

SENATE, No. 39

STATE OF NEW JERSEY

INTRODUCED OCTOBER 3, 1996

By Senators McNAMARA, Bennett, Cafiero, Littell, Ewing,
Kyrillos, Inverso and Ciesla

1 AN ACT concerning site remediation, amending and supplementing
2 P.L.1976, c.141, and P.L.1993, c.139, and amending P.L.1995,
3 c.413.

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

7
8 1. (New section) Sections 23 through 43 and section 45 of
9 P.L.1993, c.139 (C.58:10B-1 et seq.), as may be amended and
10 supplemented, shall be known and may be cited as the "Brownfields
11 Revitalization and Remediation Act."

12
13 2. (New Section) a. There is established the Brownfields
14 Environmental Risk Communication Council. The council shall be
15 comprised of 9 members who shall have experience in site remediation
16 processes or the assessment and communication of health and
17 environmental risks associated with site remediations. The members
18 shall include the Commissioner of Environmental Protection or a
19 representative, a representative from the Environmental and
20 Occupational Safety and Health Institute, a representative from New
21 Jersey Institute of Technology, a representative from a public interest
22 environmental organization, a person employed by a municipality of
23 this State, a representative from the financial community, a person
24 employed as an environmental consultant, a person engaged in
25 contaminated site redevelopment, and a person employed as a public
26 health official. The members of the council, other than the
27 commissioner, shall be appointed by the Governor with the advice and
28 consent of the Senate.

29 b. Members of the council shall serve terms of two years or until
30 a successor has been appointed and qualified. Members of the council
31 may be reappointed. Members of the council may be removed for
32 cause. Vacancies in the council shall be filled in the same manner as
33 the original appointments were made.

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.

1 c. Members of the council shall serve without compensation, but
2 may be reimbursed for all reasonable expenses incurred in the
3 performance of their duties.

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

14
15 3. (New Section) It shall be the duty of the council to:

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

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

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

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

33 e. Make recommendations to the Legislature and the Governor in
34 order to improve the public understanding and perception of site
35 remediation in the State.

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

1 it for those purposes.

2

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

22 A covenant not to sue shall contain both of the following, as
23 applicable:

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

27 (2) If the remediation involves the use of engineering or
28 institutional controls;

29 (a) a provision requiring the person to maintain those controls,
30 conduct periodic monitoring for compliance, and submit to the
31 department, on an bi-annual basis, a certification that the engineering
32 and institutional controls are being properly maintained and continue
33 to be protective of public health and safety and of the environment;
34 and

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

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

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

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

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

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

31 (2) The owner or operator shall attach a copy of any approved
32 negative declaration, approved remedial action workplan, no further
33 action letter, or remediation agreement approval to the contract or
34 agreement of sale or agreement to transfer or any option to purchase
35 which may be entered into with respect to the transfer of ownership or
36 operations. In the event that any sale or transfer agreements or
37 options have been executed prior to the approval of a negative
38 declaration, remedial action workplan, no further action letter, or
39 remediation agreement, these documents, as relevant, shall be
40 transmitted by the owner or operator, by certified mail, overnight
41 delivery, or personal service, prior to the transfer of ownership or
42 operations, to all parties to any transaction concerning the transfer of
43 ownership or operations, including purchasers, bankruptcy trustees,
44 mortgagees, sureties, and financiers.

45 (3) The preliminary assessment, site investigation, remedial
46 investigation, and remedial action for the industrial establishment shall

1 be performed and implemented by the owner or operator of the
2 industrial establishment, except that any other party may assume that
3 responsibility pursuant to the provisions of P.L.1983, c.330.

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

21 d. (1) Upon the submission of the results of either the preliminary
22 assessment, site investigation, remedial investigation, or remedial
23 action, where applicable, which demonstrate that there are no
24 discharged hazardous substances or hazardous wastes at the industrial
25 establishment, or that have migrated from or are migrating from the
26 industrial establishment, in violation of the applicable remediation
27 standards, the owner or operator may submit to the department for
28 approval a proposed negative declaration as provided in subsection c.
29 of this section.

30 (2) After the submission and review of the information submitted
31 pursuant to a preliminary assessment, site investigation, remedial
32 investigation, or remedial action, as necessary, the department shall,
33 within 45 days of submission of a complete and accurate negative
34 declaration, approve the negative declaration, or inform the owner or
35 operator of the industrial establishment that a remedial action
36 workplan or additional remediation shall be required. The department
37 shall approve a negative declaration by the issuance of a no further
38 action letter.

39 e. The owner or operator of an industrial establishment, who has
40 submitted a notice to the department pursuant to subsection a. of this
41 section, may transfer ownership or operations of the industrial
42 establishment prior to the approval of a negative declaration or
43 remedial action workplan upon application to and approval by the
44 department of a remediation agreement. The owner or operator
45 requesting a remediation agreement shall submit the following
46 documents: (1) an estimate of the cost of the remediation that is

1 approved by the department; (2) a certification of the statutory liability
2 of the owner or operator pursuant to P.L.1983, c.330 to perform and
3 to complete a remediation of the industrial establishment in the manner
4 and time limits provided by the department in regulation and consistent
5 with all applicable laws and regulations; however, nothing in this
6 paragraph shall be construed to be an admission of liability, or to
7 impose liability on the owner or operator, pursuant to P.L.1976, c.141
8 (C.58:10-23.11 et seq.) or pursuant to any other statute or common
9 law; (3) evidence of the establishment of a remediation funding source
10 in an amount of the estimated cost of the remediation and in
11 accordance with the provisions of section 25 of P.L.1993, c.139
12 (C.58:10B-3); (4) a certification that the owner or operator is subject
13 to the provisions of P.L.1983, c.330, including the liability for
14 penalties for violating the act, defenses to liability and limitations
15 thereon, the requirement to perform a remediation as required by the
16 department, allowing the department access to the industrial
17 establishment as provided in section 5 of P.L.1983, c.330
18 (C.13:1K-10), and the requirement to prepare and submit any
19 document required by the department relevant to the remediation of
20 the industrial establishment; and (5) evidence of the payment of all
21 applicable fees required by the department.

22 The department may require in the remediation agreement that all
23 plans for and results of the preliminary assessment, site investigation,
24 remedial investigation, and the implementation of the remedial action
25 workplan, prepared or initiated subsequent to the transfer of
26 ownership or operations, be submitted to the department, for review
27 purposes only, at the completion of each phase of the remediation.

28 The department shall adopt regulations establishing the manner in
29 which the documents required pursuant to paragraphs (1) through (5),
30 inclusive, of this subsection shall be submitted. The department shall
31 approve the application for the remediation agreement upon the
32 complete and accurate submission of the documents required to be
33 submitted pursuant to this subsection. The regulations shall include a
34 sample form of the certifications. Approval of a remediation
35 agreement shall not affect an owner's or operator's right to avail itself
36 of the provisions of section 6 of P.L.1983, c.330 (C.13:1K-11), of
37 section 13, 14, 15, 16, 17, or 18 of P.L.1993, c.139 (C.13:1K-11.2,
38 C.13:1K-11.3, C.13:1K-11.4, C.13:1K-11.5, C.13:1K-11.6 or
39 C.13:1K-11.7), or of the other provisions of this section.

40 f. An owner or operator of an industrial establishment may perform
41 a preliminary assessment, site investigation, or remedial investigation
42 for a surface or subsurface soil, surface water, or groundwater
43 remediation without the prior submission to or approval of the
44 department, except as otherwise provided in a remediation agreement
45 required pursuant to subsection e. of this section. However, the plans
46 for and results of the preliminary assessment, site investigation, and

1 remedial investigation may, at the discretion of the owner or operator,
2 be submitted to the department for its review and approval at the
3 completion of each phase of the remediation.

4 g. (1) The surface soil remediation standard to be implemented on
5 an industrial establishment shall be selected in conformance with the
6 policies and criteria enumerated in section 35 of P.L.1993, c.139
7 (C.58:10B-12).

8 (2) The department may not disapprove the use of the minimum
9 [nonresidential] surface soil remediation standards adopted by the
10 department except upon a finding that the use of the [nonresidential]
11 surface soil remediation standards at that site would not be protective
12 of public health, safety, or the environment or except as provided in
13 subsection i. of this section.

14 h. An owner or operator of an industrial establishment may
15 implement a surface soil remedial action at an industrial establishment
16 without prior department approval of the remedial action workplan for
17 the remediation of surface soil when the remedial action can
18 reasonably be expected to be completed pursuant to standards,
19 criteria, and time schedules established by the department, which
20 schedules shall not exceed five years from the commencement of the
21 implementation of the remedial action and if the owner or operator is
22 implementing a surface soil remediation which meets the established
23 minimum residential or nonresidential use surface soil remediation
24 standards adopted by the department.

25 Nothing in this subsection shall be construed to authorize the
26 closing of operations or the transfer of ownership or operations of an
27 industrial establishment without the department's approval of a
28 negative declaration, a remedial action workplan or a remediation
29 agreement.

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

34 (1) The soil remediation standards proposed for the industrial
35 establishment are protective of public health, safety and the
36 environment;

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

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

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

43 (5) The difference in cost between the use of the residential use
44 soil remediation standards and the nonresidential use soil remediation
45 standards; and

46 (6) Consistency with regulations established by the Pinelands

1 Commission pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.).

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

24 At any time after the effective date of P.L.1993, c.139, an owner or
25 operator may request the department to provide a determination as to
26 whether a proposed remedial action is consistent with the standards
27 and criteria set forth [above in paragraphs (1) through (6)] in section
28 35 of P.L.1993, c.139 (C.58:10B-12). The department shall make that
29 determination based upon the standards and criteria set forth in that
30 section. The department shall provide any such determination within
31 30 calendar days of the department's receipt of the request.

32 j. An owner or operator proposing to implement a surface soil
33 remedial action other than one which is set forth in subsection h. of
34 this section must receive department approval prior to implementation
35 of the remedial action.

36 k. An owner or operator of an industrial establishment shall not
37 implement a remedial action involving the remediation of subsurface
38 soil, groundwater or surface water without the prior review and
39 approval by the department of a remedial action workplan.

40 l. Submissions of a preliminary assessment, site investigation,
41 remedial investigation, remedial action workplan, and the results of a
42 remedial action shall be in a manner and form, and shall contain any
43 relevant information relating to the remediation, as may be required by
44 the department.

45 Upon receipt of a complete and accurate submission, the
46 department shall review and approve or disapprove the submission in

1 accordance with the review schedules established pursuant to section
2 2 of P.L.1991, c.423 (C.13:1D-106). The owner or operator shall not
3 be required to wait for a response by the department before continuing
4 remediation activities, except as otherwise provided in this section.
5 Upon completion of the remediation, the plans for and results of the
6 preliminary assessment, site investigation, remedial investigation,
7 remedial action workplan, and remedial action and any other
8 information required to be submitted as provided in section 35 of
9 P.L.1993, c.139 (C.58:10B-12), that has not previously been
10 submitted to the department, shall be submitted to the department for
11 its review and approval.

12 The department shall review all information submitted to it by the
13 owner or operator at the completion of the remediation to determine
14 whether the actions taken were in compliance with rules and
15 regulations of the department regarding remediation.

16 The department may review and approve or disapprove every
17 remedial action workplan, no matter when submitted, to determine, in
18 accordance with the criteria listed in subsection g. of section 35 of
19 P.L.1993, c.139 (C.58:10B-12) if the remedial action that has
20 occurred or that will occur is appropriate to meet the applicable
21 remediation standards.

22 The department may order additional remediation activities at the
23 industrial establishment, or offsite where necessary, or may require the
24 submission of additional information, where (a) the department
25 determines that the remediation activities undertaken were not in
26 compliance with the applicable rules or regulations of the department;
27 (b) all documents required to be submitted to the department were not
28 submitted or, if submitted, were inaccurate, or deficient; or (c)
29 discharged hazardous substances or hazardous wastes remain at the
30 industrial establishment, or have migrated or are migrating offsite, at
31 levels or concentrations in violation of the applicable remediation
32 standards. Upon a finding by the department that the remediation
33 conducted at the industrial establishment was in compliance with all
34 applicable regulations, that no hazardous substances or hazardous
35 wastes remain at the industrial establishment in violation of the
36 applicable remediation standards, and that all hazardous substances or
37 hazardous wastes that migrated from the industrial establishment have
38 been remediated in conformance with the applicable remediation
39 standards, the department shall approve the remediation for that
40 industrial establishment by the issuance of a no further action letter.
41 (cf: P.L.1993, c.139, s.4)

42

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

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

1 "Area of concern" means any location where contaminants are or
2 were known or suspected to have been discharged, generated,
3 manufactured, refined, transported, stored, handled, treated, or
4 disposed, or where contaminants have or may have migrated;

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

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

12 "Department" means the Department of Environmental Protection
13 [and Energy];

14 "Discharge" means an intentional or unintentional action or
15 omission resulting in the releasing, spilling, leaking, pumping, pouring,
16 emitting, emptying, or dumping of a contaminant onto the land or into
17 the waters of the State;

18 "Engineering controls" means any mechanism to contain or stabilize
19 contamination or ensure the effectiveness of a remedial action.
20 Engineering controls may include, without limitation, caps, covers,
21 dikes, trenches, leachate collection systems, signs, fences and physical
22 access controls;

23 "Financial assistance" means loans or loan guarantees;

24 "Institutional controls" means a mechanism used to limit human
25 activities at or near a contaminated site, or to ensure the effectiveness
26 of the remedial action over time, when contaminants remain at a
27 contaminated site in levels or concentrations above the applicable
28 remediation standard that would allow unrestricted use of that
29 property. Institutional controls may include, without limitation,
30 structure, land, and natural resource use restrictions, well restriction
31 areas, and deed notices;

32 "No further action letter" means a written determination by the
33 department that based upon an evaluation of the historical use of a
34 particular site, or of an area of concern or areas of concern at that site,
35 as applicable, and any other investigation or action the department
36 deems necessary, there are no discharged contaminants present at the
37 site, at the area of concern or areas of concern, at any other site to
38 which a discharge originating at the site has migrated, or that any
39 discharged contaminants present at the site or that have migrated from
40 the site have been remediated in accordance with applicable
41 remediation regulations;

42 "Nonpermanent remedial action" means any remedial action that
43 requires the continued use of engineering controls in order to meet the
44 established health risk levels;

45 "Permanent remedial action" means any remedial action that does
46 not require the continued use of engineering controls in order to meet

1 the established health risk levels. A remedial action may be considered
2 permanent even if institutional controls are employed at the site;

3 "Preliminary assessment" means the first phase in the process of
4 identifying areas of concern and determining whether contaminants are
5 or were present at a site or have migrated or are migrating from a site,
6 and shall include the initial search for and evaluation of, existing site
7 specific operational and environmental information, both current and
8 historic, to determine if further investigation concerning the
9 documented, alleged, suspected or latent discharge of any contaminant
10 is required. The evaluation of historic information shall be conducted
11 from 1932 to the present, except that the department may require the
12 search for and evaluation of additional information relating to
13 ownership and use of the site prior to 1932 if such information is
14 available through diligent inquiry of the public records;

15 "Remedial action" means those actions taken at a site or offsite if
16 a contaminant has migrated or is migrating therefrom, as may be
17 required by the department, including the removal, treatment,
18 containment, transportation, securing, or other engineering or
19 treatment measures, whether of a permanent nature or otherwise,
20 designed to ensure that any discharged contaminant at the site or that
21 has migrated or is migrating from the site, is remediated in compliance
22 with the applicable remediation standards;

23 "Remedial investigation" means a process to determine the nature
24 and extent of a discharge of a contaminant at a site or a discharge of
25 a contaminant that has migrated or is migrating from the site and the
26 problems presented by a discharge, and may include data collected,
27 site characterization, sampling, monitoring, and the gathering of any
28 other sufficient and relevant information necessary to determine the
29 necessity for remedial action and to support the evaluation of remedial
30 actions if necessary;

31 "Remediation" or "remediate" means all necessary actions to
32 investigate and clean up any known, suspected, or threatened
33 discharge of contaminants, including, as necessary, the preliminary
34 assessment, site investigation, remedial investigation, and remedial
35 action;

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

39 "Site investigation" means the collection and evaluation of data
40 adequate to determine whether or not discharged contaminants exist
41 at a site or have migrated or are migrating from the site at levels in
42 excess of the applicable remediation standards. A site investigation
43 shall be developed based upon the information collected pursuant to
44 the preliminary assessment;

45 "Subsurface soil" means the soil that is ten feet or more below the
46 existing ground surface;

1 "Surface soil" means the soil at the existing ground surface to a
2 depth of ten feet below the existing ground surface;

3 "Remedial action workplan" means a plan for the remedial action to
4 be undertaken at a site, or at any area to which a discharge originating
5 at a site is migrating or has migrated; a description of the remedial
6 action to be used to remediate a site; a time schedule and cost estimate
7 of the implementation of the remedial action; and any other
8 information the department deems necessary;

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

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

16 "Remediation standards" means the combination of numeric and
17 narrative standards to which contaminants must be remediated for
18 surface and subsurface soil, groundwater, or surface water as provided
19 by the department pursuant to section 35 of P.L.1993, c.139
20 (C.58:10B-12).

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

22
23 8. Section 24 of P.L.1993, c.139 (C.58:10B-2) is amended to read
24 as follows:

25 24. a. The department shall, pursuant to the "Administrative
26 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and
27 regulations establishing criteria and minimum standards necessary for
28 the submission, evaluation and approval of plans or results of
29 preliminary assessments, site investigations, remedial investigations,
30 and remedial action workplans and for the implementation thereof.
31 The documents for the preliminary assessment, site investigation,
32 remedial investigation, and remedial action workplan required to be
33 submitted for a remediation, shall not be identical to the criteria and
34 standards used for similar documents submitted pursuant to federal
35 law, except as may be required by federal law. In establishing criteria
36 and minimum standards for these terms the department shall strive to
37 avoid duplicate or unnecessarily costly or time consuming conditions
38 or standards.

39 b. To the extent practicable and in conformance with the standards
40 for remediations as provided in section 35 of P.L.1993, c.139
41 (C.58:10-12), the department shall adopt rules and regulations that
42 allow for certain remediation activities, with an insignificant risk to the
43 public health, safety and the environment, to be undertaken in a
44 manner prescribed by the department without having to obtain prior
45 approval from or submit detailed documentation to the department.
46 A person who performs a remediation in the manner prescribed in the

1 rules and regulations of the department, and who certifies this fact to
2 the department, shall obtain a no further action letter from the
3 department for that particular remediation activity.

4 c. The department shall develop regulatory procedures that
5 encourage the use of innovative technologies in the performance of
6 remedial actions. The procedures shall include, but need not be
7 limited to, an expedited review process for document submissions.
8 Upon submittal of the administratively and technically complete and
9 accurate remedial action workplan that proposes the use of an
10 innovative technology, the department shall review and approve that
11 plan within 90 days. The submittal of subsequent administratively and
12 technically complete and accurate remedial action progress reports
13 shall be reviewed within 30 days and the submittal of an
14 administratively and technically complete and accurate remedial action
15 final report shall be reviewed within 45 days. Failure of the
16 department to disapprove or conditionally approve these plans or
17 reports within the period of time allowed for its review shall be
18 deemed to be approval of that plan by department.

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

20

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

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

43 The remediation funding source shall be established in an amount
44 equal to or greater than the cost estimate of the implementation of the
45 remediation (1) as approved by the department, (2) as provided in an
46 administrative consent order or remediation agreement as required

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

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

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

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

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

42 The department shall return the original remediation trust fund
43 agreement to the trustee for termination after the person required to
44 establish the remediation funding source substitutes an alternative
45 remediation funding source as specified in this section or the
46 department notifies the person that that person is no longer required

1 to maintain a remediation funding source for remediation of the
2 contaminated site.

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

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

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

35 A line of credit agreement shall provide that the line of credit may
36 not be revoked or terminated by the person required to obtain the
37 remediation funding source or the person or institution providing the
38 line of credit without the written consent of the department. The
39 person or institution providing the line of credit shall release to the
40 person required to establish the remediation funding source, or to the
41 department or transferee of the property as appropriate, only those
42 moneys as the department authorizes, in writing, to be released. The
43 person entitled to draw upon the line of credit shall submit
44 documentation to the department detailing the costs incurred or to be
45 incurred as part of the remediation. Upon a determination that the
46 costs are consistent with the remediation of the site, the department

1 shall, in writing, authorize a disbursement from the line of credit in the
2 amount of the documented costs.

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

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

43 g. (1) If the person required to establish the remediation funding
44 source fails to perform the remediation as required, the department
45 shall make a written determination of this fact. A copy of the
46 determination by the department shall be delivered to the person

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

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

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

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

38

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

41 26. a. There is established in the New Jersey Economic
42 Development Authority a special, revolving fund to be known as the
43 Hazardous Discharge Site Remediation Fund. Moneys in the
44 remediation fund shall be dedicated for the provision of financial
45 assistance or grants to municipal governmental entities [,] the New
46 Jersey Redevelopment Authority, individuals, corporations,

1 partnerships, and other private business entities, for the purpose of
2 financing remediation activities at sites at which there is, or is
3 suspected of being, a discharge of hazardous substances or hazardous
4 wastes.

5 b. The remediation fund shall be credited with:

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

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

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

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

12 (5) moneys deposited into the fund from cost recovery subrogation
13 actions; and

14 (6) moneys made available to the authority for the purposes of the
15 fund.

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

17

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

20 27. a. (1) Financial assistance from the remediation fund [, made
21 to persons other than municipal governmental entities, the New Jersey
22 Redevelopment Authority, or to persons who voluntarily undertake a
23 remediation,] may only be rendered to persons who cannot establish
24 a remediation funding source for the full amount of a remediation.
25 Financial assistance pursuant to this act may be rendered only for that
26 amount of the cost of a remediation for which the person cannot
27 establish a remediation funding source. The limitations on receiving
28 financial assistance established in this paragraph (1) shall not limit the
29 ability of municipal governmental entities, the New Jersey
30 Redevelopment Authority, persons who are not required to establish
31 a remediation funding source for the part of the remediation involving
32 an innovative technology, or persons who voluntarily undertake a
33 remediation to receive financial assistance from the fund.

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

38 (3) Financial assistance rendered to persons who do not have to
39 provide financial assurance for the part of the remediation that
40 involves an innovative technology may only be made for that amount
41 of the cost of the remediation that the person cannot otherwise fund
42 by any of the authorized methods to establish a remediation funding
43 source.

44 b. Financial assistance may be rendered from the remediation fund
45 to (1) owners or operators of industrial establishments who are
46 required to perform remediation activities pursuant to P.L.1983, c.330

1 (C.13:1K-6 et al.), upon closing operations or prior to the transfer of
2 ownership or operations of an industrial establishment, (2) persons
3 who have discharged a hazardous substance or who are in any way
4 responsible for a hazardous substance pursuant to P.L.1976, c.141
5 (C.58:10-23.11 et seq.), and (3) persons who voluntarily undertake the
6 remediation of a discharge of a hazardous substance or hazardous
7 waste and who have not been ordered or directed to perform the
8 remediation by the department or by a court.

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

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

26 e. Grants may be made from the remediation fund to persons who
27 propose to perform a remedial action that uses an innovative
28 technology.

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

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

33
34 12. Section 28 of P.L.1993, c.139 (C.58:10B-6) is amended to
35 read as follows:

36 28. a. Except for moneys deposited in the remediation fund for
37 specific purposes, financial assistance and grants from the remediation
38 fund shall be rendered for the following purposes and, on an annual
39 basis, obligated in the percentages as provided in this subsection.
40 Upon a written joint determination by the authority and the department
41 that it is in the public interest, financial assistance and grants dedicated
42 for the purposes and in the percentages set forth in any particular
43 paragraph [(1), (2), or (3)] of this subsection, may, for any particular
44 year, be obligated to other purposes set forth in this subsection. The
45 written determination shall be sent to the Senate Environment
46 Committee, and the Assembly Agriculture and Waste Management

1 Committee, or their successors. For the purposes of this section,
2 "person" shall not include [the New Jersey Redevelopment Authority
3 established pursuant to P.L.1996, c.62 (C.55:19-20 et al.)] any
4 governmental entity.

5 (1) At least 15% of the moneys shall be allocated for financial
6 assistance to persons, [including] and the New Jersey Redevelopment
7 Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.),
8 [other than other governmental entities,] for remediation of real
9 property located in a qualifying municipality as defined in section 1 of
10 P.L.1978, c.14 (C.52:27D-178);

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

37 (3) At least 15% of the moneys shall be allocated for financial
38 assistance to persons, [including] the New Jersey Redevelopment
39 Authority, or municipal governmental entities for remediation activities
40 at sites that have been contaminated by a discharge of a hazardous
41 substance or hazardous waste, or at which there is an imminent and
42 significant threat of a discharge of a hazardous substance or hazardous
43 waste, and the discharge or threatened discharge poses or would pose
44 an imminent and significant threat to a drinking water source, to
45 human health, or to a sensitive or significant ecological area;

46 (4) At least 10% of the moneys shall be allocated for financial

1 assistance to persons [, other than municipal governmental entities,]
2 who voluntarily undertake the remediation of a hazardous substance
3 or hazardous waste discharge, and who have not been ordered to
4 undertake the remediation by the department or by a court;

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

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

33 (7) At least 5% of the moneys shall be allocated for loans to
34 persons [, other than municipal governmental entities,] who own and
35 plan to remediate an environmental opportunity zone for which an
36 exemption from real property taxes has been granted pursuant to
37 section 5 of P.L.1995, c.413 (C.54:4-3.154); [and]

38 (8) At least 5% of the moneys shall be allocated for 25% matching
39 grants to persons, municipal governmental entities, or the New Jersey
40 Redevelopment Authority, who propose to perform a remedial action
41 that uses an innovative technology; and

42 (9) Five percent of the moneys in the remediation fund shall be
43 allocated for financial assistance or grants for any of the purposes
44 enumerated in paragraphs (1) through [(7)] (8) of this subsection,
45 except that where moneys in the fund are insufficient to fund all the
46 applications in any calendar year that would otherwise qualify for

1 financial assistance or a grant pursuant to this paragraph, the authority
2 shall give priority to financial assistance applications that meet the
3 criteria enumerated in paragraph (3) of this subsection.

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

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

35 d. The authority may use a sum that represents up to 2% of the
36 moneys issued as financial assistance or grants from the remediation
37 fund each year for administrative expenses incurred in connection with
38 the operation of the fund and the issuance of financial assistance and
39 grants.

40 e. Prior to March 1 of each year, the authority shall submit to the
41 Senate Environment Committee and the Assembly Agriculture and
42 Waste Management Committee, or their successors, a report detailing
43 the amount of money that was available for financial assistance and
44 grants from the remediation fund for the previous calendar year, the
45 amount of money estimated to be available for financial assistance and
46 grants for the current calendar year, the amount of financial assistance

1 and grants issued for the previous calendar year and the category for
2 which each financial assistance and grant was rendered, and any
3 suggestions for legislative action the authority deems advisable to
4 further the legislative intent to facilitate remediation and promote the
5 redevelopment and use of existing industrial sites.

6 (cf: P.L.1996, c.62, s.65)

7

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

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

11 (1) require a financial assistance or grant recipient to provide to
12 the authority, as necessary or upon request, evidence that financial
13 assistance or grant moneys are being spent for the purposes for which
14 the financial assistance or grant was made, and that the applicant is
15 adhering to all of the terms and conditions of the financial assistance
16 or grant agreement;

17 (2) require the financial assistance or grant recipient to provide
18 access at reasonable times to the subject property to determine
19 compliance with the terms and conditions of the financial assistance or
20 grant;

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

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

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

34 (6) provide that where financial assistance to a person other than
35 a municipal governmental entity [,] or the New Jersey Redevelopment
36 Authority is for a portion of the remediation cost, that the proceeds
37 thereof not be disbursed to the applicant until the costs of the
38 remediation for which a remediation funding source has been
39 established has been expended;

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

43 b. An applicant for financial assistance or a grant shall be required
44 to:

45 (1) provide proof, as determined sufficient by the authority, that
46 the applicant, where applicable, cannot establish a remediation funding

1 source for all or part of the remediation costs, as required by section
2 25 of P.L.1993, c.139 (C.58:10B-3). The provisions of this paragraph
3 do not apply to grants to innocent persons or to the portion of
4 remediation costs involving innovative technology or to financial
5 assistance or grants to municipal governmental entities or the New
6 Jersey Redevelopment Authority; and

7 (2) demonstrate the ability to repay the amount of the financial
8 assistance and interest, and, if necessary, to provide adequate
9 collateral to secure the financial assistance amount.

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

13 d. In establishing requirements for financial assistance or grant
14 applications and financial assistance or grant agreements, the
15 authority:

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

18 (2) may not require financial assistance or grant conditions that
19 interfere with the everyday normal operations of the recipient's
20 business activities, except to the extent necessary to ensure the
21 recipient's ability to repay the financial assistance and to preserve the
22 value of the loan collateral; and

23 (3) shall expeditiously process all financial assistance or grant
24 applications in accordance with a schedule established by the authority
25 for the review and the taking of final action on the application, which
26 schedule shall reflect the degree of complexity of a financial assistance
27 or grant application.

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

29
30 14. Section 33 of P.L.1993, c.139 (C.58:10B-11) is amended to
31 read as follows:

32 33. a. There is imposed upon every person who is required to
33 establish a remediation funding source pursuant to section 25 of
34 P.L.1993, c.139 (C.58:10B-3) a remediation funding source surcharge.
35 The remediation funding source surcharge shall be in an amount equal
36 to 1% of the required amount of the remediation funding source
37 required by the department to be maintained. No surcharge, however,
38 may be imposed upon (1) that amount of the remediation funding
39 source that is met by a self-guarantee as provided in subsection f. of
40 section 25 of P.L.1993, c.139 (C.58:10B-3), (2) that amount of the
41 remediation funding source that is met by financial assistance or a
42 grant from the remediation fund, (3) any person who voluntarily
43 undertakes a remediation without being so ordered or directed by the
44 department or by a court or pursuant to an administrative consent
45 order, or (4) any person who entered voluntarily into a memorandum
46 of understanding with the department to remediate real property, as

1 long as that person continues the remediation in a reasonable manner,
2 or as required by law, even if subsequent to initiation of the
3 memorandum of understanding, the person received an order by the
4 department or entered into an administrative consent order to perform
5 the remediation. The surcharge shall be based on the cost of
6 remediation work remaining to be completed and shall be paid on an
7 annual basis as long as the remediation continues and until the
8 Department of Environmental Protection [and Energy] issues a no
9 further action letter for the property subject to the remediation. The
10 remediation funding source surcharge shall be due and payable within
11 14 days of the time of the department's approval of a remedial action
12 workplan or signing an administrative consent order or as otherwise
13 provided by law. The department shall collect the surcharge and shall
14 remit all moneys collected to the Economic Development Authority for
15 deposit into the Hazardous Discharge Site Remediation Fund.

16 b. By February 1 of each year, the department shall issue a report
17 to the Senate Environment Committee and to the Assembly [Energy
18 and Hazardous Waste] Agriculture and Waste Management
19 Committee, or their successors, listing, for the prior calendar year,
20 each person who owed the remediation funding source surcharge, the
21 amount of the surcharge paid, and the total amount collected.

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

23

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

26 35. a. The Department of Environmental Protection [and Energy]
27 shall adopt minimum remediation standards for surface and subsurface
28 soil, groundwater, and surface water quality necessary for the
29 remediation of contamination of real property. The remediation
30 standards shall be developed to ensure that the potential for harm to
31 public health and safety and to the environment is minimized to
32 acceptable levels, taking into consideration the location, the
33 surroundings, the intended use of the property, the potential exposure
34 to the discharge, and the surrounding ambient conditions, whether
35 naturally occurring or man-made.

36 Until the minimum remediation standards for the protection of
37 public health and safety as described herein are adopted, the
38 department shall apply public health and safety remediation standards
39 for contamination at a site on a case-by-case basis based upon the
40 considerations and criteria enumerated in this section.

41 The department shall not propose or adopt remediation standards
42 protective of the environment pursuant to this section, except
43 standards for groundwater or surface water, until recommendations
44 are made by the Environment Advisory Task Force created pursuant
45 to section 37 of P.L.1993, c.139. Until the Environment Advisory
46 Task Force issues its recommendations and the department adopts

1 remediation standards protective of the environment as required by
2 this section, the department shall continue to determine the need for
3 and the application of remediation standards protective of the
4 environment on a case-by-case basis in accordance with the guidance
5 and regulations of the United States Environmental Protection Agency
6 pursuant to the "Comprehensive Environmental Response,
7 Compensation and Liability Act of 1980," 42 U.S.C. §9601 et seq. and
8 other statutory authorities as applicable.

9 b. In developing minimum remediation standards the department
10 shall:

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

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

17 (3) avoid the use of redundant conservative assumptions. The
18 department shall avoid the use of redundant conservative assumptions
19 by the use of parameters that provide an adequate margin of safety and
20 which avoid the use of unrealistic conservative exposure parameters
21 and which guidelines make use of the guidance and regulations for
22 exposure assessment developed by the United States Environmental
23 Protection Agency pursuant to the "Comprehensive Environmental
24 Response, Compensation, and Liability Act of 1980," 42 U.S.C. §9601
25 et seq. and other statutory authorities as applicable; and

26 (4) where feasible, establish the remediation standards as numeric
27 or narrative standards setting forth acceptable levels or concentrations
28 for particular contaminants.

29 c. (1) The department shall develop permanent residential and
30 nonresidential surface soil remediation standards and permanent
31 subsurface soil remediation standards that are protective of public
32 health and safety. For contaminants that are mobile and transportable
33 to groundwater or surface water, the [residential and nonresidential]
34 permanent surface and subsurface soil remediation standards shall be
35 protective of groundwater and surface water. Residential surface soil
36 remediation standards shall be set at levels or concentrations of
37 contamination for real property based upon the use of that property for
38 residential or similar uses and which will allow the unrestricted use of
39 that property, without the need of continuous engineering devices or
40 any institutional controls, and without exceeding a health risk level
41 greater than that provided in subsection d. of this section.
42 Nonresidential surface soil remediation standards shall be set at levels
43 or concentrations of contaminants that recognize the lower likelihood
44 of exposure to contamination on property that will not be used for
45 residential or similar uses and that can be met without the need of
46 continuous engineering controls. Permanent subsurface soil

1 remediation standards shall be set at levels that assume no direct
2 contact or exposure to the contamination but are based solely on the
3 need to be protective of groundwater and surface water. Whenever
4 real property is remediated to a nonresidential surface soil remediation
5 standard, except as otherwise provided in paragraph (3) of subsection
6 g. of this section, the department shall require, pursuant to section 36
7 of P.L.1993, c.139 (C.58:10B-13), that the use of the property be
8 restricted to nonresidential or other uses compatible with the extent of
9 the contamination of the surface soil and that access to that site be
10 restricted in a manner compatible with the allowable use of that
11 property. Whenever subsurface soil meets the remediation standards
12 for subsurface soil, no engineering or institutional controls shall be
13 required pursuant to section 36 of P.L.1993, c.139 (C.58:10B-13), for
14 that property even if the level of contamination would exceed the
15 surface soil remediation standards. The department may not restrict
16 the use of the surface of a property merely because the subsurface soil
17 contamination exceeds the surface soil remediation standards.

18 (2) The department may develop differential remediation standards
19 for surface water or groundwater that take into account the current,
20 planned, or potential use of that water in accordance with the "Clean
21 Water Act" (33 U.S.C. {1251 et seq.) and the "Water Pollution
22 Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.). In areas where the
23 groundwater is highly contaminated and there is little or no use of that
24 groundwater for drinking water, the department shall develop
25 remediation policies that allow for the natural attenuation of that
26 groundwater as an appropriate remedial action. Whenever
27 contamination exists in the groundwater that exceeds the relevant
28 groundwater remediation standards the department shall require,
29 pursuant to section 36 of P.L.1993, c.139 (C.58:10B-13), that the use
30 of the groundwater be restricted in a manner so as to prevent ingestion
31 of the groundwater. The department may not, however, restrict the
32 use of the surface of a property merely because the groundwater
33 contamination exceeds the applicable remediation standards.
34 Remediation standards protective of surface waters shall be based
35 upon water quality and discharge criteria established in the "Water
36 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.).

37 d. In developing minimum remediation standards intended to be
38 protective of public health and safety, the department shall identify the
39 hazards posed by a contaminant to determine whether exposure to that
40 contaminant can cause an increase in the incidence of an adverse health
41 effect and whether the adverse health effect may occur in humans.
42 The department shall set minimum surface soil remediation standards
43 for both residential and nonresidential uses that:

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

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

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

6 e. Remediation standards and other requirements established
7 pursuant to this section shall apply to remediation activities required
8 pursuant to the "Spill Compensation and Control Act," P.L.1976,
9 c.141 (C.58:10-23.11 et seq.), the "Water Pollution Control Act,"
10 P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21
11 et seq.), the "Industrial Site Recovery Act," P.L.1983, c.330
12 (C.13:1K-6 et al.), the "Solid Waste Management Act," P.L.1970, c.39
13 (C.13:1E-1 et seq.), the "Comprehensive Regulated Medical Waste
14 Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major
15 Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49
16 et seq.), the "Sanitary Landfill Facility Closure and Contingency Fund
17 Act," P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional
18 Low-Level Radioactive Waste Disposal Facility Siting Act," P.L.1987,
19 c.333 (C.13:1E-177 et seq.), or any other law or regulation by which
20 the State may compel a person to perform remediation activities on
21 contaminated property. However, nothing in this subsection shall be
22 construed to limit the authority of the department to establish
23 discharge limits for pollutants or to prescribe penalties for violations
24 of those limits pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), or to
25 require the complete removal of nonhazardous solid waste pursuant to
26 law.

27 f. (1) A person performing a remediation of contaminated real
28 property, in lieu of using the established minimum surface soil
29 remediation standard for either residential use or nonresidential use or
30 a subsurface soil remediation standard adopted by the department
31 pursuant to subsection c. of this section, may submit to the department
32 a request to use an alternative residential use or nonresidential use
33 surface soil remediation standard or an alternative subsurface soil
34 remediation standard. The use of an alternative surface or subsurface
35 soil remediation standard shall be based upon site specific factors
36 which may include (1) physical site characteristics which may vary
37 from those used by the department in the development of the surface
38 or subsurface soil remediation standards adopted pursuant to this
39 section; or (2) a site specific risk assessment. If a person performing
40 a remediation requests to use an alternative surface or subsurface soil
41 remediation standard based upon a site specific risk assessment, that
42 person shall demonstrate to the department that the requested
43 deviation from the risk assessment protocol used by the department in
44 the development of surface or subsurface soil remediation standards
45 pursuant to this section is consistent with the guidance and regulations
46 for exposure assessment developed by the United States

1 Environmental Protection Agency pursuant to the "Comprehensive
2 Environmental Response, Compensation, and Liability Act of 1980,"
3 42 U.S.C. §9601 et seq. and other statutory authorities as applicable.
4 A site specific risk assessment may consider exposure scenarios and
5 assumptions that take into account the form of the contaminant
6 present, natural biodegradation, fate and transport of the contaminant,
7 and available toxicological data that are based upon generally accepted
8 and peer reviewed scientific evidence or methodologies.

9 Upon a determination by the department that the requested
10 alternative remediation standard is protective of public health and
11 safety, as established in subsection d. of this section, and protective of
12 the environment pursuant to subsection a. of this section, the
13 alternative residential use or nonresidential use surface or subsurface
14 soil remediation standard shall be approved by the department.

15 (2) The department may, upon its own initiative, require an
16 alternative remediation standard for a particular contaminant for a
17 specific real property site, in lieu of using the established minimum
18 residential use or nonresidential use surface soil remediation standard
19 or the subsurface soil remediation standard adopted by the department
20 for a particular contaminant pursuant to this section. The department
21 may require an alternative remediation standard pursuant to this
22 paragraph upon a determination by the department, based on the
23 weight of the scientific evidence, that due to specific physical site
24 characteristics of the subject real property, the use of the adopted
25 residential use or nonresidential use surface soil remediation standards
26 or the subsurface soil remediation standard would not be protective of
27 public health or safety or of the environment, as appropriate.

28 g. The development, selection, and implementation of any
29 remediation standard or remedial action shall ensure that it is
30 protective of public health, safety, and the environment, as applicable,
31 as provided in this section. In determining the appropriate remedial
32 action that shall occur at a site in order to meet the established
33 remediation standards, the department, or any person performing the
34 remediation, shall base its decision on the following factors:

35 (1) Permanent and nonpermanent [remedies] remedial actions shall
36 be allowed except that permanent remedies shall be preferred over
37 nonpermanent remedies for remedial actions;

38 (2) Contamination may, upon the department's approval, be left
39 onsite at levels or concentrations that exceed the minimum surface soil
40 remediation standards for residential use or nonresidential use if the
41 implementation of institutional or engineering controls at that site will
42 result in the protection of public health, safety and the environment at
43 the health risk level established in subsection d. of this section and if
44 the requirements established in subsections a., b., c. and d. of section
45 36 of P.L.1993, c.139 (C.58:10B-13) are met;

46 (3) Real property on which there is surface soil that has not been

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

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

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

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

32 (7) The technical performance, effectiveness and reliability of the
33 proposed remedial action in attaining and maintaining compliance with
34 applicable remediation standards and required health risk levels. In
35 reviewing a proposed remedial action, the department shall also
36 consider the ability of the owner or operator to implement the
37 proposed remedial action within a reasonable time frame without
38 jeopardizing public health, safety or the environment;

39 (8) In the case of a proposed remedial action that will not meet the
40 established [minimum residential use] permanent soil remediation
41 standards, the cost of all available permanent remedies is unreasonable,
42 as determined by department rules designed to provide a cost-based
43 preference for the use of permanent remedies. The department shall
44 adopt regulations, no later than 18 months after the effective date of
45 this act, establishing criteria and procedures for allowing a person to
46 demonstrate that the cost of all available permanent remedies is

1 unreasonable. Until the department adopts those regulations, it shall
2 not require a person performing a remedial action to implement a
3 permanent remedy, unless the cost of implementing a nonpermanent
4 remedy is 50 percent or more than the cost of implementing a
5 permanent remedy [; provided, however, that the preceding provision
6 shall not apply to any owner or operator of an industrial establishment
7 who is implementing a remedial action pursuant to subsection i. of
8 section 4 of P.L.1983, c.330];

9 (9) [The use of the established nonresidential soil remediation
10 standard shall not be unreasonably disapproved by the department]
11 The use of a remedial action for surface soil contamination that is
12 determined by the department to be effective in its guidance document
13 created pursuant to section 38 of P.L.1993, c.139 (C.58:10-14), is
14 presumed to be an appropriate remedial action if it is to be
15 implemented on a site in the manner described by the department in the
16 guidance document and if all of the conditions for remedy selection
17 provided for in this section are met.

18 The department may require the person performing the remediation
19 to supply the information required pursuant to this subsection as is
20 necessary for the department to make a determination.

21 h. (1) The department shall adopt regulations which establish a
22 procedure for a person to demonstrate that a particular parcel of land
23 contains large quantities of historical fill material. Upon a
24 determination by the department that large quantities of historic fill
25 material exist on that parcel of land, there is a rebuttable presumption
26 that the department shall not require any person to remove or treat the
27 fill material in order to comply with a remediation standard. In these
28 areas the department shall establish by regulation the requirement for
29 engineering or institutional controls that are designed to prevent
30 exposure of these contaminants to humans, that allow for the
31 continued use of the property, that are less costly than removal or
32 treatment, which maintain the health risk levels as established in
33 subsection d. of this section, and, as applicable, are protective of the
34 environment. The department may rebut the presumption only upon
35 a finding by the preponderance of the evidence that the use of
36 engineering or institutional controls would not be effective in
37 protecting public health, safety, and the environment. The department
38 may not adopt any rule or regulation that has the effect of shifting the
39 burden of rebutting the presumption. For the purposes of this
40 paragraph "historic fill material" means generally large volumes of
41 non-indigenous material, no matter what date they were emplaced on
42 the site, used to raise the topographic elevation of a site, which were
43 contaminated prior to emplacement and are in no way connected with
44 the operations at the location of emplacement and which include, but
45 are not limited to, construction debris, dredge spoils, incinerator
46 residue, demolition debris, fly ash, and non-hazardous solid waste.

1 Historic fill material shall not include any material which is
2 substantially chromate chemical production waste or any other
3 chemical production waste or waste from processing of metal or
4 mineral ores, residues, slags or tailings.

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

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

24 i. The department may not require a remedial action workplan to
25 be prepared or implemented or engineering or institutional controls to
26 be imposed upon any real property unless sampling performed at that
27 real property demonstrates the existence of contamination above the
28 applicable remediation standards.

29 j. Upon the approval by the department of a remedial action
30 workplan, or similar plan that describes the extent of contamination at
31 a site and the remedial action to be implemented to address that
32 contamination, the department may not subsequently require a change
33 to that workplan or similar plan in order to compel a different
34 remediation standard due to the fact that the established remediation
35 standards have changed; however, the department may compel a
36 different remediation standard if the difference between the new
37 remediation standard and the remediation standard approved in the
38 workplan or other plan differs by an order of magnitude. The
39 limitation to the department's authority to change a workplan or
40 similar plan pursuant to this subsection shall only apply if the workplan
41 or similar plan is being implemented in a reasonable timeframe, as may
42 be indicated in the approved remedial action workplan or similar plan.

43 k. Notwithstanding any other provisions of this section, all
44 remediation standards and remedial actions that involve real property
45 located in the Pinelands area shall be consistent with the provisions of
46 the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.),

1 any rules and regulations promulgated pursuant thereto, and with
2 section 502 of the National Parks and Recreation Act of 1978, 16
3 U.S.C. §4711.

4 1. Upon the adoption of a remediation standard for a particular
5 contaminant in surface or subsurface soil, groundwater, or surface
6 water pursuant to this section, the department may amend that
7 remediation standard only upon a finding that a new standard is
8 necessary to maintain the health risk levels established in subsection d.
9 of section 35 of P.L.1993, c.139 (C.58:10B-12) or to protect the
10 environment, as applicable. The department may not amend a public
11 health based surface soil remediation standard to a level that would
12 result in a health risk level more protective than that provided for in
13 subsection d. of section 35 of P.L.1993, c.139 (C.58:10B-12).

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

19

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

22 36. a. When real property is remediated to a nonresidential surface
23 soil remediation standard or engineering or institutional controls are
24 used in lieu of remediating a site to meet an established remediation
25 standard for surface or subsurface soil, groundwater, or surface water,
26 the department shall, as a condition of the use of that standard or
27 control measure:

28 (1) require the establishment of any engineering or institutional
29 controls the department determines are reasonably necessary to
30 prevent exposure to the contaminants, require maintenance, as
31 necessary, of those controls, and require the restriction of the use of
32 the property in a manner that prevents exposure;

33 (2) require, with the consent of the owner of the real property, the
34 recording with the office of the county recording officer, in the county
35 in which the property is located, a notice to inform prospective holders
36 of an interest in the property that contamination exists on the property
37 at a level that may statutorily restrict certain uses of or access to all or
38 part of that property, a delineation of those restrictions, a description
39 of all specific engineering or institutional controls at the property that
40 exist and that shall be maintained in order to prevent exposure to
41 contaminants remaining on the property, and the written consent to the
42 notice by the owner of the property. The notice shall be recorded in
43 the same manner as are deeds and other interests in real property;

44 (3) require a notice to the governing body of each municipality in
45 which the property is located that contaminants will exist at the
46 property above residential use soil remediation standards or any other

1 remediation standards and specifying the restrictions on the use of or
2 access to all or part of that property and of the specific engineering or
3 institutional controls at the property that exist and that shall be
4 maintained;

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

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

12 (6) require a person, prior to commencing a remedial action, to
13 notify the governing body of each municipality wherein the property
14 being remediated is located. The notice shall include, but not be
15 limited to, the commencement date for the remedial action; the name,
16 mailing address and business telephone number of the person
17 implementing the remedial action, or his designated representative; and
18 a brief description of the remedial action.

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

23 c. Whenever engineering or institutional controls on property as
24 provided in subsection a. of this section are no longer required, or
25 whenever the engineering or institutional controls are changed because
26 of the performance of subsequent remedial activities, a change in
27 conditions at the site, or the adoption of revised remediation
28 standards, the department shall require that the owner or operator of
29 that property record with the office of the county recording officer a
30 notice that the use of the property is no longer restricted or delineating
31 the new restrictions. The department shall also require that the owner
32 or operator notify, in writing, the municipality in which the property
33 is located of the removal or change of the restrictive use conditions.

34 d. The owner or lessee of any real property, or any person
35 operating a business on real property, which has been remediated to
36 a nonresidential use surface soil remediation standard or on which the
37 department has allowed engineering or institutional controls for
38 surface or subsurface soil, groundwater, or surface water to protect
39 the public health, safety, or the environment, as applicable, shall
40 maintain the engineering or institutional controls as required by the
41 department. An owner, lessee, or operator who takes any action that
42 results in the improper alteration or removal of engineering or
43 institutional controls or who fails to maintain the engineering or
44 institutional controls as required by the department, shall be subject to
45 the penalties and actions set forth in section 22 of P.L.1976, c.141
46 (C.58:10-23.11u) and, where applicable, shall be liable for any

1 additional remediation and damages pursuant to the provisions of
2 section 8 of P.L.1976, c.141 (C.58:10-23.11g). The provisions of this
3 subsection shall not apply if a notification received pursuant to
4 subsection b. of this section authorizes all restrictions or controls to
5 be removed from the subject property.

6 e. Notwithstanding the provisions of any other law, or any rule,
7 regulation, or order adopted pursuant thereto to the contrary,
8 whenever contamination at a property is remediated in compliance
9 with any surface or subsurface soil, or any groundwater [,] or surface
10 water remediation standards that were in effect or approved by the
11 department at the completion of the remediation, [the owner or
12 operator of the property or person performing the remediation] no
13 person, except as otherwise provided in this section, shall [not] be
14 liable for the cost of any additional remediation that may be required
15 by a subsequent adoption by the department of a more stringent
16 remediation standard for a particular contaminant. Upon the adoption
17 of a regulation that amends a remediation standard, only a person who
18 is liable to clean up and remove that contamination pursuant to section
19 8 of P.L.1976, c.141 (C.58:10-23.11g) shall be liable for any
20 additional remediation costs necessary to bring the site into
21 compliance with the new remediation standards except that no person
22 shall be so liable unless the difference between the new remediation
23 standard and the level or concentration of a contaminant at the
24 property differs by an order of magnitude.

25 Nothing in the provisions of this subsection shall be construed to
26 affect the authority of the department, pursuant to subsection f. of this
27 section, to require additional remediation on real property where
28 engineering or institutional controls were implemented.

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

33 f. Whenever the department approves or has approved the use of
34 engineering or institutional controls for the remediation of surface or
35 subsurface soil, groundwater, or surface water, to protect public
36 health, safety or the environment in lieu of remediating a site to a
37 condition that meets an established residential remediation standard,
38 the department shall not require additional remediation of that site
39 unless the engineering or institutional controls no longer are protective
40 of public health, safety, or the environment.

41 g. Whenever the department approves or has approved the use of
42 engineering or institutional controls for the remediation of surface or
43 subsurface soil, groundwater, or surface water, to protect public
44 health, safety or the environment, the department shall inspect that site
45 at least once every five years in order to ensure that the engineering
46 and institutional controls are being properly maintained and that the

1 controls remain protective of public health and safety and of the
2 environment.

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

4

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

7 38. Within 12 months of the effective date of this act, the
8 department shall develop a guidance document for the remediation of
9 contaminated surface soils. The guidance document shall include a
10 description of remedial actions the department determines are effective
11 in remediating surface soil contamination to the residential or
12 nonresidential use soil remediation standards and that should be
13 considered by a person performing a soil remediation. The department
14 shall revise the guidance document periodically as it determines
15 necessary. Adoption of the guidance document, or the revisions
16 thereto, shall be published in the New Jersey Register but the adoption
17 of the guidance document, or the revisions thereto, shall not otherwise
18 be subject to the notice, comment, publication, or other requirements
19 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
20 et seq.).

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

22

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

24 37. a. There is established, in but not of the Department of
25 Environmental Protection [and Energy], an Environment Advisory
26 Task Force. The Task Force shall consist of 15 members as follows:
27 (1) the Commissioner of Environmental Protection [and Energy], or
28 his designee; (2) one representative from the National Academy of
29 Sciences who shall be selected by the Academy; (3) one representative
30 from the New Jersey Environmental and Occupational Health Sciences
31 Institute who has experience in risk assessment, who shall be selected
32 by the Institute; (4) one representative each from the industrial real
33 estate development industry, the environmental consulting profession,
34 a public interest environmental organization, and the legal community
35 [, who shall be appointed by the Governor with the advice and consent
36 of the Senate]; (5) four members who shall have at least a master's
37 degree in a relevant science discipline and who shall, to the greatest
38 extent possible, include a plant or animal biologist, a toxicologist, an
39 ornithologist, and a physiologist [, who shall be appointed by the
40 Governor with the advice and consent of the Senate]; (6) two
41 members who shall have at least a master's degree in a science
42 discipline, have relevant experience, and be employed by an industrial
43 business [, who shall be appointed by the President of the Senate]; and
44 (7) two members who shall have at least a master's degree in a science
45 discipline, have relevant experience, and be employed by an industrial
46 business [, who shall be appointed by the Speaker of the General

1 Assembly]. The members from categories (4) through (7), inclusive,
2 shall be appointed jointly by the President of the Senate and the
3 Speaker of the General Assembly.

4 b. The Environment Advisory Task Force shall meet as soon as
5 practicable after the appointment and qualification of all its members.
6 The Commissioner of Environmental Protection, or the commissioner's
7 designee, shall be the chairperson of the Environment Advisory Task
8 Force. The Environment Advisory Task Force shall meet at the call
9 of its chairperson and in the locations the chairperson shall choose.

10 c. The Environment Advisory Task Force shall, within two years
11 after its first meeting, make recommendations to the department on the
12 feasibility, development, and application of remediation standards
13 protective of the environment. A copy of the recommendations shall
14 be submitted to the Senate Environment Committee and to the
15 Assembly [Energy and Hazardous Waste] Agriculture and Waste
16 Management Committee, or to their successors.

17 d. The Environment Advisory Task Force shall:

18 (1) review the scientific literature to identify existing sources of
19 information and data necessary for the development of remediation
20 standards protective of the environment and to determine the current
21 state-of-the-science in the identification of adverse impacts of
22 contamination on ecological receptors and the establishment of
23 contaminant concentration levels necessary to protect the environment;

24 (2) review scientific literature on the methods, procedures, data
25 input needs, limitations, interpretation, and uses of environment risk
26 assessments;

27 (3) collect information on public and private activities concerning
28 the development and uses of environment risk assessments and
29 remediation standards protective of the environment;

30 (4) evaluate the ecological components which should be protected
31 through the application of remediation standards protective of the
32 environment;

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

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

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

40 (8) recommend necessary changes in statutes and regulations
41 necessary to implement the advice of the Environment Advisory Task
42 Force; and

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

46 e. Prior to the submittal of its recommendations to the department,

1 the Environment Advisory Task Force shall release a proposed
2 recommendation to the public. The Environment Advisory Task Force
3 shall hold at least one public meeting at least 14 days after public
4 release of its proposed recommendations. Members of the public shall
5 be allowed to present written and oral comments on the proposed
6 recommendations at the public meeting. The task force is not required
7 to record, consider, or comment upon the public comments. Upon
8 submittal of its final recommendations to the department concerning
9 the adoption of remediation standards protective of the environment,
10 the Environment Advisory Task Force shall expire.

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

12

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

15 2. The Legislature finds and declares: that New Jersey's lands and
16 waters constitute a unique and delicately balanced resource; that the
17 protection and preservation of these lands and waters promote the
18 health, safety and welfare of the people of this State; that the tourist
19 and recreation industry dependent on clean waters and beaches is vital
20 to the economy of this State; that the State is the trustee, for the
21 benefit of its citizens, of all natural resources within its jurisdiction;
22 and that the storage and transfer of petroleum products and other
23 hazardous substances between vessels, between facilities and vessels,
24 and between facilities, whether onshore or offshore, is a hazardous
25 undertaking and imposes risk of damage to persons and property
26 within this State.

27 The Legislature finds and declares that the discharge of petroleum
28 products and other hazardous substances within or outside the
29 jurisdiction of this State constitutes a threat to the economy and
30 environment of this State. The Legislature intends by the passage of
31 this act to exercise the powers of this State to control the transfer and
32 storage of hazardous substances and to provide liability for damage
33 sustained within this State as a result of any discharge of said
34 substances, by requiring the prompt containment and removal of such
35 pollution and substances, and to provide a fund for swift and adequate
36 compensation to resort businesses and other persons damaged by such
37 discharges, and to provide for the defense and indemnification of
38 certain persons under contract with the State for claims or actions
39 resulting from the provision of services or work to mitigate or clean
40 up a release or discharge of hazardous substances.

41 The Legislature further finds and declares that many former
42 industrial sites in the State remain vacant or underutilized in part
43 because they have been contaminated by a discharge of a hazardous
44 substance; that these properties constitute an economic drain on the
45 State and the municipalities in which they exist; that it is in the public
46 interest to have these properties cleaned up to a level that they can be

1 safely be returned to productive use; and that it should be a function
2 of the Department of Environmental Protection to facilitate and
3 coordinate activities and functions designed to remediate contaminated
4 sites in this State.

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

6

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

9 3. Unless the context clearly indicates otherwise, the following
10 terms shall have the following meanings:

11 "Act of God" means an act exclusively occasioned by an
12 unanticipated, grave natural disaster without the interference of any
13 human agency;

14 "Administrator" means the chief executive of the New Jersey Spill
15 Compensation Fund;

16 "Barrel" means 42 United States gallons or 159.09 liters or an
17 appropriate equivalent measure set by the director for hazardous
18 substances which are other than fluid or which are not commonly
19 measured by the barrel;

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

22 "Cleanup and removal costs" means all costs associated with a
23 discharge, incurred by the State or its political subdivisions or their
24 agents or any person with written approval from the department in the:
25 (1) removal or attempted removal of hazardous substances, or (2)
26 taking of reasonable measures to prevent or mitigate damage to the
27 public health, safety, or welfare, including, but not limited to, public
28 and private property, shorelines, beaches, surface waters, water
29 columns and bottom sediments, soils and other affected property,
30 including wildlife and other natural resources, and shall include costs
31 incurred by the State for the indemnification and legal defense of
32 contractors pursuant to sections 1 through 11 of P.L.1991, c.373
33 (C.58:10-23.11f8 et seq.) For the purposes of this definition, costs
34 incurred by the State shall not include any indirect costs or fringe
35 benefit costs but may include only those program costs directly related
36 to the cleanup and removal of the discharge;

37 "Commissioner" means the Commissioner of Environmental
38 Protection;

39 "Department" means the Department of Environmental Protection;

40 "Director" means the Director of the Division of Taxation in the
41 Department of the Treasury;

42 "Discharge" means any intentional or unintentional action or
43 omission resulting in the releasing, spilling, leaking, pumping, pouring,
44 emitting, emptying or dumping of hazardous substances into the
45 waters or onto the lands of the State, or into waters outside the
46 jurisdiction of the State when damage may result to the lands, waters

1 or natural resources within the jurisdiction of the State;

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

6 "Fair market value" means the invoice price of the hazardous
7 substances transferred, including transportation charges; but where no
8 price is so fixed, "fair market value" shall mean the market price as of
9 the close of the nearest day to the transfer, paid for similar hazardous
10 substances, as shall be determined by the taxpayer pursuant to rules of
11 the director;

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

13 "Hazardous substances" means the "environmental hazardous
14 substances" on the environmental hazardous substance list adopted by
15 the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4);
16 such elements and compounds, including petroleum products, which
17 are defined as such by the department, after public hearing, and which
18 shall be consistent to the maximum extent possible with, and which
19 shall include, the list of hazardous substances adopted by the federal
20 Environmental Protection Agency pursuant to section 311 of the
21 federal Water Pollution Control Act Amendments of 1972,
22 Pub.L.92-500, as amended by the Clean Water Act of 1977,
23 Pub.L.95-217 (33 U.S.C. §1251 et seq.); the list of toxic pollutants
24 designated by Congress or the EPA pursuant to section 307 of that
25 act; and the list of hazardous substances adopted by the federal
26 Environmental Protection Agency pursuant to section 101 of the
27 "Comprehensive Environmental Response, Compensation and Liability
28 Act of 1980," Pub.L.96-510 (42 U.S.C. §9601 et seq.); provided,
29 however, that sewage and sewage sludge shall not be considered as
30 hazardous substances for the purposes of P.L.1976, c.141
31 (C.58:10-23.11 et seq.);

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

35 "Major facility" includes, but is not limited to, any refinery, storage
36 or transfer terminal, pipeline, deep-water port, drilling platform or any
37 appurtenance related to any of the preceding that is used or is capable
38 of being used to refine, produce, store, handle, transfer, process or
39 transport hazardous substances. "Major facility" shall include a vessel
40 only when that vessel is engaged in a transfer of hazardous substances
41 between it and another vessel, and in any event shall not include a
42 vessel used solely for activities directly related to recovering,
43 containing, cleaning up or removing discharges of petroleum in the
44 surface waters of the State, including training, research, and other
45 activities directly related to spill response.

46 A facility shall not be considered a major facility for the purpose of

1 P.L.1976, c.141 unless it has total combined aboveground or buried
2 storage capacity of:

3 (1) 20,000 gallons or more for hazardous substances which are
4 other than petroleum or petroleum products, or

5 (2) 200,000 gallons or more for hazardous substances of all kinds.

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

11 For the purposes of this definition, "storage capacity" shall mean
12 only that total combined capacity which is dedicated to, used for or
13 intended to be used for storage of hazardous substances of all kinds.
14 Where appropriate to the nature of the facility, storage capacity may
15 be determined by the intended or actual use of open land or
16 unenclosed space as well as by the capacities of tanks or other
17 enclosed storage spaces;

18 "Natural resources" means all land, fish, shellfish, wildlife, biota,
19 air, waters and other such resources owned, managed, held in trust or
20 otherwise controlled by the State;

21 "Owner" or "operator" means, with respect to a vessel, any person
22 owning, operating or chartering by demise such vessel; with respect to
23 any major facility, any person owning such facility, or operating it by
24 lease, contract or other form of agreement; with respect to abandoned
25 or derelict major facilities, the person who owned or operated such
26 facility immediately prior to such abandonment, or the owner at the
27 time of discharge;

28 "Person" means public or private corporations, companies,
29 associations, societies, firms, partnerships, joint stock companies,
30 individuals, the United States, the State of New Jersey and any of its
31 political subdivisions or agents;

32 "Petroleum" or "petroleum products" means oil or petroleum of any
33 kind and in any form, including, but not limited to, oil, petroleum,
34 gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other
35 wastes, crude oils, and substances or additives to be utilized in the
36 refining or blending of crude petroleum or petroleum stock in this
37 State; however, any compound designated by specific chemical name
38 on the list of hazardous substances adopted by the department
39 pursuant to this section shall not be considered petroleum or a
40 petroleum product for the purposes of P.L.1976, c.141, unless such
41 compound is to be utilized in the refining or blending of crude
42 petroleum or petroleum stock in this State;

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

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

1 "Transfer" means unloading or offloading between major facilities
2 and vessels, or vessels and major facilities, and from vessel to vessel
3 or major facility to major facility, except for fueling or refueling
4 operations and except that with regard to the movement of hazardous
5 substances other than petroleum, it shall also include any unloading of
6 or offloading from a major facility;

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

11 "Waters" means the ocean and its estuaries to the seaward limit of
12 the State's jurisdiction, all springs, streams and bodies of surface or
13 groundwater, whether natural or artificial, within the boundaries of
14 this State.

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

16

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

19 7. a. (1) Whenever any hazardous substance is discharged, the
20 department may, in its discretion, act to clean up and remove or
21 arrange for the cleanup and removal of such discharge or may direct
22 the discharger to clean up and remove, or arrange for the cleanup and
23 removal of, such discharge. If the discharge occurs at any hazardous
24 or solid waste disposal facility, the department may order the facility
25 closed for the duration of the cleanup and removal operations. The
26 department may monitor the discharger's compliance with any such
27 directive. Any discharger who fails to comply with such a directive
28 shall be liable to the department in an amount equal to three times the
29 cost of such cleanup and removal, and shall be subject to the
30 revocation or suspension of any license or permit he holds authorizing
31 him to operate a hazardous or solid waste disposal facility.

32 (2) Whenever one or more dischargers or persons cleans up and
33 removes a discharge of a hazardous substance, those dischargers and
34 persons shall have a right of contribution against all other dischargers
35 and persons in any way responsible for a discharged hazardous
36 substance who are liable for the cost of the cleanup and removal of
37 that discharge of a hazardous substance. In an action for contribution,
38 the contribution plaintiffs need prove only that a discharge occurred
39 for which the contribution defendant or defendants are liable pursuant
40 to the provisions of subsection c. of section 8 of P.L.1976, c.141
41 (C.58:10-23.11g), and the contribution defendant shall have only the
42 defenses to liability available to parties pursuant to subsection d. of
43 section 8 of P.L.1976, c.141 (C.58:10-23.11g). A letter of no
44 association received from the department pursuant to section 28 of
45 P.L. , c. (C.)(now before the Legislature as this bill) is prima facie
46 evidence that a person has a defense to a contribution claim pursuant

1 to this section. In resolving contribution claims, a court may allocate
2 the costs of cleanup and removal among liable parties using such
3 equitable factors as the court determines are appropriate.

4 (3) The department may, in its sole discretion, when it will
5 expedite the cleanup and removal of any discharged hazardous
6 substance, and when the department determines that it is in the public
7 interest, authorize parties who have entered into an agreement with the
8 department to clean up and remove or arrange for the cleanup and
9 removal of a hazardous substance and who seek contribution, to
10 collect treble damages from any contribution defendant who has failed
11 or refused to comply with any directive issued by the Department of
12 Environmental Protection, was named on the directive, and who is
13 subject to contribution pursuant to this subsection. The treble
14 damages shall be based on the amount of contribution owed by a
15 contribution defendant, which share of contribution shall be
16 determined by the court. A contribution defendant from whom treble
17 damages is sought in a contribution action shall not be assessed treble
18 damages by any court where the contribution defendant, for good
19 cause shown, failed or refused to enter the settlement agreement with
20 the department or with the contribution [plaintiffs] plaintiffs or where
21 principles of fundamental fairness will be violated. One third of an
22 award of treble damages in a contribution action pursuant to this
23 paragraph shall be paid to the department, which sum shall be
24 deposited in the New Jersey Spill Compensation Fund. The other two
25 thirds of the treble damages award shall be shared by the contribution
26 plaintiffs in the proportion of the responsibility for the cost of the
27 cleanup and removal that the contribution plaintiffs have agreed to
28 with the department or in an amount as has been agreed to by those
29 parties. Nothing in this subsection affects the rights of any party to
30 seek contribution pursuant to any other statute or under common law.

31 Cleanup and removal of hazardous substances and actions to
32 minimize damage from discharges shall, to the greatest extent possible,
33 be in accordance with the National Contingency Plan for cleanup and
34 removal of oil and hazardous substances established pursuant to
35 section 311(c)(2) of the federal Water Pollution Control Act
36 Amendments of 1972 (Pub.L.92-500, 33 U.S.C. §1251 et seq.).
37 Whenever the department acts to clean up and remove a discharge or
38 contracts to secure prospective cleanup and removal services, it is
39 authorized to draw upon the money available in the fund. Such money
40 shall be used to pay promptly for all cleanup and removal costs
41 incurred by the department in cleaning up, in removing or in
42 minimizing damage caused by such discharge.

43 Nothing in this section is intended to preclude removal and cleanup
44 operations by any person threatened by such discharges, provided such
45 persons coordinate and obtain approval for such actions with ongoing
46 State or federal operations. No action taken by any person to contain

1 or clean up and remove a discharge shall be construed as an admission
2 of liability for said discharge. No person who renders assistance in
3 containing or cleaning up and removing a discharge shall be liable for
4 any civil damages to third parties resulting solely from acts or
5 omissions of such person in rendering such assistance, except for acts
6 or omissions of gross negligence or willful misconduct. In the course
7 of cleanup or removal operations, no person shall discharge any
8 detergent into the waters of this State without prior authorization of
9 the commissioner.

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

16 (1) Has not been discharged from a grounded or disabled vessel,
17 if the department determines that such cleanup and removal is
18 necessary to prevent an imminent discharge of such hazardous
19 substance; or

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

23 (a) Explosiveness;

24 (b) High flammability;

25 (c) Radioactivity;

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

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

35 (f) High toxicity and is stored or being transported in a container
36 or motor vehicle, truck, rail car or other mechanized conveyance from
37 which its discharge is imminent as a result of the significant
38 deterioration or the precarious location of the container, motor
39 vehicle, truck, rail car or other mechanized conveyance, and such
40 discharge would create a substantial risk of imminent damage to public
41 health or safety or imminent and severe damage to the environment;
42 or

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

45 c. If and to the extent that [he] the administrator determines that
46 funds are available, the administrator shall approve and make payments

1 for any cleanup and removal costs incurred by the department for the
2 cleanup and removal of a hazardous substance other than petroleum
3 as authorized by subsection b. of this section; provided that in
4 determining the availability of funds, the administrator shall not
5 include as available funds revenues realized or to be realized from the
6 tax on the transfer of petroleum, to the extent that such revenues
7 result from a tax levied at a rate in excess of \$0.01 per barrel, pursuant
8 to subsection b. of section 9 of P.L.1976, c.141 (C.58:10-23.11h),
9 unless the administrator determines that the sum of claims paid by the
10 fund on behalf of petroleum discharges or cleanup and removals plus
11 pending reasonable claims against the fund on behalf of petroleum
12 discharges or cleanup and removals is greater than 30% of the sum of
13 all claims paid by the fund plus all pending reasonable claims against
14 the fund.

15 d. The administrator may only approve and make payments for any
16 cleanup and removal costs incurred by the department for the cleanup
17 and removal of a hazardous substance discharged prior to the effective
18 date of P.L.1976, c.141, pursuant to subsection b. of this section, if,
19 and to the extent that, he determines that adequate funds from another
20 source are not or will not be available; and provided further, with
21 regard to the cleanup and removal costs incurred for discharges which
22 occurred prior to the effective date of P.L.1976, c.141, the
23 administrator may not during any one-year period pay more than
24 \$18,000,000 in total or more than \$3,000,000 for any discharge or
25 related set or series of discharges.

26 e. Notwithstanding any other provisions of P.L.1976, c.141, the
27 administrator, after considering, among any other relevant factors, the
28 department's priorities for spending funds pursuant to P.L.1976, c.141,
29 and within the limits of available funds, shall make payments for the
30 restoration or replacement of, or connection to an alternative water
31 supply for, any private residential well destroyed, contaminated, or
32 impaired as a result of a discharge prior to the effective date of
33 P.L.1976, c.141; provided, however, total payments for said purpose
34 shall not exceed \$500,000 for the period between the effective date of
35 this subsection e. and January 1, 1983, and in any calendar year
36 thereafter.

37 f. Any expenditures made by the administrator pursuant to this act
38 shall constitute, in each instance, a debt of the discharger to the fund.
39 The debt shall constitute a lien on all property owned by the discharger
40 when a notice of lien, incorporating a description of the property of
41 the discharger subject to the cleanup and removal and an identification
42 of the amount of cleanup, removal and related costs expended from
43 the fund, is duly filed with the clerk of the Superior Court. The clerk
44 shall promptly enter upon the civil judgment or order docket the name
45 and address of the discharger and the amount of the lien as set forth
46 in the notice of lien. Upon entry by the clerk, the lien, to the amount

1 committed by the administrator for cleanup and removal, shall attach
2 to the revenues and all real and personal property of the discharger,
3 whether or not the discharger is insolvent. The notice of lien filed
4 pursuant to this subsection which affects the property of a discharger
5 subject to the cleanup and removal of a discharge shall create a lien
6 with priority over all other claims or liens which are or have been filed
7 against the property, except if the property comprises six dwelling
8 units or less and is used exclusively for residential purposes, this notice
9 of lien shall not affect any valid lien, right or interest in the property
10 filed in accordance with established procedure prior to the filing of this
11 notice of lien. The notice of lien filed pursuant to this subsection
12 which affects any property of a discharger, other than the property
13 subject to the cleanup and removal, shall have priority from the day of
14 the filing of the notice of the lien over all other claims and liens filed
15 against the property, but shall not affect any valid lien, right, or
16 interest in the property filed in accordance with established procedure
17 prior to the filing of a notice of lien pursuant to this subsection.

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

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

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

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

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

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

40

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

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

46 (1) The cost of restoring, repairing, or replacing any real or

1 personal property damaged or destroyed by a discharge, any income
2 lost from the time such property is damaged to the time such property
3 is restored, repaired or replaced, and any reduction in value of such
4 property caused by such discharge by comparison with its value prior
5 thereto;

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

8 (3) Loss of income or impairment of earning capacity due to
9 damage to real or personal property, including natural resources
10 destroyed or damaged by a discharge; provided that such loss or
11 impairment exceeds 10% of the amount which claimant derives, based
12 upon income or business records, exclusive of other sources of
13 income, from activities related to the particular real or personal
14 property or natural resources damaged or destroyed by such discharge
15 during the week, month or year for which the claim is filed;

16 (4) Loss of tax revenue by the State or local governments for a
17 period of one year due to damage to real or personal property
18 proximately resulting from a discharge;

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

23 b. The damages which may be recovered by the fund, without
24 regard to fault, subject to the defenses enumerated in subsection d. of
25 this section against the owner or operator of a major facility or vessel,
26 shall not exceed \$50,000,000.00 for each major facility or \$150.00 per
27 gross ton for each vessel, except that such maximum limitation shall
28 not apply and the owner or operator shall be liable, jointly and
29 severally, for the full amount of such damages if it can be shown that
30 such discharge was the result of (1) gross negligence or willful
31 misconduct, within the knowledge and privity of the owner, operator
32 or person in charge, or (2) a gross or willful violation of applicable
33 safety, construction or operating standards or regulations. Damages
34 which may be recovered from, or by, any other person shall be limited
35 to those authorized by common or statutory law.

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

44 (2) In addition to the persons liable pursuant to [paragraph (1) of]
45 this subsection, in the case of a discharge of a hazardous substance
46 from a vessel into the waters of the State, the owner or operator of a

1 refinery, storage, transfer, or pipeline facility to which the vessel was
2 en route to deliver the hazardous substance who, by contract,
3 agreement, or otherwise, was scheduled to assume ownership of the
4 discharged hazardous substance, and any other person who was so
5 scheduled to assume ownership of the discharged hazardous substance,
6 shall be strictly liable, jointly and severally, without regard to fault, for
7 all cleanup and removal costs if the owner or operator of the vessel did
8 not have the evidence of financial responsibility required pursuant to
9 section 2 of P.L.1991, c.58 (C.58:10-23.11g2).

10 Where a person is liable for cleanup and removal costs as provided
11 in this paragraph, any expenditures made by the administrator for that
12 cleanup and removal shall constitute a debt of that person to the fund.
13 The debt shall constitute a lien on all property owned by that person
14 when a notice of lien identifying the nature of the discharge and the
15 amount of the cleanup, removal and related costs expended from the
16 fund is duly filed with the clerk of the Superior Court. The clerk shall
17 promptly enter upon the civil judgment or order docket the name and
18 address of the liable person and the amount of the lien as set forth in
19 the notice of lien. Upon entry by the clerk, the lien, to the amount
20 committed by the administrator for cleanup and removal, shall attach
21 to the revenues and all real and personal property of the liable person,
22 whether or not that person is insolvent.

23 For the purpose of determining priority of this lien over all other
24 claims or liens which are or have been filed against the property of an
25 owner or operator of a refinery, storage, transfer, or pipeline facility,
26 the lien on the facility to which the discharged hazardous substance
27 was en route shall have priority over all other claims or liens which are
28 or have been filed against the property. The notice of lien filed
29 pursuant to this paragraph which affects any property of a person
30 liable pursuant to this paragraph other than the property of an owner
31 or operator of a refinery, storage, transfer, or pipeline facility to which
32 the discharged hazardous substance was en route, shall have priority
33 from the day of the filing of the notice of the lien over all claims and
34 liens filed against the property, but shall not affect any valid lien, right,
35 or interest in the property filed in accordance with established
36 procedure prior to the filing of a notice of lien pursuant to this
37 paragraph.

38 To the extent that a person liable pursuant to this paragraph is not
39 otherwise liable pursuant to paragraph (1) of this subsection, or under
40 any other provision of law or under common law, that person may
41 bring an action for indemnification for costs paid pursuant to this
42 paragraph against any other person who is strictly liable pursuant to
43 paragraph (1) of this subsection.

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

1 (3) In addition to the persons liable pursuant to this subsection, any
2 person who owns real property acquired on or after September 14,
3 1993 on which there has been a discharge prior to the person's
4 acquisition of that property and who knew or should have known that
5 a hazardous substance had been discharged at the real property, shall
6 be strictly liable, jointly and severally, without regard to fault, for all
7 cleanup and removal costs no matter by whom incurred. Such person
8 shall also be strictly liable, jointly and severally, without regard to
9 fault, for all cleanup and removal costs incurred by the department or
10 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141
11 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter
12 liability of any person who acquired real property prior to September
13 14, 1993.

14 d. (1) In addition to those defenses provided in this subsection, an
15 act or omission caused solely by war, sabotage, or God, or a
16 combination thereof, shall be the only defenses which may be raised by
17 any owner or operator of a major facility or vessel responsible for a
18 discharge in any action arising under the provisions of this act.

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

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

30 (b) (i) at the time the person acquired the real property, the person
31 did not know and had no reason to know that any hazardous substance
32 had been discharged at the real property, [or] (ii) the person acquired
33 the real property by devise or succession, except that any other funds
34 or property received by that person from the deceased real property
35 owner who discharged a hazardous substance or was in any way
36 responsible for a hazardous substance, shall be made available to
37 satisfy the requirements of P.L.1976, c.141, or (iii) the person
38 complies with the provisions of subparagraph (e) of paragraph (2) of
39 this subsection;

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

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

44 To establish that a person had no reason to know that any
45 hazardous substance had been discharged for the purposes of this
46 paragraph (2), the person must have undertaken, at the time of

1 acquisition, all appropriate inquiry into the previous ownership and
2 uses of the property. For the purposes of this paragraph (2), all
3 appropriate inquiry shall mean the performance of a preliminary
4 assessment, and site investigation [(1, if the preliminary assessment
5 indicates that a site investigation is necessary[)], as defined in section
6 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance
7 with rules and regulations promulgated by the department defining
8 these terms.

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

12 (e) For the purposes of this subparagraph the person must have (i)
13 acquired the property subsequent to a contaminant being discharged
14 on the site and which discharge was discovered at the time of
15 acquisition as a result of the appropriate inquiry, as defined in this
16 paragraph (2), (ii) performed a remediation of the site consistent with
17 all remediation standards set forth in section 35 of P.L.1993, c.139
18 (C.58:10B-12) or such a remediation was performed prior to
19 acquisition and a no further action letter was issued, and (iii)
20 established or maintained all engineering and institutional controls as
21 may be required pursuant sections 35 and 36 of P.L.1993, c.139. A
22 person who complies with the provisions of this subparagraph shall be
23 issued a no further action letter by the department and shall not be
24 liable for any changes in a remediation standard or for the subsequent
25 discovery of a contaminant at the site that was discharged prior to the
26 person acquiring the property. Compliance with the provisions of this
27 subparagraph (e) shall not relieve the person of any liability for a
28 discharge that occurs at that property after the person acquires the
29 property, for any actions that person negligently takes that aggravates
30 or contributes to a discharge of a contaminant, or if that person fails
31 to maintain the institutional or engineering controls on the property.

32 (3) Notwithstanding the provisions of paragraph (2) of this
33 subsection to the contrary, if a person who owns real property obtains
34 actual knowledge of a discharge of a hazardous substance at the real
35 property during the period of that person's ownership and
36 subsequently transfers ownership of the property to another person
37 without disclosing that knowledge, the transferor shall be strictly liable
38 for the cleanup and removal costs of the discharge and no defense
39 under this subsection shall be available to that person.

40 (4) Any federal, State, or local governmental entity which acquires
41 ownership of real property through bankruptcy, tax delinquency,
42 abandonment, escheat, eminent domain, condemnation or any
43 circumstance in which the [government] governmental entity
44 involuntarily acquires title by virtue of its function as sovereign, or
45 where the governmental entity acquires the property by any means for
46 the purpose of promoting the redevelopment of that property, shall not

1 be liable for the cleanup and removal costs of any discharge which
2 occurred or began prior to that ownership. This paragraph shall not
3 apply to any federal, State or local governmental entity which has
4 caused or contributed to the discharge of a hazardous substance.

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

23 (2) The fund established pursuant to the "Spill Compensation and
24 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), shall not be
25 liable for any damages incurred by any person who is relieved from
26 liability pursuant to this subsection.]

27 (cf: P.L.1996, c.62, s.56)

28

29 23. (New section) Whenever a person has a defense to liability for
30 cleanup and removal costs pursuant to paragraph (2) of subsection d.
31 of section 8 of P.L.1976, c.141 (C.58:10-23.11g), that person may
32 submit to the Department of Environmental Protection evidence
33 sufficient to prove by a preponderance of the evidence that the defense
34 applies. Upon a finding by the department that the defense applies to
35 that person the department shall issue that person a letter of no
36 association. The letter of no association shall state that upon the
37 evidence submitted to the department, the department finds that the
38 person has met the statutory burden of proving a defense to liability
39 under paragraph (2) of subsection d. of section 8 of P.L.1976, c.141
40 (C.58:10-23.11g) and that person, pursuant to that defense, is not
41 liable for any cleanup and removal costs for any discharged hazardous
42 substances that may be on that real property at the time of the issuance
43 of the letter of no association.

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

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

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

28

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

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

36 a. A property tax exemption term of ten years;

37 b. The application procedure for an exemption authorized under
38 P.L.1995, c.413 (C.54:4-3.150 et seq.);

39 c. The method of computing payments in lieu of real property taxes
40 pursuant to subsection b. of section 7 of P.L.1995, c.413
41 (C.54:4-3.156);

42 d. An approval method for exemption applications by the assessor
43 or by ordinance on a per application basis; and

44 e. A requirement that the environmental opportunity zone will be
45 remediated in compliance with the remediation standards adopted by
46 the Department of Environmental Protection pursuant to P.L.1993,

1 c.139 (C.58:10B-1 et al.), that the owner of the property will enter
2 into a memorandum of agreement or administrative consent order with
3 the department to perform the remediation and will complete the
4 remediation pursuant to the agreement or order, and that, once
5 remediated, the environmental opportunity zone will be used for a
6 commercial [or] industrial, residential, or other productive purpose
7 during the time period for which the real property tax exemption is
8 given.

9 (cf: P.L.1995, c.413, s.5)

10
11 26. This act shall take effect immediately.

12 13 14 STATEMENT

15
16 This bill, the "Brownfields Revitalization and Remediation Act," is
17 intended to remove the last of the barriers to the development of older,
18 contaminated industrial sites. These sites, commonly known as
19 "brownfields," are located in most municipalities although they are
20 predominant in urban and older suburban areas. Because these sites
21 are either vacant or underutilized, their full economic potential is not
22 realized and they remain wasted resources.

23 The remediation and redevelopment of brownfields will promote
24 economic redevelopment, create jobs, protect the public health and
25 environment, and supply needed tax revenue to many distressed urban
26 areas. However, despite the fact that the Legislature enacted a
27 comprehensive reform of the State's site remediation laws in 1993
28 (P.L.1993, c.139), experience in the last three years has shown a need
29 to do even more. This bill addresses the remaining pieces of the
30 brownfield puzzle and should lead to more remediations being
31 performed and to more abandoned properties being brought back into
32 productive use.

33 This bill addresses the four major policy areas concerning
34 brownfield remediation and redevelopment that involve environmental
35 policy. These policy areas are technical, legal liability, financial, and
36 institutional. Of course, many brownfields remain vacant or
37 underutilized because of economic and other factors beyond the
38 control of the State. However, a good many of these brownfield sites
39 can be made economically viable just by the mere elimination of certain
40 legal impediments and by offering some incentives.

41 42 **Technical Policy Issues**

43
44 *Definition change of permanent remedy* - Under existing law a
45 preference is given for remedial actions that involve a residential soil
46 cleanup. This preference may be imposed by the Department of

1 Environmental Protection (DEP) if the cost of a residential remedy is
2 a certain percentage of the cost of a nonpermanent remedy. This bill
3 recognizes that soil remediation standards that meet a nonresidential
4 standard are appropriate and safe for industrial and commercial
5 properties and that there is no reason why a residential soil remedy
6 should be preferred in those instances. The bill thus creates a
7 definition of a permanent remedy, which would still have a preference,
8 that would include both residential and nonresidential soil remediations
9 where appropriate.

10 *Permit by rule* - The bill provides that the DEP should adopt
11 regulations whereby certain minor site remediations may be performed
12 and approved without the need to get preapproval or send extensive
13 documents to the DEP for review.

14 *Presumptive remedies* - The law presently requires the DEP to list
15 certain remedial actions that the DEP deems to be effective. The bill
16 provides that a person can use any of these remedies without needing
17 further departmental approval of that choice.

18 *Innovative technologies* - The bill contains several provisions
19 designed to encourage the use of innovative technologies, including
20 the elimination of the requirement to post financial assurance, the
21 provision of 25% matching grants, expedited review, and other
22 regulatory changes.

23 *Historic fill* - Although the law already contains a provision
24 providing that the presumptive remedy for historic fill is capping,
25 recent regulatory proposals of the DEP may have the effect of
26 negating the intent of the law. The bill provides that no regulation
27 shall have the effect of shifting the burden the presumption places on
28 the DEP and that there is no date before which fill must have been
29 placed on the land in order to be considered "historic".

30 *Environmental Advisory Task Force* - This task force was
31 established by law in 1993 to determine if and how soil site
32 remediation standards should be adopted that are protective of the
33 environment. To date, the members of the task force to be appointed
34 by the Governor have not been selected. The bill would change the
35 Governor's appointments to be legislative appointments and would
36 make it easier for the task force to convene.

37 *Surface and subsurface soil standards* - Under existing regulatory
38 practice no distinction is made between the remediation standards for
39 surface soil and subsurface soil. If a contaminant is in the soil the
40 remediation standard can be based on either its potential impact to
41 groundwater or its health impact if a person is exposed to it. Because
42 many contaminants do not impact groundwater because they do not
43 leach it is questionable if those types of contaminants in the subsurface
44 soil should be remediated based solely upon human exposure criteria.
45 The bill makes a distinction between surface soil (top ten feet) and
46 subsurface soil (below ten feet) so that subsurface soil contamination

1 will only have to be remediated if there is a potential impact to
2 groundwater or surface water.

3

4

Legal Liability

5

6 *Purchaser protection from additional liability* - Earlier this year,
7 the Legislature enacted certain provisions of law to limit the liability
8 of an innocent person who acquires land which was contaminated but
9 is later remediated. That limit on liability, however, only applied to
10 properties in qualified municipalities. This bill expands these
11 protections to all properties in the State. Additionally, the bill expands
12 and clarifies the liability protections of purchasers so that if a
13 purchaser unknowingly acquires contaminated property after
14 performing a proper investigation or knowingly acquires contaminated
15 property and performs the required remediation, the purchaser would
16 not be liable to the State or to any other person, under the Spill Act or
17 under common law, for the discharged contamination even if
18 additional contamination is discovered or if standards change.

19 *Covenants not to sue* - The bill provides that whenever the DEP
20 issues a no further action letter for a remediation it shall also issue a
21 covenant not to sue. The covenant basically spells out the limits on
22 legal liability that exist once a site is remediated. The covenant
23 protects the person performing the remediation from further cleanup
24 liability to the State so long any engineering and institutional controls
25 are maintained. The covenant does not protect the discharger or other
26 liable parties for undiscovered contamination or for changes in the
27 remediation standards by an order of magnitude.

28 *Letters of no association* - A person who can demonstrate to the
29 DEP that he has a defense to liability under the innocent purchaser
30 defenses of the Spill Compensation and Control Act, will be given a
31 letter of no association. The letter will indicate that the person has
32 met the initial burden proving that he is not liable for any
33 contamination on the property. The letter of no association is prima
34 facie evidence that the person is not liable for remediation costs in any
35 contribution action.

36 *Public entity liability* - Although the law generally provides that
37 public entities are not liable for existing contamination on land they
38 acquire through actions such as a tax lien or foreclosure, a public
39 entity may be liable for knowingly and voluntarily acquiring
40 contaminated property, even if for a public purpose such as
41 redevelopment. The bill amends the law to limit public entity liability
42 for contaminated property they acquire by any means.

43

44

Financial Issues

45

46 *Limitation on fees* - The bill provides that cleanup and removal

1 costs under the Spill Compensation and Control Act are not to include
2 administrative indirect and fringe benefit costs. This will have the
3 effect of lowering the fees assessed by the DEP to review a
4 remediation and thus the cost for a person to perform a remediation.
5 Over the past several years the fees for site remediation reviews have
6 increased exponentially as more indirect and unrelated costs are being
7 recouped by the imposition of fees.

8 *Environmental Opportunity Zone Act expansion* - Last session, the
9 Legislature enacted the Environmental Opportunity Zone Act in order
10 to encourage the remediation of contaminated industrial sites by
11 offering limited property tax exemptions. That law only applied to
12 properties that were to be used for industrial or commercial purposes.
13 Because many former contaminated industrial properties are located
14 in areas that no longer make them suitable for industrial or commercial
15 purposes, the bill expands the law so that the properties may also be
16 used for residential or other productive uses.

17 *Hazardous Discharge Site Remediation Fund flexibility* - Under
18 existing law, the Economic Development Authority has limited
19 discretion to move available moneys in the fund from one dedicated
20 category to another. The bill would give the EDA more authority to
21 shift moneys from any category to any other.

22

23

Institutional Issues

24

25 *DEP mission* - The duties of the DEP under the Spill Compensation
26 and Control Act have been broadened to include coordination and
27 facilitating the remediation and redevelopment of brownfields.

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

33

34

35

36

37

38 _____
39 Makes various changes in the law to address technical, liability,
financial, and institutional issues involving site remediation.