

Title 4
Chapter 27 (New)
Aquaculture Development
§§1 - 24,36
C. 4:27-1 To 4:27-25
§§8,9 Note To 50:1-5
§§10,11 Note To 13:1D-4
& 23:2B-15
§12 Note To 13:9B-4
§13 Note To 13:9A-4
§16 Note To 4:24-6
§20 Note To 52:18A-201
§21 Note To 34:1A-6
§§22,23 Note To 52:27H-6
§24 Note To 17:1-1

P.L. 1997, CHAPTER 236, *approved August 31, 1997*
Assembly Committee Substitute (*First Reprint*) for
Assembly, No. 1830

1 AN ACT concerning aquaculture, ¹and¹ amending and supplementing
2 parts of the statutory law ¹[, and making an appropriation]¹.
3

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

7 1. (New section) Sections 1 through 24 of this act shall be known,
8 and may be cited, as the "New Jersey Aquaculture Development Act."
9

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

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted March 3, 1997.

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

6
7 3. (New section) As used in sections 1 through 24 of this act:

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

17 "Aquaculture Development Plan" means the plan prepared by the
18 Aquaculture Development Task Force, established pursuant to
19 Executive Order No. 104 (1993).

20 "Aquaculturist" means a person engaging in aquaculture.

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

24 "Council" means the Aquaculture Advisory Council established
25 pursuant to section 5 of this act.

26 "Office" means the Office of Aquaculture Coordination established
27 pursuant to section 4 of this act.

28 "Secretary" means the Secretary of Agriculture.
29

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

45 The office shall establish, in cooperation with other permitting

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

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

9
10 5. (New section) a. There is established in the Department of
11 Agriculture an Aquaculture Advisory Council which shall consist of 13
12 ¹voting and two non-voting¹ members ¹[, seven of whom shall be] .
13 The voting members shall include¹ the Secretary of Agriculture, who
14 shall serve as chairman, the Commissioner of Environmental
15 Protection, the Commissioner of Commerce and Economic
16 Development, the Commissioner of Health, the director of the
17 Aquaculture Technology Transfer Center, the director of the
18 Aquaculture Training and Information Center, the ¹executive¹ director
19 of the ¹[Fisheries and Aquaculture Technology Extension Center]¹ ¹
20 New Jersey Agricultural Experiment Station¹ , or their designees, who
21 shall serve ex officio, and six citizens of the State, to be appointed as
22 follows: two by the President of the Senate, one of whom shall be a
23 representative from recognized aquaculture organizations or an
24 operator of an aquaculture farm and one of whom shall be a
25 representative of the seafood industry; two by the Speaker of the
26 General Assembly, one of whom shall be a representative of
27 recognized aquaculture organizations or an operator of an aquaculture
28 farm and one of whom shall be a representative of farmers; and two by
29 the Governor from the public at large. ¹The chairman of the Marine
30 Fisheries Council and the chairman of the Fish and Game Council shall
31 serve ex officio and as non-voting members.¹

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

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

43 d. Members of the advisory council shall serve without
44 compensation, but shall be entitled to reimbursement for expenses
45 incurred in attendance at meetings to the extent funds are available

1 therefor.

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

12

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

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

20 c. The Department of Agriculture shall be the lead State agency
21 for the development, marketing, promotion, and advocacy of
22 aquaculture in the State.

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

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

34

35 7. (New section) Within one year of the effective date of this act,
36 the Department of Agriculture, the Department of Environmental
37 Protection, the Department of Commerce and Economic Development,
38 and the Department of Health shall, after consultation with the
39 Aquaculture Advisory Council, enter into interagency memoranda of
40 agreement concerning the implementation of the Aquaculture
41 Development Plan, and delineating the financial and regulatory
42 responsibility based upon the provisions of this act and any other
43 applicable laws. In developing the interagency memoranda of
44 agreement, the departments shall seek to develop provisions that foster
45 the development of aquaculture in the State.

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

19

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

32

33 10. (New section) a. The Department of Environmental
34 Protection, in consultation with the Department of Agriculture ¹[and],
35 the Fish and Game Council, the Marine Fisheries Council and¹ the
36 Aquaculture Advisory Council, shall review the laws, rules, and
37 regulations pertaining to the taking, harvesting, possession, and use of
38 fish, wildlife, shellfish, and plants with regard to the effect of those
39 laws, rules, and regulations on the taking, harvesting, possession, use,
40 importation, containment, transport, and marketing of aquaculture
41 products from public waters of the State. The review shall include,
42 but need not be limited to, such factors as gear, season, area, size
43 limits, and all rules and regulations adopted by the ¹[department or]
44 Department of Environmental Protection,¹ the Fish and Game
45 Council ¹, or the Marine Fisheries Council¹ that may impede the

1 potential use of any species in aquaculture.

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

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

25

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

43

44 12. (New section) a. Notwithstanding any law, rule, or regulation
45 to the contrary, an aquaculture site, for which all appropriate permits

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

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

13

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

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

27

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

32

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

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

42 b. in consultation with the Aquaculture Technology Transfer
43 Center, and the ¹[New Jersey Cooperative Extension Service] Rutgers
44 Cooperative Extension¹, shall assist aquaculturists in obtaining
45 coverage from ¹[the Federal Crop Insurance Program] federal crop

1 insurance programs¹;

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

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

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

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

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

29

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

36

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

43

44 18. (New section) The Department of Agriculture, in consultation
45 with the Department of Environmental Protection and the Aquaculture

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

9
10 19. (New section) The Department of Agriculture, in consultation
11 with the Department of Environmental Protection, shall adopt, within
12 one year of the effective date of this act and pursuant to the
13 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
14 seq.), a comprehensive animal waste management program that shall
15 provide for the proper disposal of animal wastes, including wastes
16 generated from aquaculture. The animal waste management program
17 shall include, but need not be limited to, criteria and standards for the
18 composting, handling, storage, processing, utilization and disposal of
19 animal wastes,¹[requirements and procedures for permitting such
20 animal waste facilities and activities,]¹ the establishment of program
21 compliance provisions including appropriate penalties for program
22 noncompliance and violations, and may include provisions for the
23 assessment of fees to cover reasonable administrative costs.

24
25 20. (New section) The Office of State Planning¹[,]¹established
26 pursuant to section 6 of P.L.1985, c.398 (C.52:18A-201) ¹in
27 consultation with the Pinelands Commission as it affects the pinelands
28 area designated pursuant to section 10 of P.L.1979, c.111 (C.13:18A-
29 11)¹, shall develop, pursuant to the "Administrative Procedure Act,"
30 P.L.1968, c.410 (C.52:14B-1 et seq.), an aquaculture component for
31 model planning and zoning ordinances.

32
33 21. (New section) The Department of Labor, in conjunction with
34 the Department of Agriculture and the aquaculture industry, shall
35 review worker's compensation package coverages to assess their
36 general applicability to aquaculture industry needs, and make
37 recommendations accordingly to all appropriate entities with respect
38 to any needed modifications.

39
40 22. (New section) The Department of Commerce and Economic
41 Development, in conjunction with the Department of Agriculture, the
42 Department of Environmental Protection, the Aquaculture Technology
43 Transfer Center, and the aquaculture industry, shall, to the extent
44 feasible, develop and implement an information campaign to promote
45 in-State and outside investments in aquaculture operations located or

1 based in New Jersey within one year of the appointment of the
2 Aquaculture Advisory Council pursuant to section 5 of this act.

3

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

11

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

19

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

21 4:1-6. Each county board of agriculture shall be entitled to be
22 represented in the annual convention by two delegates.

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

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

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

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

24

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

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

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

32 b. "Areawide plan" means any plan prepared pursuant to section
33 208 of the Federal Act;

34 c. "Commissioner" means the Commissioner of Environmental
35 Protection or his authorized representative;

36 d. "Department" means the Department of Environmental
37 Protection;

38 e. "Discharge" means an intentional or unintentional action or
39 omission resulting in the releasing, spilling, leaking, pumping, pouring,
40 emitting, emptying, or dumping of a pollutant into the waters of the
41 State, onto land or into wells from which it might flow or drain into
42 said waters or into waters or onto lands outside the jurisdiction of the
43 State, which pollutant enters the waters of the State. "Discharge"
44 includes the release of any pollutant into a municipal treatment works;

45 f. "Effluent limitation" means any restriction on quantities, quality,

1 rates and concentration of chemical, physical, thermal, biological, and
2 other constituents of pollutants established by permit, or imposed as
3 an interim enforcement limit pursuant to an administrative order,
4 including an administrative consent order;

5 g. "Federal Act" means the "Federal Water Pollution Control Act
6 Amendments of 1972" (Public Law 92-500; 33 U.S.C. § 1251 et seq.);

7 h. "Municipal treatment works" means the treatment works of any
8 municipal, county, or State agency or any agency or subdivision
9 created by one or more municipal, county or State governments and
10 the treatment works of any public utility as defined in R.S.48:2-13;

11 i. "National Pollutant Discharge Elimination System" or "NPDES"
12 means the national system for the issuance of permits under the
13 Federal Act;

14 j. "New Jersey Pollutant Discharge Elimination System" or
15 "NJPDES" means the New Jersey system for the issuance of permits
16 under this act;

17 k. "Permit" means a NJPDES permit issued pursuant to section 6
18 of this act. "Permit" includes a letter of agreement entered into
19 between a delegated local agency and a user of its municipal treatment
20 works, setting effluent limitations and other conditions on the user of
21 the agency's municipal treatment works;

22 l. "Person" means any individual, corporation, company,
23 partnership, firm, association, owner or operator of a treatment works,
24 political subdivision of this State and any state or interstate agency.
25 "Person" shall also mean any responsible corporate official for the
26 purpose of enforcement action under section 10 of this act;

27 m. "Point source" means any discernible, confined and discrete
28 conveyance, including but not limited to, any pipe, ditch, channel,
29 tunnel, conduit, well, discrete fissure, container, rolling stock,
30 concentrated animal feeding operation, or vessel or other floating
31 craft, from which pollutants are or may be discharged;

32 n. "Pollutant" means any dredged spoil, solid waste, incinerator
33 residue, sewage, garbage, refuse, oil, grease, sewage sludge,
34 munitions, chemical wastes, biological materials, radioactive
35 substance, thermal waste, wrecked or discarded equipment, rock,
36 sand, cellar dirt, and industrial, municipal or agricultural waste or
37 other residue discharged into the waters of the State. "Pollutant"
38 includes both hazardous and nonhazardous pollutants;

39 o. "Pretreatment standards" means any restriction on quantities,
40 quality, rates, or concentrations of pollutants discharged into
41 municipal or privately owned treatment works adopted pursuant to
42 P.L.1972, c.42 (C.58:11-49 et seq.);

43 p. "Schedule of compliance" means a schedule of remedial
44 measures including an enforceable sequence of actions or operations
45 leading to compliance with water quality standards, an effluent

1 limitation or other limitation, prohibition or standard;

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

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

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

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

34 u. "Hazardous pollutant" means:

35 (1) Any toxic pollutant;

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

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

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

44 (5) Any hazardous waste as designated pursuant to section 3 of
45 P.L.1981, c.279 (C.13:1E-51) or the "Resource Conservation and

1 Recovery Act," Pub.L.94-580 (42 U.S.C. § 6901 et seq.); or

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

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

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

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

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

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

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

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

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

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

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

20 ee. "Aquaculture" means the propagation, rearing, and
21 ¹subsequent¹ harvesting of aquatic organisms in controlled or selected
22 environments, and the subsequent processing, packaging and
23 marketing, and shall include, but need not be limited to, activities to
24 intervene in the rearing process to increase production such as
25 stocking, feeding, transplanting, and providing for protection from
26 predators¹. "Aquaculture" shall not include the construction of
27 facilities and appurtenant structures that might otherwise be regulated
28 pursuant to any State or federal law or regulation¹ ;

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

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

33

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

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

43 b. It shall be unlawful for any person to build, install, modify or
44 operate any facility for the collection, treatment or discharge of any
45 pollutant, except after approval by the department pursuant to

1 regulations adopted by the commissioner.

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

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

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

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

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

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

28 (5) Nonpoint source discharges;

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

34 (7) Discharges conforming to a national contingency plan for
35 removal of oil and hazardous substances, published pursuant to section
36 311(c)(2) of the Federal Act[.];

37 (8) Discharges resulting from agriculture, including aquaculture,
38 activities.

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

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

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

- 1 (3) Any discharge to which the administrator has objected in
2 writing pursuant to the Federal Act;
- 3 (4) Any discharge which conflicts with an areawide plan adopted
4 pursuant to law.
- 5 f. A permit issued by the department or a delegated local agency
6 pursuant to P.L.1977, c.74 shall require the permittee:
- 7 (1) To achieve effluent limitations based upon guidelines or
8 standards established pursuant to the Federal Act or to P.L.1977, c.74,
9 together with such further discharge restrictions and safeguards
10 against unauthorized discharge as may be necessary to meet water
11 quality standards, areawide plans adopted pursuant to law, or other
12 legally applicable requirements;
- 13 (2) Where appropriate, to meet schedules for compliance with the
14 terms of the permit and interim deadlines for progress or reports of
15 progress towards compliance;
- 16 (3) To insure that all discharges are consistent at all times with the
17 terms and conditions of the permit and that no pollutant will be
18 discharged more frequently than authorized or at a level in excess of
19 that which is authorized by the permit;
- 20 (4) To submit application for a new permit in the event of any
21 contemplated facility expansion or process modification that would
22 result in new or increased discharges or, if these would not violate
23 effluent limitations or other restrictions specified in the permit, to
24 notify the commissioner, or delegated local agency, of such new or
25 increased discharges;
- 26 (5) To install, use and maintain such monitoring equipment and
27 methods, to sample in accordance with such methods, to maintain and
28 retain such records of information from monitoring activities, and to
29 submit to the commissioner, or to the delegated local agency, reports
30 of monitoring results for surface waters, as may be stipulated in the
31 permit, or required by the commissioner or delegated local agency
32 pursuant to paragraph (9) of this subsection, or as the commissioner
33 or the delegated local agency may prescribe for ground water.
34 Significant indirect users, major industrial dischargers, and local
35 agencies, other than those discharging only stormwater or noncontact
36 cooling water, shall, however, report their monitoring results for
37 discharges to surface waters monthly to the commissioner, or the
38 delegated local agency. Discharge monitoring reports for discharges
39 to surface waters shall be signed by the highest ranking official having
40 day-to-day managerial and operational responsibilities for the
41 discharging facility, who may, in his absence, authorize another
42 responsible high ranking official to sign a monthly monitoring report
43 if a report is required to be filed during that period of time. The
44 highest ranking official shall, however, be liable in all instances for the
45 accuracy of all the information provided in the monitoring report;

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

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

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

43 (8) To report to the department or delegated local agency, as
44 appropriate, any exceedance of an effluent limitation that causes injury
45 to persons, or damage to the environment, or poses a threat to human

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

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

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

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

23 The commissioner or delegated local agency may restore the
24 reporting requirements stipulated in the permit if the permittee has not
25 committed any of the violations identified in this paragraph for six
26 consecutive months;

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

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

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

40 (1) To notify the commissioner or local agency in advance of the
41 quality and quantity of all new introductions of pollutants into a
42 facility and of any substantial change in the pollutants introduced into
43 a facility by an existing user of the facility, except for such
44 introductions of nonindustrial pollutants as the commissioner or local
45 agency may exempt from this notification requirement when ample

1 capacity remains in the facility to accommodate new inflows. The
2 notification shall estimate the effects of the changes on the effluents to
3 be discharged into the facility.

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

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

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

37 (2) Of the amount of any penalty assessed and collected pursuant
38 to an action brought by a local agency in accordance with section 10
39 of P.L.1977, c.74 or section 6 of P.L.1990, c.28 (C.58:10A-10.1),
40 10% shall be deposited in the "Wastewater Treatment Operators'
41 Training Account," established in accordance with section 13 of
42 P.L.1990, c.28 (C.58:10A-14.5), and used to finance the cost of
43 training operators of municipal treatment works. The remainder shall
44 be used by the local agency solely for enforcement purposes, and for
45 upgrading municipal treatment works.

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

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

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

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

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

10 (3) An evaluation of the maintenance record of the permittee's
11 treatment equipment;

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

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

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

20 The department may inspect a facility required to be inspected by
21 a delegated local agency pursuant to this subsection. Nothing in this
22 subsection shall require the department to conduct more than one
23 inspection per year.

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

43 n. To assist the commissioner in assessing a municipal treatment
44 works' NJPDES permit in accordance with paragraph (3) of subsection
45 b. of section 7 of P.L.1977, c.74 (C.58:10A-7), a delegated local

1 agency shall perform a complete analysis that includes a complete
2 priority pollutant analysis of the discharge from, and inflow to, the
3 municipal treatment works. The analysis shall be performed by a
4 delegated local agency as often as the priority pollutant scan is
5 required under the permit, but not less than once a year, and shall be
6 based upon data acquired in the priority pollutant scan and from
7 applicable sludge quality analysis reports. The results of the analysis
8 shall be included in a report to be attached to the annual report
9 required to be submitted to the commissioner by the delegated local
10 agency.

11 o. Except as otherwise provided in section 3 of P.L.1963, c.73
12 (C.47:1A-3), any records, reports or other information obtained by
13 the commissioner or a local agency pursuant to this section or section
14 5 of P.L.1972, c.42 (C.58:11-53), including any correspondence
15 relating thereto, shall be available to the public; however, upon a
16 showing satisfactory to the commissioner by any person that the
17 making public of any record, report or information, or a part thereof,
18 other than effluent data, would divulge methods or processes entitled
19 to protection as trade secrets, the commissioner or local agency shall
20 consider such record, report, or information, or part thereof, to be
21 confidential, and access thereto shall be limited to authorized officers
22 or employees of the department, the local agency, and the federal
23 government.

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

30 q. The commissioner shall, in consultation with the Department of
31 Agriculture and the Aquaculture Advisory Council, provide for the
32 issuance of general permits for the discharge of pollutants from
33 concentrated aquatic animal production facilities and aquacultural
34 projects. In establishing general permits the commissioner shall take
35 into consideration the source and receiving water quality and the type
36 of aquaculture activity being conducted. The general permits issued
37 pursuant to this subsection shall ¹[require the permittee] give priority¹
38 to ¹[meet] meeting¹ best management practices rather than ¹[to attain
39 a] attaining¹ numeric pollutant discharge parameter ¹[level] levels¹ .
40 If the commissioner determines that a permittee cannot perform the
41 best management practices in order to obtain a general permit or that
42 the performance of best management practices will not be protective
43 of water quality as required by P.L.1977, c.74, the commissioner may
44 require the permittee to obtain an individual permit which may contain
45 numeric pollutant parameter discharge limits. ¹[In setting any numeric

1 pollutant parameter discharge limits, the commissioner shall rely on the
2 development of categorical standards that are applicable to specific
3 types of aquaculture activities.]¹

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

5
6 28. Section 2 of P.L.1989, c.119 (C.58:10A-7.1) is amended to
7 read as follows:

8 2. After December 31, 1991, the department may not issue a
9 permit to any private, commercial, or industrial applicant for the
10 discharge of any solid, semi-solid, or liquid wastes into the ocean
11 waters of the State, the provisions of any other law, or rule or
12 regulation to the contrary notwithstanding. Any permit issued by the
13 department for the discharge of any such waste prior to January 1,
14 1992 shall expire on January 1, 1992, the provisions of any such
15 permit to the contrary notwithstanding. The provisions of [this act]
16 P.L.1989, c.119 shall not apply to permits applied for, or issued to,
17 municipal treatment works [or] , seafood processing facilities¹, public
18 water supply desalinization plants¹ , or¹ [for]¹ aquaculture activities.
19 As used in this act, "ocean waters" means those waters of the open
20 seas lying seaward of the base line from which the territorial sea is
21 measured, as provided for in the Convention on the Territorial Sea and
22 the Contiguous Zone (15 UST 1606; TIAS 5639).

23 As used in this section, "aquaculture" means the propagation,
24 rearing, and¹ subsequent¹ harvesting of aquatic organisms in controlled
25 or selected environments, and the subsequent processing, packaging
26 and marketing, and shall include, but need not be limited to, activities
27 such as stocking, intervention in the rearing process to increase
28 production, feeding, transplanting, and providing for protection from
29 predators¹ and shall not include the construction of facilities and
30 appurtenant structures that might otherwise be regulated pursuant to
31 any State or federal law or regulation,¹ and "aquatic organism" means
32 and includes, but need not be limited to, finfish, mollusks, crustaceans,
33 and aquatic plants which are the property of a person engaged in
34 aquaculture.

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

36
37 29. Section 3 of P.L.1981, c.262 (C.58:1A-3) is amended to read
38 as follows:

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

41 a. "Commissioner" means the Commissioner of the Department of
42 Environmental Protection or his designated representative;

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

1 c. "Department" means the Department of Environmental
2 Protection;

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

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

13 f. "Person" means any individual, corporation, company,
14 partnership, firm, association, owner or operator of a water supply
15 facility, political subdivision of the State and any state, or interstate
16 agency or Federal agency;

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

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

24 i. "Aquaculture" means the propagation¹ [and] ,¹ rearing¹ and
25 subsequent harvesting¹ of aquatic species in controlled or selected
26 environments, and the subsequent processing, packaging and
27 marketing, and shall include, but need not be limited to, activities to
28 intervene in the rearing process to increase production such as
29 stocking, feeding, transplanting, and providing for protection from
30 predators. ¹"Aquaculture" shall not include the construction of
31 facilities and appurtenant structures that might otherwise be regulated
32 pursuant to any State or federal law or regulation.¹

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

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

37

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

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

42 (1) Permit privileges previously allowed pursuant to lawful
43 legislative or administrative action, except that the department may,
44 after notice and public hearing, limit the exercise of these privileges to
45 the extent currently exercised, subject to contract, or reasonably

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

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

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

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

42 In designating an area of critical water supply concern, the
43 department shall be required to demonstrate that the specific area is
44 stressed to a degree which jeopardizes the integrity and viability of the
45 water supply source or poses a threat to the public health, safety, or

1 welfare. This designation shall conform to and satisfy the criteria of an
2 area of critical water supply concern as defined in rules and regulations
3 adopted by the department pursuant to the "Administrative Procedure
4 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

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

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

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

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

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

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

40

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

43 2. The provisions of any law, rule or regulation to the contrary
44 notwithstanding, no tax, fee or other charge shall be imposed on the
45 diversion, for agricultural or horticultural purposes, including

1 aquaculture, of any ground or surface water of this State; provided,
2 however, that nothing in this section shall prohibit the imposition of a
3 fee, pursuant to law, for the cost of processing, monitoring and
4 administering a water usage certification program for persons who
5 divert any ground or surface water for agricultural and horticultural
6 purposes, or other agriculturally-related purposes, including
7 aquaculture.

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

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

21

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

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

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

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

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

34 (3) Recommendations for improvements to existing State water
35 supply facilities, the construction of additional State water supply
36 facilities, and for the interconnection or consolidation of existing water
37 supply systems; [and]

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

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

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

44 (1) Prepare and make available to all interested persons a
45 proposed plan;

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

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

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

7

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

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

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

17

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

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

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

25

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

29

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

32 3. As used in this act:

33 a. "Agricultural or horticultural purposes" or "agricultural or
34 horticultural use" means any production of plants or animals useful to
35 man, including but not limited to: forages or sod crops; grains and
36 feed crops; dairy animals and dairy products; poultry and poultry
37 products; livestock, including beef cattle, sheep, swine, horses,
38 ponies, mules or goats, and including the breeding and grazing of any
39 or all of such animals; bees and apiary products; fur animals; aquatic
40 organisms as part of aquaculture; trees and forest products; fruits of
41 all kinds, including grapes, nuts and berries; vegetables; nursery,
42 floral, ornamental and greenhouse products; or any land devoted to
43 and meeting the requirements and qualifications for payments or other
44 compensation pursuant to a soil conservation program under an
45 agency of the Federal Government;

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

11 c. "Commission" means the Pinelands Commission created by
12 section 4 of this act;

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

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

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

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

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

28 i. "Pinelands National Reserve" means the approximately
29 1,000,000 acre area so designated by the Federal Act and generally
30 depicted on the map entitled "Pinelands National Reserve Boundary
31 Map" numbered NPS/80,011A and dated September, 1978;

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

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

36 l. "Aquaculture" means the propagation, rearing, and subsequent
37 harvesting of aquatic organisms in controlled or selected
38 environments, and the subsequent processing, packaging and
39 marketing and shall include but need not be limited to, activities to
40 intervene in the rearing process to increase production such as
41 stocking, feeding, transplanting and providing for protection from
42 predators. "Aquaculture" shall not include the construction of facilities
43 and appurtenant structures that might otherwise be regulated pursuant
44 to any other State or federal law or regulation;

45 m. "Aquatic organism " means and includes, but need not be

1 limited to, finfish, mollusks, crustaceans, and aquatic plants which are
2 the property of a person engaged in aquaculture .¹

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

4

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

12

13 ¹[36.] 37.¹ This act shall take effect immediately.

14

15

16

17

18 The "New Jersey Aquaculture Development Act."