

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.

16

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.

24

25 42. This act shall take effect immediately.

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#### STATEMENT

29

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.

26

27

### **Technical Policy Issues**

28

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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29

### **Legal Liability**

30

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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16

### **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.

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