

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR  
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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

**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:**

<sup>1</sup> Senate SBA committee amendments adopted June 12, 1997.

<sup>2</sup> Assembly AAP committee amendments adopted December 11, 1997.

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

9 The Legislature therefore declares that strict remediation standards  
10 are necessary to protect public health and safety and the environment;  
11 that these standards should be adopted based upon the risk posed by  
12 discharged hazardous substances; that <sup>2</sup>[permanent] unrestricted<sup>2</sup>  
13 remedies for contaminated sites are preferable and the State must  
14 adopt policies that encourage their use; that institutional and  
15 engineering controls should be allowed only when the public health  
16 risk and environmental protection standards are met; and that in order  
17 to encourage the cleanup of contaminated sites, there must be finality  
18 in the process, the provision of financial incentives, liability protection  
19 for innocent parties who clean up, cleanup procedures that are cost  
20 effective and regulatory action that is timely and efficient.

21

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

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

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

1 who is in need of a permit or approval from the department.

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

4

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

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

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

31

32 5. (New section) a. There is created the "Brownfields  
33 Redevelopment Task Force." The Task Force shall consist of <sup>2</sup>[a]<sup>2</sup>  
34 five representatives from State agencies and six public members. The  
35 State agency representatives shall be from each of the following State  
36 agencies: the Office of State Planning in the Department of Treasury,  
37 the Office of Neighborhood Empowerment in the Department of  
38 Community Affairs, the New Jersey Redevelopment Authority in the  
39 Department of Commerce and Economic Development, the  
40 Department of Transportation, and the Site Remediation Program in  
41 the Department of Environmental Protection. The six public members  
42 shall be appointed by the Governor with the advice and consent of the  
43 Senate. The public members shall include to the extent practicable: a  
44 representative of commercial or residential development interests, a  
45 representative of the financial community, a representative of a public  
46 interest environmental organization, a representative of a neighborhood

1 or community redevelopment organization, a representative of a labor  
2 or trade organization, and a representative of a regional planning  
3 entity.

4 The Office of State Planning shall provide staff to implement the  
5 functions and duties of the Task Force. The public members of the  
6 Task Force shall serve without compensation but may be reimbursed  
7 for actual expenses in the performance of their duties. The Governor  
8 shall select the <sup>2</sup>[chairman] chairperson<sup>2</sup> of the Task Force.

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

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

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

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

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

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

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

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

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

46 (8) make recommendations to the Governor and the Legislature

1 on means to better promote the redevelopment of brownfields,  
2 including the provision of necessary public infrastructure and methods  
3 to attract private investment in redevelopment.

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

8

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

37 <sup>2</sup>[A] Except as provided in subsection e. of this section, a<sup>2</sup>  
38 covenant not to sue shall contain the following, as applicable:

39 (1) a provision releasing the person who undertook the remediation  
40 from all civil liability to the State to perform any additional <sup>2</sup>[remedial  
41 activities and for any natural resource damages]remediation or for any  
42 cleanup and removal costs<sup>2</sup>;

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

45 (a) a provision requiring the person, <sup>2</sup>or any subsequent owner,  
46 lessee, or operator<sup>2</sup> during the person's period of ownership<sup>2</sup>, tenancy,

1 or operation<sup>2</sup>, to maintain those controls, conduct periodic monitoring  
2 for compliance, and submit to the department, on <sup>2</sup>[an bi-annual] a  
3 biennial<sup>2</sup> basis, a certification that the engineering and institutional  
4 controls are being properly maintained and continue to be protective  
5 of public health and safety and of the environment. The certification  
6 shall state the underlying facts and shall include the results of any  
7 tests or procedures performed that support the certification; and

8 (b) a provision revoking the covenant if the engineering or  
9 institutional controls are not being maintained or are no longer in  
10 place; and

11 (3) <sup>2</sup>for a remediation that involves the use of engineering controls  
12 but not for any remediation that involves the use of institutional  
13 controls only.<sup>2</sup> a provision barring the person or persons <sup>2</sup>[to]<sup>2</sup> whom  
14 the covenant not to sue benefits <sup>2,2</sup> from making a claim against the  
15 New Jersey Spill Compensation Fund and the Sanitary Landfill Facility  
16 Contingency Fund for any costs or damages relating to the real  
17 property and remediation covered by the covenant not to sue. <sup>2</sup> The  
18 covenant not to sue shall not bar a claim by any person against the  
19 New Jersey Spill Compensation Fund and the Sanitary Landfill  
20 Contingency Fund for any remediation that involves only the use of  
21 institutional controls if, after a valid no further action letter has been  
22 issued, the department orders additional remediation, except that the  
23 covenant shall bar such a claim if the department ordered additional  
24 remediation in order to remove the institutional control.<sup>2</sup>

25 b. Unless a covenant not to sue issued under this section is  
26 revoked by the department, the covenant shall remain effective. The  
27 covenant not to sue shall apply to all successors in ownership of the  
28 property and to all persons who lease the property or who engage in  
29 operations on the property.

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

34 d. <sup>2</sup>[For any person liable for the discharge of a hazardous  
35 substance or who is in any way responsible for a hazardous substance  
36 pursuant to section 8 of P.L. 1976, c. 141 (C.58:10-23.11g), and who  
37 does not have a defense to liability pursuant to subsection d. of that  
38 section, a covenant not to sue shall not apply to liability for (1)  
39 contamination discovered subsequent to the issuance of the no further  
40 action letter but which contamination existed prior to the issuance of  
41 the no further action letter, (2) any change in a remediation standard,  
42 or (3) any contamination that has been remediated by the use of an  
43 engineering control.

44 e. Notwithstanding the provisions of subsection a. of this section,  
45 a covenant not to sue shall only bar a claim for natural resource  
46 damages against a person who is entitled to a defense to liability

1 pursuant to subsection d. of section 8 of P.L. 1976, c. 141 (C.58:10-  
2 23.11g).

3 f.]<sup>2</sup> A covenant not to sue and the protections it affords<sup>2</sup> shall not  
4 apply to any discharge that occurs subsequent to the issuance of the  
5 no further action letter which was the basis of the issuance of the  
6 covenant <sup>2</sup>, nor shall a covenant not to sue and the protections it  
7 affords relieve any person of the obligations to comply in the future  
8 with laws and regulations<sup>2</sup>.

9 <sup>2</sup>e. The covenant not to sue may be issued to any person who  
10 obtains a no further action letter as provided in subsection a. of this  
11 section. The covenant not to sue shall not provide relief from any  
12 liability, either under statutory or common law, to any person who is  
13 liable for cleanup and removal costs pursuant to subsection c. of  
14 section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not have  
15 a defense to liability pursuant to subsection d. of that section.<sup>2</sup>

16

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

19 3. "Remedial action workplan" means a plan for the remedial  
20 action to be undertaken at an industrial establishment, or at any area  
21 to which a discharge originating at the industrial establishment is  
22 migrating or has migrated; a description of the remedial action to be  
23 used to remediate the industrial establishment; a time schedule and  
24 cost estimate of the implementation of the remedial action; and any  
25 other relevant information the department deems necessary;

26 "Closing operations" means:

27 (1) the cessation of operations resulting in at least a 90 percent  
28 reduction in the total value of the product output from the entire  
29 industrial establishment, as measured on a constant, annual  
30 date-specific basis, within any five year period, or, for industrial  
31 establishments for which the product output is undefined, a 90 percent  
32 reduction in the number of employees or a 90 percent reduction in the  
33 area of operations of an industrial establishment within any five year  
34 period; provided, however, the department may approve a waiver of  
35 the provisions of this paragraph for any owner or operator who, upon  
36 application and review, evidences a good faith effort to maintain and  
37 expand product output, the number of employees, or area of  
38 operations of the affected industrial establishment;

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

41 (3) any judicial proceeding or final agency action through which  
42 an industrial establishment becomes nonoperational for health or safety  
43 reasons;

44 (4) the initiation of bankruptcy proceedings pursuant to Chapter  
45 7 of the federal Bankruptcy Code, 11 U.S.C. s.701 et seq. or the filing  
46 of a plan of reorganization that provides for a liquidation pursuant to

1 Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. s.1101 et seq.;

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

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

7 "Transferring ownership or operations" means:

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

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

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

15 (4) the dissolution of an entity that is an owner or operator or an  
16 indirect owner of an industrial establishment, except for any  
17 dissolution of an indirect owner of an industrial establishment whose  
18 assets would have been unavailable for the remediation of the  
19 industrial establishment if the dissolution had not occurred;

20 "Change in ownership" means:

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

23 (2) the sale or transfer of stock in a corporation resulting in a  
24 merger or consolidation involving the direct owner or operator or  
25 indirect owner of the industrial establishment;

26 (3) the sale or transfer of stock in a corporation, or the transfer of  
27 a partnership interest, resulting in a change in the person holding the  
28 controlling interest in the direct owner or operator or indirect owner  
29 of an industrial establishment;

30 (4) the sale or transfer of title to an industrial establishment or the  
31 real property of an industrial establishment by exercising an option to  
32 purchase; or

33 (5) the sale or transfer of a partnership interest in a partnership  
34 that owns or operates an industrial establishment, that would reduce,  
35 by 10% or more, the assets available for remediation of the industrial  
36 establishment;

37 "Change in ownership" shall not include:

38 (1) a corporate reorganization not substantially affecting the  
39 ownership of the industrial establishment;

40 (2) a transaction or series of transactions involving the transfer of  
41 stock, assets or both, among corporations under common ownership,  
42 if the transaction or transactions will not result in the diminution of the  
43 net worth of the corporation that directly owns or operates the  
44 industrial establishment by more than 10%, or if an equal or greater  
45 amount in assets is available for the remediation of the industrial  
46 establishment before and after the transaction or transactions;

1 (3) a transaction or series of transactions involving the transfer of  
2 stock, assets or both, resulting in the merger or de facto merger or  
3 consolidation of the indirect owner with another entity, or in a change  
4 in the person holding the controlling interest of the indirect owner of  
5 an industrial establishment, when the indirect owner's assets would  
6 have been unavailable for cleanup if the transaction or transactions had  
7 not occurred;

8 (4) a transfer where the transferor is the sibling, spouse, child,  
9 parent, grandparent, child of a sibling, or sibling of a parent of the  
10 transferee;

11 (5) a transfer to confirm or correct any deficiencies in the  
12 recorded title of an industrial establishment;

13 (6) a transfer to release a contingent or reversionary interest  
14 except for any transfer of a lessor's reversionary interest in leased real  
15 property;

16 (7) a transfer of an industrial establishment by devise or intestate  
17 succession;

18 (8) the granting or termination of an easement or a license to any  
19 portion of an industrial establishment;

20 (9) the sale or transfer of real property pursuant to a  
21 condemnation proceeding initiated pursuant to the "Eminent Domain  
22 Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);

23 (10) execution, delivery and filing or recording of any mortgage,  
24 security interest, collateral assignment or other lien on real or personal  
25 property; or

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

31 "Department" means the Department of Environmental Protection  
32 [and Energy];

33 "Hazardous substances" means those elements and compounds,  
34 including petroleum products, which are defined as such by the  
35 department, after public hearing, and which shall be consistent to the  
36 maximum extent possible with, and which shall include, the list of  
37 hazardous substances adopted by the Environmental Protection  
38 Agency pursuant to Section 311 of the "Federal Water Pollution  
39 Control Act Amendments of 1972" (33 U.S.C. §1321) and the list of  
40 toxic pollutants designated by Congress or the Environmental  
41 Protection Agency pursuant to Section 307 of that act (33 U.S.C.  
42 §1317); except that sewage and sewage sludge shall not be considered  
43 as hazardous substances for the purposes of this act;

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

46 "Industrial establishment" means any place of business engaged in

1 operations which involve the generation, manufacture, refining,  
2 transportation, treatment, storage, handling, or disposal of hazardous  
3 substances or hazardous wastes on-site, above or below ground,  
4 having a Standard Industrial Classification number within 22-39  
5 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard  
6 Industrial Classifications Manual prepared by the Office of  
7 Management and Budget in the Executive Office of the President of  
8 the United States. Those facilities or parts of facilities subject to  
9 operational closure and post-closure maintenance requirements  
10 pursuant to the "Solid Waste Management Act," P.L.1970, c.39  
11 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting  
12 Act," P.L.1981, c.279 (C.13:1E-49 et seq.) or the "Solid Waste  
13 Disposal Act" (42 U.S.C. §6901 et seq.), or any establishment engaged  
14 in the production or distribution of agricultural commodities, shall not  
15 be considered industrial establishments for the purposes of this act.  
16 The department may, pursuant to the "Administrative Procedure Act,"  
17 P.L.1968, c.410 (C.52:14B-1 et seq.), exempt certain sub-groups or  
18 classes of operations within those sub-groups within the Standard  
19 Industrial Classification major group numbers listed in this subsection  
20 upon a finding that the operation of the industrial establishment does  
21 not pose a risk to public health and safety;

22 "Negative declaration" means a written declaration, submitted by  
23 the owner or operator of an industrial establishment or other person  
24 assuming responsibility for the remediation under paragraph (3) of  
25 subsection b. of section 4 of P.L.1983, c.330 to the department,  
26 certifying that there has been no discharge of hazardous substances or  
27 hazardous wastes on the site, or that any such discharge on the site or  
28 discharge that has migrated or is migrating from the site has been  
29 remediated in accordance with procedures approved by the department  
30 and in accordance with any applicable remediation regulations;

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

35 "No further action letter" means a written determination by the  
36 department that, based upon an evaluation of the historical use of the  
37 industrial establishment and the property, or of an area of concern or  
38 areas of concern, as applicable, and any other investigation or action  
39 the department deems necessary, there are no discharged hazardous  
40 substances or hazardous wastes present at the site of the industrial  
41 establishment, at the area of concern or areas of concern, or at any  
42 other site to which discharged hazardous substances or hazardous  
43 wastes originating at the industrial establishment have migrated, and  
44 that any discharged hazardous substances or hazardous wastes present  
45 at the industrial establishment or that have migrated from the site have  
46 been remediated in accordance with applicable remediation

1 regulations;

2 "Indirect owner" means any person who holds a controlling interest  
3 in a direct owner or operator, holds a controlling interest in another  
4 indirect owner, or holds an interest in a partnership which is an  
5 indirect owner or a direct owner or operator, of an industrial  
6 establishment;

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

14 "Area of concern" means any location where hazardous substances  
15 or hazardous wastes are or were known or suspected to have been  
16 discharged, generated, manufactured, refined, transported, stored,  
17 handled, treated, or disposed, or where hazardous substances or  
18 hazardous wastes have or may have migrated;

19 "Remediation standards" means the combination of numeric <sup>2</sup>[and  
20 narrative]<sup>2</sup> standards that establish a level or concentration <sup>2</sup>and  
21 narrative standards,<sup>2</sup> to which hazardous substances or hazardous  
22 wastes must be [investigated or remediated as established] treated,  
23 removed, or otherwise cleaned for soil, groundwater, or surface water,  
24 as provided by the department pursuant to section 35 of P.L.1993,  
25 c.139 (C.58:10B-12) in order to meet the health risk or environmental  
26 standards;

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

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

43 "Preliminary assessment" means the first phase in the process of  
44 identifying areas of concern and determining whether hazardous  
45 substances or hazardous wastes are or were present at an industrial  
46 establishment or have migrated or are migrating from the industrial

1 establishment, and shall include the initial search for and evaluation of,  
2 existing site specific operational and environmental information, both  
3 current and historic, to determine if further investigation concerning  
4 the documented, alleged, suspected or latent discharge of any  
5 hazardous substance or hazardous waste is required. The evaluation  
6 of historic information shall be conducted from 1932 to the present,  
7 except that the department may require the search for and evaluation  
8 of additional information relating to ownership and use of the site  
9 prior to 1932 if such information is available through diligent inquiry  
10 of public records;

11 "Remediation" or "remediate" means all necessary actions to  
12 investigate and clean up or respond to any known, suspected, or  
13 threatened discharge of hazardous substances or hazardous wastes,  
14 including, as necessary, the preliminary assessment, site investigation,  
15 remedial investigation, and remedial action;

16 "Remedial action" means those actions taken at an industrial  
17 establishment or offsite of an industrial establishment if hazardous  
18 substances or hazardous wastes have migrated or are migrating  
19 therefrom, as may be required by the department to protect public  
20 health, safety, and the environment. These actions may include the  
21 removal, treatment, containment, transportation, securing, or other  
22 engineering measures, whether <sup>2</sup>[of a permanent nature] to an  
23 unrestricted use<sup>2</sup> or otherwise, designed to ensure that any discharged  
24 hazardous substances or hazardous wastes at the site or that have  
25 migrated or are migrating from the site, are remediated in compliance  
26 with the applicable [remediation] health risk or environmental  
27 standards;

28 "Remedial investigation" means a process to determine the nature  
29 and extent of a discharge of hazardous substances or hazardous wastes  
30 at an industrial establishment or a discharge of hazardous substances  
31 or hazardous wastes that have migrated or are migrating from the site  
32 and the problems presented by a discharge, and may include data  
33 collection, site characterization, sampling, monitoring, and the  
34 gathering of any other sufficient and relevant information necessary to  
35 determine the necessity for remedial action and to support the  
36 evaluation of remedial actions if necessary;

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

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

45

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

1 as follows:

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

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

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

44 (3) The preliminary assessment, site investigation, remedial  
45 investigation, and remedial action for the industrial establishment shall  
46 be performed and implemented by the owner or operator of the

1 industrial establishment, except that any other party may assume that  
2 responsibility pursuant to the provisions of P.L.1983, c.330.

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

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

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

38 e. The owner or operator of an industrial establishment, who has  
39 submitted a notice to the department pursuant to subsection a. of this  
40 section, may transfer ownership or operations of the industrial  
41 establishment prior to the approval of a negative declaration or  
42 remedial action workplan upon application to and approval by the  
43 department of a remediation agreement. The owner or operator  
44 requesting a remediation agreement shall submit the following  
45 documents: (1) an estimate of the cost of the remediation that is  
46 approved by the department; (2) a certification of the statutory liability

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

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

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

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

1 submitted to the department for its review and approval at the  
2 completion of each phase of the remediation.

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

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

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

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

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

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

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

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

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

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

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

3 The department shall, within 18 months of the effective date of  
4 P.L.1993, c.139 (C.13:1K-9.6 et al.), promulgate regulations to clearly  
5 define how the department will evaluate the application of the criteria  
6 enumerated in paragraphs (1) through (6) of this subsection; provided,  
7 however, that notwithstanding the preceding requirement, the criteria  
8 enumerated in paragraphs (1) through (4) and in paragraph (6) shall  
9 become immediately operative. Until the department promulgates  
10 those regulations, it shall impose reasonable standards and  
11 requirements upon any owner or operator deciding to use  
12 nonresidential use soil remediation standards pursuant to this  
13 subsection. Furthermore, the department shall not impose any  
14 requirement or standard with regard to the criterion enumerated in  
15 paragraph (5) that would require an owner or operator to implement  
16 residential use soil remediation standards unless the cost difference  
17 between implementing the residential standards and the nonresidential  
18 standards is a de minimis amount. For the purposes of the preceding,  
19 de minimis shall mean a cost difference not exceeding 10 percent of  
20 the cost of implementing the nonresidential standards.] select a  
21 remedial action based upon the standards and criteria set forth in  
22 section 35 of P.L.1993, c.139 (C.58:10B-12). When a remedial action  
23 selected by an owner or operator includes the use of an engineering or  
24 institutional controls that necessitates the recording of a notice  
25 pursuant to section 36 of P.L. 1993, c.139 (C.58:10B-13), the owner  
26 or operator shall obtain the approval of the transferee of the industrial  
27 establishment.

28 At any time after the effective date of P.L.1993, c.139, an owner  
29 or operator may request the department to provide a determination as  
30 to whether a proposed remedial action is consistent with the standards  
31 and criteria set forth [above in paragraphs (1) through (6)] in section  
32 35 of P.L.1993, c.139 (C.58:10B-12). The department shall make that  
33 determination based upon the standards and criteria set forth in that  
34 section. The department shall provide any such determination within  
35 30 calendar days of the department's receipt of the request.

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

40 k. An owner or operator of an industrial establishment shall not  
41 implement a remedial action involving the remediation of groundwater  
42 or surface water without the prior review and approval by the  
43 department of a remedial action workplan.

44 l. Submissions of a preliminary assessment, site investigation,  
45 remedial investigation, remedial action workplan, and the results of a  
46 remedial action shall be in a manner and form, and shall contain any

1 relevant information relating to the remediation, as may be required by  
2 the department.

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

16       The department shall review all information submitted to it by the  
17 owner or operator at the completion of the remediation to determine  
18 whether the actions taken were in compliance with rules and  
19 regulations of the department regarding remediation.

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

26       The department may order additional remediation activities at the  
27 industrial establishment, or offsite where necessary, or may require the  
28 submission of additional information, where (a) the department  
29 determines that the remediation activities undertaken were not in  
30 compliance with the applicable rules or regulations of the department;  
31 (b) all documents required to be submitted to the department were not  
32 submitted or, if submitted, were inaccurate, or deficient; or (c)  
33 discharged hazardous substances or hazardous wastes remain at the  
34 industrial establishment, or have migrated or are migrating offsite, at  
35 levels or concentrations or in a manner that is in violation of the  
36 applicable [remediation] health risk or environmental standards. Upon  
37 a finding by the department that the remediation conducted at the  
38 industrial establishment was in compliance with all applicable  
39 regulations, that no hazardous substances or hazardous wastes remain  
40 at the industrial establishment in a manner that is in violation of the  
41 applicable [remediation] health risk or environmental standards, and  
42 that all hazardous substances or hazardous wastes that migrated from  
43 the industrial establishment have been remediated in conformance with  
44 the applicable [remediation] health risk or environmental standards,  
45 the department shall approve the remediation for that industrial

1 establishment by the issuance of a no further action letter.  
2 (cf: P.L.1993, c.139, s.4)

3

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

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

8 "Area of concern" means any location where contaminants are or  
9 were known or suspected to have been discharged, generated,  
10 manufactured, refined, transported, stored, handled, treated, or  
11 disposed, or where contaminants have or may have migrated;

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

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

19 "Department" means the Department of Environmental Protection  
20 [and Energy];

21 "Discharge" means an intentional or unintentional action or  
22 omission resulting in the releasing, spilling, leaking, pumping, pouring,  
23 emitting, emptying, or dumping of a contaminant onto the land or into  
24 the waters of the State;

25 "Engineering controls" means any mechanism to contain or  
26 stabilize contamination or ensure the effectiveness of a remedial  
27 action. Engineering controls may include, without limitation, caps,  
28 covers, dikes, trenches, leachate collection systems, signs, fences and  
29 physical access controls;

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

32 "Financial assistance" means loans or loan guarantees;

33 "Institutional controls" means a mechanism used to limit human  
34 activities at or near a contaminated site, or to ensure the effectiveness  
35 of the remedial action over time, when contaminants remain at a  
36 contaminated site in levels or concentrations above the applicable  
37 remediation standard that would allow unrestricted use of that  
38 property. Institutional controls may include, without limitation,  
39 structure, land, and natural resource use restrictions, well restriction  
40 areas, and deed notices;

41 <sup>2</sup>"Limited restricted use remedial action" means any remedial action  
42 that requires the continued use of institutional controls but does not  
43 require the use of an engineering control;<sup>2</sup>

44 "No further action letter" means a written determination by the  
45 department that based upon an evaluation of the historical use of a  
46 particular site, or of an area of concern or areas of concern at that site,

1 as applicable, and any other investigation or action the department  
2 deems necessary, there are no discharged contaminants present at the  
3 site, at the area of concern or areas of concern, at any other site to  
4 which a discharge originating at the site has migrated, or that any  
5 discharged contaminants present at the site or that have migrated from  
6 the site have been remediated in accordance with applicable  
7 remediation regulations;

8 <sup>2</sup>["Nonpermanent remedial action" means any remedial action that  
9 requires the continued use of engineering controls in order to meet the  
10 established health risk or environmental standards;

11 "Permanent remedial action" means any remedial action that does  
12 not require the continued use of engineering controls in order to meet  
13 the established health risk or environmental standards. A remedial  
14 action may be considered permanent even if institutional controls are  
15 employed at the site;]<sup>2</sup>

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

28 "Remedial action" means those actions taken at a site or offsite if  
29 a contaminant has migrated or is migrating therefrom, as may be  
30 required by the department, including the removal, treatment,  
31 containment, transportation, securing, or other engineering or  
32 treatment measures, whether <sup>2</sup>[of a permanent nature] to an  
33 unrestricted use<sup>2</sup> or otherwise, designed to ensure that any discharged  
34 contaminant at the site or that has migrated or is migrating from the  
35 site, is remediated in compliance with the applicable [remediation  
36 standards] health risk or environmental standards;

37 "Remedial action workplan" means a plan for the remedial action  
38 to be undertaken at a site, or at any area to which a discharge  
39 originating at a site is migrating or has migrated; a description of the  
40 remedial action to be used to remediate a site; a time schedule and cost  
41 estimate of the implementation of the remedial action; and any other  
42 information the department deems necessary;

43 "Remedial investigation" means a process to determine the nature  
44 and extent of a discharge of a contaminant at a site or a discharge of  
45 a contaminant that has migrated or is migrating from the site and the  
46 problems presented by a discharge, and may include data collected,

1 site characterization, sampling, monitoring, and the gathering of any  
2 other sufficient and relevant information necessary to determine the  
3 necessity for remedial action and to support the evaluation of remedial  
4 actions if necessary;

5 "Remediation" or "remediate" means all necessary actions to  
6 investigate and clean up or respond to any known, suspected, or  
7 threatened discharge of contaminants, including, as necessary, the  
8 preliminary assessment, site investigation, remedial investigation, and  
9 remedial action;

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

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

17 "Remediation standards" means the combination of numeric <sup>2</sup>[and  
18 narrative]<sup>2</sup> standards that establish a level or concentration <sup>2</sup>, and  
19 narrative standards<sup>2</sup> to which contaminants must be treated, removed,  
20 or otherwise cleaned for soil, groundwater, or surface water, as  
21 provided by the department pursuant to section 35 of P.L.1993, c.139  
22 (C.58:10B-12) in order to meet the health risk or environmental  
23 standards;

24 <sup>2</sup>"Restricted use remedial action" means any remedial action that  
25 requires the continued use of engineering and institutional controls in  
26 order to meet the established health risk or environmental standards;<sup>2</sup>

27 "Site investigation" means the collection and evaluation of data  
28 adequate to determine whether or not discharged contaminants exist  
29 at a site or have migrated or are migrating from the site at levels in  
30 excess of the applicable remediation standards. A site investigation  
31 shall be developed based upon the information collected pursuant to  
32 the preliminary assessment ;

33 ["Remedial action workplan" means a plan for the remedial action  
34 to be undertaken at a site, or at any area to which a discharge  
35 originating at a site is migrating or has migrated; a description of the  
36 remedial action to be used to remediate a site; a time schedule and cost  
37 estimate of the implementation of the remedial action; and any other  
38 information the department deems necessary;

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

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

46 <sup>2</sup>"Unrestricted use remedial action" means any remedial action that

1 does not require the continued use of engineering or institutional  
2 controls in order to meet the established health risk or environmental  
3 standards;<sup>2</sup>

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

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

10

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

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

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

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

41 (2) reflects current technology as documented in peer-reviewed  
42 professional journals;

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

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

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

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

15       d. The department shall develop regulatory procedures that  
16 encourage the use of innovative technologies in the performance of  
17 remedial actions and other remediation activities.

18       e. Notwithstanding any other provisions of this section, all  
19 remediation standards and remedial actions that involve real property  
20 located in the pinelands area shall be consistent with the provisions of  
21 the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.),  
22 any rules and regulations adopted pursuant thereto, and with section  
23 502 of the "National Parks and Recreation Act of 1978," 16  
24 U.S.C.§471i.

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

26  
27       11. Section 25 of P.L.1993, c.139 (C.58:10B-3) is amended to  
28 read as follows:

29       25. a. The owner or operator of an industrial establishment or any  
30 other person required to perform remediation activities pursuant to  
31 P.L.1983, c.330 (C.13:1K-6 et al.), or a discharger <sup>2</sup>[or] , a<sup>2</sup> person  
32 in any way responsible for a hazardous substance <sup>2</sup>, or a person  
33 otherwise liable for cleanup and removal costs pursuant to P.L.1976,  
34 c.141 (C.58:10-23.11 et seq.)<sup>2</sup> who has been issued a directive or an  
35 order by a State agency, who has entered into an administrative  
36 consent order with a State agency, or who has been ordered by a  
37 court to clean up and remove a hazardous substance or hazardous  
38 waste discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.),  
39 shall establish and maintain a remediation funding source in the  
40 amount necessary to pay the estimated cost of the required  
41 remediation. A person who voluntarily undertakes a remediation  
42 pursuant to a memorandum of agreement with the department, or  
43 without the department's oversight, or who performs a remediation in  
44 an environmental opportunity zone is not required to establish or  
45 maintain a remediation funding source. A person who uses an  
46 innovative technology or who, in a timely fashion, implements <sup>2</sup>[a

1 permanent remedy] an unrestricted use remedial action or a limited  
2 restricted use remedial action<sup>2</sup> for all or part of a remedial action is  
3 not required to establish a remediation funding source for the cost of  
4 the remediation involving the innovative technology or permanent  
5 remedy. A person required to establish a remediation funding source  
6 pursuant to this section shall provide to the department satisfactory  
7 documentation that the requirement has been met.

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

32       b. The person responsible for performing the remediation and who  
33 established the remediation funding source may use the remediation  
34 funding source to pay for the actual cost of the remediation. The  
35 department may not require any other financial assurance by the  
36 person responsible for performing the remediation other than that  
37 required in this section. In the case of a remediation performed  
38 pursuant to P.L.1983, c.330, the remediation funding source shall be  
39 established no more than 14 days after the approval by the department  
40 of a remedial action workplan or upon approval of a remediation  
41 agreement pursuant to subsection e. of section 4 of P.L.1983, c.330  
42 (C.13:1K-9), unless the department approves an extension. In the case  
43 of a remediation performed pursuant to P.L.1976, c.141, the  
44 remediation funding source shall be established as provided in an  
45 administrative consent order signed by the parties, as provided by a  
46 court, or as directed or ordered by the department. The establishment

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

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

41 The trust fund agreement shall provide that the remediation trust  
42 fund may not be revoked or terminated by the person required to  
43 establish the remediation funding source or by the trustee without the  
44 written consent of the department. The trustee shall release to the  
45 person required to establish the remediation funding source, or to the  
46 department or transferee of the property, as appropriate, only those

1 moneys as the department authorizes, in writing, to be released. The  
2 person entitled to receive money from the remediation trust fund shall  
3 submit documentation to the department detailing the costs incurred  
4 or to be incurred as part of the remediation. Upon a determination by  
5 the department that the costs are consistent with the remediation of  
6 the site, the department shall, in writing, authorize a disbursement of  
7 moneys from the remediation trust fund in the amount of the  
8 documented costs.

9 The department shall return the original remediation trust fund  
10 agreement to the trustee for termination after the person required to  
11 establish the remediation funding source substitutes an alternative  
12 remediation funding source as specified in this section or the  
13 department notifies the person that that person is no longer required  
14 to maintain a remediation funding source for remediation of the  
15 contaminated site.

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

33 e. A line of credit shall be established pursuant to the provisions  
34 of this subsection. A line of credit shall allow the person establishing  
35 it to borrow money up to a limit established in a written agreement in  
36 order to pay for the cost of the remediation for which the line of credit  
37 was established. An originally signed duplicate of the line of credit  
38 agreement shall be delivered to the department by certified mail,  
39 overnight delivery, or personal service within 14 days of receipt of  
40 notice from the department that the remedial action workplan or  
41 remediation agreement as provided in subsection e. of section 4 of  
42 P.L.1983, c.330 is approved, or as specified in an administrative  
43 consent order, civil order, or order of the department, as applicable.  
44 The line of credit agreement shall conform to a model agreement as  
45 established by the department and shall be accompanied by a  
46 certification of acknowledgment that conforms to a model established

1 by the department.

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

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

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

1 the 12 month period following the date on which the application for  
2 self-guarantee is made. In the event that a self-guarantee is required  
3 for a period of more than one year, applications for a self-guarantee  
4 shall be renewed annually pursuant to this subsection for each  
5 successive year. The department may establish requirements and  
6 reporting obligations to ensure that the person proposing to  
7 self-guarantee a remediation funding source meets the criteria for  
8 self-guaranteeing prior to the initiation of remedial action and until  
9 completion of the remediation.

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

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

41 (3) After the department has begun to perform the remediation in  
42 the place of the person required to establish the remediation funding  
43 source or has granted the petition of the transferee to perform the  
44 remediation, the person required to establish the remediation funding  
45 source shall not be permitted by the department to continue its  
46 performance obligations except upon the agreement of the department

1 or the transferee, as applicable, or except upon a determination by the  
2 department that the transferee is not adequately performing the  
3 remediation.

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

5  
6 12. Section 26 of P.L.1993, c.139 (C.58:10B-4) is amended to  
7 read as follows:

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

18 b. The remediation fund shall be credited with:

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

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

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

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

25 (5) moneys deposited into the fund from cost recovery  
26 subrogation actions; and

27 (6) moneys made available to the authority for the purposes of the  
28 fund.

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

30  
31 13. Section 27 of P.L.1993, c.139 (C.58:10B-5) is amended to  
32 read as follows:

33 27. a. (1) Financial assistance from the remediation fund [, made  
34 to persons other than municipal governmental entities, the New Jersey  
35 Redevelopment Authority, or to persons who voluntarily undertake a  
36 remediation,] may only be rendered to persons who cannot establish  
37 a remediation funding source for the full amount of a remediation.  
38 Financial assistance pursuant to this act may be rendered only for that  
39 amount of the cost of a remediation for which the person cannot  
40 establish a remediation funding source. The limitations on receiving  
41 financial assistance established in this paragraph (1) shall not limit the  
42 ability of municipal governmental entities, the New Jersey  
43 Redevelopment Authority, persons who are not required to establish  
44 a remediation funding source for the part of the remediation involving  
45 an innovative technology <sup>2</sup>[or a permanent remedy] , an unrestricted  
46 use remedial action or a limited restricted use remedial action <sup>2</sup> .

1 persons performing a remediation in an environmental opportunity  
2 zone, or persons who voluntarily perform a remediation<sup>2</sup>,<sup>2</sup> to receive  
3 financial assistance from the fund.

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

10 (3) Financial assistance rendered to persons who do not have to  
11 provide financial assurance for the part of the remediation that  
12 involves an innovative technology<sup>2</sup>[or a permanent remedy ] , an  
13 unrestricted use remedial action, or a limited restricted use remedial  
14 action<sup>2</sup> may only be made for that amount of the cost of the  
15 remediation that the person cannot otherwise fund by any of the  
16 authorized methods to establish a remediation funding source.

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

29 c. Financial assistance and grants may be made from the  
30 remediation fund to municipal governmental entitiesor the New Jersey  
31 Redevelopment Authority that own or hold a tax sale certificate on  
32 real property or that have acquired real property through foreclosure  
33 or other similar means, or by voluntary conveyance for the purpose of  
34 redevelopment, and on which there has been a discharge or on which  
35 there is a suspected discharge of a hazardous substance or hazardous  
36 waste [or the New Jersey Redevelopment Authority established  
37 pursuant to P.L.1996, c.62 (C.55:19-20 et al.) for any such real  
38 property upon which the New Jersey Redevelopment Authority owns  
39 or holds the tax sale certificate]. Financial assistance<sup>2</sup>and grants<sup>2</sup> may  
40 not be made to any entity listed in this subsection for any real property  
41 used by that entity for the conduct of its official business.

42 d. Grants may be made from the remediation fund to persons [,  
43 including] and the New Jersey Redevelopment Authority, [other than  
44 other governmental entities] who own real property on which there  
45 has been a discharge of a hazardous substance or a hazardous waste  
46 and that person or the authority qualifies for an innocent party grant

1 pursuant to section 28 of P.L.1993, c.139 (C.58:10B-6).

2 e. Grants may be made from the remediation fund to qualifying  
3 persons who propose to perform a remedial action that uses an  
4 innovative technology or that would result in <sup>2</sup>[a permanent remedy]  
5 an unrestricted use remedial action or a limited restricted use remedial  
6 action<sup>2</sup> .

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

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

11

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

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

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

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

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

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

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

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

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

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

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

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

29 (9) At least 5% of the moneys shall be allocated for matching  
30 grants for up to 25% of the project costs to qualifying persons for the  
31 implementation of a <sup>2</sup>[permanent] limited restricted use remedial  
32 action or an unrestricted use<sup>2</sup> 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 <sup>2</sup>[permanent]  
38 limited restricted use remedial action or an unrestricted use<sup>2</sup> remedial  
39 action; and

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

1 criteria enumerated in paragraph (3) of this subsection.

2 For the purposes of paragraphs (8) and (9) of this subsection,  
3 "qualifying persons" means any person who has a net worth of not  
4 more than \$2,000,000 <sup>2</sup>and "project costs" means that portion of the  
5 total costs of a remediation that is specifically for the use of an  
6 innovative technology or to implement an unrestricted use remedial  
7 action or a limited restricted use remedial action, as applicable<sup>2</sup> .

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

31 c. No person, other than [a municipal governmental entity, the  
32 New Jersey Redevelopment Authority] a qualified person planning to  
33 use an innovative technology for the cost of that technology, a  
34 qualified person planning to use a <sup>2</sup>[permanent remedy] limited  
35 restricted use remedial action or an unrestricted use remedial action<sup>2</sup>  
36 for the cost of the remedial action, a person performing a remediation  
37 in an environmental opportunity zone, or a person [engaging in a  
38 voluntary] voluntarily performing a remediation, shall be eligible for  
39 financial assistance from the remediation fund to the extent that person  
40 is capable of establishing a remediation funding source for the  
41 remediation as required pursuant to section 25 of P.L.1993, c.139  
42 (C.58:10B-3).

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

1 grants.

2 e. Prior to March 1 of each year, the authority shall submit to the  
3 Senate Environment Committee and the Assembly Agriculture and  
4 Waste Management Committee, or their successors, a report detailing  
5 the amount of money that was available for financial assistance and  
6 grants from the remediation fund for the previous calendar year, the  
7 amount of money estimated to be available for financial assistance and  
8 grants for the current calendar year, the amount of financial assistance  
9 and grants issued for the previous calendar year and the category for  
10 which each financial assistance and grant was rendered, and any  
11 suggestions for legislative action the authority deems advisable to  
12 further the legislative intent to facilitate remediation and promote the  
13 redevelopment and use of existing industrial sites.

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

15

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

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

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

25 (2) require the financial assistance or grant recipient to provide  
26 access at reasonable times to the subject property to determine  
27 compliance with the terms and conditions of the financial assistance or  
28 grant;

29 (3) establish a priority system for rendering financial assistance or  
30 grants for remediations identified by the department as involving an  
31 imminent and significant threat to a public water source, human health,  
32 or to a sensitive or significant ecological area pursuant to paragraph  
33 [(7)] (3) of subsection a. of section 28 of P.L.1993, c.139  
34 (C.58:10B-6);

35 (4) provide that payment of a grant shall be conditioned upon the  
36 subrogation to the department of all rights of the recipient to recover  
37 remediation costs from the discharger or other <sup>2</sup>[responsible party]  
38 liable parties<sup>2</sup>. All moneys collected in a cost recovery subrogation  
39 action shall be deposited into the remediation fund;

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

43 (6) provide that where financial assistance to a person other than  
44 a municipal governmental entity [,] or the New Jersey Redevelopment  
45 Authority is for a portion of the remediation cost, that the proceeds  
46 thereof not be disbursed to the applicant until the costs of the

1 remediation for which a remediation funding source has been  
2 established has been expended;

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

6 b. An applicant for financial assistance or a grant shall be required  
7 to:

8 (1) provide proof, as determined sufficient by the authority, that  
9 the applicant, where applicable, cannot establish a remediation funding  
10 source for all or part of the remediation costs, as required by section  
11 25 of P.L.1993, c.139 (C.58:10B-3). The provisions of this paragraph  
12 do not apply to grants to innocent persons <sup>2</sup>[or] grants<sup>2</sup> for the use  
13 of innovative technologies <sup>2</sup>,<sup>2</sup> or <sup>2</sup>[for a permanent remedy] grants for  
14 the implementation of unrestricted use remedial actions or limited  
15 restricted use remedial actions<sup>2</sup> or to financial assistance or grants to  
16 municipal governmental entities or the New Jersey Redevelopment  
17 Authority; and

18 (2) demonstrate the ability to repay the amount of the financial  
19 assistance and interest, and, if necessary, to provide adequate  
20 collateral to secure the financial assistance amount.

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

24 d. In establishing requirements for financial assistance or grant  
25 applications and financial assistance or grant agreements, the  
26 authority:

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

29 (2) may not require financial assistance or grant conditions that  
30 interfere with the everyday normal operations of the recipient's  
31 business activities, except to the extent necessary to ensure the  
32 recipient's ability to repay the financial assistance and to preserve the  
33 value of the loan collateral; and

34 (3) shall expeditiously process all financial assistance or grant  
35 applications in accordance with a schedule established by the authority  
36 for the review and the taking of final action on the application, which  
37 schedule shall reflect the degree of complexity of a financial assistance  
38 or grant application.

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

40

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

43 33. a. There is imposed upon every person who is required to  
44 establish a remediation funding source pursuant to section 25 of  
45 P.L.1993, c.139 (C.58:10B-3) a remediation funding source surcharge.  
46 The remediation funding source surcharge shall be in an amount equal

1 to 1% of the required amount of the remediation funding source  
2 required by the department to be maintained. No surcharge, however,  
3 may be imposed upon (1) that amount of the remediation funding  
4 source that is met by a self-guarantee as provided in subsection f. of  
5 section 25 of P.L.1993, c.139 (C.58:10B-3), (2) that amount of the  
6 remediation funding source that is met by financial assistance or a  
7 grant from the remediation fund, (3) any person who voluntarily  
8 ~~[undertakes]~~ performs a remediation ~~[without being so ordered or~~  
9 ~~directed by the department or by a court or]~~ pursuant to an  
10 administrative consent order, ~~[or]~~ (4) any person who entered  
11 voluntarily into a memorandum of understanding with the department  
12 to remediate real property, as long as that person continues the  
13 remediation in a reasonable manner, or as required by law, even if  
14 subsequent to initiation of the memorandum of understanding, the  
15 person received an order by the department or entered into an  
16 administrative consent order to perform the remediation, ~~(5) any~~  
17 person performing a remediation in an environmental opportunity  
18 zone, or (6) that <sup>2</sup>[amount] portion<sup>2</sup> of the cost of the remediation that  
19 is <sup>2</sup>specifically<sup>2</sup> for the use of an innovative technology or to  
20 implement a <sup>2</sup>[permanent remedy] limited restricted use remedial  
21 action or an unrestricted use remedial action<sup>2</sup>. The surcharge shall be  
22 based on the cost of remediation work remaining to be completed and  
23 shall be paid on an annual basis as long as the remediation continues  
24 and until the Department of Environmental Protection ~~[and Energy]~~  
25 issues a no further action letter for the property subject to the  
26 remediation. The remediation funding source surcharge shall be due  
27 and payable within 14 days of the time of the department's approval of  
28 a remedial action workplan or signing an administrative consent order  
29 or as otherwise provided by law. The department shall collect the  
30 surcharge and shall remit all moneys collected to the Economic  
31 Development Authority for deposit into the Hazardous Discharge Site  
32 Remediation Fund.

33 b. By February 1 of each year, the department shall issue a report  
34 to the Senate Environment Committee and to the Assembly ~~[Energy~~  
35 ~~and Hazardous Waste]~~ Agriculture and Waste Management  
36 Committee, or their successors, listing, for the prior calendar year,  
37 each person who owed the remediation funding source surcharge, the  
38 amount of the surcharge paid, and the total amount collected.

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

40

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

43 35. a. The Department of Environmental Protection ~~[and Energy]~~  
44 shall adopt minimum remediation standards for soil, groundwater, and  
45 surface water quality necessary for the remediation of contamination  
46 of real property. The remediation standards shall be developed to

1 ensure that the potential for harm to public health and safety and to the  
2 environment is minimized to acceptable levels, taking into  
3 consideration the location, the surroundings, the intended use of the  
4 property, the potential exposure to the discharge, and the surrounding  
5 ambient conditions, whether naturally occurring or man-made.

6 Until the minimum remediation standards for the protection of  
7 public health and safety as described herein are adopted, the  
8 department shall apply public health and safety remediation standards  
9 for contamination at a site on a case-by-case basis based upon the  
10 considerations and criteria enumerated in this section.

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

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

29 b. In developing minimum remediation standards the department  
30 shall:

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

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

37 (3) avoid the use of redundant conservative assumptions. The  
38 department shall avoid the use of redundant conservative assumptions  
39 by the use of parameters that provide an adequate margin of safety and  
40 which avoid the use of unrealistic conservative exposure parameters  
41 and which guidelines make use of the guidance and regulations for  
42 exposure assessment developed by the United States Environmental  
43 Protection Agency pursuant to the "Comprehensive Environmental  
44 Response, Compensation, and Liability Act of 1980," 42 U.S.C. §9601  
45 et seq. and other statutory authorities as applicable; <sup>2</sup>[and]<sup>2</sup>

46 (4) where feasible, establish the remediation standards as numeric

1 or narrative standards setting forth acceptable levels or concentrations  
2 for particular contaminants <sup>2</sup>; and

3 (5) consider and utilize, in the absence of other standards used or  
4 developed by the Department of Environmental Protection and the  
5 United States Environmental Protection Agency, the toxicity factors,  
6 slope factors for carcinogens and reference doses for non-carcinogens  
7 from the United States Environmental Protection Agency's Integrated  
8 Risk Information System (IRIS)<sup>2</sup>.

9 c. (1) The department shall develop <sup>2</sup>[permanent]<sup>2</sup> residential and  
10 nonresidential soil remediation standards that are protective of public  
11 health and safety. For contaminants that are mobile and transportable  
12 to groundwater or surface water, the <sup>2</sup>[permanent]<sup>2</sup> residential and  
13 nonresidential soil remediation standards shall be protective of  
14 groundwater and surface water. [Residential] <sup>2</sup>[Permanent  
15 residential] Residential<sup>2</sup> soil remediation standards shall be set at levels  
16 or concentrations of contamination for real property based upon the  
17 use of that property for residential or similar uses and which will allow  
18 the unrestricted use of that property without the need of engineering  
19 devices or any institutional controls and without exceeding a health  
20 risk [level] standard greater than that provided in subsection d. of this  
21 section. [Nonresidential] <sup>2</sup>[Permanent nonresidential] Nonresidential<sup>2</sup>  
22 soil remediation standards shall be set at levels or concentrations of  
23 contaminants that recognize the lower likelihood of exposure to  
24 contamination on property that will not be used for residential or  
25 similar uses , which will allow for the unrestricted use of that property  
26 for nonresidential purposes, and that can be met without the need of  
27 engineering controls. Whenever real property is remediated to a  
28 nonresidential soil remediation standard, except as otherwise provided  
29 in paragraph (3) of subsection g. of this section, the department shall  
30 require, pursuant to section 36 of P.L.1993, c.139 (C.58:10B-13), that  
31 the use of the property be restricted to nonresidential or other uses  
32 compatible with the extent of the contamination of the soil and that  
33 access to that site be restricted in a manner compatible with the  
34 allowable use of that property.

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

40 d. [In developing] The department shall develop minimum  
41 remediation standards for soil, groundwater, and surface water  
42 intended to be protective of public health and safety [,] taking into  
43 account the provisions of this section. In developing these minimum  
44 health risk remediation standards the department shall identify the  
45 hazards posed by a contaminant to determine whether exposure to that  
46 contaminant can cause an increase in the incidence of an adverse health

1 effect and whether the adverse health effect may occur in humans.  
2 The department shall set minimum soil remediation health risk  
3 standards for both residential and nonresidential uses that:

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

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

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

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

34 f. (1) A person performing a remediation of contaminated real  
35 property, in lieu of using the established minimum <sup>2</sup>[permanent]<sup>2</sup> soil  
36 remediation standard for either residential use or nonresidential use  
37 adopted by the department pursuant to subsection c. of this section,  
38 may submit to the department a request to use an alternative  
39 residential use <sup>2</sup>[permanent]<sup>2</sup> or nonresidential use soil remediation  
40 standard. The use of an alternative soil remediation standard shall be  
41 based upon site specific factors which may include (1) physical site  
42 characteristics which may vary from those used by the department in  
43 the development of the soil remediation standards adopted pursuant to  
44 this section; or (2) a site specific risk assessment. If a person  
45 performing a remediation requests to use an alternative soil  
46 remediation standard based upon a site specific risk assessment, that

1 person shall demonstrate to the department that the requested  
2 deviation from the risk assessment protocol used by the department in  
3 the development of soil remediation standards pursuant to this section  
4 is consistent with the guidance and regulations for exposure  
5 assessment developed by the United States Environmental Protection  
6 Agency pursuant to the "Comprehensive Environmental Response,  
7 Compensation, and Liability Act of 1980," 42 U.S.C. §9601 et seq.  
8 and other statutory authorities as applicable. A site specific risk  
9 assessment may consider exposure scenarios and assumptions that take  
10 into account the form of the contaminant present, natural  
11 biodegradation, fate and transport of the contaminant, <sup>2</sup>[and] <sup>2</sup>  
12 available toxicological data that are based upon generally accepted and  
13 peer reviewed scientific evidence or methodologies <sup>2</sup>, and physical  
14 characteristics of the site, including, but not limited to, climatic  
15 conditions and topographic conditions. Nothing in this subsection  
16 shall be construed to authorize the use of an alternative soil  
17 remediation standard in those instances where an engineering control  
18 is the appropriate remedial action, as determined by the department,  
19 to prevent exposure to contamination<sup>2</sup> .

20 Upon a determination by the department that the requested  
21 alternative remediation standard <sup>2</sup>satisfies the department's  
22 regulations,<sup>2</sup> is protective of public health and safety, as established in  
23 subsection d. of this section, and <sup>2</sup>is<sup>2</sup> protective of the environment  
24 pursuant to subsection a. of this section, the alternative residential use  
25 or nonresidential use soil remediation standard shall be approved by  
26 the department. <sup>2</sup>The burden to demonstrate that the requested  
27 alternative remediation standard is protective rests with the person  
28 requesting the alternative standard and the department may require the  
29 submission of any documentation as the department determines to be  
30 necessary in order for the person to meet that burden.<sup>2</sup>

31 (2) The department may, upon its own initiative, require an  
32 alternative remediation standard for a particular contaminant for a  
33 specific real property site, in lieu of using the established minimum  
34 <sup>2</sup>[permanent]<sup>2</sup> residential use or nonresidential use soil remediation  
35 standard adopted by the department for a particular contaminant  
36 pursuant to this section. The department may require an alternative  
37 remediation standard pursuant to this paragraph upon a determination  
38 by the department, based on the weight of the scientific evidence, that  
39 due to specific physical site characteristics of the subject real property,  
40 <sup>2</sup>including, but not limited to, its proximity to surface water,<sup>2</sup> the use  
41 of the adopted residential use or nonresidential use soil remediation  
42 standards would not be protective <sup>2</sup>, or would be unnecessarily  
43 overprotective,<sup>2</sup> of public health or safety or of the environment, as  
44 appropriate.

45 g. The development, selection, and implementation of any  
46 remediation standard or remedial action shall ensure that it is

1 protective of public health, safety, and the environment, as applicable,  
2 as provided in this section. In determining the appropriate remediation  
3 standard or remedial action that shall occur at a site [in order to meet  
4 the established remediation standards], the department [, or] and any  
5 person performing the remediation, shall base [its] the decision on the  
6 following factors:

7 (1) <sup>2</sup>[Permanent and nonpermanent] Unrestricted use remedial  
8 actions, limited restricted use remedial actions and restricted use<sup>2</sup>  
9 [remedies] remedial actions shall be allowed except that <sup>2</sup>[permanent  
10 remedies] unrestricted use remedial actions and limited restricted use  
11 remedial actions<sup>2</sup> shall be preferred over <sup>2</sup>[nonpermanent remedies  
12 for] restricted use<sup>2</sup> remedial actions. The department, however, may  
13 not disapprove the use of a <sup>2</sup>[nonpermanent] restricted use remedial  
14 action or a limited restricted use<sup>2</sup> remedial action so long as the  
15 selected remedial action meets the health risk standard established in  
16 subsection d. of this section, and where, as applicable, is protective of  
17 the environment. The choice of the remedial action to be implemented  
18 shall be made by the person performing the remediation <sup>2</sup>in accordance  
19 with regulations adopted by the department<sup>2</sup> and that choice of the  
20 remedial action shall be approved by the department if all the criteria  
21 for remedial action selection enumerated in this section <sup>2</sup>, as  
22 applicable,<sup>2</sup> are met. The department may not require a person to  
23 compare or investigate any alternative remedial action as part of its  
24 review of the selected remedial action.

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

33 (3) Real property on which there is soil that has not been  
34 remediated to the residential soil remediation standards, or real  
35 property on which the soil, groundwater, or surface water has been  
36 remediated to meet the required health risk [level] standard by the use  
37 of engineering or institutional controls, may be developed or used for  
38 residential purposes, or for any other similar purpose, if (a) all areas  
39 of that real property at which a person may come into contact with soil  
40 are remediated to meet the residential soil remediation standards and  
41 (b) it is clearly demonstrated that for all areas of the real property,  
42 other than those described in subparagraph (a) above, engineering and  
43 institutional controls can be implemented and maintained on the real  
44 property sufficient to meet the health risk [level] standard as  
45 established in subsection d. of this section;

46 (4) Remediation shall not be required beyond the regional natural

1 background levels for any particular contaminant. The department  
2 shall develop regulations that set forth a process to identify  
3 background levels of contaminants for a particular region. For the  
4 purpose of this paragraph "regional natural background levels" means  
5 the concentration of a contaminant consistently present in the  
6 environment of the region of the site and which has not been  
7 influenced by localized human activities;

8 (5) Remediation shall not be required of the owner or operator of  
9 real property for contamination coming onto the site from another  
10 property owned and operated by another person, unless the owner or  
11 operator is the person who <sup>2</sup>[has discharged the contaminant or is in  
12 any way responsible for the [discharge] contaminant] is liable for  
13 cleanup and removal costs pursuant to P.L.1976, c.141 (C.58:10-  
14 23.11 et seq.)<sup>2</sup> ;

15 (6) Groundwater that is contaminated shall not be required to be  
16 remediated to a level or concentration for any particular contaminant  
17 lower than the level or concentration that is migrating onto the  
18 property from another property owned and operated by another  
19 person;

20 (7) The technical performance, effectiveness and reliability of the  
21 proposed remedial action in attaining and maintaining compliance with  
22 applicable remediation standards and required health risk [levels]  
23 standards shall be considered. In reviewing a proposed remedial  
24 action, the department shall also consider the ability of the owner or  
25 operator to implement the proposed remedial action within a  
26 reasonable time frame without jeopardizing public health, safety or the  
27 environment;

28 (8) [In the case of a proposed remedial action that will not meet  
29 the established minimum residential use soil remediation standards, the  
30 cost of all available permanent remedies is unreasonable, as determined  
31 by department rules designed to provide a cost-based preference for  
32 the use of permanent remedies. The department shall adopt  
33 regulations, no later than 18 months after the effective date of this act,  
34 establishing criteria and procedures for allowing a person to  
35 demonstrate that the cost of all available permanent remedies is  
36 unreasonable. Until the department adopts those regulations, it shall  
37 not require a person performing a remedial action to implement a  
38 permanent remedy, unless the cost of implementing a nonpermanent  
39 remedy is 50 percent or more than the cost of implementing a  
40 permanent remedy; provided, however, that the preceding provision  
41 shall not apply to any owner or operator of an industrial establishment  
42 who is implementing a remedial action pursuant to subsection i. of  
43 section 4 of P.L.1983, c.330;] The use of a remedial action for soil  
44 contamination that is determined by the department to be effective in  
45 its guidance document created pursuant to section 38 of P.L.1993,  
46 c.139 (C.58:10B-14), is presumed to be an appropriate remedial action

1 if it is to be implemented on a site in the manner described by the  
2 department in the guidance document <sup>2</sup>and applicable regulations<sup>2</sup> and  
3 if all of the conditions for remedy selection provided for in this section  
4 are met. The burden to prove compliance with the criteria in the  
5 guidance document is with the person performing the remediation.

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

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

13 The department may require the person performing the remediation  
14 to supply the information required pursuant to this subsection as is  
15 necessary for the department to make a determination.

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

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

14 (3) The department may not, as a condition of allowing the use of  
15 a <sup>2</sup>[permanent]<sup>2</sup> nonresidential use soil remediation standard, or the  
16 use of institutional or engineering controls, require the owner of that  
17 real property, except as provided in section 36 of P.L.1993, c.139  
18 (C.58:10B-13), to restrict the use of that property through the filing  
19 of a deed easement, covenant, or condition.

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

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

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

46 l. Upon the adoption of a remediation standard for a particular

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

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

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

21 o. A person who has remediated a site pursuant to the provisions  
22 of this section, who was liable for the cleanup and removal costs of  
23 that discharge pursuant to the provisions of paragraph (1) of  
24 subsection c. of <sup>2</sup>section 8 of<sup>2</sup> P.L.1976, c.141 (C.58:10-23.11g), and  
25 who remains liable for the discharge on that site due to a possibility  
26 that a remediation standard may change, undiscovered contamination  
27 may be found, or because an engineering control was used to  
28 remediate the discharge, shall maintain with the department a current  
29 address at which that person may be contacted in the event additional  
30 remediation needs to be performed at the site. The requirement to  
31 maintain the current address shall be made part of the conditions of the  
32 no further action letter issued by the department <sup>2</sup>[at the completion  
33 of a remediation<sup>2</sup>.

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

35  
36 18. Section 36 of P.L.1993, c.139 (C.58:10B-13) is amended to  
37 read as follows:

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

43 (1) require the establishment of any engineering or institutional  
44 controls the department determines are reasonably necessary to  
45 prevent exposure to the contaminants, require maintenance, as  
46 necessary, of those controls, and require the restriction of the use of

1 the property in a manner that prevents exposure;

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

16 (3) require a notice to the governing body of each municipality in  
17 which the property is located that contaminants will exist at the  
18 property above residential use soil remediation standards or any other  
19 remediation standards and specifying the restrictions on the use of or  
20 access to all or part of that property and of the specific engineering or  
21 institutional controls at the property that exist and that shall be  
22 maintained;

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

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

30 (6) require a person, prior to commencing a remedial action, to  
31 notify the governing body of each municipality wherein the property  
32 being remediated is located. The notice shall include, but not be  
33 limited to, the commencement date for the remedial action; the name,  
34 mailing address and business telephone number of the person  
35 implementing the remedial action, or his designated representative; and  
36 a brief description of the remedial action.

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

41 c. Whenever engineering or institutional controls on property as  
42 provided in subsection a. of this section are no longer required, or  
43 whenever the engineering or institutional controls are changed because  
44 of the performance of subsequent remedial activities, a change in  
45 conditions at the site, or the adoption of revised remediation  
46 standards, the department shall require that the owner or operator of

1 that property record with the office of the county recording officer a  
2 notice that the use of the property is no longer restricted or delineating  
3 the new restrictions. The department shall also require that the owner  
4 or operator notify, in writing, the municipality in which the property  
5 is located of the removal or change of the restrictive use conditions.

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

23 e. Notwithstanding the provisions of any other law, or any rule,  
24 regulation, or order adopted pursuant thereto to the contrary,  
25 whenever contamination at a property is remediated in compliance  
26 with any soil, or any groundwater [.] or surface water remediation  
27 standards that were in effect or approved by the department at the  
28 completion of the remediation, [the owner or operator of the property  
29 or person performing the remediation] no person, except as otherwise  
30 provided in this section, shall [not] be liable for the cost of any  
31 additional remediation that may be required by a subsequent adoption  
32 by the department of a more stringent remediation standard for a  
33 particular contaminant. Upon the adoption of a regulation that amends  
34 a remediation standard, <sup>2</sup>or where the adoption of a regulation would  
35 change a remediation standard which was otherwise approved by the  
36 department,<sup>2</sup> only a person who is liable to clean up and remove that  
37 contamination pursuant to section 8 of P.L.1976, c.141  
38 (C.58:10-23.11g), and who does not have a defense to liability  
39 pursuant to subsection d. of that section, shall be liable for any  
40 additional remediation costs necessary to bring the site into  
41 compliance with the new remediation standards except that no person  
42 shall be so liable unless the difference between the new remediation  
43 standard and the level or concentration of a contaminant at the  
44 property differs by an order of magnitude <sup>2</sup>.<sup>2</sup> The department may  
45 compel a person who is liable for the additional remediation costs to  
46 perform additional remediation activities to meet the new remediation

1 standard except that a person may not be compelled to perform any  
2 additional remediation activities on the site if that person can  
3 demonstrate that the existing engineering or institutional controls on  
4 the site prevent exposure to the contamination and that the site  
5 remains protective of public health <sup>2, 2</sup> safety and the environment  
6 pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12). The burden  
7 to prove that a site remains protective is on the person liable for the  
8 additional remediation costs. A person liable for the additional  
9 remediation costs who is relying on engineering or institutional  
10 controls to make a site protective, shall comply with the provisions of  
11 subsections a., b., c. and d. of this section.

12 Nothing in the provisions of this subsection shall be construed to  
13 affect the authority of the department, pursuant to subsection f. of this  
14 section, to require additional remediation on real property where  
15 engineering <sup>2</sup>[or institutional]<sup>2</sup> controls were implemented.

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

20 f. Whenever the department approves or has approved the use of  
21 engineering <sup>2</sup>[or institutional]<sup>2</sup> controls for the remediation of soil,  
22 <sup>2</sup>[or the use of engineering or institutional controls for the remediation  
23 of]<sup>2</sup> groundwater[,] <sup>2, 2</sup> or surface water, to protect public health,  
24 safety or the environment <sup>2</sup>[in lieu of remediating a site to a condition  
25 that meets an established residential or non residential soil or other  
26 remediation standard]<sup>2</sup>, the department [shall not] may require  
27 additional remediation of that site [unless] only if the engineering <sup>2</sup>[or  
28 institutional]<sup>2</sup> controls no longer are protective of public health, safety,  
29 or the environment.

30 g. Whenever the department approves or has approved the use of  
31 engineering or institutional controls for the remediation of soil,  
32 groundwater, or surface water, to protect public health, safety or the  
33 environment, the department shall inspect that site at least once every  
34 five years in order to ensure that the engineering and institutional  
35 controls are being properly maintained and that the controls remain  
36 <sup>2</sup>[protection] protective<sup>2</sup> of public health and safety and of the  
37 environment.

38 h. A property owner of a site on which a deed notice has been  
39 recorded shall notify any person who intends to excavate on the site  
40 of the nature and location of any contamination existing on the site and  
41 of any conditions or measures necessary to prevent exposure to  
42 contaminants.

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

44

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

1       3. Unless the context clearly indicates otherwise, the following  
2 terms shall have the following meanings:

3       "Act of God" means an act exclusively occasioned by an  
4 unanticipated, grave natural disaster without the interference of any  
5 human agency;

6       "Administrator" means the chief executive of the New Jersey Spill  
7 Compensation Fund;

8       "Barrel" means 42 United States gallons or 159.09 liters or an  
9 appropriate equivalent measure set by the director for hazardous  
10 substances which are other than fluid or which are not commonly  
11 measured by the barrel;

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

14       "Cleanup and removal costs" means all costs associated with a  
15 discharge, incurred by the State or its political subdivisions or their  
16 agents or any person with written approval from the department in the:

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

35       "Commissioner" means the Commissioner of Environmental  
36 Protection;

37       "Department" means the Department of Environmental Protection;

38       "Director" means the Director of the Division of Taxation in the  
39 Department of the Treasury;

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

46       "Emergency response action" means those activities conducted by

1 a local unit to clean up, remove, prevent, contain, or mitigate a  
2 discharge that poses an immediate threat to the environment or to the  
3 public health, safety, or welfare;

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

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

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

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

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

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

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

3 (2) 200,000 gallons or more for hazardous substances of all kinds.

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

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

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

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

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

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

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

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

45 "Transfer" means unloading or offloading between major facilities  
46 and vessels, or vessels and major facilities, and from vessel to vessel

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

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

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

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

14

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

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

20 (1) The cost of restoring, repairing, or replacing any real or  
21 personal property damaged or destroyed by a discharge, any income  
22 lost from the time such property is damaged to the time such property  
23 is restored, repaired or replaced, and any reduction in value of such  
24 property caused by such discharge by comparison with its value prior  
25 thereto;

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

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

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

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

43 b. The damages which may be recovered by the fund, without  
44 regard to fault, subject to the defenses enumerated in subsection d. of  
45 this section against the owner or operator of a major facility or vessel,  
46 shall not exceed \$50,000,000.00 for each major facility or \$150.00 per

1 gross ton for each vessel, except that such maximum limitation shall  
2 not apply and the owner or operator shall be liable, jointly and  
3 severally, for the full amount of such damages if it can be shown that  
4 such discharge was the result of (1) gross negligence or willful  
5 misconduct, within the knowledge and privity of the owner, operator  
6 or person in charge, or (2) a gross or willful violation of applicable  
7 safety, construction or operating standards or regulations. Damages  
8 which may be recovered from, or by, any other person shall be limited  
9 to those authorized by common or statutory law.

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

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

30 Where a person is liable for cleanup and removal costs as provided  
31 in this paragraph, any expenditures made by the administrator for that  
32 cleanup and removal shall constitute a debt of that person to the fund.  
33 The debt shall constitute a lien on all property owned by that person  
34 when a notice of lien identifying the nature of the discharge and the  
35 amount of the cleanup, removal and related costs expended from the  
36 fund is duly filed with the clerk of the Superior Court. The clerk shall  
37 promptly enter upon the civil judgment or order docket the name and  
38 address of the liable person and the amount of the lien as set forth in  
39 the notice of lien. Upon entry by the clerk, the lien, to the amount  
40 committed by the administrator for cleanup and removal, shall attach  
41 to the revenues and all real and personal property of the liable person,  
42 whether or not that person is insolvent.

43 For the purpose of determining priority of this lien over all other  
44 claims or liens which are or have been filed against the property of an  
45 owner or operator of a refinery, storage, transfer, or pipeline facility,  
46 the lien on the facility to which the discharged hazardous substance

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

12 To the extent that a person liable pursuant to this paragraph is not  
13 otherwise liable pursuant to paragraph (1) of this subsection, or under  
14 any other provision of law or under common law, that person may  
15 bring an action for indemnification for costs paid pursuant to this  
16 paragraph against any other person who is strictly liable pursuant to  
17 paragraph (1) of this subsection.

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

21 (3) In addition to the persons liable pursuant to this subsection,  
22 any person who owns real property acquired on or after September 14,  
23 1993 on which there has been a discharge prior to the person's  
24 acquisition of that property and who knew or should have known that  
25 a hazardous substance had been discharged at the real property, shall  
26 be strictly liable, jointly and severally, without regard to fault, for all  
27 cleanup and removal costs no matter by whom incurred. Such person  
28 shall also be strictly liable, jointly and severally, without regard to  
29 fault, for all cleanup and removal costs incurred by the department or  
30 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141  
31 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter  
32 liability of any person who acquired real property prior to September  
33 14, 1993.

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

39 (2) A person, including an owner or operator of a major facility,  
40 who owns real property acquired on or after [the effective date of  
41 P.L.1993, c.139 (C.13:1K-9.6 et al.),] September 14, 1993 on which  
42 there has been a discharge, shall not be [considered a person in any  
43 way responsible] liable<sup>2</sup> for cleanup and removal costs or for any other  
44 damages<sup>2</sup> to the State or to any other person for the discharged  
45 hazardous substance pursuant to subsection c. of this section or  
46 pursuant to civil common law, [unless] if that person can establish by

1 a preponderance of the evidence that <sup>2</sup>[all of the  
2 following]subparagraphs (a) through (d) apply, or if applicable,  
3 subparagraphs (a) through (e)<sup>2</sup> apply:

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

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

16 (c) the person did not discharge the hazardous substance <sup>2</sup>[and],<sup>2</sup>  
17 is not in any way responsible for the hazardous substance <sup>2</sup>, and is not  
18 a corporate successor to the discharger or to any person in any way  
19 responsible for the hazardous substance or to anyone liable for cleanup  
20 and removal costs pursuant to this section<sup>2</sup>; and

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

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

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

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

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

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

41 (4) Any federal, State, or local governmental entity which acquires  
42 ownership of real property through bankruptcy, tax delinquency,  
43 abandonment, escheat, eminent domain, condemnation or any  
44 circumstance in which the [government] governmental entity  
45 involuntarily acquires title by virtue of its function as sovereign, or  
46 where the governmental entity acquires the property by any means for

1 the purpose of promoting the redevelopment of that property, shall not  
 2 be liable [for the cleanup and removal costs of], pursuant to  
 3 subsection c. of this section or pursuant to common law, to the State  
 4 or to any other person for any discharge which occurred or began  
 5 prior to that ownership. This paragraph shall not <sup>2</sup>[apply] provide any  
 6 liability protection<sup>2</sup> to any federal, State or local governmental entity  
 7 which has caused or contributed to the discharge of a hazardous  
 8 substance. <sup>2</sup>This paragraph shall not provide any liability protection  
 9 to any federal, State, or local government entity that acquires  
 10 ownership of real property by condemnation or eminent domain where  
 11 the real property is being remediated in a timely manner at the time of  
 12 the condemnation or eminent domain action.<sup>2</sup>

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

31 (2) <sup>2</sup>[The] Neither the<sup>2</sup> fund <sup>2</sup>[established pursuant to the "Spill  
 32 Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et  
 33 seq.),] nor the Sanitary Landfill Contingency Fund established pursuant  
 34 to P.L. 1981, c.306 (C.13:1E-100 et seq)<sup>2</sup> shall <sup>2</sup>[not]<sup>2</sup> be liable for  
 35 any damages incurred by any person who is relieved from liability  
 36 pursuant to [this] subsection d. or f. of this section <sup>2</sup>for a remediation  
 37 that involves the use of engineering controls but the fund and the  
 38 Sanitary Landfill Contingency Fund shall be liable for any remediation  
 39 that involves only the use of institutional controls if after a valid no  
 40 further action letter has been issued the department orders additional  
 41 remediation except that the fund and the Sanitary Landfill Contingency  
 42 Fund shall not be liable for any additional remediation that is required  
 43 to remove an institutional control<sup>2</sup>.

44 <sup>2</sup>f. Notwithstanding any other provision of this section, a person,  
 45 who owns real property acquired on or after the effective date of  
 46 P.L. , c. (C. ) (before the Legislature as this bill), shall not be

1 liable for any cleanup and removal costs or damages, under this section  
2 or pursuant to any other statutory or civil common law, to any person,  
3 other than the State and the federal government, harmed by any  
4 hazardous substance discharged on that property prior to acquisition,  
5 and any migration off that property related to that discharge, provided  
6 all the conditions of this subsection are met:

7 (1) the person acquired the real property after the discharge of  
8 that hazardous substance at the real property;

9 (2) the person did not discharge the hazardous substance, is not in  
10 any way responsible for the hazardous substance, and is not a  
11 corporate successor to the discharger or to any person in any way  
12 responsible for the hazardous substance or to anyone liable for a  
13 discharge pursuant to this section;

14 (3) the person gave notice of the discharge to the department upon  
15 actual discovery of that discharge;

16 (4) within 30 days after acquisition of the property, the person  
17 commenced a remediation of the discharge, including any migration,  
18 pursuant to a department oversight document executed prior to  
19 acquisition, and the department is satisfied that remediation was  
20 completed in a timely and appropriate fashion; and

21 (5) Within ten days after acquisition of the property, the person  
22 agrees in writing to provide access to the State for remediation and  
23 related activities, as determined by the State.

24 The provisions of this subsection shall not relieve any person of  
25 any liability:

26 (1) for a discharge that occurs at that property after the person  
27 acquired the property;

28 (2) for any actions that person negligently takes that aggravates or  
29 contributes to the harm inflicted upon any person;

30 (3) if that person fails to maintain the institutional or engineering  
31 controls on the property or to otherwise comply with the provisions  
32 of a no further action letter or a remedial action workplan and a  
33 person is harmed thereby;

34 (4) for any liability to clean up and remove, pursuant to the  
35 department's regulations and directions, any hazardous substances that  
36 may have been discharged on the property or that may have migrated  
37 therefrom; and

38 (5) for that person's failure to comply in the future with laws and  
39 regulations.

40 g. Nothing in the amendatory provisions to this section adopted  
41 pursuant to P.L. \_\_\_\_\_, c. \_\_\_\_\_ (before the Legislature as this bill) shall be  
42 construed to remove any defense to liability that a person may have  
43 had pursuant to subsection e. of this section that existed prior to the  
44 effective date of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (before the Legislature as this bill).

45 h. Nothing in this section shall limit the requirements of any  
46 person to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).<sup>2</sup>

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

2

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

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

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

30

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

33 3. As used in this act:

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

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

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

45 <sup>2</sup>"Permanent remedial action" means any remedial action that does  
46 not require the continued use of engineering controls in order to meet

1 the established health risk or environmental standards. A remedial  
2 action may be considered permanent even if institutional controls are  
3 employed at the site;]

4 "Limited restricted use remedial action" means any remedial action  
5 that requires the continued use of institutional controls but does not  
6 require the use of an engineering control;<sup>2</sup>

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

13 "Remediation" means all necessary actions to investigate and clean  
14 up or respond to any known, suspected, or threatened discharge of  
15 contaminants, including, as necessary, the preliminary assessment, site  
16 investigation, remedial investigation, and remedial action <sup>2</sup>[.] ;

17 "Remediation cost" means cost associated with the implementation  
18 of a remediation, including all direct and indirect legal, administrative  
19 and capital costs, engineering costs, and annual operation, maintenance,  
20 and monitoring costs;

21 "Unrestricted use remedial action" means any remedial action that  
22 does not require the continued use of engineering or institutional  
23 controls in order to meet the established health risk or environmental  
24 standards.<sup>2</sup>

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

26  
27 23. Section 5 of P.L.1995, c.413 (C.54:4-3.154) is amended to  
28 read as follows:

29 5. The governing body of a municipality which has adopted an  
30 ordinance pursuant to section 4 of P.L.1995, c.413 (C.54:4-3.153),  
31 <sup>1</sup>[may] shall<sup>1</sup>, by ordinance, provide for exemptions of real property  
32 taxes for environmental opportunity zones. The governing body shall  
33 include the following items in its enabling ordinance:

34 a. A property tax exemption term of ten years except that a tax  
35 exemption may be extended up to fifteen years, at the municipality's  
36 option, if the qualified real property is to be remediated with a  
37 <sup>2</sup>[permanent] limited restricted use remedial action or an unrestricted  
38 use<sup>2</sup> remedial action <sup>2</sup>. The property tax exemption shall end if the  
39 difference between the real property taxes otherwise due and payments  
40 made in lieu of those taxes equals the total remediation cost for the  
41 qualified real property<sup>2</sup>;

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

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

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

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

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

15  
16 24. Section 7 of P.L. 1995, c.413 (C.54:4-3.156) is amended to  
17 read as follows:

18 7. a. Each approved exemption shall be evidenced by a financial  
19 agreement between the municipality and the applicant. The agreement  
20 shall be prepared by the applicant and shall contain the representations  
21 that are required by the enabling ordinance. The agreement shall  
22 provide for the applicant to annually pay to the municipality an amount  
23 in lieu of real property taxes, to be computed according to subsection  
24 b. of this section. With the approval of the governing body, the  
25 agreement may be assigned to a subsequent owner of the  
26 environmental opportunity zone.

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

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

33 (2) In the second tax year following execution of a memorandum  
34 of agreement or administrative consent order, an amount not less than  
35 10% of taxes otherwise due;

36 (3) In the third tax year following execution of a memorandum of  
37 agreement or administrative consent order, an amount not less than  
38 20% of taxes otherwise due;

39 (4) In the fourth tax year following execution of a memorandum of  
40 agreement or administrative consent order, an amount not less than  
41 30% of taxes otherwise due;

42 (5) In the fifth tax year following execution of a memorandum of  
43 agreement or administrative consent order, an amount not less than  
44 40% of taxes otherwise due;

45 (6) In the sixth tax year following execution of a memorandum of  
46 agreement or administrative consent order, an amount not less than

1 50% of the taxes otherwise due;

2 (7) In the seventh tax year following execution of a memorandum  
3 of agreement or administrative consent order, an amount not less than  
4 60% of the taxes otherwise due;

5 (8) In the eighth tax year following execution of a memorandum of  
6 agreement or administrative consent order, an amount not less than  
7 70% of the taxes otherwise due;

8 (9) In the ninth tax year following execution of a memorandum of  
9 agreement or administrative consent order, an amount not less than  
10 80% of the taxes otherwise due;

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

16 Where a property tax exemption has been extended because of the  
17 proposed implementation of a <sup>2</sup>[permanent] limited restricted use  
18 remedial action or unrestricted use<sup>2</sup> remedial action, the municipality  
19 may provide for a different schedule for the payment in lieu of real  
20 property taxes which payments may not exceed the length of the  
21 property tax exemption.

22 c. For the purposes of this section, <sup>2</sup>only<sup>2</sup> the amount of "taxes  
23 otherwise due" shall be determined by using the assessed valuation of  
24 the environmental opportunity zone at the time of the approval by the  
25 assessor of the exemption, regardless of any improvement made to the  
26 environmental opportunity zone thereafter <sup>2</sup>and as if the designation  
27 of the environmental opportunity zone had not occurred<sup>2</sup>.

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

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

38 <sup>2</sup>[25. Section 2 of P.L.1960, c.183 (C.40:37A-45) is amended to  
39 read as follows:

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

42 (a) "Authority" shall mean a public body created pursuant to this  
43 act;

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

46 (c) "Bonds" shall mean bonds, notes or other obligations issued

1 pursuant to this act;

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

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

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

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

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

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

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

44 (k) "Governmental unit" shall mean the United States of America  
45 or the State or any county or municipality or any subdivision,  
46 department, agency, or instrumentality heretofore or hereafter created,

1 designated or established by or for the United States of America or the  
2 State or any county or municipality;

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

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

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

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

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

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

21 (r) "Garbage and solid waste disposal system" shall mean the  
22 plants, structures and other real and personal property acquired,  
23 constructed or operated or to be acquired, constructed or operated by  
24 a county improvement authority, including incinerators, sanitary  
25 landfill facilities or other plants for the treatment and disposal of  
26 garbage, solid waste and refuse matter and all other real and personal  
27 property and rights therein and appurtenances necessary or useful and  
28 convenient for the collection and treatment or disposal in a sanitary  
29 manner of garbage, solid waste and refuse matter (but not including  
30 sewage);

31 (s) "Garbage, solid waste or refuse matter" shall mean garbage,  
32 refuse and other discarded materials resulting from industrial,  
33 commercial and agricultural operations, and from domestic and  
34 community activities, and shall include all other waste materials  
35 including sludge, chemical waste, hazardous wastes and liquids, except  
36 for liquids which are treated in public sewage treatment plants and  
37 except for solid animal and vegetable wastes collected by swine  
38 producers licensed by the State Department of Agriculture to collect,  
39 prepare and feed such wastes to swine on their own farms;

40 (t) "Blighted, deteriorated or deteriorating area" may include an  
41 area determined heretofore by the municipality to be blighted in  
42 accordance with the provisions of P.L.1949, c.187, repealed by  
43 P.L.1992, c.79 (C.40:55-21.1 et seq.) and, in addition, areas which are  
44 determined by the municipality, pursuant to the same procedures as  
45 provided in said law, to be blighted, deteriorated or deteriorating  
46 because of structures or improvements which are dilapidated or

1 characterized by disrepair, lack of ventilation or light or sanitary  
2 facilities, faulty arrangement, location, or design, or other unhealthful  
3 or unsafe conditions;

4 (u) "Redevelopment" may include planning, replanning,  
5 conservation, rehabilitation, clearance, remediation, development and  
6 redevelopment; and the construction and rehabilitation and provision  
7 for construction and rehabilitation of residential, commercial,  
8 industrial, public or other structures and the grant or dedication or  
9 rededication of spaces as may be appropriate or necessary in the  
10 interest of the general welfare for streets, parks, playgrounds, or other  
11 public purposes including recreational and other facilities incidental or  
12 appurtenant thereto, in accordance with a redevelopment plan  
13 approved by the governing body of a municipality;

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

31 (w) "Redevelopment project" shall mean any undertakings and  
32 activities for the elimination, and for the prevention of the  
33 development or spread, of blighted, deteriorated, or deteriorating  
34 areas and may involve any work or undertaking pursuant to a  
35 redevelopment plan; such undertaking may include: (1) acquisition of  
36 real property and demolition, removal or rehabilitation of buildings and  
37 improvements thereon; (2) carrying out plans for a program of  
38 voluntary repair and rehabilitation of buildings or other improvements;  
39 and (3) installation, construction or reconstruction of streets, utilities,  
40 parks, playgrounds or other improvements necessary for carrying out  
41 the objectives of the redevelopment project;

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

46 (y) "Redevelopment area" shall mean an area of a municipality

1 which the governing body thereof finds is a blighted area, a  
2 contaminated redevelopment site, or an area in need of rehabilitation  
3 whose redevelopment is necessary to effectuate the public purposes  
4 declared in this act. A redevelopment area may include lands,  
5 buildings, or improvements which of themselves are not detrimental to  
6 the public health, safety or welfare, but whose inclusion is found  
7 necessary, with or without change in their condition, for the effective  
8 redevelopment of the area of which they are a part;

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

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

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

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

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

34 (ee) "Discharge" means an intentional or unintentional action or  
35 omission resulting in the releasing, spilling, leaking, pumping, pouring,  
36 emitting, emptying, or dumping of a contaminant onto the land or into

1 the waters of the State.

2 (cf: P.L.1994, c.76, s.1)]<sup>2</sup>

3

4 <sup>2</sup>[26. Section 11 of P.L.1960, c.183 (C.40:37A-54) is amended to  
5 read as follows:

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

1 or desirable, (g) acquisition, construction, maintenance and operation  
2 of garbage and solid waste disposal systems for the purpose of  
3 collecting and disposing of garbage, solid waste or refuse matter,  
4 whether owned or operated by any person, the authority or any other  
5 governmental unit, within or without the county or any beneficiary  
6 county, (h) the improvement, furtherance and promotion of the tourist  
7 industries and recreational attractiveness of the county or any  
8 beneficiary county through the planning, acquisition, construction,  
9 improvement, maintenance and operation of facilities for the recreation  
10 and entertainment of the public, which facilities may include, without  
11 being limited to, a center for the performing and visual arts, (i)  
12 provision of loans and other financial assistance and technical  
13 assistance for the construction, reconstruction, demolition,  
14 rehabilitation, conversion, repair or alteration of buildings or facilities  
15 designed to provide decent, safe and sanitary dwelling units for  
16 persons of low and moderate income in need of housing, including the  
17 acquisition of land, equipment or other real or personal properties  
18 which the authority determines to be necessary, convenient or  
19 desirable appurtenances, all in accordance with the provisions of this  
20 act, as amended and supplemented, (j) planning, initiating and carrying  
21 out redevelopment projects for the elimination, and for the prevention  
22 of the development or spread of blighted, deteriorated or deteriorating  
23 areas and the disposition, for uses in accordance with the objectives of  
24 the redevelopment project, of any property or part thereof acquired in  
25 the area of such project, (k) any combination or combinations of the  
26 foregoing or following, [and] (l) subject to the prior approval of the  
27 Local Finance Board, the planning, design, acquisition, construction,  
28 improvement, renovation, installation, maintenance and operation of  
29 facilities or any other type of real or personal property within the  
30 county for a corporation or other person organized for any one or  
31 more of the purposes described in subsection a. of N.J.S.15A:2-1  
32 except those facilities or any other type of real or personal property  
33 which can be financed pursuant to the provisions of P.L.1972, c.29  
34 (C.26:2I-1 et seq.) as amended, and (m) planning, initiating,  
35 promoting, financing, and coordinating necessary actions to remediate  
36 and redevelop contaminated redevelopment sites.  
37 (cf: P.L.1994, c.110, s.1)]<sup>2</sup>

38

39 <sup>2</sup>[27. Section 12 of P.L.1960, c.183 (C.40:37A-55) is amended to  
40 read as follows:

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

- 1 (a) To adopt and have a common seal and to alter the same at  
2 pleasure;
- 3 (b) To sue and be sued;
- 4 (c) To acquire, hold, use and dispose of its facility charges and  
5 other revenues and other moneys;
- 6 (d) To acquire, rent, hold, use and dispose of other personal  
7 property for the purposes of the authority;
- 8 (e) Subject to the provisions of section 26 of this act, to acquire by  
9 purchase, gift, condemnation or otherwise, or lease as lessee, real  
10 property and easements or interests therein necessary or useful and  
11 convenient for the purposes of the authority, whether subject to  
12 mortgages, deeds of trust or other liens or otherwise, and to hold and  
13 to use the same, and to dispose of property so acquired no longer  
14 necessary for the purposes of the authority; provided that the authority  
15 may dispose of such property at any time to any governmental unit or  
16 person if the authority shall receive a leasehold interest in the property  
17 for such term as the authority deems appropriate to fulfill its  
18 purposes;
- 19 (f) Subject to the provisions of section 13 of this act, to lease to  
20 any governmental unit or person, all or any part of any public facility  
21 for such consideration and for such period or periods of time and upon  
22 such other terms and conditions as it may fix and agree upon;
- 23 (g) To enter into agreements to lease, as lessee, public facilities for  
24 such term and under such conditions as the authority may deem  
25 necessary and desirable to fulfill its purposes, and to agree, pursuant  
26 thereto, to be unconditionally obligated to make payments for the term  
27 of the lease, without set-off or counterclaim, whether or not the public  
28 facility is completed, operating or operable, and notwithstanding the  
29 destruction of, damage to, or suspension, interruption, interference,  
30 reduction or curtailment of the availability or output of the public  
31 facility to which the agreement applies;
- 32 (h) To extend credit or make loans to any governmental unit or  
33 person for the planning, design, acquisition, construction, equipping  
34 and furnishing of a public facility, upon the terms and conditions that  
35 the loans be secured by loan and security agreements, mortgages,  
36 leases and other instruments, the payments on which shall be sufficient  
37 to pay the principal of and interest on any bonds issued for the purpose  
38 by the authority, and upon such other terms and conditions as the  
39 authority shall deem reasonable;
- 40 (i) Subject to the provisions of section 13 of this act, to make  
41 agreements of any kind with any governmental unit or person for the  
42 use or operation of all or any part of any public facility for such  
43 consideration and for such period or periods of time and upon such  
44 other terms and conditions as it may fix and agree upon;
- 45 (j) To borrow money and issue negotiable bonds or notes or other  
46 obligations and provide for and secure the payment of any bonds and

1 the rights of the holders thereof, and to purchase, hold and dispose of  
2 any bonds;

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

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

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

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

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

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

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

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

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

43 (t) To enter into any and all agreements or contracts, execute any  
44 and all instruments, and do and perform any and all acts or things  
45 necessary, convenient or desirable for the purposes of the authority or  
46 to carry out any power expressly given in this act subject to P.L.1971,

1 c.198, "Local Public Contracts Law" (C.40A:11-1 et seq.) ; and  
2 (u) To conduct and coordinate public outreach efforts to inform  
3 the public of the health and environmental risks, as well as the  
4 economic benefits, of the remediation and redevelopment of  
5 contaminated redevelopment sites.

6 (cf: P.L.1982, c. 113, s. 8)]<sup>2</sup>

7

8 <sup>2</sup>[28. (New section) For purposes of the redevelopment of  
9 contaminated redevelopment areas, and subject to the provisions of  
10 this act, a county improvement authority may:

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

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

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

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

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

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

40 g. Publish and disseminate information;

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

44 i. Arrange or contract with public agencies or redevelopers for the  
45 planning, replanning, conservation, rehabilitation, construction, or  
46 undertaking of any project, or redevelopment work, or any part

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

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

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

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

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

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

30 o. To finance by mortgage loans or otherwise the construction  
31 or establishment of retail food outlets and to make temporary loans or  
32 advances in anticipation of permanent loans.]<sup>2</sup>

33

34 <sup>2</sup>25. (New Section) The Department of Environmental Protection  
35 shall:

36 (1) Prepare materials for dissemination to the public that explain  
37 the environmental and health risks associated with site remediations in  
38 general and which are designed to assist local governments and the  
39 public in assessing the risks associated with particular site remediation  
40 projects;

41 (2) Serve as an informational resource for county improvement  
42 authorities who are involved in remediating and redeveloping  
43 contaminated redevelopment areas and for municipalities and residents  
44 of this State who may be impacted by the remediation or  
45 redevelopment of contaminated real property regardless of who is  
46 undertaking the remediation or redevelopment;

1       (3) Work with residents and municipalities to form neighborhood  
2 informational groups whose purpose is to research, understand and  
3 disseminate information in neighborhoods concerning the public health  
4 and environmental risks associated with site remediations and  
5 redevelopment, as well as the economic benefits to be gained; and

6       (4) Make recommendations to the Legislature and the Governor  
7 in order to improve the public understanding, perception and risk  
8 associated with site remediations in the State.<sup>2</sup>

9  
10       <sup>2</sup>26. Section 12 of P.L.1970, c.33 (C.13:1D-9) is amended to read  
11 as follows:

12       12. The department shall formulate comprehensive policies for the  
13 conservation of the natural resources of the State, the promotion of  
14 environmental protection and the prevention of pollution of the  
15 environment of the State. The department shall in addition to the  
16 powers and duties vested in it by this act or by any other law have the  
17 power to:

18       a. Conduct and supervise research programs for the purpose of  
19 determining the causes, effects and hazards to the environment and its  
20 ecology;

21       b. Conduct and supervise Statewide programs of education,  
22 including the preparation and distribution of information relating to  
23 conservation, environmental protection and ecology;

24       c. Require the registration of persons engaged in operations which  
25 may result in pollution of the environment and the filing of reports by  
26 them containing such information as the department may prescribe to  
27 be filed relative to pollution of the environment, all in accordance with  
28 applicable codes, rules or regulations established by the department;

29       d. Enter and inspect any building or place for the purpose of  
30 investigating an actual or suspected source of pollution of the  
31 environment and ascertaining compliance or noncompliance with any  
32 codes, rules and regulations of the department. Any information  
33 relating to secret processes concerning methods of manufacture or  
34 production, obtained in the course of such inspection, investigation or  
35 determination, shall be kept confidential, except this information shall  
36 be available to the department for use, when relevant, in any  
37 administrative or judicial proceedings undertaken to administer,  
38 implement, and enforce State environmental law, but shall remain  
39 subject only to those confidentiality protections otherwise afforded by  
40 federal law and by the specific State environmental laws and  
41 regulations that the department is administering, implementing and  
42 enforcing in that particular case or instance. In addition, this  
43 information shall be available upon request to the United States  
44 Government for use in administering, implementing, and enforcing  
45 federal environmental law, but shall remain subject to the  
46 confidentiality protection afforded by federal law. If samples are

1 taken for analysis, a duplicate of the analytical report shall be furnished  
2 promptly to the person suspected of causing pollution of the  
3 environment;

4 e. Receive or initiate complaints of pollution of the environment,  
5 including thermal pollution, hold hearings in connection therewith and  
6 institute legal proceedings for the prevention of pollution of the  
7 environment and abatement of nuisances in connection therewith and  
8 shall have the authority to seek and obtain injunctive relief and the  
9 recovery of fines and penalties in summary proceedings in the  
10 Superior Court;

11 f. Prepare, administer and supervise Statewide, regional and local  
12 programs of conservation and environmental protection, giving due  
13 regard for the ecology of the varied areas of the State and the  
14 relationship thereof to the environment, and in connection therewith  
15 prepare and make available to appropriate agencies in the State  
16 technical information concerning conservation and environmental  
17 protection, cooperate with the Commissioner of Health in the  
18 preparation and distribution of environmental protection and health  
19 bulletins for the purpose of educating the public, and cooperate with  
20 the Commissioner of Health in the preparation of a program of  
21 environmental protection;

22 g. Encourage, direct and aid in coordinating State, regional and  
23 local plans and programs concerning conservation and environmental  
24 protection in accordance with a unified Statewide plan which shall be  
25 formulated, approved and supervised by the department. In reviewing  
26 such plans and programs and in determining conditions under which  
27 such plans may be approved, the department shall give due  
28 consideration to the development of a comprehensive ecological and  
29 environmental plan in order to be assured insofar as is practicable that  
30 all proposed plans and programs shall conform to reasonably  
31 contemplated conservation and environmental protection plans for the  
32 State and the varied areas thereof;

33 h. Administer or supervise programs of conservation and  
34 environmental protection, prescribe the minimum qualifications of all  
35 persons engaged in official environmental protection work, and  
36 encourage and aid in coordinating local environmental protection  
37 services;

38 i. Establish and maintain adequate bacteriological, radiological and  
39 chemical laboratories with such expert assistance and such facilities as  
40 are necessary for routine examinations and analyses, and for original  
41 investigations and research in matters affecting the environment and  
42 ecology;

43 j. Administer or supervise a program of industrial planning for  
44 environmental protection; encourage industrial plants in the State to  
45 undertake environmental and ecological engineering programs; and  
46 cooperate with the State Departments of Health, Labor, and

- 1 Commerce and Economic Development in formulating rules and  
2 regulations concerning industrial sanitary conditions;
- 3 k. Supervise sanitary engineering facilities and projects within the  
4 State, authority for which is now or may hereafter be vested by law  
5 in the department, and shall, in the exercise of such supervision, make  
6 and enforce rules and regulations concerning plans and specifications,  
7 or either, for the construction, improvement, alteration or operation  
8 of all public water supplies, all public bathing places, landfill  
9 operations and of sewerage systems and disposal plants for treatment  
10 of sewage, wastes and other deleterious matter, liquid, solid or  
11 gaseous, require all such plans or specifications, or either, to be first  
12 approved by it before any work thereunder shall be commenced,  
13 inspect all such projects during the progress thereof and enforce  
14 compliance with such approved plans and specifications;
- 15 l. Undertake programs of research and development for the  
16 purpose of determining the most efficient, sanitary and economical  
17 ways of collecting, disposing or utilizing of solid waste;
- 18 m. Construct and operate, on an experimental basis, incinerators  
19 or other facilities for the disposal of solid waste, provide the various  
20 municipalities and counties of this State, the Board of Public Utilities,  
21 and the Division of Local Government Services in the Department of  
22 Community Affairs with statistical data on costs and methods of solid  
23 waste collection, disposal and utilization;
- 24 n. Enforce the State air pollution, water pollution, conservation,  
25 environmental protection, waste and refuse disposal laws, rules and  
26 regulations, including the making and signing of a complaint and  
27 summons for their violation by serving the summons upon the violator  
28 and thereafter filing the complaint promptly with a court having  
29 jurisdiction;
- 30 o. Acquire by purchase, grant, contract or condemnation, title to  
31 real property, for the purpose of demonstrating new methods and  
32 techniques for the collection or disposal of solid waste;
- 33 p. Purchase, operate and maintain, pursuant to the provisions of  
34 this act, any facility, site, laboratory, equipment or machinery  
35 necessary to the performance of its duties pursuant to this act;
- 36 q. Contract with any other public agency or corporation  
37 incorporated under the laws of this or any other state for the  
38 performance of any function under this act;
- 39 r. With the approval of the Governor, cooperate with, apply for,  
40 receive and expend funds from, the federal government, the State  
41 Government, or any county or municipal government or from any  
42 public or private sources for any of the objects of this act;
- 43 s. Make annual and such other reports as it may deem proper to  
44 the Governor and the Legislature, evaluating the demonstrations  
45 conducted during each calendar year;
- 46 t. Keep complete and accurate minutes of all hearings held before

1 the commissioner or any member of the department pursuant to the  
2 provisions of this act. All such minutes shall be retained in a  
3 permanent record, and shall be available for public inspection at all  
4 times during the office hours of the department;

5 u. Require any person subject to a lawful order of the department,  
6 which provides for a period of time during which such person subject  
7 to the order is permitted to correct a violation, to post a performance  
8 bond or other security with the department in such form and amount  
9 as shall be determined by the department. Such bond need not be for  
10 the full amount of the estimated cost to correct the violation but may  
11 be in such amount as will tend to insure good faith compliance with  
12 said order. The department shall not require such a bond or security  
13 from any public body, agency or authority. In the event of a failure  
14 to meet the schedule prescribed by the department, the sum named in  
15 the bond or other security shall be forfeited unless the department  
16 shall find that the failure is excusable in whole or in part for good  
17 cause shown, in which case the department shall determine what  
18 amount of said bond or security, if any, is a reasonable forfeiture  
19 under the circumstances. Any amount so forfeited shall be utilized by  
20 the department for the correction of the violation or violations, or for  
21 any other action required to insure compliance with the order ; and

22 v. Encourage and aid in coordinating State, regional and local  
23 plans, efforts and programs concerning the remediation and reuse of  
24 former industrial or commercial properties that are currently  
25 underutilized or abandoned and at which there has been, or is  
26 perceived to have been, a discharge, or threat of a discharge, of a  
27 contaminant. For the purposes of this subsection, "underutilized  
28 property" shall not include properties undergoing a reasonably timely  
29 remediation or redevelopment process.<sup>2</sup>

30 (cf: P.L.1984, c.5, s.1)

31  
32 <sup>2</sup>27. Section 2 of P.L.1976, c.141 (C.58:10-23.11a) is amended to  
33 read as follows:

34 2. The Legislature finds and declares: that New Jersey's lands and  
35 waters constitute a unique and delicately balanced resource; that the  
36 protection and preservation of these lands and waters promote the  
37 health, safety and welfare of the people of this State; that the tourist  
38 and recreation industry dependent on clean waters and beaches is vital  
39 to the economy of this State; that the State is the trustee, for the  
40 benefit of its citizens, of all natural resources within its jurisdiction;  
41 and that the storage and transfer of petroleum products and other  
42 hazardous substances between vessels, between facilities and vessels,  
43 and between facilities, whether onshore or offshore, is a hazardous  
44 undertaking and imposes risk of damage to persons and property  
45 within this State.

46 The Legislature finds and declares that the discharge of petroleum

1 products and other hazardous substances within or outside the  
2 jurisdiction of this State constitutes a threat to the economy and  
3 environment of this State. The Legislature intends by the passage of  
4 this act to exercise the powers of this State to control the transfer and  
5 storage of hazardous substances and to provide liability for damage  
6 sustained within this State as a result of any discharge of said  
7 substances, by requiring the prompt containment and removal of such  
8 pollution and substances, and to provide a fund for swift and adequate  
9 compensation to resort businesses and other persons damaged by such  
10 discharges, and to provide for the defense and indemnification of  
11 certain persons under contract with the State for claims or actions  
12 resulting from the provision of services or work to mitigate or clean  
13 up a release or discharge of hazardous substances.

14 The Legislature further finds and declares that many former  
15 industrial sites in the State remain vacant or underutilized in part  
16 because they have been contaminated by a discharge of a hazardous  
17 substance; that these properties constitute an economic drain on the  
18 State and the municipalities in which they exist; that it is in the public  
19 interest to have these properties cleaned up sufficiently so that they  
20 can be safely returned to productive use; and that it should be a  
21 function of the Department of Environmental Protection to facilitate  
22 and coordinate activities and functions designed to clean up  
23 contaminated sites in this State.<sup>2</sup>

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

25

26 <sup>2</sup>28. Section 7 of P.L.1976, c.141 (C.58:10-23.11f) is amended to  
27 read as follows:

28 7. a. (1) Whenever any hazardous substance is discharged, the  
29 department may, in its discretion, act to clean up and remove or  
30 arrange for the cleanup and removal of [such] the discharge or may  
31 direct the discharger to clean up and remove, or arrange for the  
32 cleanup and removal of, [such] the discharge. If the discharge occurs  
33 at any hazardous waste facility or solid waste [disposal] facility, the  
34 department may order the hazardous waste facility or solid waste  
35 facility closed for the duration of the cleanup and removal operations.  
36 The department may monitor the discharger's compliance with any  
37 such directive. Any discharger who fails to comply with such a  
38 directive shall be liable to the department in an amount equal to three  
39 times the cost of such cleanup and removal, and shall be subject to the  
40 revocation or suspension of any license issued or permit [he holds]  
41 held authorizing [him] that person to operate a hazardous waste  
42 facility or solid waste [disposal] facility.

43 (2) Whenever one or more dischargers or persons cleans up and  
44 removes a discharge of a hazardous substance, those dischargers and  
45 persons shall have a right of contribution against all other dischargers  
46 and persons in any way responsible for a discharged hazardous

1 substance or other persons who are liable for the cost of the cleanup  
2 and removal of that discharge of a hazardous substance. In an action  
3 for contribution, the contribution plaintiffs need prove only that a  
4 discharge occurred for which the contribution defendant or defendants  
5 are liable pursuant to the provisions of subsection c. of section 8 of  
6 P.L.1976, c.141 (C.58:10-23.11g), and the contribution defendant  
7 shall have only the defenses to liability available to parties pursuant to  
8 subsection d. of section 8 of P.L.1976, c.141 (C.58:10-23.11g). In  
9 resolving contribution claims, a court may allocate the costs of cleanup  
10 and removal among liable parties using such equitable factors as the  
11 court determines are appropriate. Nothing in this subsection shall  
12 affect the right of any party to seek contribution pursuant to any other  
13 statute or under common law.

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

40 In an action for contribution taken pursuant to this subsection, a  
41 contribution plaintiff may file a claim with the court for treble  
42 damages. A contribution plaintiff may be granted an award of treble  
43 damages by the court from one or more contribution defendants only  
44 upon a finding by the court that: (a) the contribution defendant is a  
45 person who was named on or subject to a directive issued by the  
46 department, who failed or refused to comply with such a directive, and

1 who is subject to contribution pursuant to this subsection; (b) the  
2 contribution plaintiff gave 30 days notice to the contribution defendant  
3 of the plaintiff's intention to seek treble damages pursuant to this  
4 subsection and gave the contribution defendant an opportunity to  
5 participate in the cleanup; (c) the contribution defendant failed or  
6 refused to enter into a settlement agreement with the contribution  
7 plaintiff; and (d) the contribution plaintiff entered into an agreement  
8 with the department to remediate the site. Notwithstanding the  
9 foregoing requirements, any authorization to seek treble damages  
10 made by the department prior to the effective date of P.L. . . . c.  
11 (pending in the Legislature as this bill) shall remain in effect, provided  
12 that the department or the contribution plaintiff gave notice to the  
13 contribution defendant of the plaintiff's request to the department for  
14 authorization to seek treble damages.

15 A contribution defendant from whom treble damages is sought in  
16 a contribution action shall not be assessed treble damages by any court  
17 where the contribution defendant, for good cause shown, failed or  
18 refused to enter the settlement agreement with the contribution  
19 plaintiff or where principles of fundamental fairness will be violated.  
20 One third of an award of treble damages in a contribution action  
21 pursuant to this paragraph shall be paid to the department, which sum  
22 shall be deposited in the New Jersey Spill Compensation Fund. The  
23 other two thirds of the treble damages award shall be shared by the  
24 contribution plaintiffs in the proportion of the responsibility for the  
25 cost of the cleanup and removal that the contribution plaintiffs have  
26 agreed to with the department or in an amount as has been agreed to  
27 by those parties.

28 Cleanup and removal of hazardous substances and actions to  
29 minimize damage from discharges shall, to the greatest extent possible,  
30 be in accordance with the National Contingency Plan for cleanup and  
31 removal of oil and hazardous substances established pursuant to  
32 section 311(c)(2) of the federal Water Pollution Control Act  
33 Amendments of 1972 (Pub.L.92-500, 33 U.S.C. s. 1251 et seq.).

34 Whenever the department acts to clean up and remove a discharge  
35 or contracts to secure prospective cleanup and removal services, it is  
36 authorized to draw upon the money available in the fund. Such money  
37 shall be used to pay promptly for all cleanup and removal costs  
38 incurred by the department in cleaning up, in removing or in  
39 minimizing damage caused by such discharge.

40 Nothing in this section is intended to preclude removal and cleanup  
41 operations by any person threatened by such discharges, provided such  
42 persons coordinate and obtain approval for such actions with ongoing  
43 State or federal operations. No action taken by any person to contain  
44 or clean up and remove a discharge shall be construed as an admission  
45 of liability for said discharge. No person who renders assistance in  
46 containing or cleaning up and removing a discharge shall be liable for

1 any civil damages to third parties resulting solely from acts or  
2 omissions of such person in rendering such assistance, except for acts  
3 or omissions of gross negligence or willful misconduct. In the course  
4 of cleanup or removal operations, no person shall discharge any  
5 detergent into the waters of this State without prior authorization of  
6 the commissioner.

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

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

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

20 (a) Explosiveness;

21 (b) High flammability;

22 (c) Radioactivity;

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

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

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

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

42 c. If and to the extent that he determines that funds are available,  
43 the administrator shall approve and make payments for any cleanup  
44 and removal costs incurred by the department for the cleanup and  
45 removal of a hazardous substance other than petroleum as authorized  
46 by subsection b. of this section; provided that in determining the

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

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

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

33 f. Any expenditures made by the administrator pursuant to this act  
34 shall constitute, in each instance, a debt of the discharger to the fund.  
35 The debt shall constitute a lien on all property owned by the discharger  
36 when a notice of lien, incorporating a description of the property of  
37 the discharger subject to the cleanup and removal and an identification  
38 of the amount of cleanup, removal and related costs expended from  
39 the fund, is duly filed with the clerk of the Superior Court. The clerk  
40 shall promptly enter upon the civil judgment or order docket the name  
41 and address of the discharger and the amount of the lien as set forth  
42 in the notice of lien. Upon entry by the clerk, the lien, to the amount  
43 committed by the administrator for cleanup and removal, shall attach  
44 to the revenues and all real and personal property of the discharger,  
45 whether or not the discharger is insolvent.

46 The notice of lien filed pursuant to this subsection which affects

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

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

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

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

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

32 Any action brought by the State pursuant to this subsection and  
33 any impoundment of a vessel resulting therefrom shall not subject the  
34 State to be in any way liable for a subsequent or continued discharge  
35 of a hazardous substance from that vessel.<sup>2</sup>

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

37

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

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

42 "Active participation in the management" or "participation in the  
43 management" means actual participation in the management or  
44 operational affairs by the holder of the security interest and shall not  
45 include the mere capacity, or ability to influence, or the unexercised  
46 right to control vessel [or] facility or underground storage tank

1 facility operations.

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

5 (a) exercises decision making control over the borrower's  
6 environmental compliance, such that the holder has undertaken  
7 responsibility for the borrower's waste disposal or hazardous substance  
8 handling practices; or

9 (b) exercises control at a level comparable to that of a manager of  
10 the borrower's enterprise, such that the holder has assumed or  
11 manifested responsibility for the overall management of the enterprise  
12 encompassing the day-to-day decision making of the enterprise with  
13 respect to:

14 (i) environmental compliance; or

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

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

41 (3) Actions that are consistent with holding ownership indicia  
42 primarily to protect a security interest do not constitute participation  
43 in management for purposes of sections 1 through 5 of [this act]  
44 P.L.1993, c.112 (C.58:10-23.11g4 through 58:10-23.11g8). The  
45 authority for the holder to make such actions may, but need not, be  
46 contained in contractual or other documents specifying requirements

1 for financial, environmental, and other warranties, covenants,  
2 conditions, representations or promises from the borrower. Loan  
3 policing and work out activities cover and include all activities up to  
4 foreclosure and its equivalents.

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

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

41 (4) A holder does not participate in the management of a vessel  
42 [or], facility, or underground storage tank facility by making any  
43 response or performing any response action or undertaking any  
44 cleanup or removal or similar action under the federal "Comprehensive  
45 Environmental Response, Compensation, and Liability Act of 1980,"  
46 Pub.L. 96-510 (42 U.S.C. §9601 et seq.), the "Spill Compensation and

1 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), P.L.1986,  
2 c.102 (C.58:10A-21 et seq.), or any other State or federal  
3 environmental law or regulation.

4 "Date of foreclosure" means the date on which the holder obtains  
5 legal or equitable title to the vessel or facility pursuant to or incident  
6 to foreclosure.

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

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

43 "Holder" is a person who maintains indicia of ownership primarily  
44 to protect a security interest. A holder includes the initial holder (such  
45 as a loan originator), any subsequent holder (such as a  
46 successor-in-interest or subsequent purchaser of the security interest

1 on the secondary market), a guarantor of an obligation, surety, or any  
2 other person who holds ownership indicia primarily to protect a  
3 security interest, or a receiver or other person who acts on behalf or  
4 for the benefit of a holder.

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

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

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

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

40 "Underground storage tank facility" shall mean one or more  
41 underground storage tanks.

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

43

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

46 2. A person who maintains indicia of ownership of a vessel [or],

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

16 (cf: P.L.1993,c.112,s.2)

17

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

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

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

43 b. (1) A holder that outbids, rejects or fails to act upon a written  
44 bona fide, firm offer of fair consideration within 90 days of receipt of  
45 the offer, and which offer is received at any time after six months  
46 following the date of foreclosure, shall not be deemed to be using a

1 commercially reasonable means for the purpose of this section. A  
2 "written bona fide, firm offer" means a legally enforceable,  
3 commercially reasonable, cash offer solely for the foreclosed vessel  
4 [or], facility, or underground storage tank facility, including all  
5 material terms of the transaction, from a ready, willing, and able  
6 purchaser who demonstrates to the holder's satisfaction the ability to  
7 perform. For purposes of this subsection, the six-month period begins  
8 to run from the time that the holder acquires a marketable title,  
9 provided that the holder, after the expiration of any redemption or  
10 other waiting period provided by law, was acting diligently to acquire  
11 marketable title.

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

19 c. A holder establishes that it is proceeding in a commercially  
20 reasonable manner after foreclosure by, within 12 months following  
21 foreclosure, listing the vessel [or], facility, or underground storage  
22 tank facility with a broker, dealer, or agent who deals with the type of  
23 property in question, or by advertising the vessel [or], facility, or  
24 underground storage tank facility as being for sale or disposition on  
25 at least a monthly basis in either a real estate publication or a trade or  
26 other publication suitable for the vessel [or], facility, or underground  
27 storage tank facility in question, or a newspaper of general circulation  
28 (defined as one with a circulation over 10,000, or one suitable under  
29 any applicable federal, State, or local rules of court for publication  
30 required by court order or rules of civil procedure) covering the area  
31 where the property is located. For purposes of this subsection, the  
32 12-month period begins to run from the time that the holder acquires  
33 marketable title, provided that the holder, after the expiration of any  
34 redemption or other waiting period provided by law, was acting  
35 diligently to acquire marketable title.

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

1 federal or State banking or other lending laws to continue its  
2 possession of the property; and (3) the holder has exercised reasonable  
3 custodial care to prevent or mitigate any new discharges from the  
4 vessel ~~[or], facility, or underground storage tank facility~~ that could  
5 substantially diminish the market value of the property.

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

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

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

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

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

1       (2) If an operator does not exist, a holder continues to maintain  
2 the exemption from liability granted to holders pursuant to this section  
3 if the holder: ( i) empties all underground storage tanks within 60  
4 days after foreclosure or within 60 days after the effective date of  
5 P.L. , c. (now in the Legislature as this bill), whichever is later, so  
6 that no more than one inch of residue, or .3 percent by weight of the  
7 total capacity of the underground storage tank remains in the  
8 underground storage tank, leaves vent lines open and functioning, and  
9 caps and secures all other lines, pumps, manways, and ancillary  
10 equipment; (ii) empties those underground storage tanks that are  
11 discovered after foreclosure within 60 days of discovery or within 60  
12 days of the effective date of P.L. , c. (now in the Legislature as this  
13 bill), whichever is later, so that no more than one inch of residue, or  
14 .3 percent by weight of the total capacity of the underground storage  
15 tank remains in the system, leaves vent lines open and functioning, and  
16 caps and secures all other lines, pumps, manways, and ancillary  
17 equipment; and (iii) permanently closes the underground storage tank  
18 pursuant to the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.)  
19 or temporarily closes the underground storage tank.

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

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

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

40

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

43       4. a. Nothing in sections 1 through 5 of [this act] P.L. 1993,  
44 c.112 (C.58:10-23.11g4 through 58:10-23.11g8) shall be deemed to  
45 prohibit or limit the rights of the Department of Environmental  
46 Protection [and Energy] to clean up a property or to obtain a lien on

1 the property of a discharger or holder in order to recover cleanup  
2 costs pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f). Any  
3 recovery of cleanup costs from a holder pursuant to a lien obtained by  
4 the Department of Environmental Protection [and Energy] shall be  
5 limited to the actual financial benefit conferred on such holder by a  
6 cleanup or removal action, and shall not exceed the amount realized  
7 by the holder on the sale or other disposition of the property.

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

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

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

43 (3) Any penalty incurred under this section may be recovered with  
44 costs in a summary proceeding pursuant to "the penalty enforcement  
45 law," N.J.S.2A:58-1 et seq., in the Superior Court or a municipal  
46 court. Failure to give any required notice pursuant to this subsection

1 shall not cause the holder to lose its status as a person who maintains  
2 indicia of ownership primarily to protect a security interest.

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

4

5 33. (New section) A holder of an interest in an underground  
6 storage tank shall not be required to comply with the provisions of  
7 P.L.1986, c.102 (C.58:10A-21 et seq.) unless the holder loses the  
8 exemption under P.L.1993, c.112 (C.58:10-23.11g4 et seq.).

9

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

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

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

21 "Director" means the Director of the Division of Taxation in the  
22 Department of the Treasury.

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

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

1 "Remediation" or "remediate" means all necessary actions to  
2 investigate and clean up or respond to any known, suspected, or  
3 threatened discharge of contaminants, including, as necessary, the  
4 preliminary assessment, site investigation, remedial investigation, and  
5 remedial action, as those terms are defined in section 23 of P.L.1993,  
6 c.139 (C.58:10B-1).

7 "Remediation costs" means all reasonable costs associated with the  
8 remediation of a contaminated site except that "remediation costs"  
9 shall not include any costs incurred in financing the remediation.  
10

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

19 The decision whether or not to enter into a redevelopment  
20 agreement is solely within the discretion of the Commissioner of  
21 Commerce and Economic Development <sup>1</sup>and the State Treasurer<sup>1</sup> and  
22 <sup>1</sup>[nothing] both must agree to enter into the redevelopment agreement.  
23 Nothing<sup>1</sup> in P.L. , c. (C. )(now before the Legislature as this  
24 bill) may be construed to compel the commissioner <sup>1</sup>and the State  
25 Treasurer<sup>1</sup> to enter into any redevelopment agreement.

26 The Commissioner of Commerce and Economic Development in  
27 consultation with the State Treasurer shall negotiate the terms and  
28 conditions of any redevelopment agreement on behalf of the State.  
29 The redevelopment agreement shall specify the amount of the  
30 reimbursement to be awarded the developer, the frequency of  
31 payments and the length of time in which that reimbursement shall be  
32 granted. In no event shall the amount of the reimbursement, when  
33 taken together with the property tax exemption received pursuant to  
34 the "Environmental Opportunity Zone Act," P.L.1995, c.413 (C.54:4-  
35 3.151), less any in lieu of tax payments made pursuant to that act, or  
36 any other State, local, or federal tax incentive <sup>1</sup>or grant<sup>1</sup> to remediate  
37 a site, exceed <sup>1</sup>75% of<sup>1</sup> the total cost of the remediation.

38 <sup>1</sup>The commissioner and the State Treasurer may only enter into a  
39 redevelopment agreement if they make a finding that the State tax  
40 revenues to be realized from the redevelopment project will be in  
41 excess of the amount necessary to reimburse the developer. This  
42 finding may be made by an estimation based upon the professional  
43 judgment of the commissioner and the State Treasurer.

44 The percentage of each payment to be made to the developer  
45 pursuant to the redevelopment agreement shall be conditioned on the  
46 occupancy rate of the buildings or other work areas located on the

1 property. The redevelopment agreement shall provide for the  
2 payments made in order to reimburse the developer to be in the same  
3 percentages as the occupancy rate at the site except that upon the  
4 attainment of a 90% occupancy rate, the developer shall be entitled to  
5 the entire amount of each payment toward the reimbursement as set  
6 forth in the redevelopment agreement. The redevelopment agreement  
7 shall provide for the frequency of the director's finding of the  
8 occupancy rate during the payment schedule.<sup>1</sup>

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

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

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

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

17 (4) the likelihood that the redevelopment project shall <sup>1</sup> upon  
18 completion <sup>1</sup> be capable of generating <sup>1</sup>[sufficient]<sup>1</sup> new tax revenue  
19 <sup>1</sup>in an amount in excess of the amount necessary<sup>1</sup> to reimburse the  
20 developer for the remediation costs incurred <sup>1</sup>as provided in the  
21 redevelopment agreement<sup>1</sup>;

22 (5) the relationship of the redevelopment project to a  
23 comprehensive local development strategy, including other major  
24 projects undertaken within the municipality;

25 (6) the need of the redevelopment agreement to the viability of the  
26 redevelopment project; and

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

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

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

1 bill).<sup>1</sup>

2 The director shall certify a developer to be eligible for the  
3 reimbursement if the director <sup>1</sup>[shall find] finds<sup>1</sup> that:

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

6 (2) <sup>1</sup>[the additional tax revenue that was generated on that site is  
7 sufficient to pay monies into the fund to provide for the negotiated  
8 reimbursement;

9 (3)<sup>1</sup> the developer had entered into a memorandum of agreement  
10 with the Commissioner of Environmental Protection, after the  
11 developer entered into the redevelopment agreement, for the  
12 remediation of contamination located on the site of the redevelopment  
13 project pursuant to section 37 of P.L. , c. (C. ) (pending in  
14 the Legislature as this bill) and the developer is in compliance with the  
15 memorandum of agreement; and

16 <sup>1</sup>[(4)] (3)<sup>1</sup> the costs of the remediation were actually and  
17 reasonably incurred. In making this finding the director may consult  
18 with the Department of Environment Protection.

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

29  
30 37. (New section) a. To qualify for the certification of  
31 reimbursement of the remediation costs authorized pursuant to section  
32 36 of P.L. , c. (C. ) (pending in the Legislature as this bill),  
33 a developer shall enter into a memorandum of agreement with the  
34 Commissioner of Environmental Protection for the remediation of the  
35 site of the redevelopment project.

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

42 c. After the developer has entered into a memorandum of  
43 agreement with the Commissioner of Environmental Protection, the  
44 commissioner shall submit a copy thereof to the developer, the clerk  
45 of the municipality in which the subject property is located, the  
46 Commissioner of the Department of Commerce and Economic

1 Development, and the director.

2

3 38. (New section) a. There is created in the Department of  
4 Treasury a special fund to be known as the Brownfield Site  
5 Reimbursement Fund. Moneys in the fund shall be dedicated to the  
6 purpose of reimbursing a developer who enters into a redevelopment  
7 agreement pursuant to section 35 of P.L. c. (C. ) (pending in the  
8 Legislature as this bill) and is certified for reimbursement pursuant to  
9 section 36 of P.L. c. (C. ) (pending in the Legislature as this bill).  
10 A special account within the fund shall be created for each developer  
11 upon approval of a certification pursuant to section 36 of P.L. , c.  
12 (C. ) (pending in the Legislature as this bill). The Legislature shall  
13 annually appropriate the entire balance of the fund for the purposes of  
14 reimbursement of remediation costs as provided in section 39 of  
15 P.L. , c. (C. ) (pending in the Legislature as this bill).

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

1 pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1  
2 et seq.).

3  
4 39. (New section) a. The State Treasurer shall reimburse the  
5 developer the amount of the remediation costs agreed upon in the  
6 redevelopment agreement <sup>1</sup>, and as provided in sections 35 and 36 of  
7 P.L. , c. (C. )(now before the Legislature as this bill)<sup>1</sup> upon  
8 issuance of the certification by the director pursuant to section 36 of  
9 P.L. , c. (C. ) (pending in the Legislature as this bill). The  
10 developer shall be entitled to periodic payments from the fund in an  
11 amount, in the frequency, and over the time period as provided in the  
12 redevelopment agreement. <sup>2</sup>Notwithstanding any other provision of  
13 sections 34 through 39 of P.L. .c. (C. )(before the Legislature  
14 ast this bill), the State Treasurer may not reimburse the developer any  
15 amount of the remediation costs from the fund until the State  
16 Treasurer is satisfied that the anticipated tax revenues from the  
17 redevelopment project have been realized by the State in an amount  
18 sufficient to pay for the cost of the reimubursements.<sup>2</sup>

19 b. A developer shall submit to the director updated remediation  
20 costs actually incurred by the developer for the remediation of the  
21 contaminated property located at the site of the redevelopment project  
22 as provided in the redevelopment agreement. The reimbursement  
23 authorized pursuant to this section shall continue until such time as the  
24 aggregate dollar amount of the agreed upon reimbursement. To remain  
25 entitled to the reimbursement authorized pursuant to this section, the  
26 developer shall perform and complete all remediation activities as may  
27 be required pursuant to the memorandum of agreement entered into  
28 with the Commissioner of Environmental Protection pursuant to  
29 section 37 of P.L. , c. (C. )(pending in the Legislature as this  
30 bill). The Department of Environmental Protection may review the  
31 remediation costs incurred by the developer to determine if they are  
32 reasonable.

33  
34 40. (New Section) a. There is established a Legislative  
35 Underground Storage Tank Remediation Task Force. The task force  
36 shall consist of seven members as follows: one member of the Senate  
37 to be appointed by the Senate President; one member of the General  
38 Assembly to be appointed by the Speaker of the General Assembly;  
39 the Commissioner of Environmental Protection or a designee; an  
40 environmental consultant with a degree in hydrogeology and  
41 experience in petroleum underground storage tank remediations to be  
42 appointed by the Senate President; a representative of an  
43 environmental interest group to be appointed by the Senate President;  
44 a small business representative who owns or operates an underground  
45 storage tank to be appointed by the Speaker of the General Assembly;  
46 and a representative from a major oil company to be appointed by the

1 Speaker of the General Assembly.

2 The chairman of the task force shall be jointly appointed by the  
3 Senate President and the Speaker of the General Assembly. Vacancies  
4 shall be filled in the same manner as the original appointments are  
5 made.

6 b. The task force shall evaluate the use of expanded risk based  
7 decision making that allows for alternative remediation standards and  
8 natural attenuation in all environmental media at petroleum  
9 underground storage tank discharge sites; <sup>2</sup>consider the use of  
10 standard probabilistic approaches in the development of minimum  
11 remediation standards;<sup>2</sup> examine and evaluate the State policy's that  
12 are preventing the development and use of alternative remediation  
13 standards for soil and groundwater and the implementation of the Risk  
14 Based Corrective Action decision making process described in ASTM  
15 standard 1739-95.

16 Within six months of the first meeting, the task force shall prepare  
17 a written report to the Legislature and the Chairman of the Senate  
18 Environment Committee, and the Assembly Agriculture and Waste  
19 Management Committee or their successor committees. The report  
20 shall include a comparison of the department's process for remediating  
21 petroleum underground storage tanks with the process recommended  
22 in the the Risk Based Corrective Action decision making process  
23 described in ASTM standard 1739-95 or that used by other states, an  
24 examination of the process that could be used to develop alternative  
25 remediation standards, a review and discussion of any policy changes  
26 necessary in order to allow for natural attenuation in all environmental  
27 media; together with any recommendations for further legislative  
28 remedies regarding expanded risk based decision making at petroleum  
29 underground storage tank discharge sites.

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

33

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

42

43 42. There is appropriated to the Department of Environmental  
44 Protection from the "1996 Environmental Cleanup Fund" created  
45 pursuant to section 19 of the "Port of New Jersey Revitalization,  
46 Dredging, Environmental Cleanup, Lake Restoration, and Delaware

1 Bay Area Economic Development Bond of 1996," P.L.1996, c.70, the  
2 sum of \$2,000,000 for the data collection and entry into the  
3 geographic information system as provided in section 4 of this act.

4  
5 43. Section 14 of P.L.1993, c.139 (C.3:1K-11.3) is amended to  
6 read as follows:

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

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

15 (2) a certification that for the industrial establishment, a remedial  
16 action workplan has previously been implemented and a no further  
17 action letter has been issued pursuant to P.L.1983, c.330, a negative  
18 declaration has been previously approved by the department pursuant  
19 to P.L.1983, c.330, or the department or the United States  
20 Environmental Protection Agency, pursuant to the "Resource  
21 Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the  
22 "Comprehensive Environmental Response, Compensation, and  
23 Liability Act of 1980," 42 U.S.C. §9601 et seq., or any other law, has  
24 previously approved a remediation of the industrial establishment  
25 equivalent to that performed pursuant to the provisions of P.L.1983,  
26 c.330;

27 (3) a certification that the owner or operator has performed  
28 remediation activities at the industrial establishment that are consistent  
29 with current regulations established by the department in order to  
30 identify areas of concern and, based on those remediation activities,  
31 that subsequent to the issuance of the negative declaration, no further  
32 action letter or remediation approval described in paragraph (2) of this  
33 subsection, a discharge has occurred at the industrial establishment  
34 that was not remediated in accordance with the procedures established  
35 by the department or that any remediation performed has not been  
36 approved by the department and that no other discharge of a  
37 hazardous substance or hazardous waste has occurred at the industrial  
38 establishment;

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

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

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

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

3       (1) approve the negative declaration upon a finding that any  
4 discharge of a hazardous substance or hazardous waste, as certified to  
5 pursuant to paragraph (3) of subsection a. of this section, has been  
6 remediated consistent with the applicable remediation <sup>1</sup>[standards]  
7 regulations<sup>1</sup> as established by the department; or

8       (2) require that the owner or operator perform a remediation as  
9 set forth in subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9)  
10 only for those areas of concern identified by the information provided  
11 pursuant to paragraph (3) of subsection a. of this section upon a  
12 finding that further investigation or remediation is necessary to bring  
13 the industrial establishment into compliance with the applicable  
14 remediation <sup>1</sup>[standards] regulations<sup>1</sup>.

15       c. The owner or operator of an industrial establishment subject to  
16 the provisions of this section shall not close operations or transfer  
17 ownership or operations until a remedial action workplan, or a  
18 negative declaration, as applicable, has been approved by the  
19 department or upon approval of a remediation agreement as provided  
20 in subsection e. of section 4 of P.L.1983, c.330.  
21 (cf: P.L.1993, c.139, s.14)

22  
23       <sup>1</sup>44. Section 43 of P.L.1993, c.139 (C.58:10B-19) is amended to  
24 read as follows:

25       43. The owner or operator of an industrial establishment who has  
26 submitted a notice to the department pursuant to subsection a. of  
27 section 4 of P.L.1983, c.330 (C.13:1K-9), or any person who has  
28 discharged a hazardous substance or is liable for the remediation of  
29 that discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), or  
30 any person who has been directed to or has entered into an agreement  
31 with the department to remediate a discharge, may implement an  
32 interim response action prior to departmental approval of that action.  
33 The interim response action may be implemented when the expeditious  
34 temporary or partial remediation of a discharged hazardous substance  
35 or hazardous waste is necessary to contain or stabilize a discharge  
36 prior to implementation of an approved remedial action workplan in  
37 order to prevent, minimize, or mitigate damage to public health or  
38 safety or to the environment which may otherwise result from a  
39 discharge. The interim response action shall be implemented in  
40 compliance with the procedures and standards established by the  
41 department. The department may require submission of a notice of  
42 intent to implement an interim response action, what those actions will  
43 be, and may require, subsequent to completion of the interim response  
44 action, a report detailing the actions taken and a certification that the  
45 interim response action was implemented in accordance with all  
46 applicable laws and regulations. The department shall review these

1 submissions to verify whether the interim response action was  
2 implemented in accordance with applicable laws and regulations. The  
3 department shall not require that additional remediation be undertaken  
4 at an area of concern subject to the interim response action except in  
5 instances when further remediation is necessary to bring that area of  
6 concern into compliance with the applicable remediation [standards]  
7 regulations.

8 The department may, pursuant to the "Administrative Procedure  
9 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and  
10 regulations establishing a fee schedule, as necessary, reflecting the  
11 actual costs associated with the review of the interim response action  
12 and any implementation thereof.<sup>1</sup>

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

14  
15 <sup>1</sup>45. Section 6 of P.L.1993, c.112 (C.58:10-23.11g9) is amended  
16 to read as follows:

17 6. In the event of the discharge of a hazardous substance from a  
18 vessel [or] a facility, or underground storage tank facility, which vessel  
19 [or] a facility, or underground storage tank facility is all or part of a  
20 trust, receivership estate, guardianship estate or estate of a deceased  
21 person, only the assets of the trust or estate, or assets of any  
22 discharger other than the fiduciary of such trust or estate, shall be  
23 subject to the obligation to pay for the cleanup of the discharge as set  
24 forth in the "Spill Compensation and Control Act," P.L.1976, c.141  
25 (C.58:10-23.11 et seq.) or subject to any obligations imposed pursuant  
26 to P.L.1986, c.102 (C.58:10A-21 et seq.).<sup>1</sup>

27 (cf: P.L.1993, c.112, s.6)

28  
29 <sup>2</sup>46. Section 20 of P.L.1993, c.139 (C.13:1K-11.9) is amended to  
30 read as follows:

31 20. a. Where the owner of an industrial establishment is a  
32 landlord and the operator of the industrial establishment is a tenant,  
33 the landlord shall be responsible for providing any information that is  
34 requested by the tenant that is not otherwise available through a  
35 diligent inquiry by the tenant, and the tenant shall be responsible for  
36 providing any information that is requested by the landlord that is not  
37 otherwise available through a diligent inquiry by the landlord.

38 b. Where the owner of an industrial establishment is a landlord  
39 and the operator of the industrial establishment is a tenant, the person  
40 that remediates the industrial establishment shall provide copies to the  
41 other person of all submissions to the department concerning the  
42 remediation.

43 c. Where the owner of an industrial establishment is a landlord and  
44 the operator of the industrial establishment is a tenant, and there has  
45 been a failure to comply with the provisions of P.L.1983, c.330, the  
46 landlord or the tenant may petition the department, in writing, to first

1 compel that party who is responsible pursuant to the provisions of the  
2 lease, to comply with the requirements of P.L.1983, c.330. [The  
3 petition shall include a copy of the signed lease between the landlord  
4 and the tenant.] The department shall develop a form for a petition  
5 made pursuant to this section, and shall establish a list of documents  
6 required to be submitted with the petition which shall include, but not  
7 be limited to: (1) a copy of the notice required pursuant to subsection  
8 a. of section 4 of P.L.1983, c.330 (C.13:1K-9); (2) the names and  
9 addresses of the landlord and the tenant; (3) a copy of the signed lease  
10 between the landlord and the tenant; (4) a certification by the  
11 petitioner that includes the relevant facts concerning noncompliance  
12 with the act; and (5) any other documents the department deems  
13 relevant. The department shall make a determination that the  
14 provisions of the lease are unclear within 30 days of receipt of a  
15 complete petition. Upon a determination by the department that the  
16 provisions of the lease are unclear as it relates to the responsibility of  
17 either party to comply with the provisions of P.L.1983, c.330, or upon  
18 the failure by the person responsible pursuant to the provisions of the  
19 lease to comply, the department may compel compliance by all persons  
20 subject to the requirements of P.L.1983, c.330 for the industrial  
21 establishment.<sup>2</sup>

22 (cf: P.L.1993, c.139, s.20)

23

24 <sup>2</sup>47. Section 8 of P.L.1983, c.330 (C.13:1K-13) is amended to  
25 read as follows:

26 8. a. Failure of the transferor to perform a remediation and obtain  
27 department approval thereof as required pursuant to the provisions of  
28 this act is grounds for voiding the sale or transfer of an industrial  
29 establishment or any real property utilized in connection therewith by  
30 the transferee, entitles the transferee to recover damages from the  
31 transferor, and renders the owner or operator of the industrial  
32 establishment strictly liable, without regard to fault, for all remediation  
33 costs and for all direct and indirect damages resulting from the failure  
34 to implement the remedial action workplan. A transferee may not act  
35 to void the sale or transfer of an industrial establishment or any real  
36 property except upon providing notice to the transferor of the failure  
37 to perform and affording the transferor a reasonable amount of time  
38 to comply with the provisions of this act. A transferee may bring an  
39 action in Superior Court to void the sale or transfer of an industrial  
40 establishment or any real property or to recover damages from the  
41 transferor, pursuant to this section.

42 b. Any person who knowingly gives or causes to be given any  
43 false information or who fails to comply with the provisions of this act  
44 is liable for a penalty of not more than \$25,000.00 for each offense.  
45 If the violation is of a continuing nature, each day during which it  
46 continues shall constitute an additional and separate offense. Penalties

1 shall be collected in a civil action by a summary proceeding under "the  
2 penalty enforcement law" (N.J.S.2A:58-1 et seq.). Any officer or  
3 management official of an industrial establishment who knowingly  
4 directs or authorizes the violation of any provisions of this act shall be  
5 personally liable for the penalties established in this subsection.<sup>2</sup>  
6 (cf: P.L.1993, c.139, s.12)

7  
8 <sup>2</sup>48. (New section) Pursuant to section 941 of the federal  
9 "Taxpayer Relief Act of 1997," Pub. L. 105-34, the Governor shall  
10 designate the Department of Environmental Protection as the  
11 appropriate State environmental agency to issue statements that an  
12 area is within a targeted area and that there has been a release, or  
13 threat of release, or disposal of any hazardous substance at or on that  
14 area. For the purposes of this section "targeted area" and "hazardous  
15 substance" shall have the meanings given to them in the federal act.<sup>2</sup>

16  
17 <sup>1</sup>[43.]<sup>2</sup>[46.<sup>1</sup>] <sup>2</sup>49.<sup>2</sup> This act shall take effect immediately.

18

19

20

21

22 Makes various changes in the law in order to facilitate the remediation  
23 of contaminated real property; appropriates \$5 million.