

CHAPTER 236

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

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

C.4:27-1 Short title.

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

C.4:27-2 Findings, declarations relative to aquaculture.

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

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

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

C.4:27-3 Definitions relative to aquaculture.

3. As used in sections 1 through 24 of this act:

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

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

"Aquaculturist" means a person engaging in aquaculture.

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

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

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

"Secretary" means the Secretary of Agriculture.

C.4:27-4 Office of Aquaculture Coordination.

4. There is established in the Department of Agriculture the Office of Aquaculture Coordination. The office shall, in consultation with the Department of Environmental Protection, prepare a guidebook explaining the permit process for receiving all necessary permits or other approvals or exemptions to engage in an aquaculture project in the State. The guidebook shall include a list that identifies the permits or other approvals that may be necessary for an aquaculture project. The list shall identify the application form or forms required for an application to be deemed complete, any documents or other written submissions required to be filed with the application, and any filing, notice, hearing or other requirement that is a precondition for review of an application. The guidebook shall also describe management

practices for aquaculture. The guidebook shall be updated as often as necessary. The office shall serve as a resource for applicants and prospective applicants for aquaculture projects.

The office shall establish, in cooperation with other permitting agencies, a permit coordination system whose purpose is to assist the applicant in the completion of the application and to assist in processing the application. The goal of the system shall be the processing of applications within 90 days of their completion, and at a reasonable application cost consistent with the goals and objectives of this act.

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

C.4:27-5 Aquaculture Advisory Council.

5. a. There is established in the Department of Agriculture an Aquaculture Advisory Council which shall consist of 13 voting and two non-voting members. The voting members shall include the Secretary of Agriculture, who shall serve as chairman, the Commissioner of Environmental Protection, the Commissioner of Commerce and Economic Development, the Commissioner of Health and Senior Services, the director of the Aquaculture Technology Transfer Center, the director of the Aquaculture Training and Information Center, the executive director of the New Jersey Agricultural Experiment Station, or their designees, who shall serve ex officio, and six citizens of the State, to be appointed as follows: two by the President of the Senate, one of whom shall be a representative from recognized aquaculture organizations or an operator of an aquaculture farm and one of whom shall be a representative of the seafood industry; two by the Speaker of the General Assembly, one of whom shall be a representative of recognized aquaculture organizations or an operator of an aquaculture farm and one of whom shall be a representative of farmers; and two by the Governor from the public at large. The chairman of the Marine Fisheries Council and the chairman of the Fish and Game Council shall serve ex officio and as non-voting members.

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

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

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

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

C.4:27-6 Aquaculture considered component of agriculture.

6. a. Notwithstanding any law, rule, or regulation to the contrary, aquaculture shall be considered a component of agriculture in the State, and aquacultured plants and animals shall be considered to be agriculture crops and animals.

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

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

marketing, promotion, and advocacy of aquaculture in the State.

d. The Department of Environmental Protection shall be the lead State agency with respect to regulation of aquaculture activities in the waters of the State.

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

C.4:27-7 Interagency memoranda of agreement concerning implementation of Aquaculture Development Plan.

7. Within one year of the effective date of this act, the Department of Agriculture, the Department of Environmental Protection, the Department of Commerce and Economic Development, and the Department of Health and Senior Services shall, after consultation with the Aquaculture Advisory Council, enter into interagency memoranda of agreement concerning the implementation of the Aquaculture Development Plan, and delineating the financial and regulatory responsibility based upon the provisions of this act and any other applicable laws. In developing the interagency memoranda of agreement, the departments shall seek to develop provisions that foster the development of aquaculture in the State.

C.4:27-8 Policies for use of aquaculture leases.

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

C.4:27-9 Interagency memorandum of agreement to expand current leasing programs.

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

C.4:27-10 Review of laws, rules, regulations pertinent to aquaculture.

10. a. The Department of Environmental Protection, in consultation with the Department of Agriculture, the Fish and Game Council, the Marine Fisheries Council and the Aquaculture Advisory Council, shall review the laws, rules, and regulations pertaining to the taking, harvesting, possession, and use of fish, wildlife, shellfish, and plants with regard to the effect of those laws, rules, and regulations on the taking, harvesting, possession, use, importation, containment, transport, and marketing of aquaculture products from public waters of the State. The review shall include, but need not be limited to, such factors as gear, season, area, size limits, and all rules and regulations adopted by the Department of Environmental Protection, the

Fish and Game Council, or the Marine Fisheries Council that may impede the potential use of any species in aquaculture.

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

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

C.4:27-11 Review of laws, rules, regulations pertinent to predation problems.

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

C.4:27-12 Aquaculture sites not designated freshwater wetland, conditions.

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

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

C.4:27-13 Aquaculture sites not designated coastal wetland, conditions.

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

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

methods and procedures to implement this section.

C.4:27-14 Agriculture programs applicable to aquaculture.

14. Notwithstanding any law, or regulations to the contrary, all State grant and loan, financial, and insurance programs that apply to agriculture as of the effective date of this act shall apply also to aquaculture.

C.4:27-15 Aquaculture statistics reporting, assistance programs.

15. The Department of Agriculture:

a. in consultation with the Aquaculture Technology Transfer Center, the Rutgers Cooperative Extension and the Department of Environmental Protection, shall implement an aquaculture statistics reporting program which may include the collection of information on the numbers of jobs being created in aquaculture, the amount, value and type of product being produced, and the overall economic activity in the aquaculture industry;

b. in consultation with the Aquaculture Technology Transfer Center, and the Rutgers Cooperative Extension, shall assist aquaculturists in obtaining coverage from federal crop insurance programs;

c. in consultation with the Aquaculture Technology Transfer Center and the Rutgers Cooperative Extension, shall assist aquaculturists in completing the proper paperwork and other information necessary to develop eligibility for economic emergency loans for disaster relief through the Farmers Services Agency and other programs;

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

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

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

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

C.4:27-16 Management practices for control of soil erosion, sedimentation.

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

C.4:27-17 Licensure of possession, ownership of aquacultural organisms.

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

C.4:27-18 Aquatic health management plan.

18. The Department of Agriculture, in consultation with the Department of Environmental Protection and the Aquaculture Advisory Council, shall develop and adopt, within one year of the effective date of this act and in accordance with the "Administrative Procedure Act,"

P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations establishing an aquatic health management plan designed to protect public and private aquaculturists and wild aquatic populations from the importation of non-endemic disease causing organisms, and to assist in facilitating the exportation and importation of aquatic species into and out of the State.

C.4:27-19 Comprehensive animal waste management program.

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

C.4:27-20 Aquaculture component for model planning and zoning ordinances.

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

C.4:27-21 Review of worker's compensation package coverages.

21. The Department of Labor, in conjunction with the Department of Agriculture and the aquaculture industry, shall review worker's compensation package coverages to assess their general applicability to aquaculture industry needs, and make recommendations accordingly to all appropriate entities with respect to any needed modifications.

C.4:27-22 Development, implementation of information campaign.

22. The Department of Commerce and Economic Development, in conjunction with the Department of Agriculture, the Department of Environmental Protection, the Aquaculture Technology Transfer Center, and the aquaculture industry, shall, to the extent feasible, develop and implement an information campaign to promote in-State and outside investments in aquaculture operations located or based in New Jersey within one year of the appointment of the Aquaculture Advisory Council pursuant to section 5 of this act.

C.4:27-23 Development of mechanisms for providing tax credits, reduced loan payments.

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

C.4:27-24 Review of product liability insurance.

24. The Department of Banking and Insurance, in consultation with the Aquaculture Advisory Council, shall review product liability insurance within the State and determine how the coverage might be extended to various segments of the aquaculture industry, and make recommendations accordingly to all appropriate entities regarding any modifications that should be made to existing insurance coverage plans.

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

Agricultural convention delegates.

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

Each of the following organizations shall be entitled to be represented in the annual convention by one delegate: American Cranberry Growers' Association, Board of Managers of the New Jersey Agricultural Experiment Station, Cook College of Rutgers, The State University, The Cooperative Marketing Associations in New Jersey, Inc., Cultivated Sod Association of New Jersey, Inc., Garden State Dairy Goat Association, Inc., Garden State Milk Council, Garden State Service Cooperative Association, Inc., Horse Park of New Jersey at Store Tavern Inc., Morgan Horse Association of New Jersey, New Jersey Angus Association, Inc., New Jersey Agricultural Society, Inc., New Jersey Apple Institute, Inc., New Jersey Aquaculture Association, New Jersey Association of Agricultural Fairs, New Jersey Beekeepers' Association, Inc., New Jersey Christmas Tree Growers' Association, New Jersey Commercial Fisherman's Association, New Jersey Farmers Direct Marketing Association, Inc., New Jersey Farm Bureau, Inc., New Jersey FFA Alumni Association, Grain and Forage Producers' Association of New Jersey, Inc., New Jersey Guernsey Breeders' Association, Inc., New Jersey Hereford Association, New Jersey Holstein-Friesian Association, Inc., New Jersey Horse Council, New Jersey Livestock Cooperative Association, Inc., New Jersey Nursery and Landscape Association, New Jersey Nursery and Landscape Association -- Metropolitan Chapter, New Jersey Peach Council, New Jersey Peach Promotion Council, Inc., New Jersey Plant and Flower Growers Association, Inc., New Jersey Pony Breeders and Owners, Inc., New Jersey Quarter Horse Association, New Jersey Sheep and Wool Cooperative Association, Inc., New Jersey State Florists' Association, Inc., New Jersey State Grange, Patrons of Husbandry, Inc., New Jersey State Horticultural Society, Inc., New Jersey State Potato Association, Inc., New Jersey State Poultry Association, Inc., New Jersey State Sweet Potato Industry Association, Inc., New Jersey Turkey Association, New Jersey Veterinary Medical Association, New Jersey Vocational Agriculture Teachers Association, each Pomona Grange, Patrons of Husbandry, Standardbred Breeders and Owners Association of New Jersey, Inc., Thoroughbred Breeders' Association of New Jersey, Tru-Blu Cooperative Association, Inc., South Jersey Flower Growers Association, Inc., and the Vegetable Growers Association of New Jersey, Inc.

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

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

C.58:10A-3 Definitions.

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

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

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

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

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

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

f. "Effluent limitation" means any restriction on quantities, quality, rates and concentration of chemical, physical, thermal, biological, and other constituents of pollutants established by

permit, or imposed as an interim enforcement limit pursuant to an administrative order, including an administrative consent order;

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

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

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

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

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

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

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

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

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

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

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

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

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

industrial waste in combined or separate storm water and sanitary sewer systems;

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

u. "Hazardous pollutant" means:

(1) Any toxic pollutant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C.58:10A-6 Permits; issuance; exemptions; prohibitions; requirements.

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

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

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

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

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

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

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

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

(5) Nonpoint source discharges;

(6) Uncontrolled nonpoint source discharges composed entirely of storm water runoff when these discharges are uncontaminated by any industrial or commercial activity unless these particular storm water runoff discharges have been identified by the administrator or the

department as a significant contributor of pollution;

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

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

e. The commissioner shall not issue any permit for:

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

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

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

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

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

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

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

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

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

(5) To install, use and maintain such monitoring equipment and methods, to sample in accordance with such methods, to maintain and retain such records of information from monitoring activities, and to submit to the commissioner, or to the delegated local agency, reports of monitoring results for surface waters, as may be stipulated in the permit, or required by the commissioner or delegated local agency pursuant to paragraph (9) of this subsection, or as the commissioner or the delegated local agency may prescribe for ground water. Significant indirect users, major industrial dischargers, and local agencies, other than those discharging only stormwater or noncontact cooling water, shall, however, report their monitoring results for discharges to surface waters monthly to the commissioner, or the delegated local agency. Discharge monitoring reports for discharges to surface waters shall be signed by the highest ranking official having day-to-day managerial and operational responsibilities for the discharging facility, who may, in his absence, authorize another responsible high ranking official to sign a monthly monitoring report if a report is required to be filed during that period of time. The highest ranking official shall, however, be liable in all instances for the accuracy of all the information provided in the monitoring report; provided, however, that the highest ranking official may file, within seven days of his return, amendments to the monitoring report to which he was not a signatory. The highest ranking official having day-to-day managerial and operational responsibilities for the discharging facility of a local agency shall be the highest ranking licensed operator of the municipal treatment works in those instances where a licensed operator is required by law to operate the facility. In those instances where a local agency has contracted with another entity to operate a municipal treatment works, the highest ranking official who signs the discharge monitoring report shall be an employee of the contract operator and not of the local agency. Notwithstanding that an employee of a contract operator is the official who signs the discharge monitoring report, the local agency, as the permittee, shall remain liable for compliance with all permit conditions. In those instances where the highest ranking official having day-to-day managerial and operational responsibilities for a discharging facility of a local agency does not have the responsibility to authorize capital expenditures and

hire personnel, a person having that responsibility, or a person designated by that person, shall submit to the department, along with the discharge monitoring report, a certification that that person has received and reviewed the discharge monitoring report. The person submitting the certification to the department shall not be liable for the accuracy of the information on the discharge monitoring report due to the submittal of the certification. Whenever a local agency has contracted with another entity to operate the municipal treatment works, the person submitting the certification shall be an employee of the permittee and not of the contract operator. The filing of amendments to a monitoring report in accordance with this paragraph shall not be considered a late filing of a report for purposes of subsection d. of section 6 of P.L.1990, c.28 (C.58:10A-10.1), or for purposes of determining a significant noncomplier;

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

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

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

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

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

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

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

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

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

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

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

requirement when ample capacity remains in the facility to accommodate new inflows. The notification shall estimate the effects of the changes on the effluents to be discharged into the facility.

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

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

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

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

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

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

l. Each permitted facility or municipal treatment works, other than one discharging only stormwater or non-contact cooling water, shall be inspected by the department at least once a year; except that each permitted facility discharging into the municipal treatment works of a delegated local agency, other than a facility discharging only stormwater or non-contact cooling

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

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

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

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

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

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

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

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

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

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

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

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

q. The commissioner shall, in consultation with the Department of Agriculture and the Aquaculture Advisory Council, provide for the issuance of general permits for the discharge of pollutants from concentrated aquatic animal production facilities and aquacultural projects. In establishing general permits the commissioner shall take into consideration the source and receiving water quality and the type of aquaculture activity being conducted. The general permits issued pursuant to this subsection shall give priority to meeting best management practices rather than attaining numeric pollutant discharge parameter levels. If the commissioner determines that a permittee cannot perform the best management practices in order to obtain a general permit or that the performance of best management practices will not be protective of water quality as required by P.L.1977, c.74, the commissioner may require the permittee to obtain an individual permit which may contain numeric pollutant parameter discharge limits.

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

C.58:10A-7.1 Discharging waste in ocean waters prohibited after Dec. 31, 1991; "aquaculture" defined.

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

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

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

C.58:1A-3 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

C.58:1A-6 Permit system; development of guidelines.

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

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

(2) Require any person diverting 100,000 or more gallons of water per day for agricultural or horticultural purposes to obtain approval of the appropriate county agricultural agent of a five-year water usage certification program. This approval shall be based on standards and procedures established by the department. This program shall include the right to construct, repair or reconstruct dams or other structures, the right to divert water for irrigation, frost protection, harvesting and other agriculturally-related purposes, including aquaculture, and the

right to measure the amount of water diverted by means of a log or other appropriate record, and shall be obtained in lieu of any permit which would otherwise be required by P.L.1981, c.262 (C.58:1A-1 et al.).

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

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

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

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

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

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

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

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

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

C.58:1A-7.2 No tax, fee imposed on diversion of water; exceptions; "aquaculture" defined.

2. The provisions of any law, rule or regulation to the contrary notwithstanding, no tax, fee or other charge shall be imposed on the diversion, for agricultural or horticultural purposes, including aquaculture, of any ground or surface water of this State; provided, however, that nothing in this section shall prohibit the imposition of a fee, pursuant to law, for the cost of

processing, monitoring and administering a water usage certification program for persons who divert any ground or surface water for agricultural and horticultural purposes, or other agriculturally-related purposes, including aquaculture.

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

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

C.58:1A-13 New Jersey Statewide Water Supply Plan.

13. a. The department shall prepare and adopt the New Jersey Statewide Water Supply Plan, which plan shall be revised and updated at least once every five years.

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

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

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

(3) Recommendations for improvements to existing State water supply facilities, the construction of additional State water supply facilities, and for the interconnection or consolidation of existing water supply systems;

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

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

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

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

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

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

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

C.4:9-38 Composting, handling, etc. of animal wastes.

12. The Department of Agriculture shall, by rule or regulation and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), establish criteria and standards for the composting, handling, storage, processing, utilization and disposal of animal wastes as provided in section 19 of P.L.1997, c.236 (C.4:27-19).

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

C.13:1E-99.21f Rules, regulations.

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

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

C.13:18A-3 Definitions.

3. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

C.4:27-25 Construction of act.

36. Except as provided in section 3 of P.L.1979, c.111 (C.13:18A-3) as amended by section 35 of P.L.1997, c.236, nothing in this act shall be construed to modify the provisions of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) or any regulations promulgated pursuant thereto and section 502 of the "National Parks and Recreation Act of 1978" (Pub.L. 95-625).

37. This act shall take effect immediately.
Approved August 31, 1997.