report detailing
7 the amount of money that was available for financial assistance and
8 grants from the remediation fund for the previous calendar year, the
9 amount of money estimated to be available for financial assistance and
10 grants for the current calendar year, the amount of financial assistance
11 and grants issued for the previous calendar year and the category for
12 which each financial assistance and grant was rendered, and any
13 suggestions for legislative action the authority deems advisable to
14 further the legislative intent to facilitate remediation and promote the
15 redevelopment and use of existing industrial sites.
16 (cf: P.L.1996, c.62, s.65)

17

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

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

21 (1) require a financial assistance or grant recipient to provide to
22 the authority, as necessary or upon request, evidence that financial
23 assistance or grant moneys are being spent for the purposes for which
24 the financial assistance or grant was made, and that the applicant is
25 adhering to all of the terms and conditions of the financial assistance
26 or grant agreement;

27 (2) require the financial assistance or grant recipient to provide
28 access at reasonable times to the subject property to determine
29 compliance with the terms and conditions of the financial assistance or
30 grant;

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

36 (4) provide that payment of a grant shall be conditioned upon the
37 subrogation to the department of all rights of the recipient to recover
38 remediation costs from the discharger or other responsible party. All
39 moneys collected in a cost recovery subrogation action shall be
40 deposited into the remediation fund;

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

44 (6) provide that where financial assistance to a person other than
45 a municipal governmental entity, established pursuant to P.L.1996,
46 c.62 (C.55:19-20 et al.), and any county improvement authority

1 established pursuant to P.L.1960, c.183 (C.40:37A-44), is for a
2 portion of the remediation cost, that the proceeds thereof not be
3 disbursed to the applicant until the costs of the remediation for which
4 a remediation funding source has been established has been expended;

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

8 b. An applicant for financial assistance or a grant shall be required
9 to:

10 (1) provide proof, as determined sufficient by the authority, that
11 the applicant, where applicable, cannot establish a remediation funding
12 source for all or part of the remediation costs, as required by section
13 25 of P.L.1993, c.139 (C.58:10B-3). The provisions of this paragraph
14 do not apply to grants to innocent persons or to the portion of
15 remediation costs involving innovative technology or to financial
16 assistance or grants to municipal governmental entities, the New
17 Jersey Redevelopment Authority or a county improvement authority;
18 and

19 (2) demonstrate the ability to repay the amount of the financial
20 assistance and interest, and, if necessary, to provide adequate
21 collateral to secure the financial assistance amount.

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

25 d. In establishing requirements for financial assistance or grant
26 applications and financial assistance or grant agreements, the
27 authority:

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

30 (2) may not require financial assistance or grant conditions that
31 interfere with the everyday normal operations of the recipient's
32 business activities, except to the extent necessary to ensure the
33 recipient's ability to repay the financial assistance and to preserve the
34 value of the loan collateral; and

35 (3) shall expeditiously process all financial assistance or grant
36 applications in accordance with a schedule established by the authority
37 for the review and the taking of final action on the application, which
38 schedule shall reflect the degree of complexity of a financial assistance
39 or grant application.

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

41

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

44 33. a. There is imposed upon every person who is required to
45 establish a remediation funding source pursuant to section 25 of
46 P.L.1993, c.139 (C.58:10B-3) a remediation funding source surcharge.

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

28 b. By February 1 of each year, the department shall issue a report
29 to the Senate Environment Committee and to the Assembly [Energy
30 and Hazardous Waste] Agriculture and Waste Management
31 Committee, or their successors, listing, for the prior calendar year,
32 each person who owed the remediation funding source surcharge, the
33 amount of the surcharge paid, and the total amount collected.

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

35

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

38 35. a. The Department of Environmental Protection [and Energy]
39 shall adopt minimum remediation standards for surface and subsurface
40 soil, groundwater, and surface water quality necessary for the
41 remediation of contamination of real property. The remediation
42 standards shall be developed to ensure that the potential for harm to
43 public health and safety and to the environment is minimized to
44 acceptable levels, taking into consideration the location, the
45 surroundings, the intended use of the property, the potential exposure
46 to the discharge, and the surrounding ambient conditions, whether

1 naturally occurring or man-made.

2 Until the minimum remediation standards for the protection of
3 public health and safety as described herein are adopted, the
4 department shall apply public health and safety remediation standards
5 for contamination at a site on a case-by-case basis based upon the
6 considerations and criteria enumerated in this section.

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

21 b. In developing minimum remediation standards the department
22 shall:

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

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

29 (3) avoid the use of redundant conservative assumptions. The
30 department shall avoid the use of redundant conservative assumptions
31 by the use of parameters that provide an adequate margin of safety and
32 which avoid the use of unrealistic conservative exposure parameters
33 and which guidelines make use of the guidance and regulations for
34 exposure assessment developed by the United States Environmental
35 Protection Agency pursuant to the "Comprehensive Environmental
36 Response, Compensation, and Liability Act of 1980," 42 U.S.C. §9601
37 et seq. and other statutory authorities as applicable; [and]

38 (4) where feasible, establish the remediation standards as numeric
39 or narrative standards setting forth acceptable levels or concentrations
40 for particular contaminants;

41 (5) consider and utilize, where appropriate, the toxicity factors,
42 slope factors for carcinogens and reference doses for non-carcinogens
43 from the United States Environmental Protection Agency's Integrated
44 Risk Information System (IRIS) in establishing minimum remediation
45 standards. In the event the department deviates from IRIS data, such
46 alternate data shall either be published in the peer-reviewed scientific

1 literature or otherwise subjected to the review of independent
2 scientific experts; and

3 (6) consider and utilize, where appropriate, standard probabilistic
4 approaches, such as the Monte Carlo approach, in the development of
5 minimum remediation standards.

6 c. (1) The department shall develop residential and nonresidential
7 surface soil remediation standards and subsurface soil remediation
8 standards that are protective of public health and safety. For
9 contaminants that are mobile and transportable to groundwater or
10 surface water, the [residential and nonresidential] subsurface soil
11 remediation standards shall be protective of groundwater and surface
12 water, where applicable. Residential surface soil remediation
13 standards shall be set at levels or concentrations of contamination for
14 real property based upon the use of that property for residential or
15 similar uses and which will allow the unrestricted use of that property
16 without the need of continuous engineering devices or any institutional
17 controls and without exceeding a health risk level greater than that
18 provided in subsection d. of this section. Nonresidential surface soil
19 remediation standards shall be set at levels or concentrations of
20 contaminants that recognize the lower likelihood of exposure to
21 contamination on property that will not be used for residential or
22 similar uses and that can be met without the need of continuous
23 engineering controls. Subsurface soil remediation standards shall be
24 set at levels that assume no direct contact or exposure to the
25 contamination but are based solely on the need to be protective of
26 groundwater. Surface and subsurface nonresidential remediation
27 standards shall be set at levels and assure no phytotoxic endpoints.
28 Whenever real property is remediated to a nonresidential surface soil
29 remediation standard, except as otherwise provided in paragraph (3)
30 of subsection g. of this section, the department shall require, pursuant
31 to section 36 of P.L.1993, c.139 (C.58:10B-13), that the use of the
32 property be restricted to nonresidential or other uses compatible with
33 the extent of the contamination of the surface soil and that access to
34 that site be restricted in a manner compatible with the allowable use of
35 that property. Whenever subsurface soil meets the remediation
36 standards for subsurface soil, no engineering or institutional controls
37 shall be required pursuant to section 36 of P.L.1993, c.139
38 (C.58:10B-13), for that property even if the level of contamination
39 would exceed the surface soil remediation standards. The department
40 may not restrict the use of the surface of a property merely because
41 the subsurface soil contamination exceeds the surface soil remediation
42 standards.

43 (2) The department may develop differential remediation standards
44 for surface water or groundwater that take into account the current,
45 planned, or potential use of that water in accordance with the "Clean
46 Water Act" (33 U.S.C. {1251 et seq.) and the "Water Pollution

1 Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.). In instances
2 where the groundwater is contaminated and there is little or no use of
3 that groundwater for drinking water, the department shall develop
4 remediation policies that allow for the natural attenuation of that
5 groundwater as an appropriate remedial action. Nothing in this
6 paragraph shall omit the use of natural attenuation as an acceptable
7 remedy for potable aquifers in instances where the contamination is
8 not causing an unacceptable impact to the potable use of that
9 groundwater. Whenever contamination exists in the groundwater that
10 exceeds the relevant groundwater remediation standards, the
11 department shall require, pursuant to section 36 of P.L.1993, c.139
12 (C.58:10B-13), that the use of the groundwater be restricted in a
13 manner so as to prevent ingestion of the groundwater. The
14 department may not, however, restrict the use of the surface of a
15 property merely because the groundwater contamination exceeds the
16 applicable remediation standards. Remediation standards protective
17 of surface waters shall be based upon water quality and discharge
18 criteria established in the "Water Pollution Control Act," P.L.1977,
19 c.74 (C.58:10A-1 et seq.).

20 d. In developing minimum remediation standards intended to be
21 protective of public health and safety, the department shall identify the
22 hazards posed by a contaminant to determine whether exposure to that
23 contaminant can cause an increase in the incidence of an adverse health
24 effect and whether the adverse health effect may occur in humans.
25 The department shall set minimum surface soil remediation standards
26 for both residential and nonresidential uses that:

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

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

32 The health risk levels established in this subsection are for any
33 particular contaminant and not for the cumulative effects of more than
34 one contaminant at a site.

35 e. Remediation standards and other requirements established
36 pursuant to this section shall apply to remediation activities required
37 pursuant to the "Spill Compensation and Control Act," P.L.1976,
38 c.141 (C.58:10-23.11 et seq.), the "Water Pollution Control Act,"
39 P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21
40 et seq.), the "Industrial Site Recovery Act," P.L.1983, c.330
41 (C.13:1K-6 et al.), the "Solid Waste Management Act," P.L.1970, c.39
42 (C.13:1E-1 et seq.), the "Comprehensive Regulated Medical Waste
43 Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major
44 Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49
45 et seq.), the "Sanitary Landfill Facility Closure and Contingency Fund
46 Act," P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional

1 Low-Level Radioactive Waste Disposal Facility Siting Act," P.L.1987,
2 c.333 (C.13:1E-177 et seq.), or any other law or regulation by which
3 the State may compel a person to perform remediation activities on
4 contaminated property. However, nothing in this subsection shall be
5 construed to limit the authority of the department to establish
6 discharge limits for pollutants or to prescribe penalties for violations
7 of those limits pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), or to
8 require the complete removal of nonhazardous solid waste pursuant to
9 law.

10 f. (1) A person performing a remediation of contaminated real
11 property, in lieu of using the established minimum surface soil
12 remediation standard for either residential use or nonresidential use
13 or a subsurface soil remediation standard adopted by the department
14 pursuant to subsection c. of this section, may submit to the department
15 a request to use an alternative residential use or nonresidential use
16 surface soil remediation standard or an alternative subsurface soil
17 remediation standard. The use of an alternative surface or subsurface
18 soil remediation standard shall be based upon site specific factors
19 which may include (1) physical site characteristics which may vary
20 from those used by the department in the development of the surface
21 or subsurface soil remediation standards adopted pursuant to this
22 section; or (2) a site specific risk assessment. If a person performing
23 a remediation requests to use an alternative surface or subsurface soil
24 remediation standard based upon a site specific risk assessment, that
25 person shall demonstrate to the department that the requested
26 deviation from the risk assessment protocol used by the department in
27 the development of surface or subsurface soil remediation standards
28 pursuant to this section is consistent with the guidance and regulations
29 for exposure assessment developed by the United States
30 Environmental Protection Agency pursuant to the "Comprehensive
31 Environmental Response, Compensation, and Liability Act of 1980,"
32 42 U.S.C. §9601 et seq. and other statutory authorities as applicable.
33 A site specific risk assessment may consider exposure scenarios and
34 assumptions that take into account the form of the contaminant
35 present, natural biodegradation, fate and transport of the contaminant,
36 and available toxicological data that are based upon generally accepted
37 and peer reviewed scientific evidence or methodologies and may
38 consider physical characteristics of the site including, but not limited
39 to, naturally occurring access restrictions or inhibitors, climatic
40 conditions or topographic conditions.

41 Upon a determination by the department that the requested
42 alternative remediation standard is protective of public health and
43 safety, as established in subsection d. of this section, and protective of
44 the environment pursuant to subsection a. of this section, the
45 alternative residential use or nonresidential use surface or subsurface
46 soil remediation standard shall be approved by the department.

1 (2) The department may, upon its own initiative, require an
2 alternative remediation standard for a particular contaminant for a
3 specific real property site, in lieu of using the established minimum
4 residential use or nonresidential use surface soil remediation standard
5 or the subsurface soil remediation standard adopted by the department
6 for a particular contaminant pursuant to this section. The department
7 may require an alternative remediation standard pursuant to this
8 paragraph upon a determination by the department, based on the
9 weight of the scientific evidence, that due to specific physical site
10 characteristics of the subject real property, including, but not limited
11 to, its proximity to surface water, the use of the adopted residential
12 use or nonresidential use surface soil remediation standards or the
13 subsurface soil remediation standards would not be protective, or
14 would be unnecessarily overly-conservative, of public health or safety
15 or of the environment, as appropriate.

16 g. The development, selection, and implementation of any
17 remediation standard or remedial action shall ensure that it is
18 protective of public health, safety, and the environment, as applicable,
19 as provided in this section. In determining the appropriate remedial
20 action that shall occur at a site in order to meet the established
21 remediation standards, the department, or any person performing the
22 remediation, shall base its decision on the following factors:

23 (1) Permanent and nonpermanent [remedies] remedial actions shall
24 be allowed [except that permanent remedies shall be preferred over
25 nonpermanent remedies for remedial actions] and no preference shall
26 be given to either a permanent or nonpermanent remedial action so
27 long as the selected remedial action meets the health risk level
28 established in subsection d. of this section, and where, as applicable,
29 is protective of the environment. The choice of the remedial action to
30 be implemented shall be made by the person performing the
31 remediation and that choice of the remedial action shall be approved
32 by the department if all the criteria for remedial action selection
33 enumerated in this section are met. The department may not require
34 a person performing a remediation to perform any remediation activity
35 that exceeds the actions necessary to meet the chosen remedial
36 objectives;

37 (2) Contamination may, upon the department's approval, be left
38 onsite at levels or concentrations that exceed the minimum surface soil
39 remediation standards for residential use or nonresidential use if the
40 implementation of institutional or engineering controls at that site will
41 result in the protection of public health, safety and the environment at
42 the health risk level established in subsection d. of this section and if
43 the requirements established in subsections a., b., c. and d. of section
44 36 of P.L.1993, c.139 (C.58:10B-13) are met;

45 (3) Real property on which there is surface soil that has not been
46 remediated to the residential surface soil remediation standards, or real

1 property on which the surface or subsurface soil, groundwater, or
2 surface water has been remediated to meet the required health risk
3 level by the use of engineering or institutional controls, may be
4 developed or used for residential purposes, or for any other similar
5 purpose, if (a) all areas of that real property at which a person may
6 come into contact with surface soil are remediated to meet the
7 residential surface soil remediation standards and (b) it is clearly
8 demonstrated that for all areas of the real property, other than those
9 described in subparagraph (a) above, engineering and institutional
10 controls can be implemented and maintained on the real property
11 sufficient to meet the health risk level as established in subsection d.
12 of this section;

13 (4) Remediation shall not be required beyond the regional natural
14 background levels for any particular contaminant. The department
15 shall develop [regulations] guidance that set forth a process to identify
16 background levels of contaminants for a particular region. For the
17 purpose of this paragraph "regional natural background levels" means
18 the concentration of a contaminant consistently present in the
19 environment of the region of the site and which has not been
20 influenced by localized human activities;

21 (5) Remediation shall not be required of the owner or operator of
22 real property for contamination coming onto the site from another
23 property owned and operated by another person, unless the owner or
24 operator is the discharger or is in any way responsible for the
25 discharge;

26 (6) Groundwater that is contaminated shall not be required to be
27 remediated to a level or concentration for any particular contaminant
28 lower than the level or concentration that is migrating onto the
29 property from another property owned and operated by another
30 person;

31 (7) The technical performance, effectiveness and reliability of the
32 proposed remedial action in attaining and maintaining compliance with
33 applicable remediation standards and required health risk levels. In
34 reviewing a [proposed] remedial action, the department shall also
35 consider the ability of the [owner or operator] proposed remedial
36 action to [implement the proposed remedial action] be implemented
37 within a reasonable time frame without jeopardizing public health,
38 safety or the environment. A person selected a presumptive remedy
39 in accordance with the department's guidance developed pursuant to
40 section 38 of P.L.1993, c.139 (C.58:10B-14), as amended by P.L. .
41 c. (now pending before the Legislature as this bill), shall be assumed
42 to have demonstrated the technical performance and reliability of the
43 remedial action as required by this subsection;

44 (8) [In the case of a proposed remedial action that will not meet the
45 established minimum residential use soil remediation standards, the
46 cost of all available permanent remedies is unreasonable, as determined

1 by department rules designed to provide a cost-based preference for
2 the use of permanent remedies. The department shall adopt
3 regulations, no later than 18 months after the effective date of this act,
4 establishing criteria and procedures for allowing a person to
5 demonstrate that the cost of all available permanent remedies is
6 unreasonable. Until the department adopts those regulations, it shall
7 not require a person performing a remedial action to implement a
8 permanent remedy, unless the cost of implementing a nonpermanent
9 remedy is 50 percent or more than the cost of implementing a
10 permanent remedy; provided, however, that the preceding provision
11 shall not apply to any owner or operator of an industrial establishment
12 who is implementing a remedial action pursuant to subsection i. of
13 section 4 of P.L.1983, c.330;] The use of a remedial action for surface
14 soil contamination that is determined by the department to be effective
15 in its guidance document created pursuant to section 38 of P.L.1993,
16 c.139 (C.58:10-14), is presumed to be an appropriate remedial action
17 if it is to be implemented on a site in the manner described by the
18 department in the guidance document and if all of the conditions for
19 remedy selection provided for in this section are met.

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

23 The department may require the person performing the remediation
24 to supply the information required pursuant to this subsection as is
25 necessary for the department to make a determination.

26 h. (1) The department shall [adopt regulations] issue guidance
27 which establish a procedure for a person to demonstrate that a
28 particular parcel of land contains large quantities of historical fill
29 material. Upon a determination by the department that large quantities
30 of historic fill material exist on that parcel of land, there is a rebuttable
31 presumption that the department shall not require any person to
32 remove or treat the fill material in order to comply with a remediation
33 standard. In these areas the department shall [establish by regulation
34 the requirement for] issue guidance that identifies engineering or
35 institutional controls that are designed to prevent exposure of these
36 contaminants to humans, that allow for the continued use of the
37 property, that are less costly than removal or treatment, which
38 maintain the health risk levels as established in subsection d. of this
39 section, and, as applicable, are protective of the environment. The
40 department may rebut the presumption only upon a finding by the
41 preponderance of the evidence that the use of engineering or
42 institutional controls would not be effective in protecting public health,
43 safety, and the environment. The department may not adopt any
44 guidance, rule or regulation that has the effect of shifting the burden
45 of rebutting the presumption. For the purposes of this paragraph
46 "historic fill material" means generally large volumes of

1 non-indigenous material, regardless of the date emplaced on the site,
2 used to raise the topographic elevation of a site, which were
3 contaminated prior to emplacement and are in no way connected with
4 the operations at the location of emplacement and which include, but
5 are not limited to, construction debris, dredge spoils, incinerator
6 residue, demolition debris, fly ash, and non-hazardous solid waste.
7 Historic fill material shall not include any material which is
8 substantially chromate chemical production waste or any other
9 chemical production waste or waste from processing of metal or
10 mineral ores, residues, slags or tailings.

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

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

30 i. The department may not require a [remedial action workplan]
31 remediation to be prepared or implemented or engineering or
32 institutional controls to be imposed upon any real property unless
33 sampling performed at that real property demonstrates the existence
34 of contamination above the [applicable] remediation standards selected
35 consistent with the intended use of the property.

36 j. Upon the approval by the department of a remedial action
37 workplan, or similar plan that describes the extent of contamination at
38 a site and the remedial action to be implemented to address that
39 contamination, or after the commencement of the remedial action, the
40 department may not subsequently require a change to that workplan
41 [or], similar plan or remedial action in order to compel a different
42 remediation standard due to the fact that the established remediation
43 standards have changed; however, the department may compel a
44 different remediation standard if the difference between the new
45 remediation standard and the remediation standard approved in the
46 workplan or other plan, or utilized in the remedial action differs by an

1 order of magnitude and poses an unacceptable risk to human health
2 or the environment. The limitation to the department's authority to
3 change a workplan or similar plan pursuant to this subsection shall
4 only apply if the workplan or similar plan is being implemented in a
5 reasonable timeframe, as may be indicated in the approved remedial
6 action workplan or similar plan.

7 k. Notwithstanding any other provisions of this section, all
8 remediation standards and remedial actions that involve real property
9 located in the Pinelands area shall be consistent with the provisions of
10 the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.),
11 any rules and regulations promulgated pursuant thereto, and with
12 section 502 of the National Parks and Recreation Act of 1978, 16
13 U.S.C. §4711.

14 l. Upon the adoption of a remediation standard for a particular
15 contaminant in surface or subsurface soil, groundwater, or surface
16 water pursuant to this section, the department may amend that
17 remediation standard only upon a finding that a new standard is
18 necessary to maintain the health risk levels established in subsection d.
19 of section 35 of P.L.1993, c.139 (C.58:10B-12) or to protect the
20 environment, as applicable. The department may not amend a public
21 health based surface soil remediation standard to a level that would
22 result in a health risk level more protective than that provided for in
23 subsection d. of section 35 of P.L.1993, c.139 (C.58:10B-12).

24 m. Nothing in P.L.1993, c.139 shall be construed to restrict or in
25 any way diminish the public participation which is otherwise provided
26 under the provisions of the "Spill Compensation and Control Act,"
27 P.L.1976, c.141 (C.58:10-23.11 et seq.).
28 (cf: P.L.1993, c.139, s.35)

29

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

32 36. a. When real property is remediated to a nonresidential surface
33 soil remediation standard or engineering or institutional controls are
34 used in lieu of remediating a site to meet an established remediation
35 standard for surface or subsurface soil, groundwater, or surface water,
36 the department shall, as a condition of the use of that standard or
37 control measure:

38 (1) require the establishment of any engineering or institutional
39 controls the department determines are reasonably necessary to
40 prevent exposure to the contaminants, require maintenance, as
41 necessary, of those controls, and require the restriction of the use of
42 the property in a manner that prevents exposure;

43 (2) require, with the consent of the owner of the real property, the
44 recording with the office of the county recording officer, in the county
45 in which the property is located, a notice to inform prospective holders
46 of an interest in the property that contamination exists on the property

1 at a level that may statutorily restrict certain uses of or access to all or
2 part of that property, a [delineation] description of those restrictions,
3 a description of all specific engineering or institutional controls at the
4 property that exist and that shall be maintained in order to prevent
5 exposure to contaminants remaining on the property above the
6 remediation standards developed consistent with the intended land use,
7 and the written consent to the notice by the owner of the property.
8 The notice shall be recorded in the same manner as are deeds and
9 other interests in real property;

10 (3) require a [notice to the governing body of each municipality in
11 which the property is located that contaminants will exist at the
12 property above residential use soil remediation standards or any other
13 remediation standards and specifying the restrictions on the use of or
14 access to all or part of that property and of the specific engineering or
15 institutional controls at the property that exist and that shall be
16 maintained] copy of this notice be forwarded to the governing body of
17 each municipality in which the property is located;

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

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

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

32 b. If the owner of the real property does not consent to the
33 recording of a notice pursuant to paragraph (2) of subsection a. of this
34 section, the department shall require the use of a residential surface
35 soil remediation standard in the remediation of that real property.

36 c. Whenever engineering or institutional controls on property as
37 provided in subsection a. of this section are no longer required, or
38 whenever the engineering or institutional controls are changed because
39 of the performance of subsequent remedial activities, a change in
40 conditions at the site, or the adoption of revised remediation
41 standards, the department shall require that the owner or operator of
42 that property record with the office of the county recording officer a
43 notice that the use of the property is no longer restricted or
44 [delineating] describing the new restrictions. The department shall
45 also require that the owner or operator notify, in writing, the
46 municipality in which the property is located of the removal or change

1 of the restrictive use conditions.

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

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

39 Nothing in the provisions of this subsection shall be construed to
40 limit the liability of any person who is liable to remediate the
41 contamination and at the time of the remediation knows of
42 contamination existing on this property and fails to remediate or
43 disclose it. Nothing in the provisions of this subsection shall be
44 construed to affect the authority of the department, pursuant to
45 subsection f. of this section, to require additional remediation on real
46 property where engineering or institutional controls were

1 implemented.

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

6 f. Whenever the department approves or has approved the use of
7 engineering or institutional controls for the remediation of soil,
8 groundwater, or surface water, to protect public health, safety or the
9 environment in lieu of remediating a site to a condition that meets an
10 established residential remediation standard, the department shall not
11 require additional remediation of that site unless the engineering or
12 institutional controls no longer are protective of public health, safety,
13 or the environment.

14 g. Whenever the department approves or has approved the use of
15 engineering or institutional controls for the remediation of surface or
16 subsurface soil, groundwater or surface water, to protect public health,
17 safety or the environment the department shall inspect that site at least
18 once every five years in order to ensure that the engineering and
19 institutional controls are being properly maintained and that the
20 controls remain protective of public health and safety and of the
21 environment.

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

23

24 22. Section 38 of P.L.1993, c.139 (C.58:10B-14) is amended to
25 read as follows:

26 38. Within 12 months of the effective date of this act, the
27 department shall develop a guidance document for the remediation of
28 contaminated surface and subsurface soils and groundwater. The
29 guidance document shall include a description of remedial actions the
30 department determines are effective in remediating [soil]
31 contamination [to the residential or nonresidential use soil remediation
32 standards] and that should be considered by a person performing a
33 [soil] remediation. The department shall revise the guidance
34 document periodically as it determines necessary. Adoption of the
35 guidance document, or the revisions thereto, shall be published in the
36 New Jersey Register but the adoption of the guidance document, or
37 the revisions thereto, shall not otherwise be subject to the notice,
38 comment, publication, or other requirements of the "Administrative
39 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

40 (cf: P.L.1993, c.139, s.38)

1 23. Section 37 of P.L.1993, c.139 is amended to read as follows:

2 37. a. There is established, in but not of the Department of
3 Environmental Protection [and Energy], an Environment Advisory
4 Task Force. The Task Force shall consist of 15 members as follows:
5 (1) the Commissioner of Environmental Protection [and Energy], or
6 his designee; (2) one representative from the National Academy of
7 Sciences who shall be selected by the Academy; (3) one representative
8 from the New Jersey Environmental and Occupational Health Sciences
9 Institute who has experience in risk assessment, who shall be selected
10 by the Institute; (4) one representative each from the industrial real
11 estate development industry, the environmental consulting profession,
12 a public interest environmental organization, and the legal community,
13 who shall be appointed by the Governor with the advice and consent
14 of the Senate; (5) four members who shall have at least a master's
15 degree in a relevant science discipline and who shall, to the greatest
16 extent possible, include a plant or animal biologist, a toxicologist, an
17 ornithologist, and a physiologist, who shall be appointed by the
18 Governor with the advice and consent of the Senate; (6) two members
19 who shall have at least a master's degree in a science discipline, have
20 relevant experience, and be employed by an industrial business, who
21 shall be appointed by the President of the Senate; and (7) two
22 members who shall have at least a master's degree in a science
23 discipline, have relevant experience, and be employed by an industrial
24 business, who shall be appointed by the Speaker of the General
25 Assembly. All the members shall be appointed and qualified within 90
26 days of the enactment of P.L. _____, c. _____ (now pending before the
27 Legislature as this bill). If any member is not appointed and qualified
28 by this date, that membership slot on the task force shall cease to exist
29 and the task force membership shall be reduced accordingly.

30 b. The Environment Advisory Task Force shall meet as soon as
31 practicable after the appointment and qualification of [all] a majority
32 of its members. The Commissioner of Environmental Protection, or
33 the commissioner's designee, shall be the chairperson of the
34 Environment Advisory Task Force. The Environment Advisory Task
35 Force shall meet at the call of its chairperson and in the locations the
36 chairperson shall choose.

37 c. The Environment Advisory Task Force shall, within two years
38 after its first meeting, make recommendations to the department on the
39 feasibility, development, and application of remediation standards
40 protective of the environment. A copy of the recommendations shall
41 be submitted to the Senate Environment Committee and to the
42 Assembly [Energy and Hazardous Waste] Agriculture and Waste
43 Management Committee, or to their successors.

44 d. The Environment Advisory Task Force shall:

45 (1) review the scientific literature to identify existing sources of
46 information and data necessary for the development of remediation

1 standards protective of the environment and to determine the current
2 state-of-the-science in the identification of adverse impacts of
3 contamination on ecological receptors and the establishment of
4 contaminant concentration levels necessary to protect the environment;

5 (2) review scientific literature on the methods, procedures, data
6 input needs, limitations, interpretation, and uses of environment risk
7 assessments;

8 (3) collect information on public and private activities concerning
9 the development and uses of environment risk assessments and
10 remediation standards protective of the environment;

11 (4) evaluate the ecological components which should be protected
12 through the application of remediation standards protective of the
13 environment;

14 (5) identify public policy issues involved in the development of
15 remediation standards protective of the environment;

16 (6) suggest an approach and methodology for the development of
17 remediation standards protective of the environment;

18 (7) evaluate the social, economic and environmental impacts of
19 regulations which would incorporate state-of-the-art environment risk
20 assessment methodologies;

21 (8) recommend necessary changes in statutes and regulations
22 necessary to implement the advice of the Environment Advisory Task
23 Force; and

24 (9) review and make recommendations on any other aspect of the
25 adoption of these remediation standards the task force determines is
26 necessary for a complete evaluation of these issues.

27 e. Prior to the submittal of its recommendations to the department,
28 the Environment Advisory Task Force shall release a proposed
29 recommendation to the public. The Environment Advisory Task Force
30 shall hold at least one public meeting at least 14 days after public
31 release of its proposed recommendations. Members of the public shall
32 be allowed to present written and oral comments on the proposed
33 recommendations at the public meeting. The task force is not required
34 to record, consider, or comment upon the public comments. Upon
35 submittal of its final recommendations to the department concerning
36 the adoption of remediation standards protective of the environment,
37 the Environment Advisory Task Force shall expire.

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

39

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

42 2. The Legislature finds and declares: that New Jersey's lands and
43 waters constitute a unique and delicately balanced resource; that the
44 protection and preservation of these lands and waters promote the
45 health, safety and welfare of the people of this State; that the tourist
46 and recreation industry dependent on clean waters and beaches is vital

1 to the economy of this State; that the State is the trustee, for the
2 benefit of its citizens, of all natural resources within its jurisdiction;
3 and that the storage and transfer of petroleum products and other
4 hazardous substances between vessels, between facilities and vessels,
5 and between facilities, whether onshore or offshore, is a hazardous
6 undertaking and imposes risk of damage to persons and property
7 within this State.

8 The Legislature finds and declares that the discharge of petroleum
9 products and other hazardous substances within or outside the
10 jurisdiction of this State constitutes a threat to the economy and
11 environment of this State. The Legislature intends by the passage of
12 this act to exercise the powers of this State to control the transfer and
13 storage of hazardous substances and to provide liability for damage
14 sustained within this State as a result of any discharge of said
15 substances, by requiring the prompt containment and removal of such
16 pollution and substances, and to provide a fund for swift and adequate
17 compensation to resort businesses and other persons damaged by such
18 discharges, and to provide for the defense and indemnification of
19 certain persons under contract with the State for claims or actions
20 resulting from the provision of services or work to mitigate or clean
21 up a release or discharge of hazardous substances.

22 The Legislature further finds and declares that many former
23 industrial sites in the State remain vacant or underutilized in part
24 because they have been contaminated by a discharge of a hazardous
25 substance; that these properties constitute an economic drain on the
26 State and the municipalities in which they exist; that it is in the public
27 interest to have these properties cleaned up sufficiently so that they
28 can be safely returned to productive use; and that it should be a
29 function of the Department of Environmental Protection to facilitate
30 and coordinate activities and functions designed to cleanup
31 contaminated sites in this State.

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

33

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

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

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

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

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

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

3 "Cleanup and removal costs" means all costs associated with a
4 discharge, incurred by the State or its political subdivisions or their
5 agents or any person with written approval from the department in the:
6 (1) removal or attempted removal of hazardous substances, or (2)
7 taking of reasonable measures to prevent or mitigate damage to the
8 public health, safety, or welfare, including, but not limited to, public
9 and private property, shorelines, beaches, surface waters, water
10 columns and bottom sediments, soils and other affected property,
11 including wildlife and other natural resources, and shall include costs
12 incurred by the State for the indemnification and legal defense of
13 contractors pursuant to sections 1 through 11 of P.L.1991, c.373
14 (C.58:10-23.11f8 et seq.) For the purposes of this definition, costs
15 incurred by the State shall not include any indirect costs or fringe
16 benefit costs, but shall include only those program costs directly
17 related to the cleanup and removal of the discharge;

18 "Commissioner" means the Commissioner of Environmental
19 Protection;

20 "Department" means the Department of Environmental Protection;

21 "Director" means the Director of the Division of Taxation in the
22 Department of the Treasury;

23 "Discharge" means any intentional or unintentional action or
24 omission resulting in the releasing, spilling, leaking, pumping, pouring,
25 emitting, emptying or dumping of hazardous substances into the
26 waters or onto the lands of the State, or into waters outside the
27 jurisdiction of the State when damage may result to the lands, waters
28 or natural resources within the jurisdiction of the State;

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

33 "Fair market value" means the invoice price of the hazardous
34 substances transferred, including transportation charges; but where no
35 price is so fixed, "fair market value" shall mean the market price as of
36 the close of the nearest day to the transfer, paid for similar hazardous
37 substances, as shall be determined by the taxpayer pursuant to rules of
38 the director;

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

40 "Hazardous substances" means the "environmental hazardous
41 substances" on the environmental hazardous substance list adopted by
42 the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4);
43 such elements and compounds, including petroleum products, which
44 are defined as such by the department, after public hearing, and which
45 shall be consistent to the maximum extent possible with, and which
46 shall include, the list of hazardous substances adopted by the federal

1 Environmental Protection Agency pursuant to section 311 of the
2 federal Water Pollution Control Act Amendments of 1972,
3 Pub.L.92-500, as amended by the Clean Water Act of 1977,
4 Pub.L.95-217 (33 U.S.C. §1251 et seq.); the list of toxic pollutants
5 designated by Congress or the EPA pursuant to section 307 of that
6 act; and the list of hazardous substances adopted by the federal
7 Environmental Protection Agency pursuant to section 101 of the
8 "Comprehensive Environmental Response, Compensation and Liability
9 Act of 1980," Pub.L.96-510 (42 U.S.C. §9601 et seq.); provided,
10 however, that sewage and sewage sludge shall not be considered as
11 hazardous substances for the purposes of P.L.1976, c.141
12 (C.58:10-23.11 et seq.);

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

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

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

30 (1) 20,000 gallons or more for hazardous substances which are
31 other than petroleum or petroleum products, or

32 (2) 200,000 gallons or more for hazardous substances of all kinds.

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

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

45 "Natural resources" means all land, fish, shellfish, wildlife, biota,
46 air, waters and other such resources owned, managed, held in trust or

1 otherwise controlled by the State;

2 "Owner" or "operator" means, with respect to a vessel, any person
3 owning, operating or chartering by demise such vessel; with respect to
4 any major facility, any person owning such facility, or operating it by
5 lease, contract or other form of agreement; with respect to abandoned
6 or derelict major facilities, the person who owned or operated such
7 facility immediately prior to such abandonment, or the owner at the
8 time of discharge;

9 "Person" means public or private corporations, companies,
10 associations, societies, firms, partnerships, joint stock companies,
11 individuals, the United States, the State of New Jersey and any of its
12 political subdivisions or agents;

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

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

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

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

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

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

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

43

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

46 7. a. (1) Whenever any hazardous substance is discharged, the

1 department may, in its discretion, act to clean up and remove or
2 arrange for the cleanup and removal of such discharge or may direct
3 the discharger to clean up and remove, or arrange for the cleanup and
4 removal of, such discharge. If the discharge occurs at any hazardous
5 or solid waste disposal facility, the department may order the facility
6 closed for the duration of the cleanup and removal operations. The
7 department may monitor the discharger's compliance with any such
8 directive. Any discharger who fails to comply with such a directive
9 shall be liable to the department in an amount equal to three times the
10 cost of such cleanup and removal, and shall be subject to the
11 revocation or suspension of any license or permit he holds authorizing
12 him to operate a hazardous or solid waste disposal facility.

13 (2) Whenever one or more dischargers or persons cleans up and
14 removes a discharge of a hazardous substance, those dischargers and
15 persons shall have a right of contribution against all other dischargers
16 and persons in any way responsible for a discharged hazardous
17 substance who are liable for the cost of the cleanup and removal of
18 that discharge of a hazardous substance. In an action for contribution,
19 the contribution plaintiffs need prove only that a discharge occurred
20 for which the contribution defendant or defendants are liable pursuant
21 to the provisions of subsection c. of section 8 of P.L.1976, c.141
22 (C.58:10-23.11g), and the contribution defendant shall have only the
23 defenses to liability available to parties pursuant to subsection d. of
24 section 8 of P.L.1976, c.141 (C.58:10-23.11g). A letter of no
25 association received from the department pursuant to section 28 of
26 P.L. _____, c. _____ (C. _____) (now pending before the Legislature as this bill)
27 is prima facie evidence that a person has a defense to a contribution
28 claim pursuant to this section. In resolving contribution claims, a
29 court may allocate the costs of cleanup and removal among liable
30 parties using such equitable factors as the court determines are
31 appropriate. Nothing in this subsection shall affect the right of any
32 party to seek contribution pursuant to any other statute or under
33 common law.

34 (3) [The department may, in its sole discretion, when it will
35 expedite the cleanup and removal of any discharged hazardous
36 substance, and when the department determines that it is in the public
37 interest, authorize parties who have entered into an agreement with the
38 department to clean up and remove or arrange for the cleanup and
39 removal of a hazardous substance and who seek contribution, to
40 collect treble damages from any contribution defendant who has failed
41 or refused to comply with any directive, was named on the directive,
42 and who is subject to contribution pursuant to this subsection. The
43 treble damages shall be based on the amount of contribution owed by
44 a contribution defendant, which share of contribution shall be
45 determined by the court. A contribution defendant from whom treble
46 damages is sought in a contribution action shall not be assessed treble

1 damages by any court where the contribution defendant, for good
2 cause shown, failed or refused to enter the settlement agreement with
3 the department or with the contribution [plaintiffs] plaintiffs or where
4 principles of fundamental fairness will be violated. One third of an
5 award of treble damages in a contribution action pursuant to this
6 paragraph shall be paid to the department, which sum shall be
7 deposited in the New Jersey Spill Compensation Fund. The other two
8 thirds of the treble damages award shall be shared by the contribution
9 plaintiffs in the proportion of the responsibility for the cost of the
10 cleanup and removal that the contribution plaintiffs have agreed to
11 with the department or in an amount as has been agreed to by those
12 parties. Nothing in this subsection affects the rights of any party to
13 seek contribution pursuant to any other statute or under common law.]

14 Cleanup and removal of hazardous substances and actions to
15 minimize damage from discharges shall, to the greatest extent possible,
16 be in accordance with the National Contingency Plan for cleanup and
17 removal of oil and hazardous substances established pursuant to
18 section 311(c)(2) of the federal Water Pollution Control Act
19 Amendments of 1972 (Pub.L.92-500, 33 U.S.C. §1251 et seq.).
20 Whenever the department acts to clean up and remove a discharge or
21 contracts to secure prospective cleanup and removal services, it is
22 authorized to draw upon the money available in the fund. Such money
23 shall be used to pay promptly for all cleanup and removal costs
24 incurred by the department in cleaning up, in removing or in
25 minimizing damage caused by such discharge.

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

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

45 (1) Has not been discharged from a grounded or disabled vessel,
46 if the department determines that such cleanup and removal is

1 necessary to prevent an imminent discharge of such hazardous
2 substance; or

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

6 (a) Explosiveness;

7 (b) High flammability;

8 (c) Radioactivity;

9 (d) Chemical properties which in combination with any discharged
10 hazardous substance at the same storage facility would create a
11 substantial risk of imminent damage to public health or safety or an
12 imminent and severe damage to the environment;

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

18 (f) High toxicity and is stored or being transported in a container
19 or motor vehicle, truck, rail car or other mechanized conveyance from
20 which its discharge is imminent as a result of the significant
21 deterioration or the precarious location of the container, motor
22 vehicle, truck, rail car or other mechanized conveyance, and such
23 discharge would create a substantial risk of imminent damage to public
24 health or safety or imminent and severe damage to the environment;
25 or

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

28 c. If and to the extent that [he] the administrator determines that
29 funds are available, the administrator shall approve and make payments
30 for any cleanup and removal costs incurred by the department for the
31 cleanup and removal of a hazardous substance other than petroleum
32 as authorized by subsection b. of this section; provided that in
33 determining the availability of funds, the administrator shall not
34 include as available funds revenues realized or to be realized from the
35 tax on the transfer of petroleum, to the extent that such revenues
36 result from a tax levied at a rate in excess of \$0.01 per barrel, pursuant
37 to subsection b. of section 9 of P.L.1976, c.141 (C.58:10-23.11h),
38 unless the administrator determines that the sum of claims paid by the
39 fund on behalf of petroleum discharges or cleanup and removals plus
40 pending reasonable claims against the fund on behalf of petroleum
41 discharges or cleanup and removals is greater than 30% of the sum of
42 all claims paid by the fund plus all pending reasonable claims against
43 the fund.

44 d. The administrator may only approve and make payments for any
45 cleanup and removal costs incurred by the department for the cleanup
46 and removal of a hazardous substance discharged prior to the effective

1 date of P.L.1976, c.141, pursuant to subsection b. of this section, if,
2 and to the extent that, he determines that adequate funds from another
3 source are not or will not be available; and provided further, with
4 regard to the cleanup and removal costs incurred for discharges which
5 occurred prior to the effective date of P.L.1976, c.141, the
6 administrator may not during any one-year period pay more than
7 \$18,000,000 in total or more than \$3,000,000 for any discharge or
8 related set or series of discharges.

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

20 f. Any expenditures made by the administrator pursuant to this act
21 shall constitute, in each instance, a debt of the discharger to the fund.
22 The debt shall constitute a lien on all property owned by the discharger
23 when a notice of lien, incorporating a description of the property of
24 the discharger subject to the cleanup and removal and an identification
25 of the amount of cleanup, removal and related costs expended from
26 the fund, is duly filed with the clerk of the Superior Court. The clerk
27 shall promptly enter upon the civil judgment or order docket the name
28 and address of the discharger and the amount of the lien as set forth
29 in the notice of lien. Upon entry by the clerk, the lien, to the amount
30 committed by the administrator for cleanup and removal, shall attach
31 to the revenues and all real and personal property of the discharger,
32 whether or not the discharger is insolvent. The notice of lien filed
33 pursuant to this subsection which affects the property of a discharger
34 subject to the cleanup and removal of a discharge shall create a lien
35 with priority over all other claims or liens which are or have been filed
36 against the property, except if the property comprises six dwelling
37 units or less and is used exclusively for residential purposes, this notice
38 of lien shall not affect any valid lien, right or interest in the property
39 filed in accordance with established procedure prior to the filing of this
40 notice of lien. The notice of lien filed pursuant to this subsection
41 which affects any property of a discharger, other than the property
42 subject to the cleanup and removal, shall have priority from the day of
43 the filing of the notice of the lien over all other claims and liens filed
44 against the property, but shall not affect any valid lien, right, or
45 interest in the property filed in accordance with established procedure
46 prior to the filing of a notice of lien pursuant to this subsection.

1 g. In the event a vessel discharges a hazardous substance into the
2 waters of the State, the cleanup and removal and related costs
3 resulting from that discharge that constitute a maritime lien on the
4 discharging vessel pursuant to 33 U.S.C. §1321 or any other law, may
5 be recovered by the Department of Environmental Protection in an
6 action in rem brought in the district court of the United States. An
7 impoundment of a vessel resulting from this action shall continue until:

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

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

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

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

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

23

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

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

29 (1) The cost of restoring, repairing, or replacing any real or
30 personal property damaged or destroyed by a discharge, any income
31 lost from the time such property is damaged to the time such property
32 is restored, repaired or replaced, and any reduction in value of such
33 property caused by such discharge by comparison with its value prior
34 thereto;

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

37 (3) Loss of income or impairment of earning capacity due to
38 damage to real or personal property, including natural resources
39 destroyed or damaged by a discharge; provided that such loss or
40 impairment exceeds 10% of the amount which claimant derives, based
41 upon income or business records, exclusive of other sources of
42 income, from activities related to the particular real or personal
43 property or natural resources damaged or destroyed by such discharge
44 during the week, month or year for which the claim is filed;

45 (4) Loss of tax revenue by the State or local governments for a
46 period of one year due to damage to real or personal property

1 proximately resulting from a discharge;

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

6 b. The damages which may be recovered by the fund, without
7 regard to fault, subject to the defenses enumerated in subsection d. of
8 this section against the owner or operator of a major facility or vessel,
9 shall not exceed ~~[\$50,000,000.00]~~ \$50,000,000 for each major facility
10 or ~~[\$150.00]~~\$150 per gross ton for each vessel, except that such
11 maximum limitation shall not apply and the owner or operator shall be
12 liable, jointly and severally, for the full amount of such damages if it
13 can be shown that such discharge was the result of (1) gross
14 negligence or willful misconduct, within the knowledge and privity of
15 the owner, operator or person in charge, or (2) a gross or willful
16 violation of applicable safety, construction or operating standards or
17 regulations. Damages which may be recovered from, or by, any other
18 person shall be limited to those authorized by common or statutory
19 law.

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

28 (2) In addition to the persons liable pursuant to [paragraph (1) of]
29 this subsection, in the case of a discharge of a hazardous substance
30 from a vessel into the waters of the State, the owner or operator of a
31 refinery, storage, transfer, or pipeline facility to which the vessel was
32 en route to deliver the hazardous substance who, by contract,
33 agreement, or otherwise, was scheduled to assume ownership of the
34 discharged hazardous substance, and any other person who was so
35 scheduled to assume ownership of the discharged hazardous substance,
36 shall be strictly liable, jointly and severally, without regard to fault, for
37 all cleanup and removal costs if the owner or operator of the vessel did
38 not have the evidence of financial responsibility required pursuant to
39 section 2 of P.L.1991, c.58 (C.58:10-23.11g2).

40 Where a person is liable for cleanup and removal costs as provided
41 in this paragraph, any expenditures made by the administrator for that
42 cleanup and removal shall constitute a debt of that person to the fund.
43 The debt shall constitute a lien on all property owned by that person
44 when a notice of lien identifying the nature of the discharge and the
45 amount of the cleanup, removal and related costs expended from the
46 fund is duly filed with the clerk of the Superior Court. The clerk shall

1 promptly enter upon the civil judgment or order docket the name and
2 address of the liable person and the amount of the lien as set forth in
3 the notice of lien. Upon entry by the clerk, the lien, to the amount
4 committed by the administrator for cleanup and removal, shall attach
5 to the revenues and all real and personal property of the liable person,
6 whether or not that person is insolvent.

7 For the purpose of determining priority of this lien over all other
8 claims or liens which are or have been filed against the property of an
9 owner or operator of a refinery, storage, transfer, or pipeline facility,
10 the lien on the facility to which the discharged hazardous substance
11 was en route shall have priority over all other claims or liens which are
12 or have been filed against the property. The notice of lien filed
13 pursuant to this paragraph which affects any property of a person
14 liable pursuant to this paragraph other than the property of an owner
15 or operator of a refinery, storage, transfer, or pipeline facility to which
16 the discharged hazardous substance was en route, shall have priority
17 from the day of the filing of the notice of the lien over all claims and
18 liens filed against the property, but shall not affect any valid lien, right,
19 or interest in the property filed in accordance with established
20 procedure prior to the filing of a notice of lien pursuant to this
21 paragraph.

22 To the extent that a person liable pursuant to this paragraph is not
23 otherwise liable pursuant to paragraph (1) of this subsection, or under
24 any other provision of law or under common law, that person may
25 bring an action for indemnification for costs paid pursuant to this
26 paragraph against any other person who is strictly liable pursuant to
27 paragraph (1) of this subsection.

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

31 (3) In addition to the persons liable pursuant to this subsection, any
32 person who owns real property acquired on or after September 14,
33 1993 on which there has been a discharge prior to the person's
34 acquisition of that property and who knew or should have known that
35 a hazardous substance had been discharged on the real property, shall
36 be strictly liable, jointly and severally, without regard to fault, for all
37 cleanup and removal costs no matter by whom incurred. Such person
38 shall also be strictly liable, jointly and severally, without regard to
39 fault, for all cleanup and removal costs incurred by the department or
40 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141
41 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter
42 the liability of any person who acquired real property prior to
43 September 14, 1993.

44 d. (1) In addition to those defenses provided in this subsection, an
45 act or omission caused solely by war, sabotage, or God, or a
46 combination thereof, shall be the only defenses which may be raised by

1 any owner or operator of a major facility or vessel responsible for a
2 discharge in any action arising under the provisions of this act.

3 (2) A person, including an owner or operator of a major facility,
4 who owns real property acquired on or after [the effective date of
5 P.L.1993, c.139 (C.13:1K-9.6 et al.),] September 14, 1993 on which
6 there has been a discharge, shall not be [considered a person in any
7 way responsible] liable to the State or to any other person for the
8 discharged hazardous substance pursuant to subsection c. of this
9 section or pursuant to common law, [unless] if that person can
10 establish by a preponderance of the evidence that all of the following
11 apply:

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

14 (b) (i) at the time the person acquired the real property, the person
15 did not know and had no reason to know that any hazardous substance
16 had been discharged at the real property, (ii) the person acquired the
17 real property by devise or succession, except that any other funds or
18 property received by that person from the deceased real property
19 owner who discharged a hazardous substance or was in any way
20 responsible for a hazardous substance, shall be made available to
21 satisfy the requirements of P.L.1976, c.141, (iii) the person complies
22 with the provisions of subparagraph (e) of paragraph (2) of this
23 subsection, or (iv) the person complies with the provisions of
24 subparagraph (f) of paragraph (2) of this subsection;

25 (c) the person did not discharge the hazardous substance and is not
26 in any way responsible for the hazardous substance; and

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

29 To establish that a person had no reason to know that any
30 hazardous substance had been discharged for the purposes of this
31 paragraph (2), the person must have undertaken, at the time of
32 acquisition, all appropriate inquiry into the previous ownership and
33 uses of the property. For the purposes of this paragraph (2), all
34 appropriate inquiry shall mean the performance of a preliminary
35 assessment, and site investigation [], if the preliminary assessment
36 indicates that a site investigation is necessary [)], as defined in section
37 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance
38 with rules and regulations promulgated by the department defining
39 these terms.

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

43 (e) If the Department of Environmental Protection issues a no
44 further action letter, as defined in section 23 of P.L.1993, c.139
45 (C.58:10B-1), for a site at which a discharge occurred prior to a
46 person becoming the owner or operator of the site, and any

1 institutional or engineering controls required by the remedial action
2 workplan are maintained as required by the department, then any
3 person who is not otherwise liable for the discharge at the site which
4 occurred prior to the department's approval of the no further action
5 letter shall not be liable for the cleanup and removal of the discharge
6 or for damages to any person resulting from the discharge based solely
7 on that person becoming an owner or operator of the site of the
8 discharge after the effective date of P.L. , c. (now pending before
9 the Legislature as this bill). For the purposes of this paragraph, a site
10 shall constitute the real property defined in the remedial action
11 workplan or, if no remedial action workplan is required, the no further
12 action letter.

13 (f) At any site at which a discharge has occurred and at which the
14 department has not issued a no further action letter, any person not
15 otherwise liable for any discharge that occurred prior to that person's
16 ownership shall not be liable for cleanup of any discharge based solely
17 on the persons becoming an owner or operator after the effective date
18 of P.L. , c. (now pending before the Legislature as this bill), if such
19 person remediates any immediate, direct or imminent threats to
20 acceptable levels based on the intended use of the site. To the extent
21 that any person seeks to utilize or develop the site, the person is
22 responsible for taking steps necessary to prevent direct contact with
23 contamination in surface soils and to obtain a no further action letter
24 consistent with the intended use of the site. A person who receives a
25 no further action letter pursuant to this paragraph shall not be liable
26 for any changes in the remediation standard for the subsequent
27 discovery of a contaminant at the site that was discharged prior to the
28 person acquiring the property.

29 g. Notwithstanding any provisions of section 36 of P.L.1993, c.139
30 (C.58:10B-13) or any other law, rule or regulation to the contrary, the
31 owner or operator of any contaminated property acquired on or after
32 the effective date of P.L. , c. (now pending before the Legislature
33 as this bill) shall not be liable for any actions, claims or damages for
34 on-site contamination, off-site contamination or third party actions
35 arising from contamination existing at the property prior to the owner
36 or operator taking title to the property, or commencing operations on
37 the property, and which was not caused by that person. Nothing in
38 this subsection shall insulate such a person from liability for
39 subsequently contaminating or aggravating existing contamination on
40 the property.

41 (3) Notwithstanding the provisions of paragraph (2) of this
42 subsection to the contrary, if a person who owns real property obtains
43 actual knowledge of a discharge of a hazardous substance at the real
44 property during the period of that person's ownership and
45 subsequently transfers ownership of the property to another person
46 without disclosing that knowledge, the transferor shall be strictly liable

1 for the cleanup and removal costs of the discharge and no defense
2 under this subsection shall be available to that person.

3 (4) Any federal, State, or local governmental entity which acquires
4 ownership of real property through bankruptcy, tax delinquency,
5 abandonment, escheat, eminent domain, condemnation or any
6 circumstance in which the [government] governmental entity
7 involuntarily acquires title by virtue of its function as sovereign, or
8 where the governmental entity acquires the property by any means for
9 the purpose of promoting the redevelopment of that property. shall not
10 be liable for the cleanup and removal costs of any discharge which
11 occurred or began prior to that ownership. This paragraph shall not
12 apply to any federal, State or local governmental entity which has
13 caused or contributed to the discharge of a hazardous substance , nor
14 shall this paragraph apply to property acquired by the governmental
15 entity where such property is engaged in a reasonably timely
16 remediation or redevelopment process.

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

35 (2) The fund established pursuant to the "Spill Compensation and
36 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), shall not be
37 liable for any damages incurred by any person who is relieved from
38 liability pursuant to this subsection.] (Deleted by amendment, P.L. ,
39 c.)
40 (cf: P.L.1996, c.62, s.56)

41
42 28. (New section) Whenever a person claims a defense to liability
43 for cleanup and removal costs pursuant to paragraph (2) of subsection
44 d. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), that person may
45 submit to the Department of Environmental Protection evidence
46 sufficient to prove by a preponderance of the evidence that the defense

1 applies. Upon a finding by the department that the defense applies to
2 that person, the department shall issue that person a letter of no
3 association. The letter of no association shall state that, upon the
4 evidence submitted to the department, the department finds that the
5 person has met the statutory burden of proving a defense to liability
6 under paragraph (2) of subsection d. of section 8 of P.L.1976, c.141
7 (C.58:10-23.11g) and that person, pursuant to that defense, is not
8 liable for any cleanup and removal costs for any discharged hazardous
9 substances that may be on that real property at the time of the issuance
10 of the letter of no association.

11

12 29. Section 2 of P.L.1995, c.413 (C.54:4-3.151) is amended to
13 read as follows:

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

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

39

40 30. Section 5 of P.L.1995, c.413 (C.54:4-3.154) is amended to
41 read as follows:

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

- 1 a. A property tax exemption term of ten years;
- 2 b. The application procedure for an exemption authorized under
3 P.L.1995, c.413 (C.54:4-3.150 et seq.);
- 4 c. The method of computing payments in lieu of real property
5 taxes pursuant to subsection b. of section 7 of P.L.1995, c.413
6 (C.54:4-3.156);
- 7 d. An approval method for exemption applications by the assessor
8 or by ordinance on a per application basis; and
- 9 e. A requirement that the environmental opportunity zone will be
10 remediated in compliance with the remediation standards adopted by
11 the Department of Environmental Protection pursuant to P.L.1993,
12 c.139 (C.58:10B-1 et al.), that the owner of the property will enter
13 into a memorandum of agreement or administrative consent order with
14 the department to perform the remediation and will complete the
15 remediation pursuant to the agreement or order, and that, once
16 remediated, the environmental opportunity zone will be used for a
17 commercial [or] , industrial, residential or other productive purpose
18 during the time period for which the real property tax exemption is
19 given.
20 (cf: P.L.1995, c.413, s.5)

21

22 31. (New section) This act shall be known and may be cited as the
23 "Brownfields Redevelopment Incentive Act."

24

25 32. (New section) As used in sections 31 through 37 of P.L. , c.
26 (C.)(now pending before the Legislature as this bill):

27 "Developer" means any person that enters or proposes to enter into
28 a redevelopment agreement with the State pursuant to the provisions
29 of section 33 of P.L. , c. (C.)(now pending before the
30 Legislature as this bill).

31 "Director" means the Director of the Division of Taxation in the
32 Department of the Treasury.

33 "Project" or "redevelopment project" means a specific work or
34 improvement, including lands, buildings, improvements, real and
35 personal property or any interest therein, including lands under water,
36 riparian rights, space rights and air rights, acquired, owned, developed
37 or redeveloped, constructed, reconstructed, rehabilitated or improved,
38 undertaken by a developer within an area of land whereon a
39 contaminated site is located, under a redevelopment agreement with
40 the State pursuant to section 33 of P.L. , c. (C.) (now pending
41 before the Legislature as this bill).

42 "Redevelopment agreement" means an agreement between the
43 State and a developer under which the developer agrees to perform
44 an agreed upon scope of work or undertaking necessary for the
45 remediation of the contaminated site located at the site of the
46 redevelopment project, and for the clearance, development or

1 redevelopment, construction or rehabilitation of any structure or
2 improvement of commercial, industrial or public structures or
3 improvements within an area of land whereon a contaminated site is
4 located pursuant to section 33 of P.L. , c. (C.) (now pending
5 before the Legislature as this bill), and the State agrees that the
6 developer shall be eligible for the reimbursement of 75% of the costs
7 of remediation of the contaminated site from the fund established
8 pursuant to section 36 of P.L. , c. (C.) (now pending before the
9 Legislature as this bill) as authorized pursuant to section 34 of P.L. ,
10 c. (C.)(pending in the Legislature as this bill).

11 "Remediation" or "remediate" means all necessary actions to
12 investigate and address any known, suspected, or threatened discharge
13 of contaminants, including, as necessary, the preliminary assessment,
14 site investigation, remedial investigation and remedial action, as those
15 terms are defined in section 23 of P.L.1993, c.139 (C.58:10B-1).

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

19

20 33. (New section) a. The provisions of any other law, or rule or
21 regulation adopted pursuant thereto, to the contrary notwithstanding,
22 any developer may enter into a redevelopment agreement with the
23 State pursuant to the provisions of this section.

24 The Commissioner of the Department of Commerce and Economic
25 Development, in consultation with the State Treasurer, shall negotiate
26 the terms and conditions of any redevelopment agreement on behalf of
27 the State.

28 b. In negotiating a redevelopment agreement with a developer, the
29 commissioner shall consider the following factors:

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

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

33 (3) the degree to which the redevelopment project will advance
34 State, regional and local development strategies;

35 (4) the likelihood that the redevelopment project shall upon
36 completion be capable of repaying the remediation costs incurred;

37 (5) the relationship of the redevelopment project to a
38 comprehensive local development strategy, including other major
39 projects undertaken within the municipality;

40 (6) the need of the redevelopment agreement to the viability of the
41 project; and

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

1 34. (New section) a. The provisions of any other law, or rule or
2 regulation adopted pursuant thereto, to the contrary notwithstanding,
3 any developer that enters into a redevelopment agreement pursuant to
4 section 33 of P.L. , c. (C.) (now pending before the Legislature
5 as this bill), may, upon the commencement of a business operation
6 within a redevelopment project, be eligible for reimbursement of 75%
7 of the costs of the remediation of that subject property pursuant to the
8 provisions of this section. The reimbursement, as hereinafter
9 provided, shall be funded from the amounts due and payable under the
10 "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) by
11 those businesses for the taxable sales that are sold within that project
12 area.

13 b. To be eligible for reimbursement of 75% of the costs of
14 remediation, a developer shall submit an application, in writing, to the
15 director for review and certification of the reimbursement. The
16 director shall review the request for the reimbursement upon receipt
17 of an application therefor, and shall approve or deny the application
18 for certification on a timely basis.

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

21 (1) a place of business is located in the area subject to the
22 redevelopment agreement for the purpose of making retail sales;

23 (2) non-exempt items are regularly exhibited and offered for retail
24 sale at that location;

25 (3) the place of business is not utilized primarily for the purpose of
26 catalogue or mail order sales; and

27 (4) the developer has entered into a memorandum of agreement
28 with the Commissioner of Environmental Protection for the
29 remediation of contamination located on the site of the redevelopment
30 project pursuant to section 35 of P.L. , c. (C.) (now pending
31 before the Legislature as this bill) and is in compliance with the
32 memorandum of agreement.

33 c. When filing an application to certify a reimbursement pursuant
34 to this section, the developer shall submit to the director a certification
35 of the total remediation costs incurred by the developer for the
36 remediation of the subject property located at the site of the
37 redevelopment project as provided in the redevelopment agreement.
38

39 35. (New section) a. To qualify for the certification of
40 reimbursement of 75% of the remediation costs authorized pursuant
41 to section 34 of P.L. , c. (C.) (now pending before the
42 Legislature as this bill), a developer shall enter into a memorandum of
43 agreement with the Commissioner of Environmental Protection for the
44 remediation of the site of the redevelopment project.

45 b. Under the memorandum of agreement, the developer shall agree
46 to perform and complete any remediation activity as may be required

1 by the Department of Environmental Protection to ensure the
2 remediation is conducted pursuant to the remediation standards
3 adopted by the Department of Environmental Protection pursuant to
4 P.L.1993, c.139 (C.58:10B-1 et al.).

5 c. After the developer has entered into a memorandum of
6 agreement with the Commissioner of Environmental Protection, the
7 commissioner shall submit a copy thereof to the developer, the clerk
8 of the municipality in which the subject property is located, the
9 Commissioner of the Department of Commerce and Economic
10 Development and the director.

11

12 36. (New section) a. There is created in the Department of
13 Treasury a special fund to be known as the Brownfields Site
14 Remediation Fund. Moneys in the fund shall be dedicated to the
15 purpose of reimbursing a developer who enters into a redevelopment
16 agreement pursuant to section 33 of P.L. c. (C.) (now pending
17 before the Legislature as this bill) and is certified for reimbursement
18 pursuant to section 34 of P.L. c. (C.) (now pending before the
19 Legislature as this bill) in an amount equal to 75% of the remediation
20 costs of the subject property. A special account within the fund shall
21 be created for each developer upon approval of a certification pursuant
22 to section 34 of P.L. , c. (C.) (now pending before the Legislature
23 as this bill). The Legislature shall annually appropriate the entire
24 balance of the fund for the purposes of reimbursement of remediation
25 costs as provided in section 37 of P.L. , c. (C.) (pending in the
26 Legislature as this bill).

27 b. The fund shall be credited with one half of all taxes due and
28 payable pursuant to the "Sales and Use Tax Act," P.L.1966, c.30
29 (C.54:32B-1 et seq.) by any person required to collect the tax at the
30 site of a redevelopment project which is the subject of a
31 redevelopment agreement with the State pursuant to section 33 of
32 P.L. , c. (C.) (pending in the Legislature as this bill) until the
33 amount credited equals 75% of the dollar amount of the remediation
34 costs actually and reasonably incurred by the developer, as certified
35 to the director by the developer.

36

37 37. (New section) a. The State Treasurer shall reimburse the
38 developer for 75% of the remediation costs of the subject property
39 from the Brownfields Site Remediation Fund upon approval of the
40 certification for reimbursement pursuant to section 34 of P.L. ,
41 c. (C.) (now pending before the Legislature as this bill). The
42 developer shall be entitled to periodic payments from the fund in an
43 amount equal to one half of the taxes due and payable pursuant to the
44 "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) from
45 any person required to collect the tax at the site of a redevelopment
46 project which is subject to a redevelopment agreement between the

1 developer and the State pursuant to section 33 of P.L. c. (C.)
2 (now pending before the Legislature as this bill). Payments from the
3 fund shall be made to a developer at the same frequency in which the
4 payments are made to the State from the persons required to collect
5 the tax. Payments to the developer shall be made within 15 days of
6 receipt by the State of the taxes.

7 b. A developer shall submit to the director updated remediation
8 costs actually incurred by the developer for the remediation of the
9 contaminated property located at the site of the redevelopment project
10 as provided in the redevelopment agreement. The reimbursement
11 authorized pursuant to this section shall continue until such time as the
12 aggregate dollar amount of the reimbursement equals 75% of the
13 dollar amount of the remediation costs actually incurred by the
14 developer, as certified to the director by the developer. To remain
15 entitled to the reimbursement authorized pursuant to this section, the
16 developer shall perform and complete all remediation activities as may
17 be required pursuant to the memorandum of agreement entered into
18 with the Commissioner of Environmental Protection pursuant to
19 section 35 of P.L. , c. (C.)(now pending before the
20 Legislature as this bill). The Department of Environmental Protection
21 may review the remediation costs incurred by the developer to
22 determine if they are reasonable.

23

24 38. Section 21 of P.L.1983, c.303 (C.52:27H-80) is amended to
25 read as follows:

26 21. Receipts of retail sales, except retail sales of motor vehicles, of
27 alcoholic beverages as defined in the "Alcoholic Beverage Tax Law,"
28 R.S.54:41-1 et seq., cigarettes as defined in the "Cigarette Tax Act,"
29 P.L.1948, c.65 (C.54:40A-1 et seq.) and of manufacturing machinery,
30 equipment or apparatus, made by a certified vendor from a place of
31 business owned or leased and regularly operated by the vendor for the
32 purpose of making retail sales, and located in a designated enterprise
33 zone established pursuant to the "New Jersey Urban Enterprise Zones
34 Act," P.L.1983, c.303 (C.52:27H-60 et al.), are exempt to the extent
35 of 50% of the tax imposed under the "Sales and Use Tax Act,"
36 P.L.1966, c.30 (C.54:32B-1 et seq.).

37 Any vendor, which is a qualified business having a place of
38 business located in a designated enterprise zone, may apply to the
39 Director of the Division of Taxation in the Department of the Treasury
40 for certification pursuant to this section. The director shall certify a
41 vendor if he shall find that the vendor owns or leases and regularly
42 operates a place of business located in the designated enterprise zone
43 for the purpose of making retail sales, that items are regularly
44 exhibited and offered for retail sale at that location, and that the place
45 of business is not utilized primarily for the purpose of catalogue or
46 mail order sales. The certification under this section shall remain in

1 effect during the time the business retains its status as a qualified
2 business meeting the eligibility criteria of section 27 of P.L.1983,
3 c.303 (C.52:27H-86). However, the director may at any time revoke
4 a certification granted pursuant to this section if he shall determine
5 that the vendor no longer complies with the provisions of this section.

6 Notwithstanding the provisions of this act to the contrary, except
7 as may otherwise be provided by section 7 of P.L.1983, c.303
8 (C.52:27H-66), the authority may, in its discretion, determine whether
9 or not the provisions of this section shall apply to any enterprise zone
10 designated after the effective date of P.L.1985, c.142 (C.52:27H-66
11 et al.); provided, however, that the authority may make such a
12 determination only where the authority finds that the award of an
13 exemption of 50 percent of the tax imposed under the "Sales and Use
14 Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) will not have any
15 adverse economic impact upon any other urban enterprise zone.

16 Notwithstanding any other provisions of law to the contrary, except
17 as provided in subsection b. of section 6 of P.L.1996, c.124 (C.13:1e-
18 116.6) and as provided in subsection b. of section 36 of P.L. , c.
19 (C.) (now pending before the Legislature as this bill), after first
20 depositing 10 percent of the gross amount of all revenues received
21 from the taxation of retail sales made by certified vendors from
22 business locations in designated enterprise zones to which this
23 exemption shall apply into the account created in the name of the
24 authority in the enterprise zone assistance fund pursuant to section 29
25 of P.L.1983, c.303 (C.52:27H-88), the remaining 90 percent shall be
26 deposited immediately upon collection by the Department of the
27 Treasury, as follows:

28 a. In the first five year period during which the State shall have
29 collected reduced rate revenues within an enterprise zone, all such
30 revenues shall be deposited in the enterprise zone assistance fund
31 created pursuant to section 29 of P.L.1983, c.303 (C.52:27H-88);

32 b. In the second five year period during which the State shall have
33 collected reduced rate revenues within an enterprise zone, 66 2/3% of
34 all those revenues shall be deposited in the enterprise zone assistance
35 fund, and 33 1/3% shall be deposited in the General Fund;

36 c. In the third five year period during which the State shall have
37 collected reduced rate revenues within an enterprise zone, 33 1/3% of
38 all those revenues shall be deposited in the enterprise zone assistance
39 fund, and 66 2/3% shall be deposited in the General Fund;

40 d. In the final five year period during which the State shall have
41 collected reduced rate revenues within an enterprise zone, but not to
42 exceed the life of the enterprise zone, all those revenues shall be
43 deposited in the General Fund.

44 Commencing on the effective date of P.L.1993, c.144, all revenues
45 in any enterprise zone to which the provisions of this section have
46 been extended prior to the enactment of P.L.1993, c.144 shall be

1 deposited into the enterprise zone assistance fund until there shall have
2 been deposited all revenues into that fund for a total of five full years,
3 as set forth in subsection a. of this section. The State Treasurer then
4 shall proceed to deposit funds into the enterprise zone assistance fund
5 according to the schedule set forth in subsections b. through d. of this
6 section, beginning at the point where the enterprise zone was located
7 on that schedule on the effective date of P.L.1993, c.144. No
8 enterprise zone shall receive the deposit benefit granted by any one
9 subsection of this section for more than five cumulative years.

10 The revenues required to be deposited in the enterprise zone
11 assistance fund under this section shall be used for the purposes of that
12 fund and for the uses prescribed in section 29 of P.L.1983, c.303
13 (C.52:27H-88), subject to annual appropriations being made for those
14 purposes and uses.

15 (cf: P.L.1996, c.124, s.8)

16

17 39. Section 5 of P.L.1983, c.330 (C.13:1K-10) is amended to read
18 as follows:

19 5. a. The department shall[, pursuant to the "Administrative
20 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and
21 regulations establishing: (1) criteria and minimum standards necessary
22 for the submission, evaluation and approval of plans or results of
23 preliminary assessments, site investigations, remedial investigations,
24 and remedial action workplans and for the implementation thereof.
25 The documents for the preliminary assessment, site investigation,
26 remedial investigation, and remedial action workplan required to be
27 submitted for a remediation shall not be identical to the criteria and
28 standards used for similar documents submitted pursuant to federal
29 law, except as may be required by federal law. In establishing criteria
30 and minimum standards for these terms, the department shall strive to
31 avoid duplicate or unnecessarily costly or time consuming conditions
32 or standards] develop guidance for the performance of preliminary
33 assessments, site investigations, remedial investigations and remedial
34 actions, and for the implementation thereof. Such guidance shall meet
35 the criteria, objectives and goals as set forth in section 24 of P.L.1993,
36 c.139 (C.58:10B-2), as amended by P.L. , c. (now pending before
37 the Legislature as this bill); (2) a fee schedule, as necessary, reflecting
38 the actual costs associated with the review of plans for or results of
39 negative declarations, preliminary assessments, site investigations,
40 remedial investigations, and remedial actions, and review of the
41 implementation thereof and for any other review or approval required
42 by the department; (3) standards and procedures for remediation
43 agreements authorized pursuant to subsection e. of section 4 of
44 P.L.1983, c.330 (C.13:1K-9); and (4) any other provisions or
45 procedures necessary to implement this act.

46 b. The owner or operator shall allow the department reasonable

1 access to the industrial establishment and to offsite areas under the
2 owner's or operator's control to inspect the premises, review records,
3 and to take soil, groundwater, or other samples or measurements as
4 deemed necessary by the department to verify the results of any
5 submission made to the department and to verify the owner's or
6 operator's compliance with the requirements of this act.

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

8

9 40. There is appropriated to the Department of Environmental
10 Protection from the "1996 Environmental Cleanup Fund" created
11 pursuant to section 19 of the "Port of New Jersey Revitalization,
12 Dredging, Environmental Cleanup, Lake Restoration, and Delaware
13 Bay Area Economic Development Bond of 1996," P.L.1996, c.70, the
14 sum of \$5,000,000 for the investigations, determinations, and data
15 entry as provided for in that section.

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17 41. There is appropriated to the Department of Environmental
18 Protection from the "1996 Environmental Cleanup Fund" created
19 pursuant to section 19 of the "Port of New Jersey Revitalization,
20 Dredging, Environmental Cleanup, Lake Restoration, and Delaware
21 Bay Area Economic Development Bond of 1996," P.L.1996, c.70, the
22 sum of \$3,000,000 for the data collection and entry into the
23 geographic information system as required by that section.

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25 42. This act shall take effect immediately.

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STATEMENT

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30 The intent of this bill, the "Brownfields Redevelopment Act," is to
31 remove impediments in the law, and to create incentives, in order to
32 promote, streamline, expedite and facilitate the cleanup and reuse of
33 New Jersey's older industrial sites. The redevelopment of these
34 industrial sites will help protect the public health and environment,
35 conserve open space, improve the economy, create jobs and revitalize
36 our cities and neighborhoods.

37 Because New Jersey is an older, industrial state, it has many
38 properties formerly used for industrial or commercial purposes but
39 which are, today, either abandoned or underutilized. Many of these
40 properties are contaminated with hazardous substances or at least
41 suspected of being contaminated. Most of these properties are located
42 in the State's urban areas. These former industrial sites, often referred
43 to as "brownfields," can be a blight to a neighborhood and a financial
44 drain to a municipality. They can pose environmental risks due to
45 their uncontrolled environmental condition and a safety hazard for
46 children. The remediation and redevelopment of these sites would

1 protect the health of New Jersey's citizens and the environment, create
2 jobs, restore neighborhoods and increase tax revenues on both the
3 State and local levels.

4 The need to revitalize brownfields and bring them back to
5 productive use is obvious and has been recognized for some time at
6 both the State and national levels. However, many impediments to
7 brownfield remediation and redevelopment exist. Although many sites
8 may be difficult to redevelop due to economic and other factors
9 beyond the State's control, many of these brownfield sites have great
10 economic potential. They remain abandoned or underutilized,
11 however, because of the unknown or uncertain costs of and degree of
12 liability in performing an environmental cleanup. These factors often
13 make the difference between a viable redevelopment project and an
14 abandoned site.

15 New Jersey began the process of facilitating the remediation and
16 redevelopment of brownfields in 1993 when the Legislature enacted a
17 comprehensive reform of its site remediation laws. Three years
18 experience with that reform measure and the legislative actions and
19 experiences of several other states have demonstrated that more
20 changes are needed in order to facilitate brownfield redevelopment.

21 There are four general areas that need to be addressed in order to
22 facilitate brownfields remediation and redevelopment. These areas
23 include technical, legal, financial and institutional policies. This bill
24 addresses each of these areas in a comprehensive manner in order to
25 fully address the problems posed.

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Technical Policy Issues

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29 *Elimination of preference for residential soil remediations* - Under
30 present law, there is a preference for the performance of a soil
31 remediation to residential limits. This preference exists even if the
32 property is to be used for industrial or commercial purposes, although
33 a cost limitation does exist. Additionally, many people have argued
34 that engineering solutions, such as capping, together with institutional
35 controls, are as safe as residential remediations. The draft bill
36 eliminates the preference and allows a person to select the remedial
37 action to implement, provided health standards and Department of
38 Environmental Protection regulations are met. In order to ensure that
39 the remedy will work, and continue to work, the DEP is required to
40 inspect at least once every five years each site that uses engineering or
41 institutional controls.

42 *Regulatory flexibility* - The bill contains provisions amending
43 selected portions of ISRA and the Hazardous Discharge Site
44 Remediation Act to require the DEP's prescriptive, overly-burdensome
45 regulations to be issued as guidance documents. Doing so would
46 retain the flexibility necessary to focus on the nature and extent of

1 required investigations to ensure the selected remedy is protective of
2 human health and the environment. The DEP would still be required
3 to adopt regulations regarding minimum remediation standards for
4 surface and subsurface soils, groundwater and surface water quality,
5 as well as oversight regulations.

6 *Permit by rule* - The bill provides that the DEP should develop
7 guidance allowing site remediations to be performed and approved
8 without requiring extensive document review or preapproval.

9 *Aquifer delineation* - Under existing law and practice of the DEP,
10 aquifers that are contaminated and not used as a drinking water
11 resource can be classified as such and the DEP will allow
12 contamination in the aquifer to be remediated through natural
13 attenuation (e.g., the natural breakdown of contaminants over time).
14 This process would save a person performing the remediation
15 substantial sums of money over requiring the person to pump and treat
16 the groundwater. However, it is difficult and costly for a person to
17 prove to the DEP that any particular aquifer meets the criteria for the
18 designation. This is especially so for small businesses and landowners
19 performing relatively minor remediations. The bill requires the DEP
20 to investigate and determine which aquifers meet this standard and to
21 plot those aquifers on the geographic information system. Five million
22 dollars from the site remediation bond act to be on the ballot in
23 November will be used for this purpose. The bill also codifies the
24 natural attenuation policy of the DEP.

25 *Presumptive remedies* - The law presently requires the DEP to list
26 certain remedial actions that the DEP deems to be effective. The bill
27 provides that a person using any of these remedies shall be assumed to
28 have demonstrated the technical performance and reliability of the
29 remedial action. The presumptive remedies shall be historically
30 acceptable technologies for similar sites and contaminants and are to
31 be based on historical patterns of remedy selection and the
32 department's scientific and technical evaluation of performance data.

33 *Innovative technologies* - The bill contains several provisions
34 designed to encourage the use of innovative technologies, including
35 the elimination of the requirement to post financial assurance, the
36 provision of 25% matching grants, expedited review and other
37 regulatory changes.

38 *Historic fill* - Although the law already contains a provision
39 providing that the presumptive remedy for historic fill is capping,
40 recent regulatory proposals of the DEP may have the effect of
41 negating the intent of the law. The bill provides that no regulation,
42 guidance or rule shall have the effect of shifting the burden the
43 presumption places on the DEP and that there is no date before which
44 the fill must have been placed on the land in order to be considered
45 "historic."

46 *Reports and regulations* - Several reports and regulations required

1 in P.L.1993, c.139 have not yet been issued or adopted. These include
2 the liability report to be issued by the DEP, the risk report to be issued
3 by a special commission and the remediation standards, technical rules
4 and large contaminated area regulations to be issued by the DEP. The
5 bill provides new time limits for the issuance of these reports, guidance
6 and regulations. If they are not issued by the set date, the relevant
7 General Assembly and Senate committees are instructed to hold a joint
8 public hearing to determine why the report, guidance or regulations
9 were not issued.

10 *Environmental Advisory Task Force* - This task force was
11 established by law in 1993 to determine if and how soil site
12 remediation standards should be adopted that are protective of the
13 environment. To date, the members of the task force to be appointed
14 by the Governor have not been selected. The bill would eliminate the
15 Governor's appointments if not selected in a defined period of time and
16 would make it easier for the task force to convene.

17 *Surface and subsurface soil standards* - Under existing regulatory
18 practice, no distinction is made between the remediation standards for
19 surface soil and subsurface soil. If a contaminant is in the soil, the
20 remediation standard can be based on either its potential impact to
21 groundwater or the health impact on a person exposed to it. Because
22 contaminants that leach do not impact groundwater, it is questionable
23 if they should be remediated based solely upon human exposure
24 criteria. The bill makes a distinction between surface soil (top two
25 feet) and subsurface soil (below two feet) so that subsurface soil
26 contamination will only have to be remediated if there is a potential
27 impact to groundwater or surface water.

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Legal Liability

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31 *Limited remediation requirements for purchasers* - Often the
32 extensive, and unknown, cost of a remediation makes the
33 redevelopment of many properties economically unfeasible. In order
34 to lower these costs, the bill would limit the extent of a remediation
35 that a person buying contaminated property would have to perform if
36 the person decides to develop or utilize the site. The purchaser would
37 only be required to perform surface soil remediations, use engineering
38 or institutional controls, remove sources of contamination that pose
39 imminent threats and maintain any controls in place. The purchaser
40 would not be liable for groundwater contamination, changes in
41 remediation standards or undiscovered contamination. Once the
42 purchaser performs this limited remediation to make the property safe
43 for its intended use, the purchaser would have no further remediation
44 liability under the law.

45 *Purchaser protection from additional liability* - Earlier this year,
46 the Legislature enacted certain provisions of law to limit the liability

1 of an innocent person who acquires land which was contaminated but
2 is later remediated. That limit on liability, however, only applied to
3 properties in qualified municipalities. This bill expands these
4 protections to all properties in the State. Additionally, the bill expands
5 and clarifies the liability protections of purchasers so that if a
6 purchaser unknowingly acquires contaminated property after
7 performing a proper investigation or knowingly acquires contaminated
8 property and performs the required remediation, the purchaser would
9 not be liable to the State or to any other person, under the Spill
10 Compensation and Control Act or under common law, for the
11 discharged contamination, even if additional contamination is
12 discovered or the standards change.

13 *Covenants not to sue* - The bill provides that whenever the DEP
14 issues a no further action letter for a remediation, it shall also issue a
15 covenant not to sue. The covenant basically spells out the limits on
16 legal liability that exist once a site is remediated. The covenant
17 protects the person performing the remediation from further cleanup
18 liability to the State provided any engineering and institutional controls
19 are maintained. The covenant does not protect the discharger or other
20 liable parties for undiscovered contamination.

21 *Letters of no association* - A person who can demonstrate to the
22 DEP that he has a defense to liability under the innocent purchaser
23 defenses of the Spill Compensation and Control Act will be issued a
24 letter of no association. The letter will indicate that the person has
25 met the initial burden proving that he is not liable for any
26 contamination on the property. The letter of no association is prima
27 facie evidence that the person is not liable for remediation costs in any
28 contribution action.

29 *Public entity liability* - Although the law generally provides that
30 public entities are not liable for existing contamination on land they
31 acquire through actions such as a tax lien or foreclosure, a public
32 entity may be liable for knowingly and voluntarily acquiring
33 contaminated property, even if for a public purpose such as
34 redevelopment. The bill amends the law to limit public entity liability
35 for contaminated property acquired by any means, with the exception
36 of those engaged in a reasonably timely remediation or redevelopment
37 process.

38 *Contribution treble damage awards* - The bill would amend the
39 "Spill Compensation and Control Act," (Spill Act") P.L.1976, c.141
40 (C.58:10-23.11 et seq.) to delete the provision which authorizes the
41 Department of Environmental Protection to authorize a person who
42 cleans up or removes a hazardous discharge to seek treble damages
43 from any other person liable for the discharge, but who is not involved
44 in the cleanup.

45 Until 1991, the Spill Act provided that if the DEP ordered a party
46 liable for a hazardous discharge to clean up and remove the discharge,

1 and the party refused, thus requiring the expenditure of moneys from
2 the Spill Compensation Fund to conduct the cleanup and removal, the
3 DEP would seek damages from the responsible party in an amount
4 equal to three times the amount (treble damages) expended by the
5 DEP for the cleanup and removal. In 1991, the Spill Act was amended
6 to enable private responsible parties performing a cleanup to seek
7 treble damages from other responsible parties. As a result of that
8 1991 amendment, the Spill Act currently provides that any person
9 seeking treble damages (the contribution plaintiff) from another
10 discharger (the contribution defendant) must be authorized to do so by
11 the DEP, and further provides that one-third of the amount of any
12 treble damages recovered must be paid to the DEP for deposit in the
13 Spill Compensation Fund. This bill would remove this authorization,
14 thus allowing the DEP to seek treble damages under the Spill Act.

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Financial Issues

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18 *Limitation on fees* - The bill provides that cleanup and removal
19 costs under the Spill Compensation and Control Act are not to include
20 administrative, indirect and fringe benefit costs. This will have the
21 effect of lowering the fees assessed by the DEP to review a
22 remediation, thus reducing the cost for a person to perform a
23 remediation. Over the past several years, the fees for site remediation
24 reviews have increased exponentially as more indirect and unrelated
25 costs are being recouped by the imposition of fees.

26 *Environmental Opportunity Zone Act expansion* - Last session, the
27 Legislature enacted the Environmental Opportunity Zone Act in order
28 to encourage the remediation of contaminated industrial sites by
29 offering limited property tax exemptions. That law only applied to
30 properties that were to be used for industrial or commercial purposes.
31 Because many former contaminated industrial properties are located
32 in areas that no longer make them suitable for industrial or commercial
33 purposes, the bill expands the law so that the properties may also be
34 used for residential or other productive uses.

35 *Sales tax exemptions* - The bill establishes a program whereby a
36 person can recover 75% of remediation costs incurred. The
37 reimbursement would be funded from the dedication of 50% of the
38 sales tax collected from any new retail establishment built on the
39 formerly contaminated property. State approval would be needed
40 before a property could qualify for this benefit.

41 *Hazardous Discharge Site Remediation Fund flexibility* - Under
42 existing law, the Economic Development Authority has limited
43 discretion to move available moneys in the fund from one dedicated
44 category to another. The bill would give the EDA more authority to
45 shift moneys from one category to another.

Institutional Issues

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Geographic information system - Economic data will be entered into the GIS system in order to facilitate decisions concerning the redevelopment of brownfields. Three million dollars from the site remediation bond act to be voted upon in November is appropriated for this purpose.

DEP mission - The mission of the DEP, as well as its duties under the Spill Act, have been broadened to include coordination and facilitation of remediating and redeveloping the brownfields. To assist in this effort, a special office is established in the DEP to facilitate and expedite the investigation and remediation of selected brownfields sites.

Community involvement and risk communication - A Brownfields Environmental Risk Communication Council is established as a Statewide entity designed to help local governmental entities and community groups understand the risks and benefits of brownfield remediation and redevelopment.

Makes various changes in the law in order to facilitate the remediation of contaminated real property; makes an appropriation.