

[First Reprint]

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STATE OF NEW JERSEY

ADOPTED JUNE 5, 1997

Sponsored by Senator McNAMARA, Assemblyman BAGGER,
Senators Singer, Ciesla, McGreevey, Assemblyman Garrett,
Senators Baer, MacInnes, Bennett, Cafiero, Littell, Ewing,
Kyrillos, Inverso and Assemblyman Bucco

1 AN ACT concerning the remediation of contaminated sites, revising
2 parts of the statutory law, and making appropriations.

3

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

6

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

11

12 2. (New section) The Legislature finds and declares that due to
13 New Jersey's industrial history, large areas in the State's urban and
14 suburban areas formerly used for commercial and industrial purposes
15 are underused or abandoned; that many of these properties, often
16 referred to as brownfields, are contaminated with hazardous
17 substances and pose a health risk to the nearby residents and a threat
18 to the environment; and that these sites can be a blight to the
19 neighborhood and a financial drain on a municipality because they have
20 no productive use, and fail to generate property taxes and jobs. The
21 Legislature further finds that often there are legal, financial, technical,
22 and institutional impediments to the efficient and cost-effective
23 cleanup of brownfield sites as well as all other contaminated sites

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted June 12, 1997.

1 wherever they may be. The Legislature finds and declares that the
2 State needs to ensure that the public health and safety and the
3 environment are protected from the risks posed by contaminated sites
4 and that strict standards coupled with a risk based and flexible
5 regulatory system will result in more cleanups and thus the elimination
6 of the public's exposure to these hazardous substances and the
7 environmental degradation that contamination causes.

8 The Legislature therefore declares that strict remediation standards
9 are necessary to protect public health and safety and the environment;
10 that these standards should be adopted based upon the risk posed by
11 discharged hazardous substances; that permanent remedies for
12 contaminated sites are preferable and the State must adopt policies
13 that encourage their use; that institutional and engineering controls
14 should be allowed only when the public health risk and environmental
15 protection standards are met; and that in order to encourage the
16 cleanup of contaminated sites, there must be finality in the process, the
17 provision of financial incentives, liability protection for innocent
18 parties who clean up, cleanup procedures that are cost effective and
19 regulatory action that is timely and efficient.

20
21 3. (New section) a. The Department of Environmental Protection
22 shall investigate and determine the extent of contamination of every
23 aquifer in this State. The department shall prioritize its investigations
24 of aquifers giving the highest priority to those aquifers underlying
25 urban or industrial areas that are known or suspected of having large
26 areas of contamination. This information shall be updated periodically
27 as necessary. The information derived from the investigation shall be
28 made available to the public by entering it into the Department of
29 Environmental Protection's existing geographic information system,
30 by making this information available on the system, and by making
31 copies of any maps and data available to the public. The functions
32 required pursuant to this section shall be considered a site remediation
33 obligation of the State. The department may charge a reasonable fee
34 for the reproduction of the maps and data which fee shall reflect the
35 cost of their reproduction.

36 b. Upon completion of an investigation of an aquifer by the
37 department and upon the department's determination of the extent of
38 contamination of an aquifer, a person performing a remediation may
39 rely upon that information for that person's submission of information
40 to the department in the performance of a remediation.

41 c. The entire cost of the investigation required pursuant to this
42 section shall be borne by the department from appropriations made to
43 it by the Legislature specifically for this purpose. The department may
44 not fund any part of this investigation by the imposition of a fee or
45 charge on any person performing a remediation or upon any person
46 who is in need of a permit or approval from the department.

1 d. Nothing in this section shall be construed to require or obligate
2 the department to reclassify the groundwater of any aquifer.

3
4 4. (New section) a. The Department of Environmental Protection
5 shall investigate and map those areas of the State at which large areas
6 of historic fill exist. The department shall prioritize its investigations
7 of historic fill areas giving highest priority to those areas of the State
8 that are known or suspected to contain historic fill. This information
9 shall be updated periodically as necessary. The information derived
10 from the investigation shall be made available to the public by entering
11 it into the Department of Environmental Protection's existing
12 geographic information system, by making this information available
13 on the system, and by making copies of any maps and data available to
14 the public. The functions required pursuant to this section shall be
15 considered a site remediation obligation of the State. The department
16 may charge a reasonable fee for the reproduction of the maps and data
17 which fee shall reflect the cost of their reproduction.

18 b. Upon completion of an investigation of an area of historic fill
19 by the department and upon the department's determination of the
20 location of historic fill in an area, a person performing a remediation
21 may rely upon that information for that person's performance of a
22 remediation and selection of a remedial action pursuant to subsection
23 h. of section 35 of P.L.1993, c.139 (C.58:10B-12).

24 c. The entire cost of investigation required pursuant to this section
25 shall be borne by the department from appropriations made to it by the
26 Legislature specifically for this purpose. The department may not fund
27 any part of this investigation by the imposition of a fee or charge on
28 any person performing a remediation or upon any person who is in
29 need of a permit or approval from the department.

30
31 5. (New section) a. There is created the "Brownfields
32 Redevelopment Task Force." The Task Force shall consist of a five
33 representatives from State agencies and six public members. The State
34 agency representatives shall be from each of the following State
35 agencies: the Office of State Planning in the Department of Treasury,
36 the Office of Neighborhood Empowerment in the Department of
37 Community Affairs, the New Jersey Redevelopment Authority in the
38 Department of Commerce and Economic Development, the
39 Department of Transportation, and the Site Remediation Program in
40 the Department of Environmental Protection. The six public members
41 shall be appointed by the Governor with the advice and consent of the
42 Senate. The public members shall include to the extent practicable: a
43 representative of commercial or residential development interests, a
44 representative of the financial community, a representative of a public
45 interest environmental organization, a representative of a neighborhood
46 or community redevelopment organization, a representative of a labor

1 or trade organization, and a representative of a regional planning
2 entity.

3 The Office of State Planning shall provide staff to implement the
4 functions and duties of the Task Force. The public members of the
5 Task Force shall serve without compensation but may be reimbursed
6 for actual expenses in the performance of their duties. The Governor
7 shall select the chairman of the Task Force.

8 b. The Task Force shall prepare and update an inventory of
9 brownfield sites in the State. In preparing the inventory, priority shall
10 be given to those areas of the State that receive assistance from the
11 Urban Coordinating Council or from the Office of Neighborhood
12 Empowerment. To the extent practicable, the inventory shall include
13 an assessment of the contaminants known or suspected to have been
14 discharged or that are currently stored on the site, the extent of any
15 remediation performed on the site, the site's proximity to
16 transportation networks, and the availability of infrastructure to
17 support the redevelopment of the site. The information gathered for
18 the inventory shall, to the extent practicable, be made available to the
19 public by entering it into the Department of Environmental
20 Protection's existing geographic information system, by making this
21 information available on the system and by making copies of any maps
22 and data available to the public. The department may charge a
23 reasonable fee for the reproduction of maps and data which fee shall
24 reflect the cost of their reproduction.

25 c. In addition to its functions pursuant to subsection b. of this
26 section, the Task Force shall:

27 (1) coordinate State policy on brownfields redevelopment,
28 including incentives, regulatory programs, provision of infrastructure,
29 and redevelopment planning assistance to local governments;

30 (2) use the inventory to prioritize sites based on their immediate
31 economic development potential;

32 (3) prepare a plan of action to return these sites to productive
33 economic use on an expedited basis;

34 (4) actively market sites on the inventory to prospective
35 developers;

36 (5) use the inventory to provide a targeted environmental
37 assessment of the sites, or of areas containing several brownfield sites,
38 by the Department of Environmental Protection;

39 (6) consult with the Pinelands Commission concerning the
40 remediation and redevelopment of brownfield sites located in the
41 pinelands area as designated pursuant to section 10 of P.L.1979, c.111
42 (C.13:18A-11);

43 (7) evaluate the performance of current public incentives in
44 encouraging the remediation of and redevelopment of brownfields; and

45 (8) make recommendations to the Governor and the Legislature
46 on means to better promote the redevelopment of brownfields,

1 including the provision of necessary public infrastructure and methods
2 to attract private investment in redevelopment.

3 d. As used in this section, "brownfield" means any former or
4 current commercial or industrial site that is currently vacant or
5 underutilized and on which there has been, or there is suspected to
6 have been, a discharge of a contaminant.

7

8 6. (New section) a. Whenever after the effective date of P.L. ,
9 c. (now before the legislature as this bill) the Department of
10 Environmental Protection issues a no further action letter pursuant to
11 a remediation, it shall also issue to the person performing the
12 remediation a covenant not to sue with respect to the real property
13 upon which the remediation has been conducted. A covenant not to
14 sue shall be executed by the person performing the remediation and by
15 the department in order to become effective. The covenant not to sue
16 shall be consistent with any conditions and limitations contained in the
17 no further action letter. The covenant not to sue shall be for any area
18 of concern remediated and may apply to the entire real property if the
19 remediation included a preliminary assessment and, if necessary, a site
20 investigation of the entire real property, and any other necessary
21 remedial actions. The covenant remains effective only for as long as
22 the real property for which the covenant was issued continues to meet
23 the conditions of the no further action letter. Upon a finding by the
24 department that real property or a portion thereof to which a covenant
25 not to sue pertains, no longer meets with the conditions of the no
26 further action letter, the department shall provide notice of that fact to
27 the person responsible for maintaining compliance with the no further
28 action letter. The department may allow the person a reasonable time
29 to come into compliance with the terms of the original no further
30 action letter. If the property does not meet the conditions of the no
31 further action letter and if the department does not allow for a period
32 of time to come into compliance or if the person fails to come into
33 compliance within the time period, the department may invoke the
34 provisions of the covenant not to sue permitting revocation of the
35 covenant not to sue.

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

37 (1) a provision releasing the person who undertook the remediation
38 from all civil liability to the State to perform any additional remedial
39 activities and for any natural resource damages;

40 (2) for a remediation that involves the use of engineering or
41 institutional controls:

42 (a) a provision requiring the person, during the person's period of
43 ownership, to maintain those controls, conduct periodic monitoring
44 for compliance, and submit to the department, on an bi-annual basis,
45 a certification that the engineering and institutional controls are being
46 properly maintained and continue to be protective of public health and

1 safety and of the environment. The certification shall state the
2 underlying facts and shall include the results of any tests or
3 procedures performed that support the certification; and

4 (b) a provision revoking the covenant if the engineering or
5 institutional controls are not being maintained or are no longer in
6 place; and

7 (3) a provision barring the person or persons to whom the
8 covenant not to sue benefits from making a claim against the New
9 Jersey Spill Compensation Fund and the Sanitary Landfill Facility
10 Contingency Fund for any costs or damages relating to the real
11 property and remediation covered by the covenant not to sue.

12 b. Unless a covenant not to sue issued under this section is
13 revoked by the department, the covenant shall remain effective. The
14 covenant not to sue shall apply to all successors in ownership of the
15 property and to all persons who lease the property or who engage in
16 operations on the property.

17 c. If a covenant not to sue is revoked, liability for any additional
18 remediation shall not be applied retroactively to any person for whom
19 the covenant remained in effect during that person's ownership,
20 tenancy, or operation of the property.

21 d. For any person liable for the discharge of a hazardous substance
22 or who is in any way responsible for a hazardous substance pursuant
23 to section 8 of P.L. 1976, c. 141 (C.58:10-23.11g), and who does not
24 have a defense to liability pursuant to subsection d. of that section, a
25 covenant not to sue shall not apply to liability for (1) contamination
26 discovered subsequent to the issuance of the no further action letter
27 but which contamination existed prior to the issuance of the no further
28 action letter, (2) any change in a remediation standard, or (3) any
29 contamination that has been remediated by the use of an engineering
30 control.

31 e. Notwithstanding the provisions of subsection a. of this section,
32 a covenant not to sue shall only bar a claim for natural resource
33 damages against a person who is entitled to a defense to liability
34 pursuant to subsection d. of section 8 of P.L. 1976, c. 141 (C.58:10-
35 23.11g).

36 f. A covenant not to sue shall not apply to any discharge that
37 occurs subsequent to the issuance of the no further action letter which
38 was the basis of the issuance of the covenant.

39
40 7. Section 3 of P.L.1983, c.330 (C.13:1K-8) is amended to read
41 as follows:

42 3. "Remedial action workplan" means a plan for the remedial
43 action to be undertaken at an industrial establishment, or at any area
44 to which a discharge originating at the industrial establishment is
45 migrating or has migrated; a description of the remedial action to be
46 used to remediate the industrial establishment; a time schedule and

1 cost estimate of the implementation of the remedial action; and any
2 other relevant information the department deems necessary;

3 "Closing operations" means:

4 (1) the cessation of operations resulting in at least a 90 percent
5 reduction in the total value of the product output from the entire
6 industrial establishment, as measured on a constant, annual
7 date-specific basis, within any five year period, or, for industrial
8 establishments for which the product output is undefined, a 90 percent
9 reduction in the number of employees or a 90 percent reduction in the
10 area of operations of an industrial establishment within any five year
11 period; provided, however, the department may approve a waiver of
12 the provisions of this paragraph for any owner or operator who, upon
13 application and review, evidences a good faith effort to maintain and
14 expand product output, the number of employees, or area of
15 operations of the affected industrial establishment;

16 (2) any temporary cessation of operations of an industrial
17 establishment for a period of not less than two years;

18 (3) any judicial proceeding or final agency action through which
19 an industrial establishment becomes nonoperational for health or safety
20 reasons;

21 (4) the initiation of bankruptcy proceedings pursuant to Chapter
22 7 of the federal Bankruptcy Code, 11 U.S.C. s.701 et seq. or the filing
23 of a plan of reorganization that provides for a liquidation pursuant to
24 Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. s.1101 et seq.;

25 (5) any change in operations of an industrial establishment that
26 changes the industrial establishment's Standard Industrial Classification
27 number to one that is not subject to this act; or

28 (6) the termination of a lease unless there is no disruption in
29 operations of the industrial establishment, or the assignment of a lease;

30 "Transferring ownership or operations" means:

31 (1) any transaction or proceeding through which an industrial
32 establishment undergoes a change in ownership;

33 (2) the sale or transfer of more than 50% of the assets of an
34 industrial establishment within any five year period, as measured on a
35 constant, annual date-specific basis;

36 (3) the execution of a lease for a period of 99 years or longer for
37 an industrial establishment; or

38 (4) the dissolution of an entity that is an owner or operator or an
39 indirect owner of an industrial establishment, except for any
40 dissolution of an indirect owner of an industrial establishment whose
41 assets would have been unavailable for the remediation of the
42 industrial establishment if the dissolution had not occurred;

43 "Change in ownership" means:

44 (1) the sale or transfer of the business of an industrial
45 establishment or any of its real property;

46 (2) the sale or transfer of stock in a corporation resulting in a

- 1 merger or consolidation involving the direct owner or operator or
2 indirect owner of the industrial establishment;
- 3 (3) the sale or transfer of stock in a corporation, or the transfer of
4 a partnership interest, resulting in a change in the person holding the
5 controlling interest in the direct owner or operator or indirect owner
6 of an industrial establishment;
- 7 (4) the sale or transfer of title to an industrial establishment or the
8 real property of an industrial establishment by exercising an option to
9 purchase; or
- 10 (5) the sale or transfer of a partnership interest in a partnership
11 that owns or operates an industrial establishment, that would reduce,
12 by 10% or more, the assets available for remediation of the industrial
13 establishment;
- 14 "Change in ownership" shall not include:
 - 15 (1) a corporate reorganization not substantially affecting the
16 ownership of the industrial establishment;
 - 17 (2) a transaction or series of transactions involving the transfer of
18 stock, assets or both, among corporations under common ownership,
19 if the transaction or transactions will not result in the diminution of the
20 net worth of the corporation that directly owns or operates the
21 industrial establishment by more than 10%, or if an equal or greater
22 amount in assets is available for the remediation of the industrial
23 establishment before and after the transaction or transactions;
 - 24 (3) a transaction or series of transactions involving the transfer of
25 stock, assets or both, resulting in the merger or de facto merger or
26 consolidation of the indirect owner with another entity, or in a change
27 in the person holding the controlling interest of the indirect owner of
28 an industrial establishment, when the indirect owner's assets would
29 have been unavailable for cleanup if the transaction or transactions had
30 not occurred;
 - 31 (4) a transfer where the transferor is the sibling, spouse, child,
32 parent, grandparent, child of a sibling, or sibling of a parent of the
33 transferee;
 - 34 (5) a transfer to confirm or correct any deficiencies in the
35 recorded title of an industrial establishment;
 - 36 (6) a transfer to release a contingent or reversionary interest
37 except for any transfer of a lessor's reversionary interest in leased real
38 property;
 - 39 (7) a transfer of an industrial establishment by devise or intestate
40 succession;
 - 41 (8) the granting or termination of an easement or a license to any
42 portion of an industrial establishment;
 - 43 (9) the sale or transfer of real property pursuant to a
44 condemnation proceeding initiated pursuant to the "Eminent Domain
45 Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);
 - 46 (10) execution, delivery and filing or recording of any mortgage,

1 security interest, collateral assignment or other lien on real or personal
2 property; or

3 (11) any transfer of personal property pursuant to a valid security
4 agreement, collateral assignment or other lien, including, but not
5 limited to, seizure or replevin of such personal property which transfer
6 is for the purpose of implementing the secured party's rights in the
7 personal property which is the collateral.

8 "Department" means the Department of Environmental Protection
9 [and Energy];

10 "Hazardous substances" means those elements and compounds,
11 including petroleum products, which are defined as such by the
12 department, after public hearing, and which shall be consistent to the
13 maximum extent possible with, and which shall include, the list of
14 hazardous substances adopted by the Environmental Protection
15 Agency pursuant to Section 311 of the "Federal Water Pollution
16 Control Act Amendments of 1972" (33 U.S.C. §1321) and the list of
17 toxic pollutants designated by Congress or the Environmental
18 Protection Agency pursuant to Section 307 of that act (33 U.S.C.
19 §1317); except that sewage and sewage sludge shall not be considered
20 as hazardous substances for the purposes of this act;

21 "Hazardous waste" shall have the same meaning as provided in
22 section 1 of P.L.1976, c.99 (C.13:1E-38);

23 "Industrial establishment" means any place of business engaged in
24 operations which involve the generation, manufacture, refining,
25 transportation, treatment, storage, handling, or disposal of hazardous
26 substances or hazardous wastes on-site, above or below ground,
27 having a Standard Industrial Classification number within 22-39
28 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard
29 Industrial Classifications Manual prepared by the Office of
30 Management and Budget in the Executive Office of the President of
31 the United States. Those facilities or parts of facilities subject to
32 operational closure and post-closure maintenance requirements
33 pursuant to the "Solid Waste Management Act," P.L.1970, c.39
34 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting
35 Act," P.L.1981, c.279 (C.13:1E-49 et seq.) or the "Solid Waste
36 Disposal Act" (42 U.S.C. §6901 et seq.), or any establishment engaged
37 in the production or distribution of agricultural commodities, shall not
38 be considered industrial establishments for the purposes of this act.
39 The department may, pursuant to the "Administrative Procedure Act,"
40 P.L.1968, c.410 (C.52:14B-1 et seq.), exempt certain sub-groups or
41 classes of operations within those sub-groups within the Standard
42 Industrial Classification major group numbers listed in this subsection
43 upon a finding that the operation of the industrial establishment does
44 not pose a risk to public health and safety;

45 "Negative declaration" means a written declaration, submitted by
46 the owner or operator of an industrial establishment or other person

1 assuming responsibility for the remediation under paragraph (3) of
2 subsection b. of section 4 of P.L.1983, c.330 to the department,
3 certifying that there has been no discharge of hazardous substances or
4 hazardous wastes on the site, or that any such discharge on the site or
5 discharge that has migrated or is migrating from the site has been
6 remediated in accordance with procedures approved by the department
7 and in accordance with any applicable remediation regulations;

8 "Discharge" means an intentional or unintentional action or
9 omission resulting in the releasing, spilling, leaking, pumping, pouring,
10 emitting, emptying, or dumping of a hazardous substance or hazardous
11 waste into the waters or onto the lands of the State;

12 "No further action letter" means a written determination by the
13 department that, based upon an evaluation of the historical use of the
14 industrial establishment and the property, or of an area of concern or
15 areas of concern, as applicable, and any other investigation or action
16 the department deems necessary, there are no discharged hazardous
17 substances or hazardous wastes present at the site of the industrial
18 establishment, at the area of concern or areas of concern, or at any
19 other site to which discharged hazardous substances or hazardous
20 wastes originating at the industrial establishment have migrated, and
21 that any discharged hazardous substances or hazardous wastes present
22 at the industrial establishment or that have migrated from the site have
23 been remediated in accordance with applicable remediation
24 regulations;

25 "Indirect owner" means any person who holds a controlling interest
26 in a direct owner or operator, holds a controlling interest in another
27 indirect owner, or holds an interest in a partnership which is an
28 indirect owner or a direct owner or operator, of an industrial
29 establishment;

30 "Direct owner or operator" means any person that directly owns or
31 operates an industrial establishment. A holder of a mortgage or other
32 security interest in the industrial establishment shall not be deemed to
33 be a direct owner or operator of the industrial establishment unless or
34 until it loses its exemption under P.L.1993, c.112 (C.58:10-23.11g4
35 et al.) or obtains title to the industrial establishment by deed of
36 foreclosure, by other deed, or by court order or other process;

37 "Area of concern" means any location where hazardous substances
38 or hazardous wastes are or were known or suspected to have been
39 discharged, generated, manufactured, refined, transported, stored,
40 handled, treated, or disposed, or where hazardous substances or
41 hazardous wastes have or may have migrated;

42 "Remediation standards" means the combination of numeric and
43 narrative standards that establish a level or concentration to which
44 hazardous substances or hazardous wastes must be [investigated or
45 remediated as established] treated, removed, or otherwise cleaned for
46 soil, groundwater, or surface water, as provided by the department

1 pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12) in order to
2 meet the health risk or environmental standards;

3 "Owner" means any person who owns the real property of an
4 industrial establishment or who owns the industrial establishment. A
5 holder of a mortgage or other security interest in the industrial
6 establishment shall not be deemed to be an owner of the industrial
7 establishment unless or until it loses its exemption under P.L.1993,
8 c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial
9 establishment by deed of foreclosure, by other deed, or by court order
10 or other process;

11 "Operator" means any person, including users, tenants, or
12 occupants, having and exercising direct actual control of the
13 operations of an industrial establishment. A holder of a mortgage or
14 other security interest in the industrial establishment shall not be
15 deemed to be an operator of the industrial establishment unless or until
16 it loses its exemption under P.L.1993, c.112 (C.58:10-23.11g4 et al.)
17 or obtains title to the industrial establishment by deed of foreclosure,
18 by other deed, or by court order or other process;

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

33 "Remediation" or "remediate" means all necessary actions to
34 investigate and clean up or respond to any known, suspected, or
35 threatened discharge of hazardous substances or hazardous wastes,
36 including, as necessary, the preliminary assessment, site investigation,
37 remedial investigation, and remedial action;

38 "Remedial action" means those actions taken at an industrial
39 establishment or offsite of an industrial establishment if hazardous
40 substances or hazardous wastes have migrated or are migrating
41 therefrom, as may be required by the department to protect public
42 health, safety, and the environment. These actions may include the
43 removal, treatment, containment, transportation, securing, or other
44 engineering measures, whether of a permanent nature or otherwise,
45 designed to ensure that any discharged hazardous substances or
46 hazardous wastes at the site or that have migrated or are migrating

1 from the site, are remediated in compliance with the applicable
2 [remediation] health risk or environmental standards;

3 "Remedial investigation" means a process to determine the nature
4 and extent of a discharge of hazardous substances or hazardous wastes
5 at an industrial establishment or a discharge of hazardous substances
6 or hazardous wastes that have migrated or are migrating from the site
7 and the problems presented by a discharge, and may include data
8 collection, site characterization, sampling, monitoring, and the
9 gathering of any other sufficient and relevant information necessary to
10 determine the necessity for remedial action and to support the
11 evaluation of remedial actions if necessary;

12 "Site investigation" means the collection and evaluation of data
13 adequate to determine whether or not discharged hazardous
14 substances or hazardous wastes exist at the industrial establishment or
15 have migrated or are migrating from the site at levels in excess of the
16 applicable remediation standards. A site investigation shall be
17 developed based upon the information collected pursuant to the
18 preliminary assessment.

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

20

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

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

45 b. (1) Subsequent to the submittal of the notice required pursuant
46 to subsection a. of this section, the owner or operator of an industrial

1 establishment shall, except as otherwise provided by P.L.1983, c.330
2 or P.L.1993, c.139 (C.13:1K-9.6 et al.), remediate the industrial
3 establishment. The remediation shall be conducted in accordance with
4 criteria, procedures, and time schedules established by the department.

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

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

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

41 d. (1) Upon the submission of the results of either the preliminary
42 assessment, site investigation, remedial investigation, or remedial
43 action, where applicable, which demonstrate that there are no
44 discharged hazardous substances or hazardous wastes at the industrial
45 establishment, or that have migrated from or are migrating from the
46 industrial establishment, in violation of the applicable remediation

1 [standards] regulations, the owner or operator may submit to the
2 department for approval a proposed negative declaration as provided
3 in subsection c. of this section.

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

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

42 The department may require in the remediation agreement that all
43 plans for and results of the preliminary assessment, site investigation,
44 remedial investigation, and the implementation of the remedial action
45 workplan, prepared or initiated subsequent to the transfer of
46 ownership or operations, be submitted to the department, for review

1 purposes only, at the completion of each phase of the remediation.

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

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

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

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

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

1 Nothing in this subsection shall be construed to authorize the
2 closing of operations or the transfer of ownership or operations of an
3 industrial establishment without the department's approval of a
4 negative declaration, a remedial action workplan or a remediation
5 agreement.

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

10 (1) The soil remediation standards proposed for the industrial
11 establishment are protective of public health, safety and the
12 environment;

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

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

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

19 (5) The difference in cost between the use of the residential use
20 soil remediation standards and the nonresidential use soil remediation
21 standards; and

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

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

1 or operator shall obtain the approval of the transferee of the industrial
2 establishment.

3 At any time after the effective date of P.L.1993, c.139, an owner
4 or operator may request the department to provide a determination as
5 to whether a proposed remedial action is consistent with the standards
6 and criteria set forth [above in paragraphs (1) through (6)] in section
7 35 of P.L.1993, c.139 (C.58:10B-12). The department shall make that
8 determination based upon the standards and criteria set forth in that
9 section. The department shall provide any such determination within
10 30 calendar days of the department's receipt of the request.

11 j. An owner or operator proposing to implement a soil remedial
12 action other than one which is set forth in subsection h. of this section
13 must receive department approval prior to implementation of the
14 remedial action.

15 k. An owner or operator of an industrial establishment shall not
16 implement a remedial action involving the remediation of groundwater
17 or surface water without the prior review and approval by the
18 department of a remedial action workplan.

19 l. Submissions of a preliminary assessment, site investigation,
20 remedial investigation, remedial action workplan, and the results of a
21 remedial action shall be in a manner and form, and shall contain any
22 relevant information relating to the remediation, as may be required by
23 the department.

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

37 The department shall review all information submitted to it by the
38 owner or operator at the completion of the remediation to determine
39 whether the actions taken were in compliance with rules and
40 regulations of the department regarding remediation.

41 The department may review and approve or disapprove every
42 remedial action workplan, no matter when submitted, to determine, in
43 accordance with the criteria listed in subsection g. of section 35 of
44 P.L.1993, c.139 (C.58:10B-12) if the remedial action that has
45 occurred or that will occur is appropriate to meet the applicable
46 [remediation] health risk or environmental standards.

1 The department may order additional remediation activities at the
2 industrial establishment, or offsite where necessary, or may require the
3 submission of additional information, where (a) the department
4 determines that the remediation activities undertaken were not in
5 compliance with the applicable rules or regulations of the department;
6 (b) all documents required to be submitted to the department were not
7 submitted or, if submitted, were inaccurate, or deficient; or (c)
8 discharged hazardous substances or hazardous wastes remain at the
9 industrial establishment, or have migrated or are migrating offsite, at
10 levels or concentrations or in a manner that is in violation of the
11 applicable [remediation] health risk or environmental standards. Upon
12 a finding by the department that the remediation conducted at the
13 industrial establishment was in compliance with all applicable
14 regulations, that no hazardous substances or hazardous wastes remain
15 at the industrial establishment in a manner that is in violation of the
16 applicable [remediation] health risk or environmental standards, and
17 that all hazardous substances or hazardous wastes that migrated from
18 the industrial establishment have been remediated in conformance with
19 the applicable [remediation] health risk or environmental standards,
20 the department shall approve the remediation for that industrial
21 establishment by the issuance of a no further action letter. (cf:
22 P.L.1993, c.139, s.4)

23

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

26 23. As used in sections 23 through 43 and section 45 of P.L.1993,
27 c.139 (C.58:10B-1 et seq.) , as may be amended and supplemented:

28 "Area of concern" means any location where contaminants are or
29 were known or suspected to have been discharged, generated,
30 manufactured, refined, transported, stored, handled, treated, or
31 disposed, or where contaminants have or may have migrated;

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

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

39 "Department" means the Department of Environmental Protection
40 [and Energy];

41 "Discharge" means an intentional or unintentional action or
42 omission resulting in the releasing, spilling, leaking, pumping, pouring,
43 emitting, emptying, or dumping of a contaminant onto the land or into
44 the waters of the State;

45 "Engineering controls" means any mechanism to contain or
46 stabilize contamination or ensure the effectiveness of a remedial

1 action. Engineering controls may include, without limitation, caps,
2 covers, dikes, trenches, leachate collection systems, signs, fences and
3 physical access controls;

4 "Environmental opportunity zone" has the meaning given that term
5 pursuant to section 3 of P.L. 1995, c.413 (C.54:4-3.152):

6 "Financial assistance" means loans or loan guarantees;

7 "Institutional controls" means a mechanism used to limit human
8 activities at or near a contaminated site, or to ensure the effectiveness
9 of the remedial action over time, when contaminants remain at a
10 contaminated site in levels or concentrations above the applicable
11 remediation standard that would allow unrestricted use of that
12 property. Institutional controls may include, without limitation,
13 structure, land, and natural resource use restrictions, well restriction
14 areas, and deed notices;

15 "No further action letter" means a written determination by the
16 department that based upon an evaluation of the historical use of a
17 particular site, or of an area of concern or areas of concern at that site,
18 as applicable, and any other investigation or action the department
19 deems necessary, there are no discharged contaminants present at the
20 site, at the area of concern or areas of concern, at any other site to
21 which a discharge originating at the site has migrated, or that any
22 discharged contaminants present at the site or that have migrated from
23 the site have been remediated in accordance with applicable
24 remediation regulations;

25 "Nonpermanent remedial action" means any remedial action that
26 requires the continued use of engineering controls in order to meet the
27 established health risk or environmental standards;

28 "Permanent remedial action" means any remedial action that does
29 not require the continued use of engineering controls in order to meet
30 the established health risk or environmental standards. A remedial
31 action may be considered permanent even if institutional controls are
32 employed at the site;

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

45 "Remedial action" means those actions taken at a site or offsite if
46 a contaminant has migrated or is migrating therefrom, as may be

1 required by the department, including the removal, treatment,
2 containment, transportation, securing, or other engineering or
3 treatment measures, whether of a permanent nature or otherwise,
4 designed to ensure that any discharged contaminant at the site or that
5 has migrated or is migrating from the site, is remediated in compliance
6 with the applicable [remediation standards] health risk or
7 environmental standards;

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

14 "Remedial investigation" means a process to determine the nature
15 and extent of a discharge of a contaminant at a site or a discharge of
16 a contaminant that has migrated or is migrating from the site and the
17 problems presented by a discharge, and may include data collected,
18 site characterization, sampling, monitoring, and the gathering of any
19 other sufficient and relevant information necessary to determine the
20 necessity for remedial action and to support the evaluation of remedial
21 actions if necessary;

22 "Remediation" or "remediate" means all necessary actions to
23 investigate and clean up or respond to any known, suspected, or
24 threatened discharge of contaminants, including, as necessary, the
25 preliminary assessment, site investigation, remedial investigation, and
26 remedial action;

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

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

34 "Remediation standards" means the combination of numeric and
35 narrative standards that establish a level or concentration to which
36 contaminants must be treated, removed, or otherwise cleaned for soil,
37 groundwater, or surface water, as provided by the department
38 pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12) in order to
39 meet the health risk or environmental standards;

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

46 ["Remedial action workplan" means a plan for the remedial action

1 to be undertaken at a site, or at any area to which a discharge
2 originating at a site is migrating or has migrated; a description of the
3 remedial action to be used to remediate a site; a time schedule and cost
4 estimate of the implementation of the remedial action; and any other
5 information the department deems necessary;

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

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

13 "Voluntarily perform a remediation" means performing a
14 remediation without having been ordered or directed to do so by the
15 department or by a court and without being compelled to perform a
16 remediation pursuant to the provisions of P.L. 1983, c.330 (C.13:1K-6
17 et al.).

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

19

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

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

36 b. The regulations adopted by the department pursuant to
37 subsection a. of this section shall provide that a person performing a
38 remediation may deviate from the strict adherence to the regulations,
39 in a variance procedure or by another method prescribed by the
40 department, if that person can demonstrate that the deviation and the
41 resulting remediation would be as protective of human health, safety,
42 and the environment, as appropriate, as the department's regulations
43 and that the health risk standards established in subsection d. of
44 section 35 of P.L.1993, c.139 (C.58:10B-12) and any applicable
45 environmental standards would be met. Factors to be considered in
46 determining if the deviation should be allowed are whether the

1 alternative method:

2 (1) has been either used successfully or approved by the
3 department in writing or similar situations;

4 (2) reflects current technology as documented in peer-reviewed
5 professional journals;

6 (3) can be expected to achieve the same or substantially the same
7 results or objectives as the method which it is to replace; and

8 (4) furthers the attainment of the goals of the specific remedial
9 phase for which it is used.

10 The department shall make available to the public, and shall
11 periodically update, a list of alternative remediation methods used
12 successfully or approved by the department as provided in paragraph
13 (1) of this subsection.

14 c. To the extent practicable and in conformance with the standards
15 for remediations as provided in section 35 of P.L.1993, c.139
16 (C.58:10-12), the department shall adopt rules and regulations that
17 allow for certain remedial actions to be undertaken in a manner
18 prescribed by the department without having to obtain prior approval
19 from or submit detailed documentation to the department. A person
20 who performs a remedial action in the manner prescribed in the rules
21 and regulations of the department, and who certifies this fact to the
22 department, shall obtain a no further action letter from the department
23 for that particular remedial action.

24 d. The department shall develop regulatory procedures that
25 encourage the use of innovative technologies in the performance of
26 remedial actions and other remediation activities.

27 e. Notwithstanding any other provisions of this section, all
28 remediation standards and remedial actions that involve real property
29 located in the pinelands area shall be consistent with the provisions of
30 the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.),
31 any rules and regulations adopted pursuant thereto, and with section
32 502 of the "National Parks and Recreation Act of 1978," 16
33 U.S.C. §471i.

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

35

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

38 25. a. The owner or operator of an industrial establishment or any
39 other person required to perform remediation activities pursuant to
40 P.L.1983, c.330 (C.13:1K-6 et al.), or a discharger or person in any
41 way responsible for a hazardous substance who has been issued a
42 directive or an order by a State agency, who has entered into an
43 administrative consent order with a State agency, or who has been
44 ordered by a court to clean up and remove a hazardous substance or
45 hazardous waste discharge pursuant to P.L.1976, c.141
46 (C.58:10-23.11 et seq.), shall establish and maintain a remediation

1 funding source in the amount necessary to pay the estimated cost of
2 the required remediation. A person who voluntarily undertakes a
3 remediation pursuant to a memorandum of agreement with the
4 department, or without the department's oversight, or who performs
5 a remediation in an environmental opportunity zone is not required to
6 establish or maintain a remediation funding source. A person who
7 uses an innovative technology or who, in a timely fashion, implements
8 a permanent remedy for all or part of a remedial action is not required
9 to establish a remediation funding source for the cost of the
10 remediation involving the innovative technology or permanent remedy.

11 A person required to establish a remediation funding source pursuant
12 to this section shall provide to the department satisfactory
13 documentation that the requirement has been met.

14 The remediation funding source shall be established in an amount
15 equal to or greater than the cost estimate of the implementation of the
16 remediation (1) as approved by the department, (2) as provided in an
17 administrative consent order or remediation agreement as required
18 pursuant to subsection e. of section 4 of P.L.1983, c.330, (3) as stated
19 in a departmental order or directive, or (4) as agreed to by a court, and
20 shall be in effect for a term not less than the actual time necessary to
21 perform the remediation at the site. Whenever the remediation cost
22 estimate increases, the person required to establish the remediation
23 funding source shall cause the amount of the remediation funding
24 source to be increased to an amount at least equal to the new estimate.
25 Whenever the remediation or cost estimate decreases, the person
26 required to obtain the remediation funding source may file a written
27 request to the department to decrease the amount in the remediation
28 funding source. The remediation funding source may be decreased to
29 the amount of the new estimate upon written approval by the
30 department delivered to the person who established the remediation
31 funding source and to the trustee or the person or institution providing
32 the remediation trust, the environmental insurance policy, or the line
33 of credit, as applicable. The department shall approve the request
34 upon a finding that the remediation cost estimate decreased by the
35 requested amount. The department shall review and respond to the
36 request to decrease the remediation funding source within 90 days of
37 receipt of the request.

38 b. The person responsible for performing the remediation and who
39 established the remediation funding source may use the remediation
40 funding source to pay for the actual cost of the remediation. The
41 department may not require any other financial assurance by the
42 person responsible for performing the remediation other than that
43 required in this section. In the case of a remediation performed
44 pursuant to P.L.1983, c.330, the remediation funding source shall be
45 established no more than 14 days after the approval by the department
46 of a remedial action workplan or upon approval of a remediation

1 agreement pursuant to subsection e. of section 4 of P.L.1983, c.330
2 (C.13:1K-9), unless the department approves an extension. In the case
3 of a remediation performed pursuant to P.L.1976, c.141, the
4 remediation funding source shall be established as provided in an
5 administrative consent order signed by the parties, as provided by a
6 court, or as directed or ordered by the department. The establishment
7 of a remediation funding source for that part of the remediation
8 funding source to be established by a grant or financial assistance from
9 the remediation fund may be established for the purposes of this
10 subsection by the application for a grant or financial assistance from
11 the remediation fund and satisfactory evidence submitted to the
12 department that the grant or financial assistance will be awarded.
13 However, if the financial assistance or grant is denied or the
14 department finds that the person responsible for establishing the
15 remediation funding source did not take reasonable action to obtain
16 the grant or financial assistance, the department shall require that the
17 full amount of the remediation funding source be established within 14
18 days of the denial or finding. The remediation funding source shall be
19 evidenced by the establishment and maintenance of (1) a remediation
20 trust fund, (2) an environmental insurance policy, issued by an entity
21 licensed by the Department of Insurance to transact business in the
22 State of New Jersey, to fund the remediation, (3) a line of credit from
23 a person or institution satisfactory to the department authorizing the
24 person responsible for performing the remediation to borrow money,
25 or (4) a self-guarantee, or by any combination thereof. Where it can
26 be demonstrated that a person cannot establish and maintain a
27 remediation funding source for the full cost of the remediation by a
28 method specified in this subsection, that person may establish the
29 remediation funding source for all or a portion of the remediation, by
30 securing financial assistance from the Hazardous Discharge Site
31 Remediation Fund as provided in section 29 of P.L.1993, c.139
32 (C.58:10B-7).

33 c. A remediation trust fund shall be established pursuant to the
34 provisions of this subsection. An originally signed duplicate of the
35 trust agreement shall be delivered to the department by certified mail
36 within 14 days of receipt of notice from the department that the
37 remedial action workplan or remediation agreement as provided in
38 subsection e. of section 4 of P.L.1983, c.330 is approved or as
39 specified in an administrative consent order, civil order, or order of the
40 department, as applicable. The remediation trust fund agreement shall
41 conform to a model trust fund agreement as established by the
42 department and shall be accompanied by a certification of
43 acknowledgment that conforms to a model established by the
44 department. The trustee shall be an entity which has the authority to
45 act as a trustee and whose trust operations are regulated and examined
46 by a federal or New Jersey agency.

1 The trust fund agreement shall provide that the remediation trust
2 fund may not be revoked or terminated by the person required to
3 establish the remediation funding source or by the trustee without the
4 written consent of the department. The trustee shall release to the
5 person required to establish the remediation funding source, or to the
6 department or transferee of the property, as appropriate, only those
7 moneys as the department authorizes, in writing, to be released. The
8 person entitled to receive money from the remediation trust fund shall
9 submit documentation to the department detailing the costs incurred
10 or to be incurred as part of the remediation. Upon a determination by
11 the department that the costs are consistent with the remediation of
12 the site, the department shall, in writing, authorize a disbursement of
13 moneys from the remediation trust fund in the amount of the
14 documented costs.

15 The department shall return the original remediation trust fund
16 agreement to the trustee for termination after the person required to
17 establish the remediation funding source substitutes an alternative
18 remediation funding source as specified in this section or the
19 department notifies the person that that person is no longer required
20 to maintain a remediation funding source for remediation of the
21 contaminated site.

22 d. An environmental insurance policy shall be established
23 pursuant to the provisions of this subsection. An originally signed
24 duplicate of the insurance policy shall be delivered to the department
25 by certified mail, overnight delivery, or personal service within 30 days
26 of receipt of notice from the department that the remedial action
27 workplan or remediation agreement, as provided in subsection e. of
28 section 4 of P.L.1983, c.330, is approved or as specified in an
29 administrative consent order, civil order, or order of the department,
30 as applicable. The environmental insurance policy may not be revoked
31 or terminated without the written consent of the department. The
32 insurance company shall release to the person required to establish the
33 remediation funding source, or to the department or transferee of the
34 property, as appropriate, only those moneys as the department
35 authorizes, in writing, to be released. The person entitled to receive
36 money from the environmental insurance policy shall submit
37 documentation to the department detailing the costs incurred or to be
38 incurred as part of the remediation.

39 e. A line of credit shall be established pursuant to the provisions
40 of this subsection. A line of credit shall allow the person establishing
41 it to borrow money up to a limit established in a written agreement in
42 order to pay for the cost of the remediation for which the line of credit
43 was established. An originally signed duplicate of the line of credit
44 agreement shall be delivered to the department by certified mail,
45 overnight delivery, or personal service within 14 days of receipt of
46 notice from the department that the remedial action workplan or

1 remediation agreement as provided in subsection e. of section 4 of
2 P.L.1983, c.330 is approved, or as specified in an administrative
3 consent order, civil order, or order of the department, as applicable.
4 The line of credit agreement shall conform to a model agreement as
5 established by the department and shall be accompanied by a
6 certification of acknowledgment that conforms to a model established
7 by the department.

8 A line of credit agreement shall provide that the line of credit may
9 not be revoked or terminated by the person required to obtain the
10 remediation funding source or the person or institution providing the
11 line of credit without the written consent of the department. The
12 person or institution providing the line of credit shall release to the
13 person required to establish the remediation funding source, or to the
14 department or transferee of the property as appropriate, only those
15 moneys as the department authorizes, in writing, to be released. The
16 person entitled to draw upon the line of credit shall submit
17 documentation to the department detailing the costs incurred or to be
18 incurred as part of the remediation. Upon a determination that the
19 costs are consistent with the remediation of the site, the department
20 shall, in writing, authorize a disbursement from the line of credit in the
21 amount of the documented costs.

22 The department shall return the original line of credit agreement to
23 the person or institution providing the line of credit for termination
24 after the person required to establish the remediation funding source
25 substitutes an alternative remediation funding source as specified in
26 this section, or after the department notifies the person that that
27 person is no longer required to maintain a remediation funding source
28 for remediation of the contaminated site.

29 f. A person may self-guarantee a remediation funding source upon
30 the submittal of documentation to the department demonstrating that
31 the cost of the remediation as estimated in the remedial action
32 workplan, in the remediation agreement as provided in subsection e.
33 of section 4 of P.L.1983, c.330, in an administrative consent order, or
34 as provided in a departmental or court order, would not exceed
35 one-third of the tangible net worth of the person required to establish
36 the remediation funding source, and that the person has a cash flow
37 sufficient to assure the availability of sufficient moneys for the
38 remediation during the time necessary for the remediation. Satisfactory
39 documentation of a person's capacity to self-guarantee a remediation
40 funding source shall consist only of a statement of income and
41 expenses or similar statement of that person and the balance sheet or
42 similar statement of assets and liabilities as used by that person for the
43 fiscal year of the person making the application that ended closest in
44 time to the date of the self-guarantee application. The self-guarantee
45 application shall be certified as true to the best of the applicant's
46 information, knowledge, and belief, by the chief financial, or similar

1 officer or employee, or general partner, or principal of the person
2 making the self-guarantee application. A person shall be deemed by
3 the department to possess the required cash flow pursuant to this
4 section if that person's gross receipts exceed its gross payments in that
5 fiscal year in an amount at least equal to the estimated costs of
6 completing the remedial action workplan schedule to be performed in
7 the 12 month period following the date on which the application for
8 self-guarantee is made. In the event that a self-guarantee is required
9 for a period of more than one year, applications for a self-guarantee
10 shall be renewed annually pursuant to this subsection for each
11 successive year. The department may establish requirements and
12 reporting obligations to ensure that the person proposing to
13 self-guarantee a remediation funding source meets the criteria for
14 self-guaranteeing prior to the initiation of remedial action and until
15 completion of the remediation.

16 g. (1) If the person required to establish the remediation funding
17 source fails to perform the remediation as required, the department
18 shall make a written determination of this fact. A copy of the
19 determination by the department shall be delivered to the person
20 required to establish the remediation funding source and, in the case
21 of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6
22 et al.), to any transferee of the property. Following this written
23 determination, the department may perform the remediation in place
24 of the person required to establish the remediation funding source. In
25 order to finance the cost of the remediation the department may make
26 disbursements from the remediation trust fund or the line of credit or
27 claims upon the environmental insurance policy, as appropriate, or, if
28 sufficient moneys are not available from those funds, from the
29 remediation guarantee fund created pursuant to section 45 of
30 P.L.1993, c.139 (C.58:10B-20).

31 (2) The transferee of property subject to a remediation conducted
32 pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), may, at any time after
33 the department's determination of nonperformance by the owner or
34 operator required to establish the remediation funding source, petition
35 the department, in writing, with a copy being sent to the owner and
36 operator, for authority to perform the remediation at the industrial
37 establishment. The department, upon a determination that the
38 transferee is competent to do so, may grant that petition which shall
39 authorize the transferee to perform the remediation as specified in an
40 approved remedial action workplan, or to perform the activities as
41 required in a remediation agreement, and to avail itself of the moneys
42 in the remediation trust fund or line of credit or to make claims upon
43 the environmental insurance policy for these purposes. The petition
44 of the transferee shall not be granted by the department if the owner
45 or operator continues or begins to perform its obligations within 14
46 days of the petition being filed with the department.

1 (3) After the department has begun to perform the remediation in
2 the place of the person required to establish the remediation funding
3 source or has granted the petition of the transferee to perform the
4 remediation, the person required to establish the remediation funding
5 source shall not be permitted by the department to continue its
6 performance obligations except upon the agreement of the department
7 or the transferee, as applicable, or except upon a determination by the
8 department that the transferee is not adequately performing the
9 remediation.

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

11
12 12. Section 26 of P.L.1993, c.139 (C.58:10B-4) is amended to
13 read as follows:

14 26. a. There is established in the New Jersey Economic
15 Development Authority a special, revolving fund to be known as the
16 Hazardous Discharge Site Remediation Fund. Moneys in the
17 remediation fund shall be dedicated for the provision of financial
18 assistance or grants to municipal governmental entities, the New
19 Jersey Redevelopment Authority, individuals, corporations,
20 partnerships, and other private business entities, for the purpose of
21 financing remediation activities at sites at which there is, or is
22 suspected of being, a discharge of hazardous substances or hazardous
23 wastes.

24 b. The remediation fund shall be credited with:

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

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

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

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

31 (5) moneys deposited into the fund from cost recovery
32 subrogation actions; and

33 (6) moneys made available to the authority for the purposes of the
34 fund.

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

36
37 13. Section 27 of P.L.1993, c.139 (C.58:10B-5) is amended to
38 read as follows:

39 27. a. (1) Financial assistance from the remediation fund [, made
40 to persons other than municipal governmental entities, the New Jersey
41 Redevelopment Authority, or to persons who voluntarily undertake a
42 remediation,] may only be rendered to persons who cannot establish
43 a remediation funding source for the full amount of a remediation.
44 Financial assistance pursuant to this act may be rendered only for that
45 amount of the cost of a remediation for which the person cannot
46 establish a remediation funding source. The limitations on receiving

1 financial assistance established in this paragraph (1) shall not limit the
2 ability of municipal governmental entities, the New Jersey
3 Redevelopment Authority, persons who are not required to establish
4 a remediation funding source for the part of the remediation involving
5 an innovative technology or a permanent remedy, persons performing
6 a remediation in an environmental opportunity zone, or persons who
7 voluntarily perform a remediation to receive financial assistance from
8 the fund.

9 (2) Financial assistance rendered to persons who voluntarily
10 [undertake] perform a remediation or perform a remediation in an
11 environmental opportunity zone may only be made for that amount of
12 the cost of the remediation that the person cannot otherwise fund by
13 any of the authorized methods to establish a remediation funding
14 source.

15 (3) Financial assistance rendered to persons who do not have to
16 provide financial assurance for the part of the remediation that
17 involves an innovative technology or a permanent remedy may only be
18 made for that amount of the cost of the remediation that the person
19 cannot otherwise fund by any of the authorized methods to establish
20 a remediation funding source.

21 b. Financial assistance may be rendered from the remediation fund
22 to (1) owners or operators of industrial establishments who are
23 required to perform remediation activities pursuant to P.L.1983, c.330
24 (C.13:1K-6 et al.), upon closing operations or prior to the transfer of
25 ownership or operations of an industrial establishment, (2) persons
26 who have discharged a hazardous substance or who are in any way
27 responsible for a hazardous substance pursuant to P.L.1976, c.141
28 (C.58:10-23.11 et seq.), and (3) persons who voluntarily [undertake
29 the] perform a remediation of a discharge of a hazardous substance or
30 hazardous waste [and who have not been ordered or directed to
31 perform the remediation by the department or by a court].

32 c. Financial assistance and grants may be made from the
33 remediation fund to municipal governmental entities or the New Jersey
34 Redevelopment Authority that own or hold a tax sale certificate on
35 real property or that have acquired real property through foreclosure
36 or other similar means, or by voluntary conveyance for the purpose of
37 redevelopment, and on which there has been a discharge or on which
38 there is a suspected discharge of a hazardous substance or hazardous
39 waste [or the New Jersey Redevelopment Authority established
40 pursuant to P.L.1996, c.62 (C.55:19-20 et al.) for any such real
41 property upon which the New Jersey Redevelopment Authority owns
42 or holds the tax sale certificate]. Financial assistance may not be made
43 to any entity listed in this subsection for any real property used by that
44 entity for the conduct of its official business.

45 d. Grants may be made from the remediation fund to persons [,
46 including] and the New Jersey Redevelopment Authority, [other than

1 other governmental entities] who own real property on which there
2 has been a discharge of a hazardous substance or a hazardous waste
3 and that person or the authority qualifies for an innocent party grant
4 pursuant to section 28 of P.L.1993, c.139 (C.58:10B-6).

5 e. Grants may be made from the remediation fund to qualifying
6 persons who propose to perform a remedial action that uses an
7 innovative technology or that would result in a permanent remedy.

8 For the purposes of this section, "person" shall not include [the
9 New Jersey Redevelopment Authority established pursuant to
10 P.L.1996, c.62 (C.55:19-20 et al.)] any governmental entity.
11 (cf: P.L.1996, c.62, s.64)

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

15 28. a. Except for moneys deposited in the remediation fund for
16 specific purposes, financial assistance and grants from the remediation
17 fund shall be rendered for the following purposes and, on an annual
18 basis, obligated in the percentages as provided in this subsection.
19 Upon a written joint determination by the authority and the department
20 that [it is in the public interest] the demand for financial assistance or
21 grants for moneys allocated in any paragraph exceeds the percentage
22 of funds allocated for that paragraph, financial assistance and grants
23 dedicated for the purposes and in the percentages set forth in any other
24 paragraph [(1), (2), or (3)] of this subsection, may, for any particular
25 year, if the demand for financial assistance or grants for moneys
26 allocated in that paragraph is less than the percentage of funds
27 allocated for that paragraph, be obligated to [other] the purposes set
28 forth in [this subsection] the over allocated paragraph. The written
29 determination shall be sent to the Senate Environment Committee, and
30 the Assembly Agriculture and Waste Management Committee, or their
31 successors. For the purposes of this section, "person" shall not
32 include [the New Jersey Redevelopment Authority established
33 pursuant to P.L.1996, c.62 (C.55:19-20 et al.)] any governmental
34 entity.

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

41 (2) At least 10% of the moneys shall be allocated for financial
42 assistance and grants to municipal governmental entities and the New
43 Jersey Redevelopment Authority that [hold] owns or holds a tax sale
44 certificate on real property or have acquired real property through
45 foreclosure or other similar means [real property] , or by voluntary
46 conveyance for the purpose of redevelopment, on which there has been

1 or on which there is suspected of being a discharge of hazardous
2 substances or hazardous wastes [or the New Jersey Redevelopment
3 Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.),
4 for any such real property upon which the New Jersey Redevelopment
5 Authority owns or holds the tax sale certificate]. Grants provided
6 pursuant to this paragraph shall be used for performing preliminary
7 assessments, site investigations, and remedial investigations on real
8 property [acquired by a municipal governmental entity the New Jersey
9 Redevelopment Authority, as the case may be, or on which the
10 municipality the New Jersey Redevelopment Authority owns or holds
11 a tax sale certificate,] in order to determine the existence or extent of
12 any hazardous substance or hazardous waste contamination on those
13 properties. A municipal governmental entity or the New Jersey
14 Redevelopment Authority that has performed, or on which there has
15 been performed, a preliminary assessment, site investigation [and] or
16 remedial investigation on property [or the New Jersey Redevelopment
17 Authority, in any case where the New Jersey Redevelopment Authority
18 has performed the preliminary assessment, site investigation, and
19 remedial investigation] may obtain a loan for the purpose of continuing
20 the remediation on those properties [it owns] as necessary to comply
21 with the applicable remediation [standards] regulations adopted by
22 the department;

23 (3) At least 15% of the moneys shall be allocated for financial
24 assistance to persons, [including] the New Jersey Redevelopment
25 Authority, or municipal governmental entities for remediation activities
26 at sites that have been contaminated by a discharge of a hazardous
27 substance or hazardous waste, or at which there is an imminent and
28 significant threat of a discharge of a hazardous substance or hazardous
29 waste, and the discharge or threatened discharge poses or would pose
30 an imminent and significant threat to a drinking water source, to
31 human health, or to a sensitive or significant ecological area;

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

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

44 (6) At least [20%] 15% of the moneys shall be allocated for grants
45 to persons [, other than municipal governmental entities,] who own
46 real property on which there has been a discharge of a hazardous

1 substance or a hazardous waste and that person qualifies for an
2 innocent party grant. A person qualifies for an innocent party grant if
3 that person acquired the property prior to December 31, 1983, except
4 as provided hereunder, the hazardous substance or hazardous waste
5 that was discharged at the property was not used by the person at that
6 site, and that person certifies that he did not discharge any hazardous
7 substance or hazardous waste at an area where a discharge is
8 discovered; provided, however, that [if the person is] notwithstanding
9 any other provision of this section the New Jersey Redevelopment
10 Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.),
11 [the authority] shall qualify for an innocent party grant pursuant to this
12 paragraph where the immediate predecessor in title to the authority
13 would have qualified for but failed to apply for or receive such grant.
14 A grant authorized pursuant to this paragraph may be for up to 50%
15 of the remediation costs at the area of concern for which the person
16 qualifies for an innocent party grant, except that no grant awarded
17 pursuant to this paragraph to any person [including] or the New Jersey
18 Redevelopment Authority may exceed \$1,000,000;

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

25 (8) At least 5% of the moneys shall be allocated for matching
26 grants for up to 25% of the project costs to qualifying persons who
27 propose to perform a remedial action that uses an innovative
28 technology except that no grant awarded pursuant to this paragraph
29 to any qualifying person may exceed \$100,000;

30 (9) At least 5% of the moneys shall be allocated for matching
31 grants for up to 25% of the project costs to qualifying persons for the
32 implementation of a permanent remedial action except that no grant
33 awarded pursuant to this paragraph to any qualifying person may
34 exceed \$100,000. The authority may use money allocated pursuant to
35 this paragraph to provide loan guarantees to encourage financial
36 institutions to provide loans to any person who may receive financial
37 assistance from the fund who plans to implement a permanent remedial
38 action; and

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

1 For the purposes of paragraphs (8) and (9) of this subsection,
2 "qualifying persons" means any person who has a net worth of not
3 more than \$2,000,000.

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
24 calendar year. Repayments of principal and interest on the loans
25 issued from the remediation fund shall be paid to the authority and
26 shall be deposited into the remediation fund.

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

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

43 e. Prior to March 1 of each year, the authority shall submit to the
44 Senate Environment Committee and the Assembly Agriculture and
45 Waste Management Committee, or their successors, a report detailing
46 the amount of money that was available for financial assistance and

1 grants from the remediation fund for the previous calendar year, the
2 amount of money estimated to be available for financial assistance and
3 grants for the current calendar year, the amount of financial assistance
4 and grants issued for the previous calendar year and the category for
5 which each financial assistance and grant was rendered, and any
6 suggestions for legislative action the authority deems advisable to
7 further the legislative intent to facilitate remediation and promote the
8 redevelopment and use of existing industrial sites.
9 (cf: P.L.1996, c.62, s.65)

10

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

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

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

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

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

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

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

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

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

1 b. An applicant for financial assistance or a grant shall be required
2 to:

3 (1) provide proof, as determined sufficient by the authority, that
4 the applicant, where applicable, cannot establish a remediation funding
5 source for all or part of the remediation costs, as required by section
6 25 of P.L.1993, c.139 (C.58:10B-3). The provisions of this paragraph
7 do not apply to grants to innocent persons or for the use of innovative
8 technologies or for a permanent remedy or to financial assistance or
9 grants to municipal governmental entities or the New Jersey
10 Redevelopment Authority; and

11 (2) demonstrate the ability to repay the amount of the financial
12 assistance and interest, and, if necessary, to provide adequate
13 collateral to secure the financial assistance amount.

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

17 d. In establishing requirements for financial assistance or grant
18 applications and financial assistance or grant agreements, the
19 authority:

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

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

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

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

33

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

36 33. a. There is imposed upon every person who is required to
37 establish a remediation funding source pursuant to section 25 of
38 P.L.1993, c.139 (C.58:10B-3) a remediation funding source surcharge.
39 The remediation funding source surcharge shall be in an amount equal
40 to 1% of the required amount of the remediation funding source
41 required by the department to be maintained. No surcharge, however,
42 may be imposed upon (1) that amount of the remediation funding
43 source that is met by a self-guarantee as provided in subsection f. of
44 section 25 of P.L.1993, c.139 (C.58:10B-3), (2) that amount of the
45 remediation funding source that is met by financial assistance or a
46 grant from the remediation fund, (3) any person who voluntarily

1 [undertakes] performs a remediation [without being so ordered or
2 directed by the department or by a court or] pursuant to an
3 administrative consent order, [or] (4) any person who entered
4 voluntarily into a memorandum of understanding with the department
5 to remediate real property, as long as that person continues the
6 remediation in a reasonable manner, or as required by law, even if
7 subsequent to initiation of the memorandum of understanding, the
8 person received an order by the department or entered into an
9 administrative consent order to perform the remediation, (5) any
10 person performing a remediation in an environmental opportunity
11 zone, or (6) that amount of the cost of the remediation that is for the
12 use of an innovative technology or to implement a permanent remedy.
13 The surcharge shall be based on the cost of remediation work
14 remaining to be completed and shall be paid on an annual basis as long
15 as the remediation continues and until the Department of
16 Environmental Protection [and Energy] issues a no further action
17 letter for the property subject to the remediation. The remediation
18 funding source surcharge shall be due and payable within 14 days of
19 the time of the department's approval of a remedial action workplan or
20 signing an administrative consent order or as otherwise provided by
21 law. The department shall collect the surcharge and shall remit all
22 moneys collected to the Economic Development Authority for deposit
23 into the Hazardous Discharge Site Remediation Fund.

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

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

31

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

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

43 Until the minimum remediation standards for the protection of
44 public health and safety as described herein are adopted, the
45 department shall apply public health and safety remediation standards
46 for contamination at a site on a case-by-case basis based upon the

1 considerations and criteria enumerated in this section.

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

16 The department may not require any person to perform an
17 ecological evaluation of any area of concern that consists of an
18 underground storage tank storing heating oil for on-site consumption
19 in a one to four family residential building.

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

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

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

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

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

40 c. (1) The department shall develop permanent residential and
41 nonresidential soil remediation standards that are protective of public
42 health and safety. For contaminants that are mobile and transportable
43 to groundwater or surface water, the permanent residential and
44 nonresidential soil remediation standards shall be protective of
45 groundwater and surface water. **[Residential]** Permanent residential
46 soil remediation standards shall be set at levels or concentrations of

1 contamination for real property based upon the use of that property for
2 residential or similar uses and which will allow the unrestricted use of
3 that property without the need of engineering devices or any
4 institutional controls and without exceeding a health risk [level]
5 standard greater than that provided in subsection d. of this section.
6 [Nonresidential] Permanent nonresidential soil remediation standards
7 shall be set at levels or concentrations of contaminants that recognize
8 the lower likelihood of exposure to contamination on property that
9 will not be used for residential or similar uses , which will allow for the
10 unrestricted use of that property for nonresidential purposes, and that
11 can be met without the need of engineering controls. Whenever real
12 property is remediated to a nonresidential soil remediation standard,
13 except as otherwise provided in paragraph (3) of subsection g. of this
14 section, the department shall require, pursuant to section 36 of
15 P.L.1993, c.139 (C.58:10B-13), that the use of the property be
16 restricted to nonresidential or other uses compatible with the extent of
17 the contamination of the soil and that access to that site be restricted
18 in a manner compatible with the allowable use of that property.

19 (2) The department may develop differential remediation standards
20 for surface water or groundwater that take into account the current,
21 planned, or potential use of that water in accordance with the "Clean
22 Water Act" (33 U.S.C. §1251 et seq.) and the "Water Pollution
23 Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.).

24 d. [In developing] The department shall develop minimum
25 remediation standards for soil, groundwater, and surface water
26 intended to be protective of public health and safety [.] taking into
27 account the provisions of this section. In developing these minimum
28 health risk remediation standards the department shall identify the
29 hazards posed by a contaminant to determine whether exposure to that
30 contaminant can cause an increase in the incidence of an adverse health
31 effect and whether the adverse health effect may occur in humans.
32 The department shall set minimum soil remediation health risk
33 standards for both residential and nonresidential uses that:

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

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

39 The health risk [levels] standards established in this subsection are
40 for any particular contaminant and not for the cumulative effects of
41 more than one contaminant at a site.

42 e. Remediation standards and other remediation requirements
43 established pursuant to this section and regulations adopted pursuant
44 thereto shall apply to remediation activities required pursuant to the
45 "Spill Compensation and Control Act," P.L.1976, c.141
46 (C.58:10-23.11 et seq.), the "Water Pollution Control Act," P.L.1977,

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

18 f. (1) A person performing a remediation of contaminated real
19 property, in lieu of using the established minimum permanent soil
20 remediation standard for either residential use or nonresidential use
21 adopted by the department pursuant to subsection c. of this section,
22 may submit to the department a request to use an alternative
23 residential use permanent or nonresidential use soil remediation
24 standard. The use of an alternative soil remediation standard shall be
25 based upon site specific factors which may include (1) physical site
26 characteristics which may vary from those used by the department in
27 the development of the soil remediation standards adopted pursuant to
28 this section; or (2) a site specific risk assessment. If a person
29 performing a remediation requests to use an alternative soil
30 remediation standard based upon a site specific risk assessment, that
31 person shall demonstrate to the department that the requested
32 deviation from the risk assessment protocol used by the department in
33 the development of soil remediation standards pursuant to this section
34 is consistent with the guidance and regulations for exposure
35 assessment developed by the United States Environmental Protection
36 Agency pursuant to the "Comprehensive Environmental Response,
37 Compensation, and Liability Act of 1980," 42 U.S.C. §9601 et seq.
38 and other statutory authorities as applicable. A site specific risk
39 assessment may consider exposure scenarios and assumptions that take
40 into account the form of the contaminant present, natural
41 biodegradation, fate and transport of the contaminant, and available
42 toxicological data that are based upon generally accepted and peer
43 reviewed scientific evidence or methodologies.

44 Upon a determination by the department that the requested
45 alternative remediation standard is protective of public health and
46 safety, as established in subsection d. of this section, and protective of

1 the environment pursuant to subsection a. of this section, the
2 alternative residential use or nonresidential use soil remediation
3 standard shall be approved by the department.

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

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

24 (1) Permanent and nonpermanent [remedies] remedial actions shall
25 be allowed except that permanent remedies shall be preferred over
26 nonpermanent remedies for remedial actions. The department,
27 however, may not disapprove the use of a nonpermanent remedial
28 action so long as the selected remedial action meets the health risk
29 standard established in subsection d. of this section, and where, as
30 applicable, is protective of the environment. The choice of the
31 remedial action to be implemented shall be made by the person
32 performing the remediation and that choice of the remedial action
33 shall be approved by the department if all the criteria for remedial
34 action selection enumerated in this section are met. The department
35 may not require a person to compare or investigate any alternative
36 remedial action as part of its review of the selected remedial action.

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

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

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

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

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

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

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

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

1 not require a person performing a remedial action to implement a
2 permanent remedy, unless the cost of implementing a nonpermanent
3 remedy is 50 percent or more than the cost of implementing a
4 permanent remedy; provided, however, that the preceding provision
5 shall not apply to any owner or operator of an industrial establishment
6 who is implementing a remedial action pursuant to subsection i. of
7 section 4 of P.L.1983, c.330;] The use of a remedial action for soil
8 contamination that is determined by the department to be effective in
9 its guidance document created pursuant to section 38 of P.L.1993,
10 c.139 (C.58:10B-14), is presumed to be an appropriate remedial action
11 if it is to be implemented on a site in the manner described by the
12 department in the guidance document and if all of the conditions for
13 remedy selection provided for in this section are met. The burden to
14 prove compliance with the criteria in the guidance document is with
15 the person performing the remediation.

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

19 The burden to demonstrate that a remedial action is protective of
20 public health, safety and the environment, as applicable, and has been
21 selected in conformance with the provisions of this subsection is with
22 the person proposing the remedial action.

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

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

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

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

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

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

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

1 or similar plan is being implemented in a reasonable timeframe, as may
2 be indicated in the approved remedial action workplan or similar plan.

3 k. Notwithstanding any other provisions of this section, all
4 remediation standards and remedial actions that involve real property
5 located in the Pinelands area shall be consistent with the provisions of
6 the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.),
7 any rules and regulations promulgated pursuant thereto, and with
8 section 502 of the "National Parks and Recreation Act of 1978," 16
9 U.S.C. §[4711] 471i.

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

20 m. Nothing in P.L.1993, c.139 shall be construed to restrict or in
21 any way diminish the public participation which is otherwise provided
22 under the provisions of the "Spill Compensation and Control Act,"
23 P.L.1976, c.141 (C.58:10-23.11 et seq.).

24 n. Notwithstanding any provision of subsection a. of section 36 of
25 P.L. 1993, c.139 (C.58:10B-13) to the contrary, the department may
26 not require a person intending to implement a remedial action at an
27 underground storage tank facility storing heating oil for on-site
28 consumption at a one to four family residential dwelling to provide
29 advance notice to a municipality prior to implementing that remedial
30 action.

31 o. A person who has remediated a site pursuant to the provisions
32 of this section, who was liable for the cleanup and removal costs of
33 that discharge pursuant to the provisions of paragraph (1) of
34 subsection c. of P.L.1976, c.141 (C.58:10-23.11g), and who remains
35 liable for the discharge on that site due to a possibility that a
36 remediation standard may change, undiscovered contamination may be
37 found, or because an engineering control was used to remediate the
38 discharge, shall maintain with the department a current address at
39 which that person may be contacted in the event additional
40 remediation needs to be performed at the site. The requirement to
41 maintain the current address shall be made part of the conditions of the
42 no further action letter issued by the department at the completion of
43 a remediation.

44 (cf: P.L.1993, c.139, s.35)

45

46 18. Section 36 of P.L.1993, c.139 (C.58:10B-13) is amended to

1 read as follows:

2 36. a. When real property is remediated to a nonresidential soil
3 remediation standard or engineering or institutional controls are used
4 in lieu of remediating a site to meet an established remediation
5 standard for soil, groundwater, or surface water, the department shall,
6 as a condition of the use of that standard or control measure:

7 (1) require the establishment of any engineering or institutional
8 controls the department determines are reasonably necessary to
9 prevent exposure to the contaminants, require maintenance, as
10 necessary, of those controls, and require the restriction of the use of
11 the property in a manner that prevents exposure;

12 (2) require, with the consent of the owner of the real property, the
13 recording with the office of the county recording officer, in the county
14 in which the property is located, a notice to inform prospective holders
15 of an interest in the property that contamination exists on the property
16 at a level that may statutorily restrict certain uses of or access to all or
17 part of that property, a delineation of those restrictions, a description
18 of all specific engineering or institutional controls at the property that
19 exist and that shall be maintained in order to prevent exposure to
20 contaminants remaining on the property, and the written consent to the
21 notice by the owner of the property. The notice shall be recorded in
22 the same manner as are deeds and other interests in real property. The
23 department shall develop a uniform deed notice that ensures the proper
24 filing of the deed notice. The provisions of this paragraph do not
25 apply to restrictions on the use of surface water or groundwater;

26 (3) require a notice to the governing body of each municipality in
27 which the property is located that contaminants will exist at the
28 property above residential use soil remediation standards or any other
29 remediation standards and specifying the restrictions on the use of or
30 access to all or part of that property and of the specific engineering or
31 institutional controls at the property that exist and that shall be
32 maintained;

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

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

40 (6) require a person, prior to commencing a remedial action, to
41 notify the governing body of each municipality wherein the property
42 being remediated is located. The notice shall include, but not be
43 limited to, the commencement date for the remedial action; the name,
44 mailing address and business telephone number of the person
45 implementing the remedial action, or his designated representative; and
46 a brief description of the remedial action.

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

5 c. Whenever engineering or institutional controls on property as
6 provided in subsection a. of this section are no longer required, or
7 whenever the engineering or institutional controls are changed because
8 of the performance of subsequent remedial activities, a change in
9 conditions at the site, or the adoption of revised remediation
10 standards, the department shall require that the owner or operator of
11 that property record with the office of the county recording officer a
12 notice that the use of the property is no longer restricted or delineating
13 the new restrictions. The department shall also require that the owner
14 or operator notify, in writing, the municipality in which the property
15 is located of the removal or change of the restrictive use conditions.

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

33 e. Notwithstanding the provisions of any other law, or any rule,
34 regulation, or order adopted pursuant thereto to the contrary,
35 whenever contamination at a property is remediated in compliance
36 with any soil, or any groundwater [,] or surface water remediation
37 standards that were in effect or approved by the department at the
38 completion of the remediation, [the owner or operator of the property
39 or person performing the remediation] no person, except as otherwise
40 provided in this section, shall [not] be liable for the cost of any
41 additional remediation that may be required by a subsequent adoption
42 by the department of a more stringent remediation standard for a
43 particular contaminant. Upon the adoption of a regulation that amends
44 a remediation standard, only a person who is liable to clean up and
45 remove that contamination pursuant to section 8 of P.L.1976, c.141
46 (C.58:10-23.11g), and who does not have a defense to liability

1 pursuant to subsection d. of that section, shall be liable for any
2 additional remediation costs necessary to bring the site into
3 compliance with the new remediation standards except that no person
4 shall be so liable unless the difference between the new remediation
5 standard and the level or concentration of a contaminant at the
6 property differs by an order of magnitude The department may
7 compel a person who is liable for the additional remediation costs to
8 perform additional remediation activities to meet the new remediation
9 standard except that a person may not be compelled to perform any
10 additional remediation activities on the site if that person can
11 demonstrate that the existing engineering or institutional controls on
12 the site prevent exposure to the contamination and that the site
13 remains protective of public health safety and the environment
14 pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12). The burden
15 to prove that a site remains protective is on the person liable for the
16 additional remediation costs. A person liable for the additional
17 remediation costs who is relying on engineering or institutional
18 controls to make a site protective, shall comply with the provisions of
19 subsections a., b., c. and d. of this section.

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

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

28 f. Whenever the department approves or has approved the use of
29 engineering or institutional controls for the remediation of soil, or the
30 use of engineering or institutional controls for the remediation of
31 groundwater[,] or surface water, to protect public health, safety or the
32 environment in lieu of remediating a site to a condition that meets an
33 established residential or non residential soil or other remediation
34 standard, the department [shall not] may require additional
35 remediation of that site [unless] only if the engineering or institutional
36 controls no longer are protective of public health, safety, or the
37 environment.

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

45 h. A property owner of a site on which a deed notice has been
46 recorded shall notify any person who intends to excavate on the site

1 of the nature and location of any contamination existing on the site and
2 of any conditions or measures necessary to prevent exposure to
3 contaminants.

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

5

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

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

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

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

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

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

21 "Cleanup and removal costs" means all costs associated with a
22 discharge, incurred by the State or its political subdivisions or their
23 agents or any person with written approval from the department in the:
24 (1) removal or attempted removal of hazardous substances, or (2)
25 taking of reasonable measures to prevent or mitigate damage to the
26 public health, safety, or welfare, including, but not limited to, public
27 and private property, shorelines, beaches, surface waters, water
28 columns and bottom sediments, soils and other affected property,
29 including wildlife and other natural resources, and shall include costs
30 incurred by the State for the indemnification and legal defense of
31 contractors pursuant to sections 1 through 11 of P.L.1991, c.373
32 (C.58:10-23.11f8 et seq.) For the purposes of this definition, costs
33 incurred by the State shall not include any indirect costs for
34 department oversight performed after the effective date of P.L. _____,
35 c. _____ (now before the Legislature as this bill), but may include only
36 those program costs directly related to the cleanup and removal of the
37 discharge; however, where the State or the fund have expended money
38 for the cleanup and removal of a discharge and are seeking to recover
39 the costs incurred in that cleanup and removal action from a
40 responsible party, costs incurred by the State shall include any indirect
41 costs;

42 "Commissioner" means the Commissioner of Environmental
43 Protection;

44 "Department" means the Department of Environmental Protection;

45 "Director" means the Director of the Division of Taxation in the
46 Department of the Treasury;

1 "Discharge" means any intentional or unintentional action or
2 omission resulting in the releasing, spilling, leaking, pumping, pouring,
3 emitting, emptying or dumping of hazardous substances into the
4 waters or onto the lands of the State, or into waters outside the
5 jurisdiction of the State when damage may result to the lands, waters
6 or natural resources within the jurisdiction of the State;

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

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

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

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

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

40 "Major facility" includes, but is not limited to, any refinery, storage
41 or transfer terminal, pipeline, deep-water port, drilling platform or any
42 appurtenance related to any of the preceding that is used or is capable
43 of being used to refine, produce, store, handle, transfer, process or
44 transport hazardous substances. "Major facility" shall include a vessel
45 only when that vessel is engaged in a transfer of hazardous substances
46 between it and another vessel, and in any event shall not include a

1 vessel used solely for activities directly related to recovering,
2 containing, cleaning up or removing discharges of petroleum in the
3 surface waters of the State, including training, research, and other
4 activities directly related to spill response.

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

8 (1) 20,000 gallons or more for hazardous substances which are
9 other than petroleum or petroleum products, or

10 (2) 200,000 gallons or more for hazardous substances of all kinds.

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

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

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

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

33 "Person" means public or private corporations, companies,
34 associations, societies, firms, partnerships, joint stock companies,
35 individuals, the United States, the State of New Jersey and any of its
36 political subdivisions or agents;

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

1 petroleum or petroleum stock in this State;

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

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

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

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

16 "Waters" means the ocean and its estuaries to the seaward limit of
17 the State's jurisdiction, all springs, streams and bodies of surface or
18 groundwater, whether natural or artificial, within the boundaries of
19 this State.

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

21

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

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

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

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

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

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

46 (5) Interest on loans obtained or other obligations incurred by a

1 claimant for the purpose of ameliorating the adverse effects of a
2 discharge pending the payment of a claim in full as provided by this
3 act.

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

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

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

37 Where a person is liable for cleanup and removal costs as provided
38 in this paragraph, any expenditures made by the administrator for that
39 cleanup and removal shall constitute a debt of that person to the fund.
40 The debt shall constitute a lien on all property owned by that person
41 when a notice of lien identifying the nature of the discharge and the
42 amount of the cleanup, removal and related costs expended from the
43 fund is duly filed with the clerk of the Superior Court. The clerk shall
44 promptly enter upon the civil judgment or order docket the name and
45 address of the liable person and the amount of the lien as set forth in
46 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 liable person,
3 whether or not that person is insolvent.

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

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

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

28 (3) In addition to the persons liable pursuant to this subsection,
29 any person who owns real property acquired on or after September 14,
30 1993 on which there has been a discharge prior to the person's
31 acquisition of that property and who knew or should have known that
32 a hazardous substance had been discharged at the real property, shall
33 be strictly liable, jointly and severally, without regard to fault, for all
34 cleanup and removal costs no matter by whom incurred. Such person
35 shall also be strictly liable, jointly and severally, without regard to
36 fault, for all cleanup and removal costs incurred by the department or
37 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141
38 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter
39 liability of any person who acquired real property prior to September
40 14, 1993.

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

46 (2) A person, including an owner or operator of a major facility,

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

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

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

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

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

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

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

39 (e) For the purposes of this subparagraph the person must have (i)
40 acquired the property subsequent to a contaminant being discharged
41 on the site and which discharge was discovered at the time of
42 acquisition as a result of the appropriate inquiry, as defined in this
43 paragraph (2), (ii) performed, following the effective date of P.L. ,
44 c. (now before the legislature as this bill), a remediation of the site
45 or discharge consistent with the provisions of section 35 of P.L.1993,
46 c.139 (C.58:10B-12), or, relied upon a no further action letter for a

1 remediation performed prior to acquisition, and (iii) established or
2 maintained all engineering and institutional controls as may be required
3 pursuant sections 35 and 36 of P.L.1993, c.139. A person who
4 complies with the provisions of this subparagraph by actually
5 performing a remediation of the site or discharge as set forth in (ii)
6 above shall, upon application, be issued a no further action letter by
7 the department. A person who complies with the provisions of this
8 subparagraph either by receipt of a no further action letter from the
9 department following the effective date of P.L. ., c. (now before
10 the Legislature as this bill), or by relying on a previously issued no
11 further action letter shall not be liable for any further remediation
12 including any changes in a remediation standard or for the subsequent
13 discovery of a contaminant at the site, if the remediation was for the
14 entire site, and the contaminant was discharged prior to the person
15 acquiring the property. Notwithstanding any other provisions of this
16 subparagraph, a person who complies with the provisions of this
17 subparagraph only by virtue of the existence of a previously issued no
18 further action letter shall receive no liability protections for any
19 discharge which occurred during the time period between the issuance
20 of the no further action letter and the property acquisition.
21 Compliance with the provisions of this subparagraph (e) shall not
22 relieve any person of any liability for a discharge that is off the site of
23 the property covered by the no further action letter, for a discharge
24 that occurs at that property after the person acquires the property, for
25 any actions that person negligently takes that aggravates or contributes
26 to a discharge of a contaminant, or if that person fails to maintain the
27 institutional or engineering controls on the property or to otherwise
28 comply with the provisions of the no further action letter.

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

37 (4) Any federal, State, or local governmental entity which acquires
38 ownership of real property through bankruptcy, tax delinquency,
39 abandonment, escheat, eminent domain, condemnation or any
40 circumstance in which the [government] governmental entity
41 involuntarily acquires title by virtue of its function as sovereign, or
42 where the governmental entity acquires the property by any means for
43 the purpose of promoting the redevelopment of that property, shall not
44 be liable [for the cleanup and removal costs of], pursuant to
45 subsection c. of this section or pursuant to common law, to the State
46 or to any other person for any discharge which occurred or began

1 prior to that ownership. This paragraph shall not apply to any federal,
2 State or local governmental entity which has caused or contributed to
3 the discharge of a hazardous substance.

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

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

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

27
28 21. Section 2 of P.L.1995, c.413 (C.54:4-3.151) is amended to
29 read as follows:

30 2. The Legislature finds that there are numerous properties that
31 are underutilized or that have been abandoned and that are not being
32 utilized for any commercial use because of contamination that exists
33 at those properties; that abandoned contaminated properties harm
34 society by causing a burden on municipal services while failing to
35 contribute to the funding of those services; that a disproportionate
36 percentage of these properties are located in older urban municipalities
37 given the fact that these municipalities were once the center for
38 industrial production; that the revitalization of these properties will not
39 only bring tax ratables to the municipality and other local
40 governments, but will result in job creation and foster urban
41 redevelopment; that one of the central tenets of the State Development
42 and Redevelopment Plan is to redevelop urban areas with existing
43 utilities and infrastructure and that the use of these now abandoned or
44 underutilized sites for commercial purposes will make a significant
45 contribution toward implementing the plan; that the federal "Clean Air
46 Act" encourages the reindustrialization of urban areas as this would

1 provide jobs near where people live thus reducing harmful air
2 pollutants emitted from automobiles needed to travel distances to
3 places of employment; and that it is in the economic interest of the
4 State and the municipalities in which abandoned or underutilized
5 contaminated properties are located to encourage the remediation of
6 these properties so that they can be reused or fully used for
7 commercial, residential, or other productive purposes.

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

9
10 22. Section 3 of P.L.1995, c.413, (C.54:4-3.152) is amended to
11 read as follows:

12 3. As used in this act:

13 "Assessor" means the municipal tax assessor appointed pursuant
14 to the provisions of chapter 9 of Title 40A of the New Jersey Statutes;

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

20 "Environmental opportunity zone" means any qualified real
21 property that has been designated by the governing body as an
22 environmental opportunity zone pursuant to section 4 of P.L.1995,
23 c.413 (C.54:4-3.153);

24 "Permanent remedial action" means any remedial action that does
25 not require the continued use of engineering controls in order to meet
26 the established health risk or environmental standards. A remedial
27 action may be considered permanent even if institutional controls are
28 employed at the site;

29 "Qualified real property" means any parcel of real property that is
30 now vacant or underutilized, which is in need of a remediation due to
31 a discharge or threatened discharge of a contaminant [, and which is
32 listed in the most recent Department of Environmental Protection
33 publication of known hazardous discharge sites in New Jersey
34 prepared pursuant to P.L.1982, c.202 (C.58:10-23.15 et seq.)];

35 "Remediation" means all necessary actions to investigate and clean
36 up or respond to any known, suspected, or threatened discharge of
37 contaminants, including, as necessary, the preliminary assessment, site
38 investigation, remedial investigation, and remedial action.

39 (cf: P.L.1995, c.413, s.3)

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

43 5. The governing body of a municipality which has adopted an
44 ordinance pursuant to section 4 of P.L.1995, c.413 (C.54:4-3.153),
45 ¹[may] shall¹, by ordinance, provide for exemptions of real property
46 taxes for environmental opportunity zones. The governing body shall

1 include the following items in its enabling ordinance:

2 a. A property tax exemption term of ten years except that a tax
3 exemption may be extended up to fifteen years, at the municipality's
4 option, if the qualified real property is to be remediated with a
5 permanent remedial action;

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

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

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

13 e. A requirement that the environmental opportunity zone will be
14 remediated in compliance with the remediation [standards] regulations
15 adopted by the Department of Environmental Protection pursuant to
16 P.L.1993, c.139 (C.58:10B-1 et al.), that the owner of the property
17 will enter into a memorandum of agreement or administrative consent
18 order with the department to perform the remediation and will
19 complete the remediation pursuant to the agreement or order, and that,
20 once remediated, the environmental opportunity zone will be used for
21 a commercial [or] industrial, residential, or other productive purpose
22 during the time period for which the real property tax exemption is
23 given.

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

25

26 24. Section 7 of P.L. 1995, c.413 (C.54:4-3.156) is amended to
27 read as follows:

28 7. a. Each approved exemption shall be evidenced by a financial
29 agreement between the municipality and the applicant. The agreement
30 shall be prepared by the applicant and shall contain the representations
31 that are required by the enabling ordinance. The agreement shall
32 provide for the applicant to annually pay to the municipality an amount
33 in lieu of real property taxes, to be computed according to subsection
34 b. of this section. With the approval of the governing body, the
35 agreement may be assigned to a subsequent owner of the
36 environmental opportunity zone.

37 b. Payments in lieu of real property taxes may be computed as a
38 portion of the real property taxes otherwise due, according to the
39 following schedule:

40 (1) In the first tax year following execution of a memorandum of
41 agreement or administrative consent order, no payment in lieu of taxes
42 otherwise due;

43 (2) In the second tax year following execution of a memorandum
44 of agreement or administrative consent order, an amount not less than
45 10% of taxes otherwise due;

46 (3) In the third tax year following execution of a memorandum of

1 agreement or administrative consent order, an amount not less than
2 20% of taxes otherwise due;

3 (4) In the fourth tax year following execution of a memorandum of
4 agreement or administrative consent order, an amount not less than
5 30% of taxes otherwise due;

6 (5) In the fifth tax year following execution of a memorandum of
7 agreement or administrative consent order, an amount not less than
8 40% of taxes otherwise due;

9 (6) In the sixth tax year following execution of a memorandum of
10 agreement or administrative consent order, an amount not less than
11 50% of the taxes otherwise due;

12 (7) In the seventh tax year following execution of a memorandum
13 of agreement or administrative consent order, an amount not less than
14 60% of the taxes otherwise due;

15 (8) In the eighth tax year following execution of a memorandum of
16 agreement or administrative consent order, an amount not less than
17 70% of the taxes otherwise due;

18 (9) In the ninth tax year following execution of a memorandum of
19 agreement or administrative consent order, an amount not less than
20 80% of the taxes otherwise due;

21 (10) In the tenth and all subsequent tax years following execution
22 of a memorandum of agreement or administrative consent order, the
23 exemption shall expire and the full amount of the assessed real
24 property taxes, taking into account the value of the real property in its
25 remediated state, shall be due.

26 Where a property tax exemption has been extended because of the
27 proposed implementation of a permanent remedial action, the
28 municipality may provide for a different schedule for the payment in
29 lieu of real property taxes which payments may not exceed the length
30 of the property tax exemption.

31 c. For the purposes of this section, the amount of "taxes
32 otherwise due" shall be determined by using the assessed valuation of
33 the environmental opportunity zone at the time of the approval by the
34 assessor of the exemption, regardless of any improvement made to the
35 environmental opportunity zone thereafter.

36 d. Notwithstanding any other provision in P.L.1995, c.413
37 (C.54:4-3.150 et seq.), if at any time the governing body of the
38 municipality finds that the memorandum of agreement for remediation
39 of the environmental opportunity zone has been terminated at the
40 option of the applicant, unless if an administrative consent order is
41 issued in its place, or that any of the conditions in the ordinance as
42 required by subsection e. of section 5 of P.L.1995, c.413
43 (C.54:4-3.154) are not met, the period of the property tax exemption
44 shall end.

45 (cf: P.L.1995, c.413, s.7)

46

1 25. Section 2 of P.L.1960, c.183 (C.40:37A-45) is amended to
2 read as follows:

3 2. As used in this act, unless a different meaning clearly appears
4 from the context:

5 (a) "Authority" shall mean a public body created pursuant to this
6 act;

7 (b) "Bond resolution" shall have the meaning ascribed thereto in
8 section 17 of P.L.1960, c.183 (C.40:37A-60);

9 (c) "Bonds" shall mean bonds, notes or other obligations issued
10 pursuant to this act;

11 (d) "Construct" and "construction" shall connote and include acts
12 of clearance, demolition, construction, development or redevelopment,
13 reconstruction, replacement, extension, improvement and betterment;

14 (e) "Cost" shall mean, in addition to the usual connotations
15 thereof, the cost of planning, acquisition or construction of all or any
16 part of any public facility or facilities of an authority and of all or any
17 property, rights, easements, privileges, agreements and franchises
18 deemed by the authority to be necessary or useful and convenient
19 therefor or in connection therewith, including interest or discount on
20 bonds, cost of issuance of bonds, architectural, engineering and
21 inspection costs and legal expenses, cost of financial, professional and
22 other estimates and advice, organization, administrative, operating and
23 other expenses of the authority prior to and during such acquisition or
24 construction, and all such other expenses as may be necessary or
25 incident to the financing, acquisition, construction and completion of
26 such public facility or facilities or part thereof and the placing of the
27 same fully in operation or the disposition of the same, and also such
28 provision or reserves for working capital, operating, maintenance or
29 replacement expenses or for payment or security of principal of or
30 interest on bonds during or after such acquisition or construction as
31 the authority may determine, and also reimbursements to the authority
32 or any governmental unit or person of any moneys theretofore
33 expended for the purposes of the authority;

34 (f) The term "county" shall mean any county of any class of the
35 State and shall include, without limitation, the terms "the county" and
36 "beneficiary county" defined in this act, and the term "the county" shall
37 mean the county which created an authority pursuant to this act;

38 (g) "Development project" shall mean any lands, structures, or
39 property or facilities acquired or constructed or to be acquired or
40 constructed by an authority for the purposes of the authority described
41 in subsection (e) of section 11 of P.L.1960, c.183 (C.40:37A-54);

42 (h) "Facility charges" shall have the meaning ascribed to said term
43 in section 14 of P.L.1960, c.183 (C.40:37A-57);

44 (i) "Facility revenues" shall have the meaning ascribed to said term
45 in subsection (e) of section 20 of P.L.1960, c.183 (C.40:37A-63);

46 (j) "Governing body" shall mean, in the case of a county, the

1 board of chosen freeholders, or in the case of a county operating under
2 article 3 or 5 of the "Optional County Charter Law" (P.L.1972, c.154;
3 C.40:41A-1 et seq.) as defined thereunder, and, in the case of a
4 municipality, the commission, council, board or body, by whatever
5 name it may be known, having charge of the finances of the
6 municipality;

7 (k) "Governmental unit" shall mean the United States of America
8 or the State or any county or municipality or any subdivision,
9 department, agency, or instrumentality heretofore or hereafter created,
10 designated or established by or for the United States of America or the
11 State or any county or municipality;

12 (l) "Local bond law" shall mean chapter 2 of Title 40A,
13 Municipalities and Counties, of the New Jersey Statutes (N.J.S.) as
14 amended and supplemented;

15 (m) "Municipality" shall mean any city, borough, village, town, or
16 township of the State but not a county or a school district;

17 (n) "Person" shall mean any person, partnership, association,
18 corporation or entity other than a nation, state, county or municipality
19 or any subdivision, department, agency or instrumentality thereof;

20 (o) "Project" shall have the meaning ascribed to said term in
21 section 17 of P.L.1960, c.183 (C.40:37A-60);

22 (p) "Public facility" shall mean any lands, structures, franchises,
23 equipment, or other property or facilities acquired, constructed,
24 owned, financed, or leased by the authority or any other governmental
25 unit or person to accomplish any of the purposes of an authority
26 authorized by section 11 of P.L.1960, c.183 (C.40:37A-54);

27 (q) "Real property" shall mean lands within or without the State,
28 above or below water, and improvements thereof or thereon, or any
29 riparian or other rights or interests therein;

30 (r) "Garbage and solid waste disposal system" shall mean the
31 plants, structures and other real and personal property acquired,
32 constructed or operated or to be acquired, constructed or operated by
33 a county improvement authority, including incinerators, sanitary
34 landfill facilities or other plants for the treatment and disposal of
35 garbage, solid waste and refuse matter and all other real and personal
36 property and rights therein and appurtenances necessary or useful and
37 convenient for the collection and treatment or disposal in a sanitary
38 manner of garbage, solid waste and refuse matter (but not including
39 sewage);

40 (s) "Garbage, solid waste or refuse matter" shall mean garbage,
41 refuse and other discarded materials resulting from industrial,
42 commercial and agricultural operations, and from domestic and
43 community activities, and shall include all other waste materials
44 including sludge, chemical waste, hazardous wastes and liquids, except
45 for liquids which are treated in public sewage treatment plants and
46 except for solid animal and vegetable wastes collected by swine

1 producers licensed by the State Department of Agriculture to collect,
2 prepare and feed such wastes to swine on their own farms;

3 (t) "Blighted, deteriorated or deteriorating area" may include an
4 area determined heretofore by the municipality to be blighted in
5 accordance with the provisions of P.L.1949, c.187, repealed by
6 P.L.1992, c.79 (C.40:55-21.1 et seq.) and, in addition, areas which are
7 determined by the municipality, pursuant to the same procedures as
8 provided in said law, to be blighted, deteriorated or deteriorating
9 because of structures or improvements which are dilapidated or
10 characterized by disrepair, lack of ventilation or light or sanitary
11 facilities, faulty arrangement, location, or design, or other unhealthful
12 or unsafe conditions;

13 (u) "Redevelopment" may include planning, replanning,
14 conservation, rehabilitation, clearance, remediation, development and
15 redevelopment; and the construction and rehabilitation and provision
16 for construction and rehabilitation of residential, commercial,
17 industrial, public or other structures and the grant or dedication or
18 rededication of spaces as may be appropriate or necessary in the
19 interest of the general welfare for streets, parks, playgrounds, or other
20 public purposes including recreational and other facilities incidental or
21 appurtenant thereto, in accordance with a redevelopment plan
22 approved by the governing body of a municipality;

23 (v) "Redevelopment plan" shall mean a plan as it exists from time
24 to time for the redevelopment of all or any part of a redevelopment
25 area, which plan shall be sufficiently complete to indicate such land
26 acquisition, demolition and removal of structures, redevelopment,
27 improvements, conservation or rehabilitation as may be proposed to
28 be carried out in the area of the project, zoning and planning changes,
29 if any, land uses, maximum densities, building requirements, the plan's
30 relationship to definite local objectives respecting appropriate land
31 uses, improved traffic, public transportation, public utilities,
32 recreational and community facilities, and other public improvements,
33 the need for and extent of remediation of any lands, and provision for
34 relocation of any residents and occupants to be displaced in a manner
35 which has been or is likely to be approved by the Department of
36 Community Affairs pursuant to the "Relocation Assistance Law of
37 1967," P.L.1967, c.79 (C.52:31B-1 et seq.) and the "Relocation
38 Assistance Act," P.L.1971, c.362 (C.20:4-1 et seq.) and rules and
39 regulations pursuant thereto;

40 (w) "Redevelopment project" shall mean any undertakings and
41 activities for the elimination, and for the prevention of the
42 development or spread, of blighted, deteriorated, or deteriorating
43 areas and may involve any work or undertaking pursuant to a
44 redevelopment plan; such undertaking may include: (1) acquisition of
45 real property and demolition, removal or rehabilitation of buildings and
46 improvements thereon; (2) carrying out plans for a program of

1 voluntary repair and rehabilitation of buildings or other improvements;
2 and (3) installation, construction or reconstruction of streets, utilities,
3 parks, playgrounds or other improvements necessary for carrying out
4 the objectives of the redevelopment project;

5 (x) "Redeveloper" shall mean any person or governmental unit that
6 shall enter into or propose to enter into a contract with an authority
7 for the redevelopment of an area or any part thereof under the
8 provisions of this act;

9 (y) "Redevelopment area" shall mean an area of a municipality
10 which the governing body thereof finds is a blighted area, a
11 contaminated redevelopment site, or an area in need of rehabilitation
12 whose redevelopment is necessary to effectuate the public purposes
13 declared in this act. A redevelopment area may include lands,
14 buildings, or improvements which of themselves are not detrimental to
15 the public health, safety or welfare, but whose inclusion is found
16 necessary, with or without change in their condition, for the effective
17 redevelopment of the area of which they are a part;

18 (z) "Sludge" shall mean any solid, semisolid, or liquid waste
19 generated from a municipal, industrial or other sewage treatment plant,
20 water supply treatment plant, or air pollution control facility, or any
21 other such waste having similar characteristics and effects, but shall
22 not include effluent; [and]

23 (aa) "Beneficiary county" shall mean any county that has not
24 created an authority pursuant to this act ;

25 (bb) "Contaminated redevelopment site" means any parcel of real
26 property that is now vacant or underutilized, which is in need of a
27 remediation due to a perceived or actual discharge or threatened
28 discharge of a contaminant, and which has been so designated by the
29 municipality in which it is located. "Contaminated redevelopment site"
30 may only include an environmental opportunity zone designated by a
31 municipality pursuant to P.L.1995, c.413 (C.54:4-3.150 et seq.) or an
32 area determined to be in need of redevelopment pursuant to P.L. 1992,
33 c.79 (C.40A:12A-1 et seq.);

34 (cc) "Remediation" means all necessary actions to investigate and
35 clean up or respond to any known, suspected, or threatened discharge
36 of contaminants, including, as necessary, the preliminary assessment,
37 site investigation, remedial investigation, and remedial action;

38 (dd) "Contaminant" means any discharged hazardous substance as
39 defined pursuant to section 3 of P.L.1976, c.141 (C.58:10-23.11b),
40 hazardous waste as defined pursuant to section 1 of P.L.1976, c.99
41 (C.13:1E-38), or pollutant as defined pursuant to section 3 of
42 P.L.1977, c.74 (C.58:10A-3) and;

43 (ee) "Discharge" means an intentional or unintentional action or
44 omission resulting in the releasing, spilling, leaking, pumping, pouring,
45 emitting, emptying, or dumping of a contaminant onto the land or into
46 the waters of the State.

1 (cf: P.L.1994, c.76, s.1)

2

3 26. Section 11 of P.L.1960, c.183 (C.40:37A-54) is amended to
4 read as follows:

5 11. The purposes of every authority shall be (a) provision within
6 the county or any beneficiary county of public facilities for use by the
7 State, the county or any beneficiary county, or any municipality in any
8 such county, or any two or more or any subdivisions, departments,
9 agencies or instrumentalities of any of the foregoing for any of their
10 respective governmental purposes, (b) provision within the county or
11 any beneficiary county of public facilities for use as convention halls,
12 or the rehabilitation, improvement or enlargement of any convention
13 hall, including appropriate and desirable appurtenances located within
14 the convention hall or near, adjacent to or over it within boundaries
15 determined at the discretion of the authority, including but not limited
16 to office facilities, commercial facilities, community service facilities,
17 parking facilities, hotel facilities and other facilities for the
18 accommodation and entertainment of tourists and visitors, (c)
19 provision within the county or any beneficiary county of structures,
20 franchises, equipment and facilities for operation of public
21 transportation or for terminal purposes, including development and
22 improvement of port terminal structures, facilities and equipment for
23 public use in counties in, along or through which a navigable river
24 flows, (d) provision within the county or any beneficiary county of
25 structures or other facilities used or operated by the authority or any
26 governmental unit in connection with, or relative to development and
27 improvement of, aviation for military or civilian purposes, including
28 research in connection therewith, and including structures or other
29 facilities for the accommodation of passengers, (e) provision within the
30 county or any beneficiary county of a public facility for a combination
31 of governmental and nongovernmental uses; provided that not more
32 than 50% of the usable space in any such facility shall be made
33 available for nongovernmental use under a lease or other agreement by
34 or with the authority, (f) acquisition of any real property within the
35 county or any beneficiary county, with or without the improvements
36 thereof or thereon or personal property appurtenant or incidental
37 thereto, from the United States of America or any department, agency
38 or instrumentality heretofore or hereafter created, designated or
39 established by or for it, and the clearance, development or
40 redevelopment, improvement, use or disposition of the acquired lands
41 and premises in accordance with the provisions and for the purposes
42 stated in this act, including the construction, reconstruction,
43 demolition, rehabilitation, conversion, repair or alteration of
44 improvements on or to said lands and premises, and structures and
45 facilities incidental to the foregoing as may be necessary, convenient
46 or desirable, (g) acquisition, construction, maintenance and operation

1 of garbage and solid waste disposal systems for the purpose of
2 collecting and disposing of garbage, solid waste or refuse matter,
3 whether owned or operated by any person, the authority or any other
4 governmental unit, within or without the county or any beneficiary
5 county, (h) the improvement, furtherance and promotion of the tourist
6 industries and recreational attractiveness of the county or any
7 beneficiary county through the planning, acquisition, construction,
8 improvement, maintenance and operation of facilities for the recreation
9 and entertainment of the public, which facilities may include, without
10 being limited to, a center for the performing and visual arts, (i)
11 provision of loans and other financial assistance and technical
12 assistance for the construction, reconstruction, demolition,
13 rehabilitation, conversion, repair or alteration of buildings or facilities
14 designed to provide decent, safe and sanitary dwelling units for
15 persons of low and moderate income in need of housing, including the
16 acquisition of land, equipment or other real or personal properties
17 which the authority determines to be necessary, convenient or
18 desirable appurtenances, all in accordance with the provisions of this
19 act, as amended and supplemented, (j) planning, initiating and carrying
20 out redevelopment projects for the elimination, and for the prevention
21 of the development or spread of blighted, deteriorated or deteriorating
22 areas and the disposition, for uses in accordance with the objectives of
23 the redevelopment project, of any property or part thereof acquired in
24 the area of such project, (k) any combination or combinations of the
25 foregoing or following, [and] (l) subject to the prior approval of the
26 Local Finance Board, the planning, design, acquisition, construction,
27 improvement, renovation, installation, maintenance and operation of
28 facilities or any other type of real or personal property within the
29 county for a corporation or other person organized for any one or
30 more of the purposes described in subsection a. of N.J.S.15A:2-1
31 except those facilities or any other type of real or personal property
32 which can be financed pursuant to the provisions of P.L.1972, c.29
33 (C.26:2I-1 et seq.) as amended, and (m) planning, initiating,
34 promoting, financing, and coordinating necessary actions to remediate
35 and redevelop contaminated redevelopment sites.

36 (cf: P.L.1994, c.110, s.1)

37

38 27. Section 12 of P.L.1960, c.183 (C.40:37A-55) is amended to
39 read as follows:

40 12. Every authority shall be a public body politic and corporate
41 constituting a political subdivision of the State established as an
42 instrumentality exercising public and essential governmental functions
43 to provide for the public convenience, benefit and welfare and shall
44 have perpetual succession and, for the effectuation of its purposes,
45 have the following additional powers:

46 (a) To adopt and have a common seal and to alter the same at

1 pleasure;

2 (b) To sue and be sued;

3 (c) To acquire, hold, use and dispose of its facility charges and
4 other revenues and other moneys;

5 (d) To acquire, rent, hold, use and dispose of other personal
6 property for the purposes of the authority;

7 (e) Subject to the provisions of section 26 of this act, to acquire by
8 purchase, gift, condemnation or otherwise, or lease as lessee, real
9 property and easements or interests therein necessary or useful and
10 convenient for the purposes of the authority, whether subject to
11 mortgages, deeds of trust or other liens or otherwise, and to hold and
12 to use the same, and to dispose of property so acquired no longer
13 necessary for the purposes of the authority; provided that the authority
14 may dispose of such property at any time to any governmental unit or
15 person if the authority shall receive a leasehold interest in the property
16 for such term as the authority deems appropriate to fulfill its
17 purposes;

18 (f) Subject to the provisions of section 13 of this act, to lease to
19 any governmental unit or person, all or any part of any public facility
20 for such consideration and for such period or periods of time and upon
21 such other terms and conditions as it may fix and agree upon;

22 (g) To enter into agreements to lease, as lessee, public facilities for
23 such term and under such conditions as the authority may deem
24 necessary and desirable to fulfill its purposes, and to agree, pursuant
25 thereto, to be unconditionally obligated to make payments for the term
26 of the lease, without set-off or counterclaim, whether or not the public
27 facility is completed, operating or operable, and notwithstanding the
28 destruction of, damage to, or suspension, interruption, interference,
29 reduction or curtailment of the availability or output of the public
30 facility to which the agreement applies;

31 (h) To extend credit or make loans to any governmental unit or
32 person for the planning, design, acquisition, construction, equipping
33 and furnishing of a public facility, upon the terms and conditions that
34 the loans be secured by loan and security agreements, mortgages,
35 leases and other instruments, the payments on which shall be sufficient
36 to pay the principal of and interest on any bonds issued for the purpose
37 by the authority, and upon such other terms and conditions as the
38 authority shall deem reasonable;

39 (i) Subject to the provisions of section 13 of this act, to make
40 agreements of any kind with any governmental unit or person for the
41 use or operation of all or any part of any public facility for such
42 consideration and for such period or periods of time and upon such
43 other terms and conditions as it may fix and agree upon;

44 (j) To borrow money and issue negotiable bonds or notes or other
45 obligations and provide for and secure the payment of any bonds and
46 the rights of the holders thereof, and to purchase, hold and dispose of

1 any bonds;

2 (k) To apply for and to accept gifts or grants of real or personal
3 property, money, material, labor or supplies for the purposes of the
4 authority from any governmental unit or person, and to make and
5 perform agreements and contracts and to do any and all things
6 necessary or useful and convenient in connection with the procuring,
7 acceptance or disposition of such gifts or grants;

8 (l) To determine the location, type and character of any public
9 facility and all other matters in connection with all or any part of any
10 public facility which it is authorized to own, construct, establish,
11 effectuate or control;

12 (m) To make and enforce bylaws or rules and regulations for the
13 management and regulation of its business and affairs and for the use,
14 maintenance and operation of any public facility, and to amend the
15 same;

16 (n) To do and perform any acts and things authorized by this act
17 under, through or by means of its own officers, agents and employees,
18 or by contract with any governmental unit or person;

19 (o) To acquire, purchase, construct, lease, operate, maintain and
20 undertake any project and to fix and collect facility charges for the use
21 thereof;

22 (p) To mortgage, pledge or assign or otherwise encumber all or
23 any portion of its revenues and other income, real and personal
24 property, projects and facilities for the purpose of securing its bonds,
25 notes and other obligations or otherwise in furtherance of the purpose
26 of this act;

27 (q) To extend credit or make loans to redevelopers for the
28 planning, designing, acquiring, constructing, reconstructing,
29 improving, remediation, equipping and furnishing any redevelopment
30 project or redevelopment work;

31 (r) To conduct examinations and investigations, hear testimony and
32 take proof, under oath at public or private hearings of any material
33 matter, require the attendance of witnesses and the production of
34 books and papers and issue commissions for the examination of
35 witnesses who are out of the State, unable to attend, or excused from
36 attendance;

37 (s) To authorize a committee designated by it consisting of one or
38 more members, or counsel, or any officer or employee to conduct any
39 such investigation or examination, in which case such committee,
40 counsel, officer or employee shall have power to administer oaths,
41 take affidavits and issue [subpenas] subpoenas or commissions; [and]

42 (t) To enter into any and all agreements or contracts, execute any
43 and all instruments, and do and perform any and all acts or things
44 necessary, convenient or desirable for the purposes of the authority or
45 to carry out any power expressly given in this act subject to P.L.1971,
46 c.198, "Local Public Contracts Law" (C.40A:11-1 et seq.) ; and

1 (u) To conduct and coordinate public outreach efforts to inform
2 the public of the health and environmental risks, as well as the
3 economic benefits, of the remediation and redevelopment of
4 contaminated redevelopment sites.

5 (cf: P.L.1982, c. 113, s. 8)

6
7 28. (New section) For purposes of the redevelopment of
8 contaminated redevelopment areas, and subject to the provisions of
9 this act, a county improvement authority may:

10 a. Acquire or contract to acquire from any person, firm or
11 corporation, public or private, by contribution, gift, grant, bequest,
12 devise, purchase, condemnation or otherwise, real or personal
13 property or any interest therein, including such property as it may
14 deem necessary or proper, although temporarily not required for such
15 purposes, in a redevelopment area and in any area designated by the
16 municipal governing body as necessary for carrying out the relocation
17 of the residents, industry and commerce displaced from a
18 redevelopment area;

19 b. Demolish, remove or rehabilitate buildings or other
20 improvements in any area acquired and install, construct or
21 reconstruct streets, facilities, utilities and site improvements essential
22 to the preparation of sites for use in accordance with the
23 redevelopment plan;

24 c. Relocate or arrange for the relocation of residents and
25 occupants of an area;

26 d. Dispose of land so acquired for the uses specified in the
27 redevelopment plan as determined by it to any person, firm, or
28 corporation or to any public agency by sale, lease or exchange;

29 e. Request the municipal planning board, if any, to recommend, or
30 request the municipal governing body pursuant to existing law to
31 designate, areas in need of redevelopment or as environmental
32 opportunity zones and to make recommendations for such
33 development;

34 f. Study the recommendations of the municipal planning board for
35 redevelopment of any area and to make its own investigations and
36 recommendations as to current trends in the municipality, blighted
37 areas and blighting factor, to the governing body of the municipality
38 thereon;

39 g. Publish and disseminate information;

40 h. Prepare or arrange by contract for preparation of plans by
41 registered architects or licensed professional engineers or planners for
42 the carrying out of the redevelopment projects;

43 i. Arrange or contract with public agencies or redevelopers for the
44 planning, replanning, conservation, rehabilitation, construction, or
45 undertaking of any project, or redevelopment work, or any part
46 thereof, to provide as part of any such arrangement or contract for

1 extension of credit or making of loans to redevelopers to finance any
2 project or redevelopment work, and to arrange or contract with public
3 agencies for the opening, grading or closing of streets, roads,
4 roadways, alleys, or other places or for the furnishing of facilities or
5 for the acquisition by such agency of property options or property
6 rights or for the furnishing of property or services in connection with
7 a redevelopment area;

8 j. Arrange or contract with a public agency, to the extent that it is
9 within the scope of that agency's functions, to cause the services
10 customarily provided by such other agency to be rendered for the
11 benefit of the occupants of any redevelopment area, and to have such
12 other agency provide and maintain parks, recreation centers, schools,
13 sewerage, transportation, water and other municipal facilities adjacent
14 to or in connection with redevelopment areas;

15 k. Enter upon any building or property in any redevelopment area
16 in order to conduct investigations or make surveys, soundings or test
17 borings necessary to carry out the purposes of this act;

18 l. Arrange or contract with a public agency for the relocation of
19 residents, industry or commerce displaced from a redevelopment area;

20 m. Make (1) plans for carrying out a program of voluntary repair
21 and rehabilitation of buildings and improvements; and (2) plans for the
22 enforcement of laws, codes, and regulations relating to the use of land
23 and the use and occupancy of buildings and improvements, and to the
24 compulsory repair, rehabilitation, demolition, or removal of buildings
25 and improvements;

26 n. Develop, test, and report methods and techniques, and carry out
27 demonstrations and other activities, for the prevention and the
28 elimination of blight; and

29 o. To finance by mortgage loans or otherwise the construction
30 or establishment of retail food outlets and to make temporary loans or
31 advances in anticipation of permanent loans.

32

33 29. Section 1 of P.L.1993, c.112 (C.58:10-23.11g4) is amended
34 to read as follows:

35 1. For purposes of sections 1 through 5 of [this act] P.L.1993,
36 c.112 (C.58:10-23.11g4 through 58:10-23.11g8):

37 "Active participation in the management" or "participation in the
38 management" means actual participation in the management or
39 operational affairs by the holder of the security interest and shall not
40 include the mere capacity, or ability to influence, or the unexercised
41 right to control vessel [or] , facility , or underground storage tank
42 facility operations.

43 (1) A holder of a security interest shall be considered to be in
44 active participation in the management, while the borrower is still in
45 possession, only if the holder either:

46 (a) exercises decision making control over the borrower's

1 environmental compliance, such that the holder has undertaken
2 responsibility for the borrower's waste disposal or hazardous substance
3 handling practices; or

4 (b) exercises control at a level comparable to that of a manager of
5 the borrower's enterprise, such that the holder has assumed or
6 manifested responsibility for the overall management of the enterprise
7 encompassing the day-to-day decision making of the enterprise with
8 respect to:

9 (i) environmental compliance; or

10 (ii) all, or substantially all, of the operational (as opposed to
11 financial or administrative) aspects of the enterprise other than
12 environmental compliance. Operational aspects of the enterprise
13 include functions such as that of facility manager, underground
14 storage tank facility manager, or plant manager, operations manager,
15 chief operating officer, or chief executive officer. Financial or
16 administrative aspects include functions such as that of credit manager,
17 accounts payable or receivable manager, or both, personnel manager,
18 controller, chief financial officer, or similar functions.

19 (2) No act or omission prior to the time that indicia of ownership
20 are held primarily to protect a security interest constitutes evidence of
21 participation in management. A prospective holder who undertakes or
22 requires an environmental inspection of the vessel [or] facility, or
23 underground storage tank facility in which indicia of ownership are to
24 be held, or requires a prospective borrower to clean up a vessel [or],
25 facility, or underground storage tank facility or to comply or come
26 into compliance (whether prior or subsequent to the time that indicia
27 of ownership are held primarily to protect a security interest) with any
28 applicable law or regulation, is not by such action considered to be
29 participating in the vessel's [or], facility's, or underground storage tank
30 facility's management, provided however, that a holder shall not be
31 required to conduct or require an inspection to qualify for the
32 protection for holders granted pursuant to sections 1 through 5 of [this
33 act] P.L.1993, c.112 (C.58:10-23.11g4 through 58:10-23.11g8), and
34 the liability of a holder shall not be based on or affected by the holder
35 not conducting or not requiring an inspection.

36 (3) Actions that are consistent with holding ownership indicia
37 primarily to protect a security interest do not constitute participation
38 in management for purposes of sections 1 through 5 of [this act]
39 P.L.1993, c.112 (C.58:10-23.11g4 through 58:10-23.11g8). The
40 authority for the holder to make such actions may, but need not, be
41 contained in contractual or other documents specifying requirements
42 for financial, environmental, and other warranties, covenants,
43 conditions, representations or promises from the borrower. Loan
44 policing and work out activities cover and include all activities up to
45 foreclosure and its equivalents.

46 (a) A holder who engages in policing activities prior to foreclosure

1 shall remain within the exemption provided that the holder does not by
2 such actions participate in the management of the vessel [or], facility,
3 or underground storage tank facility. Such actions include, but are not
4 limited to, requiring the borrower to clean up the vessel [or], facility,
5 or underground storage tank facility during the term of the security
6 interest; requiring the borrower to comply or come into compliance
7 with applicable federal, State, and local environmental and other laws,
8 rules and regulations during the term of the security interest; securing
9 or exercising authority to monitor or inspect the vessel [or], facility,
10 or underground storage tank facility (including on-site inspections) in
11 which indicia of ownership are maintained, or the borrower's business
12 or financial conditions during the term of the security interest; or
13 taking other actions to adequately police the loan or security interest
14 (such as requiring a borrower to comply with any warranties,
15 covenants, conditions, representations or promises from the
16 borrower).

17 (b) A holder who engages in work out activities prior to
18 foreclosure and its equivalents shall remain within the exemption
19 provided that the holder does not by such action participate in the
20 management of the vessel [or], facility, or underground storage tank
21 facility. For purposes of this act, "work out" refers to those actions
22 by which a holder, at any time prior to foreclosure and its equivalents,
23 seeks to: prevent, cure, or mitigate a default by the borrower or
24 obligor; or preserve or prevent the diminution of the value of the
25 security. Work out activities include, but are not limited to:
26 restructuring or renegotiating the terms of the security interest;
27 requiring payment of additional rent or interest; exercising
28 forbearance; requiring or exercising rights pursuant to an assignment
29 of accounts or other amounts owing to an obligor; requiring or
30 exercising rights pursuant to an escrow agreement pertaining to
31 amounts owing to an obligor; providing specific or general financial or
32 other advice, suggestions, counseling, or guidance; and exercising any
33 right or remedy the holder is entitled to by law or under any
34 warranties, covenants, conditions, representations or promises from
35 the borrower.

36 (4) A holder does not participate in the management of a vessel
37 [or], facility, or underground storage tank facility by making any
38 response or performing any response action or undertaking any
39 cleanup or removal or similar action under the federal "Comprehensive
40 Environmental Response, Compensation, and Liability Act of 1980,"
41 Pub.L. 96-510 (42 U.S.C. §9601 et seq.), the "Spill Compensation and
42 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), P.L.1986,
43 c.102 (C.58:10A-21 et seq.), or any other State or federal
44 environmental law or regulation.

45 "Date of foreclosure" means the date on which the holder obtains
46 legal or equitable title to the vessel or facility pursuant to or incident

1 to foreclosure.

2 "Fair consideration" means the value of the security interest when
3 calculated as an amount equal to or in excess of the sum of the
4 outstanding principal (or comparable amount in the cases of a lease
5 that constitutes a security interest) owed to the holder immediately
6 preceding the acquisition of full title (or possession in the case of
7 property subject to a lease financing transaction) pursuant to
8 foreclosure and its equivalents, plus any unpaid interest, rent or
9 penalties (whether arising before or after foreclosure and its
10 equivalents), plus all reasonable and necessary costs, fees, or other
11 charges incurred by the holder incident to work out, foreclosure and
12 its equivalents, retention, maintaining the business activities of the
13 enterprise, preserving, protecting and preparing the vessel [or],
14 facility, or underground storage tank facility prior to sale, re-lease of
15 property held pursuant to a lease financing transaction (whether by a
16 new lease financing transaction or substitution of the lessee) or other
17 disposition, plus response costs incurred under applicable federal or
18 State environmental cleanup laws or regulations, or at the direction of
19 an on-scene coordinator, less any amounts received by the holder in
20 connection with any partial disposition of the property, net revenues
21 received as a result of maintaining the business activities of the
22 enterprise, and any amounts paid by the borrower subsequent to the
23 acquisition of full title (or possession in the case of property subject
24 to a lease financing transaction) pursuant to foreclosure and its
25 equivalents. In the case of a holder maintaining indicia of ownership
26 primarily to protect a junior security interest, fair consideration is the
27 value of all outstanding higher priority security interests plus the value
28 of the security interest held by the junior holder, each calculated as set
29 forth in this definition.

30 "Foreclosure" or "foreclosure and its equivalents" means purchase
31 at foreclosure sale; acquisition or assignment of title in lieu of
32 foreclosure; termination of a lease or other repossession; acquisition
33 of a right to title or possession; an agreement in satisfaction of the
34 obligation; or any other form or informal manner (whether pursuant to
35 law or under warranties, covenants, conditions, representations or
36 promises from the borrower) by which the holder acquires title to or
37 possession of the secured property.

38 "Holder" is a person who maintains indicia of ownership primarily
39 to protect a security interest. A holder includes the initial holder (such
40 as a loan originator), any subsequent holder (such as a
41 successor-in-interest or subsequent purchaser of the security interest
42 on the secondary market), a guarantor of an obligation, surety, or any
43 other person who holds ownership indicia primarily to protect a
44 security interest, or a receiver or other person who acts on behalf or
45 for the benefit of a holder.

46 "Indicia of ownership" means evidence of a security interest,

1 evidence of an interest in a security interest, or evidence of an interest
2 in real or personal property securing a loan or other obligation,
3 including any legal or equitable title to real or personal property
4 acquired incident to foreclosure and its equivalents. Evidence of such
5 interests include, but are not limited to, mortgages, deeds of trust,
6 liens, surety bonds and guarantees of obligations, title held pursuant
7 to a lease financing transaction in which the lessor does not select
8 initially the leased property (hereinafter "lease financing transaction"),
9 legal or equitable title obtained pursuant to foreclosure and their
10 equivalents. Evidence of such interests also includes assignments,
11 pledges, or other rights to or other forms of encumbrance against
12 property that are held primarily to protect a security interest. A
13 person is not required to hold title or a security interest in order to
14 maintain indicia of ownership.

15 "Primarily to protect a security interest" means that the holder's
16 indicia of ownership are held primarily for the purpose of securing
17 payment or performance of an obligation but does not include indicia
18 of ownership held primarily for investment purposes, nor ownership
19 indicia held primarily for purposes other than as a protection for a
20 security interest. A holder may have other, secondary reasons for
21 maintaining indicia of ownership, but the primary reasons why any
22 ownership indicia are held shall be as protection for a security interest.

23 "Security interest" means an interest in a vessel or facility created
24 or established for the purpose of securing a loan or other obligation.
25 Security interests include, but are not limited to, mortgages, deeds of
26 trusts, liens, and title pursuant to lease financing transactions.
27 Security interests may also arise from transactions such as sale and
28 leasebacks, conditional sales, installment sales, trusts receipt
29 transactions, certain assignments, factoring agreements, accounts
30 receivable financing arrangements, and consignments, if the transaction
31 creates or establishes an interest in a vessel or facility for the purpose
32 of securing a loan or other obligation.

33 "Underground storage tank" shall have the same meaning as set
34 forth in section 2 of P.L. 1986, c.102 (C.58:10A-22).

35 "Underground storage tank facility" shall mean one or more
36 underground storage tanks.

37 (cf: P.L.1993,c.112,s.1)

38

39 30. Section 2 of P.L.1993, c.112 (58:10-23.11g5) is amended to
40 read as follows:

41 2. A person who maintains indicia of ownership of a vessel [or],
42 facility, or underground storage tank facility primarily to protect a
43 security interest in a vessel [or], facility, or underground storage tank
44 facility and who does not participate in the management of the vessel
45 or facility or underground storage tank facility is not deemed to be an
46 owner or operator of the vessel [or], facility, or underground storage

1 tank facility, shall not be deemed the discharger or responsible party
2 for a discharge from the vessel [or], facility, or underground storage
3 tank facility and shall not be liable for cleanup costs or damages
4 resulting from discharges from the vessel or facility pursuant to
5 sections 8, 18, and 22 of P.L.1976, c.141 (C.58:10-23.11g,
6 58:10-23.11q and 58:10-23.11u) [or] , section 2 of P.L.1990, c.75
7 (C.58:10-23.11u1), or section 8 of P.L.1986, c.102 (C.58:10A-28)
8 except to the extent that liability may still apply to holders after
9 foreclosure as set forth in section 3 of [this act] P.L. 1993, c.112
10 (C.58:10-23.11g6).
11 (cf: P.L.1993,c.112,s.2)
12

13 31. Section 3 of P.L.1993, c.112 (C.58:10-23.11g6) is amended
14 to read as follows:

15 3. The indicia of ownership, held after foreclosure, continue to be
16 maintained primarily as a protection for a security interest provided
17 that the holder did not participate in management prior to foreclosure
18 and that the holder undertakes to sell, re-lease property held pursuant
19 to a lease financing transaction (whether by a new lease financing
20 transaction or substitution of the lessee) or otherwise divest itself of
21 the vessel [or], facility, or underground storage tank facility in a
22 reasonably expeditious manner in accordance with the means and
23 procedures specified in this section. Such a holder may liquidate,
24 maintain business operations, undertake environmental response
25 actions pursuant to State and federal law, and take measures to
26 preserve, protect or prepare the secured asset prior to sale or other
27 disposition, without losing status as a person who maintains indicia of
28 ownership primarily to protect a security pursuant to section 2 of [this
29 act] P.L. 1993, c.112 (C.58:10-23.11g5).

30 a. For purposes of establishing that a holder is seeking to sell,
31 re-lease property held pursuant to a new lease financing transaction
32 (whether by a new lease financing transaction or substitution of the
33 lessee), or divest a vessel [or], facility, or underground storage tank
34 facility in a reasonably expeditious manner, the holder may use
35 whatever commercially reasonable means are relevant or appropriate
36 with respect to the vessel [or], facility, or underground storage tank
37 facility, or may employ the means specified in this section.

38 b. (1) A holder that outbids, rejects or fails to act upon a written
39 bona fide, firm offer of fair consideration within 90 days of receipt of
40 the offer, and which offer is received at any time after six months
41 following the date of foreclosure, shall not be deemed to be using a
42 commercially reasonable means for the purpose of this section. A
43 "written bona fide, firm offer" means a legally enforceable,
44 commercially reasonable, cash offer solely for the foreclosed vessel
45 [or], facility, , or underground storage tank facility, including all
46 material terms of the transaction, from a ready, willing, and able

1 purchaser who demonstrates to the holder's satisfaction the ability to
2 perform. For purposes of this subsection, the six-month period begins
3 to run from the time that the holder acquires a marketable title,
4 provided that the holder, after the expiration of any redemption or
5 other waiting period provided by law, was acting diligently to acquire
6 marketable title.

7 (2) A holder that outbids, rejects, or fails to act upon an offer of
8 fair consideration for the vessel [or], facility, or underground storage
9 tank facility within the 90-day period, establishes that the ownership
10 indicia in the secured property are not held primarily to protect the
11 security interest, unless the holder is required, in order to avoid
12 liability under federal or State law, to make a higher bid, to obtain a
13 higher offer, or to seek or obtain an offer in a different manner.

14 c. A holder establishes that it is proceeding in a commercially
15 reasonable manner after foreclosure by, within 12 months following
16 foreclosure, listing the vessel [or], facility, or underground storage
17 tank facility with a broker, dealer, or agent who deals with the type of
18 property in question, or by advertising the vessel [or], facility, or
19 underground storage tank facility as being for sale or disposition on
20 at least a monthly basis in either a real estate publication or a trade or
21 other publication suitable for the vessel [or], facility, or underground
22 storage tank facility in question, or a newspaper of general circulation
23 (defined as one with a circulation over 10,000, or one suitable under
24 any applicable federal, State, or local rules of court for publication
25 required by court order or rules of civil procedure) covering the area
26 where the property is located. For purposes of this subsection, the
27 12-month period begins to run from the time that the holder acquires
28 marketable title, provided that the holder, after the expiration of any
29 redemption or other waiting period provided by law, was acting
30 diligently to acquire marketable title.

31 d. A holder shall sell, re-lease the property held pursuant to a new
32 lease financing transaction, or otherwise divest such vessel [or],
33 facility, or underground storage tank facility in a reasonably
34 expeditious manner, but not later than five years after the date of
35 foreclosure, except that a holder may continue to hold the property for
36 a time period longer than five years without losing status as a person
37 who maintains indicia of ownership primarily to protect a security
38 interest if (1) the holder has made a good faith effort to sell, re-lease
39 or otherwise divest itself of the property using commercially
40 reasonable means or other procedures prescribed by this act; (2) the
41 holder has obtained any approvals required pursuant to applicable
42 federal or State banking or other lending laws to continue its
43 possession of the property; and (3) the holder has exercised reasonable
44 custodial care to prevent or mitigate any new discharges from the
45 vessel [or], facility, or underground storage tank facility that could
46 substantially diminish the market value of the property.

1 e. (1) The exemption granted to holders pursuant to this section
2 shall not apply to the liability for any new discharge from the vessel
3 ~~[or], facility, or underground storage tank facility~~, occurring after the
4 date of foreclosure, that is caused by acts or omissions of the holder
5 which can be shown, based on a preponderance of the evidence, to
6 have been negligent. In the event a property has both preexisting and
7 new discharges, the liability, if any, allocable to the holder pursuant to
8 this subsection shall be limited to those cleanup costs or damages that
9 relate directly to the new discharge. In the event there is a substantial
10 commingling of a new discharge with a preexisting discharge, the
11 liability, if any, allocable to the holder pursuant to this subsection shall
12 be limited to the cleanup costs or damages in excess of those cleanup
13 costs or damages relating to the preexisting discharge.

14 In order to establish that a discharge occurred or began prior to the
15 date of foreclosure, a holder may perform, but shall not be required to
16 perform, an environmental audit, in accordance with any applicable
17 Department of Environmental Protection ~~[and Energy]~~ regulations and
18 guidelines, to identify such discharges at the vessel ~~[or], facility, or~~
19 underground storage tank facility. Upon receipt of a complete audit
20 from the holder, the Department of Environmental Protection ~~[and~~
21 ~~Energy]~~ shall, within 90 days of its receipt of the audit, review the
22 audit and transmit its findings to the holder. The Department of
23 Environmental Protection ~~[and Energy]~~ may charge reasonable fees
24 and adopt any additional regulations necessary to provide guidelines
25 for the submission and review of such audits.

26 (2) Nothing in this subsection shall be deemed to impose liability
27 for a new discharge from the vessel ~~[or], facility, or underground~~
28 storage tank facility that is authorized pursuant to a federal or State
29 permit or cleanup procedure.

30 (3) The exemption granted to holders of indicia of ownership to
31 protect a security interest shall not apply to liability, if any, pursuant
32 to applicable law and regulation, for arranging for the offsite disposal
33 or treatment of a hazardous substance or by accepting for
34 transportation and disposing of a hazardous substance at an offsite
35 facility selected by the holder.

36 f. (1) A holder who acquires an underground storage tank
37 continues to hold the exemption granted to holders pursuant to this
38 section if there is an operator of the underground storage tank, other
39 than the holder, who is in control of the underground storage tank or
40 has responsibility for compliance with applicable federal and State
41 requirements.

42 (2) If an operator does not exist, a holder continues to maintain
43 the exemption from liability granted to holders pursuant to this section
44 if the holder: (i) empties all underground storage tanks within 60
45 days after foreclosure or within 60 days after the effective date of
46 P.L. , c. (now in the Legislature as this bill), whichever is later, so

1 that no more than one inch of residue, or .3 percent by weight of the
2 total capacity of the underground storage tank remains in the
3 underground storage tank, leaves vent lines open and functioning, and
4 caps and secures all other lines, pumps, manways, and ancillary
5 equipment; (ii) empties those underground storage tanks that are
6 discovered after foreclosure within 60 days of discovery or within 60
7 days of the effective date of P.L. . c. (now in the Legislature as this
8 bill), whichever is later, so that no more than one inch of residue, or
9 .3 percent by weight of the total capacity of the underground storage
10 tank remains in the system, leaves vent lines open and functioning, and
11 caps and secures all other lines, pumps, manways, and ancillary
12 equipment; and (iii) permanently closes the underground storage tank
13 pursuant to the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.)
14 or temporarily closes the underground storage tank.

15 g. An underground storage tank may be temporarily closed until
16 a subsequent purchaser has acquired marketable title to the
17 underground storage tank. When a subsequent purchaser acquires
18 marketable title to the facility, the purchaser shall operate the
19 underground storage tank in accordance with applicable State and
20 federal laws or shall permanently close or remove the underground
21 storage tank in accordance with the provisions of P.L.1986. c.102
22 (C.58:10A-21 et seq.).

23 For the purposes of this section, an underground storage tank shall
24 be considered temporarily closed if a holder installs or continues to
25 operate and maintain corrosion protection and reports suspected
26 releases to the Department of Environmental Protection. If the
27 underground storage tank has not been upgraded to comply with the
28 provisions of P.L.1986, c.102 and the applicable federal law or does
29 not comply with the standards for new underground storage tanks
30 pursuant to State and federal law except for spill and overflow
31 protection, and is temporarily closed for 12 months or more, the
32 holder shall conduct a site investigation in accordance with rules and
33 regulations adopted by the department.

34 (cf: P.L.1993, c.112, s.3)

35

36 32. Section 4 of P.L.1993, c.112 (C.58:10-23.11g7) is amended
37 to read as follows:

38 4. a. Nothing in sections 1 through 5 of [this act] P.L. 1993,
39 c.112 (C.58:10-23.11g4 through 58:10-23.11g8) shall be deemed to
40 prohibit or limit the rights of the Department of Environmental
41 Protection [and Energy] to clean up a property or to obtain a lien on
42 the property of a discharger or holder in order to recover cleanup
43 costs pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f). Any
44 recovery of cleanup costs from a holder pursuant to a lien obtained by
45 the Department of Environmental Protection [and Energy] shall be
46 limited to the actual financial benefit conferred on such holder by a

1 cleanup or removal action, and shall not exceed the amount realized
2 by the holder on the sale or other disposition of the property.

3 b. Nothing in sections 1 through 5 of [this act] P.L. 1993, c. 112
4 (C.58:10-23.11g4 through 58:10-23.11g8) shall be deemed to prohibit
5 or limit the rights of the Department of Environmental Protection [and
6 Energy], pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f),
7 to direct the holder to take any emergency response actions, including
8 closure of the vessel [or], facility, or underground storage tank
9 facility, necessary to prevent, contain or mitigate a continuing or new
10 discharge that poses an immediate threat to the environment or to the
11 public health, safety or welfare.

12 c. (1) If a holder forecloses on a vessel [or], facility, or
13 underground storage tank facility at which it has actual knowledge a
14 discharge occurred or began prior to the date of foreclosure, the
15 holder shall, within 30 days of the date of foreclosure, notify the
16 Department of Environmental Protection [and Energy] that
17 foreclosure has occurred. Any person who fails to give notice
18 required pursuant to this subsection or knowingly gives or causes to
19 be given false information in any such report, shall be subject to a civil
20 penalty not to exceed \$25,000. A court, in determining the amount of
21 the penalty to be imposed, shall consider, among other relevant
22 factors, the amount of any damages caused by the failure to give
23 timely notice and whether the failure to notify was inadvertent or
24 intentional.

25 (2) The holder shall immediately notify the Department of
26 Environmental Protection [and Energy] of any new discharge, of
27 which it has actual knowledge, occurring after the date of foreclosure,
28 from the vessel [or], facility, or underground storage tank facility.
29 Any person who fails to give notice required pursuant to this
30 subsection or knowingly gives or causes to be given any false
31 information in any such report, shall be subject to a civil penalty not
32 to exceed \$10,000 per day for each violation. A court, in determining
33 the amount of the penalty to be imposed and the appropriateness of
34 imposing multiple penalties for a continuing offense, shall consider,
35 among other relevant factors, the amount of any damages caused by
36 the failure to give timely notice and whether the failure to notify was
37 inadvertent or intentional.

38 (3) Any penalty incurred under this section may be recovered with
39 costs in a summary proceeding pursuant to "the penalty enforcement
40 law," N.J.S.2A:58-1 et seq., in the Superior Court or a municipal
41 court. Failure to give any required notice pursuant to this subsection
42 shall not cause the holder to lose its status as a person who maintains
43 indicia of ownership primarily to protect a security interest.

44 (cf: P.L.1993, c.112, s.4)

45

46 33. (New section) A holder of an interest in an underground

1 storage tank shall not be required to comply with the provisions of
2 P.L.1986, c.102 (C.58:10A-21 et seq.) unless the holder loses the
3 exemption under P.L.1993, c.112 (C.58:10-23.11g4 et seq.).

4
5 34. (New section) As used in sections 34 through 39 of P.L. ,
6 c. (C.)(now before the Legislature as this bill):

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

12 "Developer" means any person that enters or proposes to enter into
13 a redevelopment agreement with the State pursuant to the provisions
14 of section 35 of P.L. , c. (C.)(pending in the Legislature as
15 this bill).

16 "Director" means the Director of the Division of Taxation in the
17 Department of the Treasury.

18 "Project" or "redevelopment project" means a specific work or
19 improvement, including lands, buildings, improvements, real and
20 personal property or any interest therein, including lands under water,
21 riparian rights, space rights and air rights, acquired, owned, developed
22 or redeveloped, constructed, reconstructed, rehabilitated or improved,
23 undertaken by a developer within an area of land whereon a
24 contaminated site is located, under a redevelopment agreement with
25 the State pursuant to section 35 of P.L. , c. (C.) (pending in the
26 Legislature as this bill).

27 "Redevelopment agreement" means an agreement between the
28 State and a developer under which the developer agrees to perform
29 any work or undertaking necessary for the remediation of the
30 contaminated site located at the site of the redevelopment project, and
31 for the clearance, development or redevelopment, construction or
32 rehabilitation of any structure or improvement of commercial,
33 industrial or public structures or improvements within an area of land
34 whereon a contaminated site is located pursuant to section 35 of
35 P.L. , c. (C.) (pending in the Legislature as this bill), and the
36 State agrees that the developer shall be eligible for the reimbursement
37 of up to 75% of the costs of remediation of the contaminated site from
38 the fund established pursuant to section 38 of P.L. c. (C.)
39 (pending in the Legislature as this bill) as authorized pursuant to
40 section 36 of P.L. , c. (C.)(pending in the Legislature as this
41 bill).

42 "Remediation" or "remediate" means all necessary actions to
43 investigate and clean up or respond to any known, suspected, or
44 threatened discharge of contaminants, including, as necessary, the
45 preliminary assessment, site investigation, remedial investigation, and
46 remedial action, as those terms are defined in section 23 of P.L.1993,

1 c.139 (C.58:10B-1).

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

5
6 35. (New section) a. The provisions of any other law, or rule or
7 regulation adopted pursuant thereto, to the contrary notwithstanding,
8 any developer may enter into a redevelopment agreement with the
9 State pursuant to the provisions of this section. The State may not
10 enter into a redevelopment agreement with a developer who is liable,
11 pursuant to paragraph (1) of subsection c. of section 8 of P.L.1976,
12 c.141 (C.58:10-23.11g), for the contamination at the site proposed to
13 be in the redevelopment agreement.

14 The decision whether or not to enter into a redevelopment
15 agreement is solely within the discretion of the Commissioner of
16 Commerce and Economic Development ¹and the State Treasurer¹ and
17 ¹[nothing] both must agree to enter into the redevelopment agreement.
18 Nothing¹ in P.L. , c. (C.)(now before the Legislature as this
19 bill) may be construed to compel the commissioner ¹and the State
20 Treasurer¹ to enter into any redevelopment agreement.

21 The Commissioner of Commerce and Economic Development in
22 consultation with the State Treasurer shall negotiate the terms and
23 conditions of any redevelopment agreement on behalf of the State.
24 The redevelopment agreement shall specify the amount of the
25 reimbursement to be awarded the developer, the frequency of
26 payments and the length of time in which that reimbursement shall be
27 granted. In no event shall the amount of the reimbursement, when
28 taken together with the property tax exemption received pursuant to
29 the "Environmental Opportunity Zone Act," P.L.1995, c.413 (C.54:4-
30 3.151), less any in lieu of tax payments made pursuant to that act, or
31 any other State, local, or federal tax incentive ¹or grant¹ to remediate
32 a site, exceed ¹75% of¹ the total cost of the remediation.

33 ¹The commissioner and the State Treasurer may only enter into a
34 redevelopment agreement if they make a finding that the State tax
35 revenues to be realized from the redevelopment project will be in
36 excess of the amount necessary to reimburse the developer. This
37 finding may be made by an estimation based upon the professional
38 judgment of the commissioner and the State Treasurer.

39 The percentage of each payment to be made to the developer
40 pursuant to the redevelopment agreement shall be conditioned on the
41 occupancy rate of the buildings or other work areas located on the
42 property. The redevelopment agreement shall provide for the
43 payments made in order to reimburse the developer to be in the same
44 percentages as the occupancy rate at the site except that upon the
45 attainment of a 90% occupancy rate, the developer shall be entitled to
46 the entire amount of each payment toward the reimbursement as set

1 forth in the redevelopment agreement. The redevelopment agreement
2 shall provide for the frequency of the director's finding of the
3 occupancy rate during the payment schedule.¹

4 b. In deciding whether or not to enter into a redevelopment
5 agreement and in negotiating a redevelopment agreement with a
6 developer, the commissioner shall consider the following factors:

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

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

10 (3) the degree to which the redevelopment project will advance
11 State, regional and local development and planning strategies;

12 (4) the likelihood that the redevelopment project shall ¹ upon
13 completion ¹ be capable of generating ¹[sufficient]¹ new tax revenue
14 ¹in an amount in excess of the amount necessary¹ to reimburse the
15 developer for the remediation costs incurred ¹as provided in the
16 redevelopment agreement¹;

17 (5) the relationship of the redevelopment project to a
18 comprehensive local development strategy, including other major
19 projects undertaken within the municipality;

20 (6) the need of the redevelopment agreement to the viability of the
21 redevelopment project; and

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

24
25 36. (New section) a. The provisions of any other law, or rule or
26 regulation adopted pursuant thereto, to the contrary notwithstanding,
27 any developer that enters into a redevelopment agreement pursuant to
28 section 35 of P.L. , c. (C.) (pending in the Legislature as this
29 bill), may be eligible for reimbursement of up to 75% of the costs of
30 the remediation of the subject real property pursuant to the provisions
31 of this section upon the commencement of a business operation within
32 a redevelopment project.

33 b. To be eligible for reimbursement of the costs of remediation, a
34 developer shall submit an application, in writing, to the director for
35 review and certification of the reimbursement. The director shall
36 review the request for the reimbursement upon receipt of an
37 application therefor, and shall approve or deny the application for
38 certification on a timely basis. ¹The director shall also make a finding
39 of the occupancy rate of the property subject to the redevelopment
40 agreement in the frequency set forth in the redevelopment agreement as
41 provided in section 35 of P.L. , c. (C.) (in the Legislature as this
42 bill).¹

43 The director shall certify a developer to be eligible for the
44 reimbursement if the director ¹[shall find] finds¹ that:

45 (1) a place of business is located in the area subject to the
46 redevelopment agreement that has generated new tax revenues;

1 (2) ¹[the additional tax revenue that was generated on that site is
2 sufficient to pay monies into the fund to provide for the negotiated
3 reimbursement;

4 (3)]¹ the developer had entered into a memorandum of agreement
5 with the Commissioner of Environmental Protection, after the
6 developer entered into the redevelopment agreement, for the
7 remediation of contamination located on the site of the redevelopment
8 project pursuant to section 37 of P.L. , c. (C.) (pending in
9 the Legislature as this bill) and the developer is in compliance with the
10 memorandum of agreement; and

11 ¹[(4)] (3)¹ the costs of the remediation were actually and
12 reasonably incurred. In making this finding the director may consult
13 with the Department of Environment Protection.

14 c. When filing an application for certification for a reimbursement
15 pursuant to this section, the developer shall submit to the director a
16 certification of the total remediation costs incurred by the developer
17 for the remediation of the subject property located at the site of the
18 redevelopment project as provided in the redevelopment agreement ¹.
19 information concerning the occupancy rate of the buildings or other
20 work areas located on the property subject to the redevelopment
21 agreement, and such other information as the director deems necessary
22 in order to make the certifications and findings pursuant to this
23 section¹.

24
25 37. (New section) a. To qualify for the certification of
26 reimbursement of the remediation costs authorized pursuant to section
27 36 of P.L. , c. (C.) (pending in the Legislature as this bill),
28 a developer shall enter into a memorandum of agreement with the
29 Commissioner of Environmental Protection for the remediation of the
30 site of the redevelopment project.

31 b. Under the memorandum of agreement, the developer shall agree
32 to perform and complete any remediation activity as may be required
33 by the Department of Environmental Protection to ensure the
34 remediation is conducted pursuant to the regulations adopted by the
35 Department of Environmental Protection pursuant to P.L.1993, c.139
36 (C.58:10B-1 et seq.).

37 c. After the developer has entered into a memorandum of
38 agreement with the Commissioner of Environmental Protection, the
39 commissioner shall submit a copy thereof to the developer, the clerk
40 of the municipality in which the subject property is located, the
41 Commissioner of the Department of Commerce and Economic
42 Development, and the director.

43
44 38. (New section) a. There is created in the Department of
45 Treasury a special fund to be known as the Brownfield Site
46 Reimbursement Fund. Moneys in the fund shall be dedicated to the

1 purpose of reimbursing a developer who enters into a redevelopment
 2 agreement pursuant to section 35 of P.L. c. (C.) (pending in the
 3 Legislature as this bill) and is certified for reimbursement pursuant to
 4 section 36 of P.L. c. (C.) (pending in the Legislature as this bill).
 5 A special account within the fund shall be created for each developer
 6 upon approval of a certification pursuant to section 36 of P.L. , c.
 7 (C.) (pending in the Legislature as this bill). The Legislature shall
 8 annually appropriate the entire balance of the fund for the purposes of
 9 reimbursement of remediation costs as provided in section 39 of
 10 P.L. , c. (C.) (pending in the Legislature as this bill).

11 b. The fund shall be credited with an amount ¹from the General
 12 Fund¹, determined sufficient by the Commissioner of Commerce and
 13 Economic Development, to provide the negotiated reimbursement to
 14 the developer. ¹[The fund shall be credited, as necessary, with monies
 15 that are paid or that are the equivalent to the new taxes derived from
 16 the operation of business activities on the site.]¹ Monies credited to
 17 the fund shall be an amount that equals the percent of the remediation
 18 costs expected to be reimbursed pursuant to the redevelopment
 19 agreement. ¹[Revenues] In estimating the amount of new State taxes
 20 that is anticipated to be derived from a redevelopment project pursuant
 21 to section 35 of P.L. , c. (C.)(now before the Legislature as
 22 this bill), the Commissioner of Commerce and Economic Development
 23 and the State Treasurer shall consider taxes¹ from the following
 24 ¹[taxes may be used to calculate the amount of monies that needs to
 25 be credited to the fund]¹: the Corporation Business Tax Act (1945),
 26 P.L.1945, c.162 (C.54:10A-1 et seq.), "The Savings Institution Tax
 27 Act," P.L.1973, c.31 (C.54:10D-1 et seq.), the tax imposed on marine
 28 insurance companies pursuant to R.S.54:16-1 et seq., the tax imposed
 29 on fire insurance companies pursuant to R.S.54:17-4 et al., the tax
 30 imposed on insurers generally, pursuant to P.L.1945, c.132
 31 (C.54:18A-1 et seq.), the public utility franchise tax, public utilities
 32 gross receipts tax and public utility excise tax imposed pursuant to
 33 P.L.1940, c.4, and P.L.1940, c.5 (C.54:30A-16 et seq. and
 34 C.54:30A-49 et seq.), that is a taxpayer in respect of net profits from
 35 business, a distributive share of partnership income, or a prorata share
 36 of S corporation income under the "New Jersey Gross Income Tax
 37 Act," N.J.S.54A:1-1 et seq., or who is required to collect the tax
 38 pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1
 39 et seq.).
 40

41 39. (New section) a. The State Treasurer shall reimburse the
 42 developer the amount of the remediation costs agreed upon in the
 43 redevelopment agreement ¹, and as provided in sections 35 and 36 of
 44 P.L. , c. (C.)(now before the Legislature as this bill)¹ upon
 45 issuance of the certification by the director pursuant to section 36 of
 46 P.L. , c. (C.) (pending in the Legislature as this bill). The

1 developer shall be entitled to periodic payments from the fund in an
2 amount, in the frequency, and over the time period as provided in the
3 redevelopment agreement.

4 b. A developer shall submit to the director updated remediation
5 costs actually incurred by the developer for the remediation of the
6 contaminated property located at the site of the redevelopment project
7 as provided in the redevelopment agreement. The reimbursement
8 authorized pursuant to this section shall continue until such time as the
9 aggregate dollar amount of the agreed upon reimbursement. To remain
10 entitled to the reimbursement authorized pursuant to this section, the
11 developer shall perform and complete all remediation activities as may
12 be required pursuant to the memorandum of agreement entered into
13 with the Commissioner of Environmental Protection pursuant to
14 section 37 of P.L. , c. (C.)(pending in the Legislature as this
15 bill). The Department of Environmental Protection may review the
16 remediation costs incurred by the developer to determine if they are
17 reasonable.

18

19 40. (New Section) a. There is established a Legislative
20 Underground Storage Tank Remediation Task Force. The task force
21 shall consist of seven members as follows: one member of the Senate
22 to be appointed by the Senate President; one member of the General
23 Assembly to be appointed by the Speaker of the General Assembly;
24 the Commissioner of Environmental Protection or a designee; an
25 environmental consultant with a degree in hydrogeology and
26 experience in petroleum underground storage tank remediations to be
27 appointed by the Senate President; a representative of an
28 environmental interest group to be appointed by the Senate President;
29 a small business representative who owns or operates an underground
30 storage tank to be appointed by the Speaker of the General Assembly;
31 and a representative from a major oil company to be appointed by the
32 Speaker of the General Assembly.

33 The chairman of the task force shall be jointly appointed by the
34 Senate President and the Speaker of the General Assembly. Vacancies
35 shall be filled in the same manner as the original appointments are
36 made.

37 b. The task force shall evaluate the use of expanded risk based
38 decision making that allows for alternative remediation standards and
39 natural attenuation in all environmental media at petroleum
40 underground storage tank discharge sites; examine and evaluate the
41 State policy's that are preventing the development and use of
42 alternative remediation standards for soil and groundwater and the
43 implementation of the Risk Based Corrective Action decision making
44 process deccribed in ASTM standard 1739-95.

45 Within six months of the first meeting, the task force shall prepare
46 a written report to the Legislature and the Chairman of the Senate

1 Environment Committee, and the Assembly Agriculture and Waste
2 Management Committee or their successor committees. The report
3 shall include a comparison of the department's process for remediating
4 petroleum underground storage tanks with the process recommended
5 in the the Risk Based Corrective Action decision making process
6 described in ASTM standard 1739-95 or that used by other states, an
7 examination of the process that could be used to develop alternative
8 remediation standards, a review and discussion of any policy changes
9 necessary in order to allow for natural attenuation in all environmental
10 media; together with any recommendations for further legislative
11 remedies regarding expanded risk based decision making at petroleum
12 underground storage tank discharge sites.

13 (3) The task force shall convene its first meeting within sixty days
14 of the effective date of P.L.1997, c. (now in the Legislature as this
15 bill).

16

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

25

26 42. There is appropriated to the Department of Environmental
27 Protection from the "1996 Environmental Cleanup Fund" created
28 pursuant to section 19 of the "Port of New Jersey Revitalization,
29 Dredging, Environmental Cleanup, Lake Restoration, and Delaware
30 Bay Area Economic Development Bond of 1996," P.L.1996, c.70, the
31 sum of \$2,000,000 for the data collection and entry into the
32 geographic information system as provided in section 4 of this act.

33

34 43. Section 14 of P.L.1993, c.139 (C.3:1K-11.3) is amended to
35 read as follows:

36 14. a. The owner or operator of an industrial establishment
37 planning to close operations or transfer ownership or operations of the
38 industrial establishment may, in lieu of complying with the provisions
39 of subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9), apply to
40 the department for a limited site review. An application for a limited
41 site review pursuant to this section shall include:

42 (1) the notice required pursuant to the provisions of subsection a.
43 of section 4 of P.L.1983, c.330 (C.13:1K-9);

44 (2) a certification that for the industrial establishment, a remedial
45 action workplan has previously been implemented and a no further
46 action letter has been issued pursuant to P.L.1983, c.330, a negative

1 declaration has been previously approved by the department pursuant
2 to P.L.1983, c.330, or the department or the United States
3 Environmental Protection Agency, pursuant to the "Resource
4 Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the
5 "Comprehensive Environmental Response, Compensation, and
6 Liability Act of 1980," 42 U.S.C. §9601 et seq., or any other law, has
7 previously approved a remediation of the industrial establishment
8 equivalent to that performed pursuant to the provisions of P.L.1983,
9 c.330;

10 (3) a certification that the owner or operator has performed
11 remediation activities at the industrial establishment that are consistent
12 with current regulations established by the department in order to
13 identify areas of concern and, based on those remediation activities,
14 that subsequent to the issuance of the negative declaration, no further
15 action letter or remediation approval described in paragraph (2) of this
16 subsection, a discharge has occurred at the industrial establishment
17 that was not remediated in accordance with the procedures established
18 by the department or that any remediation performed has not been
19 approved by the department and that no other discharge of a
20 hazardous substance or hazardous waste has occurred at the industrial
21 establishment;

22 (4) a certification that for any underground storage tank covered
23 by the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), an
24 approved method of secondary containment or a monitoring system as
25 required by P.L.1986, c.102, has been installed;

26 (5) a copy of the most recent negative declaration, no further
27 action letter, or other approval, as applicable, approved by the
28 department for the industrial establishment; and

29 (6) a proposed negative declaration, if applicable.

30 b. Upon the submission of a complete application, and after an
31 inspection if necessary, the department may:

32 (1) approve the negative declaration upon a finding that any
33 discharge of a hazardous substance or hazardous waste, as certified to
34 pursuant to paragraph (3) of subsection a. of this section, has been
35 remediated consistent with the applicable remediation ¹[standards]
36 regulations¹ as established by the department; or

37 (2) require that the owner or operator perform a remediation as
38 set forth in subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9)
39 only for those areas of concern identified by the information provided
40 pursuant to paragraph (3) of subsection a. of this section upon a
41 finding that further investigation or remediation is necessary to bring
42 the industrial establishment into compliance with the applicable
43 remediation ¹[standards] regulations¹.

44 c. The owner or operator of an industrial establishment subject to
45 the provisions of this section shall not close operations or transfer
46 ownership or operations until a remedial action workplan, or a

1 negative declaration, as applicable, has been approved by the
2 department or upon approval of a remediation agreement as provided
3 in subsection e. of section 4 of P.L.1983, c.330.

4 (cf: P.L.1993, c.139, s.14)

5
6 ¹44. Section 43 of P.L.1993, c.139 (C.58:10B-19) is amended to
7 read as follows:

8 43. The owner or operator of an industrial establishment who has
9 submitted a notice to the department pursuant to subsection a. of
10 section 4 of P.L.1983, c.330 (C.13:1K-9), or any person who has
11 discharged a hazardous substance or is liable for the remediation of
12 that discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), or
13 any person who has been directed to or has entered into an agreement
14 with the department to remediate a discharge, may implement an
15 interim response action prior to departmental approval of that action.
16 The interim response action may be implemented when the expeditious
17 temporary or partial remediation of a discharged hazardous substance
18 or hazardous waste is necessary to contain or stabilize a discharge
19 prior to implementation of an approved remedial action workplan in
20 order to prevent, minimize, or mitigate damage to public health or
21 safety or to the environment which may otherwise result from a
22 discharge. The interim response action shall be implemented in
23 compliance with the procedures and standards established by the
24 department. The department may require submission of a notice of
25 intent to implement an interim response action, what those actions will
26 be, and may require, subsequent to completion of the interim response
27 action, a report detailing the actions taken and a certification that the
28 interim response action was implemented in accordance with all
29 applicable laws and regulations. The department shall review these
30 submissions to verify whether the interim response action was
31 implemented in accordance with applicable laws and regulations. The
32 department shall not require that additional remediation be undertaken
33 at an area of concern subject to the interim response action except in
34 instances when further remediation is necessary to bring that area of
35 concern into compliance with the applicable remediation [standards]
36 regulations.

37 The department may, pursuant to the "Administrative Procedure
38 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and
39 regulations establishing a fee schedule, as necessary, reflecting the
40 actual costs associated with the review of the interim response action
41 and any implementation thereof.¹

42 (cf: P.L.1993, c.139, s.43)

43
44 ¹45. Section 6 of P.L.1993, c.112 (C.58:10-23.11g9) is amended
45 to read as follows:

46 6. In the event of the discharge of a hazardous substance from a

1 vessel [or] , facility, or underground storage tank facility, which vessel
2 [or] , facility , or underground storage tank facility is all or part of a
3 trust, receivership estate, guardianship estate or estate of a deceased
4 person, only the assets of the trust or estate, or assets of any
5 discharger other than the fiduciary of such trust or estate, shall be
6 subject to the obligation to pay for the cleanup of the discharge as set
7 forth in the "Spill Compensation and Control Act," P.L.1976, c.141
8 (C.58:10-23.11 et seq.) or subject to any obligations imposed pursuant
9 to P.L.1986, c.102 (C.58:10A-21 et seq.).¹
10 (cf: P.L.1993, c.112, s.6)

11

12 ¹[43.] 46.¹ This act shall take effect immediately.

13

14

15

16

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