

SENATE, No. 1539

STATE OF NEW JERSEY

INTRODUCED OCTOBER 3, 1996

By Senator McGREEVEY

1 AN ACT concerning the remediation of contaminated sites amending  
2 and supplementing P.L.1976, c.141, P.L.1993, c.139, P.L.1960,  
3 c.183, amending P.L.1983, c.303, P.L.1995, c.413, P.L.1970, c.33,  
4 and P.L.1983, c.330, and making appropriations.

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

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

13  
14 2. (New section) a. The Department of Environmental Protection  
15 shall investigate and determine the extent of contamination of every  
16 aquifer in this State for the purpose of determining the appropriate  
17 method of remedial action needed to address that contamination. The  
18 department shall prioritize its investigations of aquifers giving the  
19 highest priority to those aquifers underlying urban or industrial areas  
20 that are known or suspected of having large areas of contamination.  
21 The information derived from the investigation shall be made available  
22 to the public by entering it into the existing Department of  
23 Environmental Protection's geographic information system, by making  
24 this information available on the system, and by making copies of any  
25 maps and data available to the public. The functions required pursuant  
26 to this section shall be considered a site remediation obligation of the  
27 State. The department may charge a reasonable fee for the  
28 reproduction of the maps and data which fee shall reflect the cost of  
29 their reproduction.

30 b. Upon completion of an investigation of an aquifer by the  
31 department and upon the department's determination of the extent of  
32 contamination of an aquifer, a person performing a remediation may  
33 rely upon that information for that person's performance of a  
34 remediation.

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

**Matter underlined thus is new matter.**

1       3. (New section) The Department of Environmental Protection, in  
2 cooperation with the Department of Community Affairs, the  
3 Department of Transportation, the Department of Labor, and the  
4 Department of Commerce and Economic Development, shall obtain  
5 data and information relevant to the economic redevelopment of  
6 present or former industrial or commercial areas in the State that are  
7 now vacant or underutilized and at which there is located large areas  
8 of contaminated property in need of remediation. The data obtained  
9 shall be made available to the public by entering it into the existing  
10 Department of Environmental Protection's geographic information  
11 system and by making this information available on the system and by  
12 making copies of any maps and data available to the public. The data  
13 and its integration into the geographic information system shall be  
14 designed to assist the State, local governmental entities, and other  
15 persons in making decisions concerning the remediation and  
16 redevelopment of contaminated properties. The collection and  
17 integration of the data shall be considered a site remediation obligation  
18 of the State. The department may charge a reasonable fee for the  
19 reproduction of the maps and data which fee shall reflect the cost of  
20 their reproduction.

21

22       4. (New Section) a. There is established the Brownfields  
23 Environmental Risk Communication Council. The council shall be  
24 comprised of 9 members who shall have experience in site remediation  
25 processes or the assessment and communication of health and  
26 environmental risks associated with site remediations. The members  
27 shall include the Commissioner of Environmental Protection or a  
28 representative, a representative from the Environmental and  
29 Occupational Safety and Health Institute, a representative from New  
30 Jersey Institute of Technology, a representative from a public interest  
31 environmental organization, a person employed by a municipality of  
32 this State, a representative from the financial community, a person  
33 employed as an environmental consultant, a person engaged in  
34 contaminated site redevelopment, and a person employed as a public  
35 health official. The members of the council, other than the  
36 Commissioner, shall be appointed by the Governor with the advice and  
37 consent of the Senate.

38       b. Members of the council shall serve terms of two years or until  
39 a successor has been appointed and qualified. Members of the council  
40 may be reappointed. Members of the council may be removed for  
41 cause. Vacancies in the council shall be filled in the same manner as  
42 the original appointments were made.

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

46       d. The council shall organize as soon as may be practicable after

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

10

11 5. (New Section) It shall be the duty of the council to:

12

a. Prepare materials for dissemination to the public that explain the  
13 environmental and health risks associated with site remediations in  
14 general and which are designed to assist local governments and the  
15 public in assessing the risks associated with particular site remediation  
16 projects;

17

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

23

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

28

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

30

e. Make recommendations to the Legislature and the Governor in  
31 order to improve the public understanding, perception, and risk  
32 associated with site remediations in the State.

33

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

45

46 7. (New Section) There is appropriated to the Brownfields

1 Environmental Risk Communication Council the sum of \$150,000.00  
2 from the New Jersey Spill Compensation Fund for the purposes for  
3 which the council was established.

4

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

24 A covenant not to sue shall contain both of the following, as  
25 applicable:

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

29 (2) If the remediation involves the use of engineering or  
30 institutional controls;

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

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

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

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

1 letter or for any change in a remediation standard.

2

3 9. (New section) a. The Department of Environmental Protection  
4 shall, within one year of the enactment of P.L. , c. (now before  
5 the Legislature as this bill), adopt minimum remediation standards for  
6 soil, groundwater, and surface water quality as required pursuant to  
7 section 35 of P.L.1993, c.139 (C.58:10B-12) and technical  
8 remediation standards as required in subsection a. of section 24 of  
9 P.L.1993, c.139 (C.58:10B-2). If the department fails to adopt these  
10 regulations within the prescribed time period, the Senate Environment  
11 Committee and the Assembly Agriculture and Waste Management  
12 Committee, or their successors, are instructed to hold a joint public  
13 hearing to investigate why the regulations were not adopted within the  
14 prescribed time period.

15 b. The Department of Environmental Protection shall, within three  
16 months of the enactment of P.L. , c. (now before the Legislature  
17 as this bill), issue the report concerning strict, joint, and several  
18 liability as required pursuant to section 48 of P.L.1993, c.139. If the  
19 department fails to issue this report within the prescribed time period,  
20 the Senate Environment Committee and the Assembly Agriculture and  
21 Waste Management Committee, or their successors, are instructed to  
22 hold a joint public hearing to investigate why the report was not issued  
23 within the prescribed time period.

24 c. The Environmental Risk Assessment and Risk Management  
25 Study Commission shall, within six months of the enactment of  
26 P.L. , c. (now before the Legislature as this bill), issue its final  
27 report as required pursuant to section 47 of P.L.1993, c.139. If the  
28 commission fails to issue its final report within the prescribed time  
29 period, the Senate Environment Committee and the Assembly  
30 Agriculture and Waste Management Committee, or their successors,  
31 are instructed to hold a joint public hearing to investigate why the final  
32 report was not issued within the prescribed time period.

33 d. The Department of Environmental Protection shall, within one  
34 year of the enactment of P.L. , c. (now before the Legislature as  
35 this bill), develop recommendations for remedial actions in large areas  
36 of historic contamination and issue its report to the Legislature as  
37 required pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12). If  
38 the department fails to develop these regulations and issue its report  
39 within the prescribed time period, the Senate Environment Committee  
40 and the Assembly Agriculture and Waste Management Committee, or  
41 their successors, are instructed to hold a joint public hearing to  
42 investigate why the regulations were not adopted within the prescribed  
43 time period.

44 e. For the purposes of carrying out their charge under this section,  
45 the committees shall have all the powers conferred pursuant to  
46 Chapter 13 of Title 52 of the Revised Statutes.

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

3       12. The department shall formulate comprehensive policies for the  
4 conservation of the natural resources of the State, the promotion of  
5 environmental protection and the prevention of pollution of the  
6 environment of the State. The department shall in addition to the  
7 powers and duties vested in it by this act or by any other law have the  
8 power to:

9       a. Conduct and supervise research programs for the purpose of  
10 determining the causes, effects and hazards to the environment and its  
11 ecology;

12       b. Conduct and supervise Statewide programs of education,  
13 including the preparation and distribution of information relating to  
14 conservation, environmental protection and ecology;

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

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

41       e. Receive or initiate complaints of pollution of the environment,  
42 including thermal pollution, hold hearings in connection therewith and  
43 institute legal proceedings for the prevention of pollution of the  
44 environment and abatement of nuisances in connection therewith and  
45 shall have the authority to seek and obtain injunctive relief and the  
46 recovery of fines and penalties in summary proceedings in the

1 Superior Court;

2 f. Prepare, administer and supervise Statewide, regional and local  
3 programs of conservation and environmental protection, giving due  
4 regard for the ecology of the varied areas of the State and the  
5 relationship thereof to the environment, and in connection therewith  
6 prepare and make available to appropriate agencies in the State  
7 technical information concerning conservation and environmental  
8 protection, cooperate with the Commissioner of Health in the  
9 preparation and distribution of environmental protection and health  
10 bulletins for the purpose of educating the public, and cooperate with  
11 the Commissioner of Health in the preparation of a program of  
12 environmental protection;

13 g. Encourage, direct and aid in coordinating State, regional and  
14 local plans and programs concerning conservation and environmental  
15 protection in accordance with a unified Statewide plan which shall be  
16 formulated, approved and supervised by the department. In reviewing  
17 such plans and programs and in determining conditions under which  
18 such plans may be approved, the department shall give due  
19 consideration to the development of a comprehensive ecological and  
20 environmental plan in order to be assured insofar as is practicable that  
21 all proposed plans and programs shall conform to reasonably  
22 contemplated conservation and environmental protection plans for the  
23 State and the varied areas thereof;

24 h. Administer or supervise programs of conservation and  
25 environmental protection, prescribe the minimum qualifications of all  
26 persons engaged in official environmental protection work, and  
27 encourage and aid in coordinating local environmental protection  
28 services;

29 i. Establish and maintain adequate bacteriological, radiological and  
30 chemical laboratories with such expert assistance and such facilities as  
31 are necessary for routine examinations and analyses, and for original  
32 investigations and research in matters affecting the environment and  
33 ecology;

34 j. Administer or supervise a program of industrial planning for  
35 environmental protection; encourage industrial plants in the State to  
36 undertake environmental and ecological engineering programs; and  
37 cooperate with the State Departments of Health, Labor, and  
38 Commerce and Economic Development in formulating rules and  
39 regulations concerning industrial sanitary conditions;

40 k. Supervise sanitary engineering facilities and projects within the  
41 State, authority for which is now or may hereafter be vested by law  
42 in the department, and shall, in the exercise of such supervision, make  
43 and enforce rules and regulations concerning plans and specifications,  
44 or either, for the construction, improvement, alteration or operation  
45 of all public water supplies, all public bathing places, landfill  
46 operations and of sewerage systems and disposal plants for treatment

- 1 of sewage, wastes and other deleterious matter, liquid, solid or  
2 gaseous, require all such plans or specifications, or either, to be first  
3 approved by it before any work thereunder shall be commenced,  
4 inspect all such projects during the progress thereof and enforce  
5 compliance with such approved plans and specifications;
- 6 l . Undertake programs of research and development for the  
7 purpose of determining the most efficient, sanitary and economical  
8 ways of collecting, disposing or utilizing of solid waste;
- 9 m. Construct and operate, on an experimental basis, incinerators  
10 or other facilities for the disposal of solid waste, provide the various  
11 municipalities and counties of this State, the Board of Public Utilities,  
12 and the Division of Local Government Services in the Department of  
13 Community Affairs with statistical data on costs and methods of solid  
14 waste collection, disposal and utilization;
- 15 n. Enforce the State air pollution, water pollution, conservation,  
16 environmental protection, waste and refuse disposal laws, rules and  
17 regulations, including the making and signing of a complaint and  
18 summons for their violation by serving the summons upon the violator  
19 and thereafter filing the complaint promptly with a court having  
20 jurisdiction;
- 21 o. Acquire by purchase, grant, contract or condemnation, title to  
22 real property, for the purpose of demonstrating new methods and  
23 techniques for the collection or disposal of solid waste;
- 24 p. Purchase, operate and maintain, pursuant to the provisions of  
25 this act, any facility, site, laboratory, equipment or machinery  
26 necessary to the performance of its duties pursuant to this act;
- 27 q. Contract with any other public agency or corporation  
28 incorporated under the laws of this or any other state for the  
29 performance of any function under this act;
- 30 r. With the approval of the Governor, cooperate with, apply for,  
31 receive and expend funds from, the federal government, the State  
32 Government, or any county or municipal government or from any  
33 public or private sources for any of the objects of this act;
- 34 s. Make annual and such other reports as it may deem proper to the  
35 Governor and the Legislature, evaluating the demonstrations  
36 conducted during each calendar year;
- 37 t. Keep complete and accurate minutes of all hearings held before  
38 the commissioner or any member of the department pursuant to the  
39 provisions of this act. All such minutes shall be retained in a  
40 permanent record, and shall be available for public inspection at all  
41 times during the office hours of the department;
- 42 u. Require any person subject to a lawful order of the department,  
43 which provides for a period of time during which such person subject  
44 to the order is permitted to correct a violation, to post a performance  
45 bond or other security with the department in such form and amount  
46 as shall be determined by the department. Such bond need not be for

1 the full amount of the estimated cost to correct the violation but may  
2 be in such amount as will tend to insure good faith compliance with  
3 said order. The department shall not require such a bond or security  
4 from any public body, agency or authority. In the event of a failure  
5 to meet the schedule prescribed by the department, the sum named in  
6 the bond or other security shall be forfeited unless the department  
7 shall find that the failure is excusable in whole or in part for good  
8 cause shown, in which case the department shall determine what  
9 amount of said bond or security, if any, is a reasonable forfeiture  
10 under the circumstances. Any amount so forfeited shall be utilized by  
11 the department for the correction of the violation or violations, or for  
12 any other action required to insure compliance with the order [.]:

13 v. Encourage, direct, and aid in coordinating State, regional and  
14 local plans, efforts, and programs concerning the remediation and  
15 reuse of former industrial or commercial properties that are currently  
16 underutilized or abandoned and at which there has been, or there is  
17 perceived to have been, a discharge, or threat of a discharge, of a  
18 hazardous substance.

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

20

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 Nothing in this subsection shall be construed to authorize the

1 closing of operations or the transfer of ownership or operations of an  
2 industrial establishment without the department's approval of a  
3 negative declaration, a remedial action workplan or a remediation  
4 agreement.

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

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

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

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

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

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

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

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

45 At any time after the effective date of P.L.1993, c.139, an owner or  
46 operator may request the department to provide a determination as to

1 whether a proposed remedial action is consistent with the standards  
2 and criteria set forth [above in paragraphs (1) through (6)] in section  
3 35 of P.L.1993, c.139 (C.58:10B-12). The department shall make that  
4 determination based upon the standards and criteria set forth in that  
5 section. The department shall provide any such determination within  
6 30 calendar days of the department's receipt of the request.

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

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

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

20 Upon receipt of a complete and accurate submission, the  
21 department shall review and approve or disapprove the submission in  
22 accordance with the review schedules established pursuant to section  
23 2 of P.L.1991, c.423 (C.13:1D-106). The owner or operator shall not  
24 be required to wait for a response by the department before continuing  
25 remediation activities, except as otherwise provided in this section.  
26 Upon completion of the remediation, the plans for and results of the  
27 preliminary assessment, site investigation, remedial investigation,  
28 remedial action workplan, and remedial action and any other  
29 information required to be submitted as provided in section 35 of  
30 P.L.1993, c.139 (C.58:10B-12), that has not previously been  
31 submitted to the department, shall be submitted to the department for  
32 its review and approval.

33 The department shall review all information submitted to it by the  
34 owner or operator at the completion of the remediation to determine  
35 whether the actions taken were in compliance with rules and  
36 regulations of the department regarding remediation.

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

43 The department may order additional remediation activities at the  
44 industrial establishment, or offsite where necessary, or may require the  
45 submission of additional information, where (a) the department  
46 determines that the remediation activities undertaken were not in

1 compliance with the applicable rules or regulations of the department;  
2 (b) all documents required to be submitted to the department were not  
3 submitted or, if submitted, were inaccurate, or deficient; or (c)  
4 discharged hazardous substances or hazardous wastes remain at the  
5 industrial establishment, or have migrated or are migrating offsite, at  
6 levels or concentrations in violation of the applicable remediation  
7 standards. Upon a finding by the department that the remediation  
8 conducted at the industrial establishment was in compliance with all  
9 applicable regulations, that no hazardous substances or hazardous  
10 wastes remain at the industrial establishment in violation of the  
11 applicable remediation standards, and that all hazardous substances or  
12 hazardous wastes that migrated from the industrial establishment have  
13 been remediated in conformance with the applicable remediation  
14 standards, the department shall approve the remediation for that  
15 industrial establishment by the issuance of a no further action letter.  
16 (cf: P.L.1993, c.139, s.4)

17

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

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

22 "Area of concern" means any location where contaminants are or  
23 were known or suspected to have been discharged, generated,  
24 manufactured, refined, transported, stored, handled, treated, or  
25 disposed, or where contaminants have or may have migrated;

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

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

33 "Department" means the Department of Environmental Protection  
34 [and Energy];

35 "Discharge" means an intentional or unintentional action or  
36 omission resulting in the releasing, spilling, leaking, pumping, pouring,  
37 emitting, emptying, or dumping of a contaminant onto the land or into  
38 the waters of the State;

39 "Engineering controls" means any mechanism to contain or stabilize  
40 contamination or ensure the effectiveness of a remedial action.  
41 Engineering controls may include, without limitation, caps, covers,  
42 dikes, trenches, leachate collection systems, signs, fences and physical  
43 access controls;

44 "Financial assistance" means loans or loan guarantees;

45 "Institutional controls" means a mechanism used to limit human  
46 activities at or near a contaminated site, or to ensure the effectiveness

1 of the remedial action over time, when contaminants remain at a  
2 contaminated site in levels or concentrations above the applicable  
3 remediation standard that would allow unrestricted use of that  
4 property. Institutional controls may include, without limitation,  
5 structure, land, and natural resource use restrictions, well restriction  
6 areas, and deed notices;

7 "No further action letter" means a written determination by the  
8 department that based upon an evaluation of the historical use of a  
9 particular site, or of an area of concern or areas of concern at that site,  
10 as applicable, and any other investigation or action the department  
11 deems necessary, there are no discharged contaminants present at the  
12 site, at the area of concern or areas of concern, at any other site to  
13 which a discharge originating at the site has migrated, or that any  
14 discharged contaminants present at the site or that have migrated from  
15 the site have been remediated in accordance with applicable  
16 remediation regulations;

17 "Nonpermanent remedial action" means any remedial action that  
18 requires the continued use of engineering controls in order to meet the  
19 established health risk levels;

20 "Permanent remedial action" means any remedial action that does  
21 not require the continued use of engineering controls in order to meet  
22 the established health risk levels. A remedial action may be considered  
23 permanent even if institutional controls are employed at the site;

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

36 "Remedial action" means those actions taken at a site or offsite if  
37 a contaminant has migrated or is migrating therefrom, as may be  
38 required by the department, including the removal, treatment,  
39 containment, transportation, securing, or other engineering or  
40 treatment measures, whether of a permanent nature or otherwise,  
41 designed to ensure that any discharged contaminant at the site or that  
42 has migrated or is migrating from the site, is remediated in compliance  
43 with the applicable remediation standards;

44 "Remedial investigation" means a process to determine the nature  
45 and extent of a discharge of a contaminant at a site or a discharge of  
46 a contaminant that has migrated or is migrating from the site and the

1 problems presented by a discharge, and may include data collected,  
2 site characterization, sampling, monitoring, and the gathering of any  
3 other sufficient and relevant information necessary to determine the  
4 necessity for remedial action and to support the evaluation of remedial  
5 actions if necessary;

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

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

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

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

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

24 "Remedial action workplan" means a plan for the remedial action to  
25 be undertaken at a site, or at any area to which a discharge originating  
26 at a site is migrating or has migrated; a description of the remedial  
27 action to be used to remediate a site; a time schedule and cost estimate  
28 of the implementation of the remedial action; and any other  
29 information the department deems necessary;

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

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

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

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

43

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

46 24. a. The department shall, pursuant to the "Administrative

1 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and  
2 regulations establishing criteria and minimum standards necessary for  
3 the submission, evaluation and approval of plans or results of  
4 preliminary assessments, site investigations, remedial investigations,  
5 and remedial action workplans and for the implementation thereof.  
6 The documents for the preliminary assessment, site investigation,  
7 remedial investigation, and remedial action workplan required to be  
8 submitted for a remediation, shall not be identical to the criteria and  
9 standards used for similar documents submitted pursuant to federal  
10 law, except as may be required by federal law. In establishing criteria  
11 and minimum standards for these terms the department shall strive to  
12 avoid duplicate or unnecessarily costly or time consuming conditions  
13 or standards. The rules and regulations for the performance of  
14 preliminary assessments, site investigations, remedial investigations,  
15 and remedial action workplans, and for the implementation thereof,  
16 shall consist of general guidelines for the performance and submission  
17 of each item the performance of which in the manner indicated by the  
18 department will satisfy the standards of the department. The  
19 regulations shall provide that a person performing a remediation may  
20 deviate from the strict adherence to the regulations if that person can  
21 demonstrate that the deviation and the resulting remediation would be  
22 as protective of human health, safety and the environment as the  
23 department's regulations and the health risk standards established in  
24 subsection d. of section 35 of P.L.1993, c.139 (C.58:10-12) would be  
25 met.

26 b. To the extent practicable and in conformance with the standards  
27 for remediations as provided in section 35 of P.L.1993, c.139  
28 (C.58:10-12), the department shall adopt rules and regulations that  
29 allow for certain remediation activities, with an insignificant risk to the  
30 public health, safety and the environment, to be undertaken in a  
31 manner prescribed by the department without having to obtain prior  
32 approval from or submit detailed documentation to the department.  
33 A person who performs a remediation in the manner prescribed in the  
34 rules and regulations of the department, and who certifies this fact to  
35 the department, shall obtain a no further action letter from the  
36 department for that particular remediation activity.

37 c. The department shall develop regulatory procedures that  
38 encourage the use of innovative technologies in the performance of  
39 remedial actions. The procedures shall include, but need not be  
40 limited to, an expedited review process for document submissions.  
41 Upon submittal of the administratively and technically complete and  
42 accurate remedial action workplan that proposes the use of an  
43 innovative technology, the department shall review and approve that  
44 plan within 90 days. The submittal of subsequent administratively and  
45 technically complete and accurate remedial action progress reports  
46 shall be reviewed within 30 days and the submittal of an

1 administratively and technically complete and accurate remedial action  
2 final report shall be reviewed within 45 days. Failure of the  
3 department to disapprove or conditionally approve these plans or  
4 reports within the period of time allowed for its review shall be  
5 deemed to be approval of that plan by department.

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

7

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

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

30 The remediation funding source shall be established in an amount  
31 equal to or greater than the cost estimate of the implementation of the  
32 remediation (1) as approved by the department, (2) as provided in an  
33 administrative consent order or remediation agreement as required  
34 pursuant to subsection e. of section 4 of P.L.1983, c.330, (3) as stated  
35 in a departmental order or directive, or (4) as agreed to by a court, and  
36 shall be in effect for a term not less than the actual time necessary to  
37 perform the remediation at the site. Whenever the remediation cost  
38 estimate increases, the person required to establish the remediation  
39 funding source shall cause the amount of the remediation funding  
40 source to be increased to an amount at least equal to the new estimate.  
41 Whenever the remediation or cost estimate decreases, the person  
42 required to obtain the remediation funding source may file a written  
43 request to the department to decrease the amount in the remediation  
44 funding source. The remediation funding source may be decreased to  
45 the amount of the new estimate upon written approval by the  
46 department delivered to the person who established the remediation

1 funding source and to the trustee or the person or institution providing  
2 the remediation trust, the environmental insurance policy, or the line  
3 of credit, as applicable. The department shall approve the request  
4 upon a finding that the remediation cost estimate decreased by the  
5 requested amount.

6 b. The person responsible for performing the remediation and who  
7 established the remediation funding source may use the remediation  
8 funding source to pay for the actual cost of the remediation. The  
9 department may not require any other financial assurance by the  
10 person responsible for performing the remediation other than that  
11 required in this section. In the case of a remediation performed  
12 pursuant to P.L.1983, c.330, the remediation funding source shall be  
13 established no more than 14 days after the approval by the department  
14 of a remedial action workplan or upon approval of a remediation  
15 agreement pursuant to subsection e. of section 4 of P.L.1983, c.330  
16 (C.13:1K-9), unless the department approves an extension. In the case  
17 of a remediation performed pursuant to P.L.1976, c.141, the  
18 remediation funding source shall be established as provided in an  
19 administrative consent order signed by the parties, as provided by a  
20 court, or as directed or ordered by the department. The establishment  
21 of a remediation funding source for that part of the remediation  
22 funding source to be established by a grant or financial assistance from  
23 the remediation fund may be established for the purposes of this  
24 subsection by the application for a grant or financial assistance from  
25 the remediation fund and satisfactory evidence submitted to the  
26 department that the grant or financial assistance will be awarded.  
27 However, if the financial assistance or grant is denied or the  
28 department finds that the person responsible for establishing the  
29 remediation funding source did not take reasonable action to obtain  
30 the grant or financial assistance, the department shall require that the  
31 full amount of the remediation funding source be established within 14  
32 days of the denial or finding. The remediation funding source shall be  
33 evidenced by the establishment and maintenance of (1) a remediation  
34 trust fund, (2) an environmental insurance policy, issued by an entity  
35 licensed by the Department of Insurance to transact business in the  
36 State of New Jersey, to fund the remediation, (3) a line of credit from  
37 a person or institution satisfactory to the department authorizing the  
38 person responsible for performing the remediation to borrow money,  
39 or (4) a self-guarantee, or by any combination thereof. Where it can  
40 be demonstrated that a person cannot establish and maintain a  
41 remediation funding source for the full cost of the remediation by a  
42 method specified in this subsection, that person may establish the  
43 remediation funding source for all or a portion of the remediation, by  
44 securing financial assistance from the Hazardous Discharge Site  
45 Remediation Fund as provided in section 29 of P.L.1993, c.139  
46 (C.58:10B-7).

1 c. A remediation trust fund shall be established pursuant to the  
2 provisions of this subsection. An originally signed duplicate of the  
3 trust agreement shall be delivered to the department by certified mail  
4 within 14 days of receipt of notice from the department that the  
5 remedial action workplan or remediation agreement as provided in  
6 subsection e. of section 4 of P.L.1983, c.330 is approved or as  
7 specified in an administrative consent order, civil order, or order of the  
8 department, as applicable. The remediation trust fund agreement shall  
9 conform to a model trust fund agreement as established by the  
10 department and shall be accompanied by a certification of  
11 acknowledgment that conforms to a model established by the  
12 department. The trustee shall be an entity which has the authority to  
13 act as a trustee and whose trust operations are regulated and examined  
14 by a federal or New Jersey agency.

15 The trust fund agreement shall provide that the remediation trust  
16 fund may not be revoked or terminated by the person required to  
17 establish the remediation funding source or by the trustee without the  
18 written consent of the department. The trustee shall release to the  
19 person required to establish the remediation funding source, or to the  
20 department or transferee of the property, as appropriate, only those  
21 moneys as the department authorizes, in writing, to be released. The  
22 person entitled to receive money from the remediation trust fund shall  
23 submit documentation to the department detailing the costs incurred  
24 or to be incurred as part of the remediation. Upon a determination by  
25 the department that the costs are consistent with the remediation of  
26 the site, the department shall, in writing, authorize a disbursement of  
27 moneys from the remediation trust fund in the amount of the  
28 documented costs.

29 The department shall return the original remediation trust fund  
30 agreement to the trustee for termination after the person required to  
31 establish the remediation funding source substitutes an alternative  
32 remediation funding source as specified in this section or the  
33 department notifies the person that that person is no longer required  
34 to maintain a remediation funding source for remediation of the  
35 contaminated site.

36 d. An environmental insurance policy shall be established pursuant  
37 to the provisions of this subsection. An originally signed duplicate of  
38 the insurance policy shall be delivered to the department by certified  
39 mail, overnight delivery, or personal service within 30 days of receipt  
40 of 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 environmental insurance policy may not be revoked or  
45 terminated without the written consent of the department. The  
46 insurance company shall release to the person required to establish the

1 remediation funding source, or to the department or transferee of the  
2 property, as appropriate, only those moneys as the department  
3 authorizes, in writing, to be released. The person entitled to receive  
4 money from the environmental insurance policy shall submit  
5 documentation to the department detailing the costs incurred or to be  
6 incurred as part of the remediation.

7 e. A line of credit shall be established pursuant to the provisions  
8 of this subsection. A line of credit shall allow the person establishing  
9 it to borrow money up to a limit established in a written agreement in  
10 order to pay for the cost of the remediation for which the line of credit  
11 was established. An originally signed duplicate of the line of credit  
12 agreement shall be delivered to the department by certified mail,  
13 overnight delivery, or personal service within 14 days of receipt of  
14 notice from the department that the remedial action workplan or  
15 remediation agreement as provided in subsection e. of section 4 of  
16 P.L.1983, c.330 is approved, or as specified in an administrative  
17 consent order, civil order, or order of the department, as applicable.  
18 The line of credit agreement shall conform to a model agreement as  
19 established by the department and shall be accompanied by a  
20 certification of acknowledgment that conforms to a model established  
21 by the department.

22 A line of credit agreement shall provide that the line of credit may  
23 not be revoked or terminated by the person required to obtain the  
24 remediation funding source or the person or institution providing the  
25 line of credit without the written consent of the department. The  
26 person or institution providing the line of credit shall release to the  
27 person required to establish the remediation funding source, or to the  
28 department or transferee of the property as appropriate, only those  
29 moneys as the department authorizes, in writing, to be released. The  
30 person entitled to draw upon the line of credit shall submit  
31 documentation to the department detailing the costs incurred or to be  
32 incurred as part of the remediation. Upon a determination that the  
33 costs are consistent with the remediation of the site, the department  
34 shall, in writing, authorize a disbursement from the line of credit in the  
35 amount of the documented costs.

36 The department shall return the original line of credit agreement to  
37 the person or institution providing the line of credit for termination  
38 after the person required to establish the remediation funding source  
39 substitutes an alternative remediation funding source as specified in  
40 this section, or after the department notifies the person that that  
41 person is no longer required to maintain a remediation funding source  
42 for remediation of the contaminated site.

43 f. A person may self-guarantee a remediation funding source upon  
44 the submittal of documentation to the department demonstrating that  
45 the cost of the remediation as estimated in the remedial action  
46 workplan, in the remediation agreement as provided in subsection e.

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

30 g. (1) If the person required to establish the remediation funding  
31 source fails to perform the remediation as required, the department  
32 shall make a written determination of this fact. A copy of the  
33 determination by the department shall be delivered to the person  
34 required to establish the remediation funding source and, in the case  
35 of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6  
36 et al.), to any transferee of the property. Following this written  
37 determination, the department may perform the remediation in place  
38 of the person required to establish the remediation funding source. In  
39 order to finance the cost of the remediation the department may make  
40 disbursements from the remediation trust fund or the line of credit or  
41 claims upon the environmental insurance policy, as appropriate, or, if  
42 sufficient moneys are not available from those funds, from the  
43 remediation guarantee fund created pursuant to section 45 of  
44 P.L.1993, c.139 (C.58:10B-20).

45 (2) The transferee of property subject to a remediation conducted  
46 pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), may, at any time after

1 the department's determination of nonperformance by the owner or  
2 operator required to establish the remediation funding source, petition  
3 the department, in writing, with a copy being sent to the owner and  
4 operator, for authority to perform the remediation at the industrial  
5 establishment. The department, upon a determination that the  
6 transferee is competent to do so, may grant that petition which shall  
7 authorize the transferee to perform the remediation as specified in an  
8 approved remedial action workplan, or to perform the activities as  
9 required in a remediation agreement, and to avail itself of the moneys  
10 in the remediation trust fund or line of credit or to make claims upon  
11 the environmental insurance policy for these purposes. The petition  
12 of the transferee shall not be granted by the department if the owner  
13 or operator continues or begins to perform its obligations within 14  
14 days of the petition being filed with the department.

15 (3) After the department has begun to perform the remediation in  
16 the place of the person required to establish the remediation funding  
17 source or has granted the petition of the transferee to perform the  
18 remediation, the person required to establish the remediation funding  
19 source shall not be permitted by the department to continue its  
20 performance obligations except upon the agreement of the department  
21 or the transferee, as applicable, or except upon a determination by the  
22 department that the transferee is not adequately performing the  
23 remediation.

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

25

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

28 26. a. There is established in the New Jersey Economic  
29 Development Authority a special, revolving fund to be known as the  
30 Hazardous Discharge Site Remediation Fund. Moneys in the  
31 remediation fund shall be dedicated for the provision of financial  
32 assistance or grants to municipal governmental entities, the New  
33 Jersey Redevelopment Authority, county improvement authorities,  
34 individuals, corporations, partnerships, and other private business  
35 entities, for the purpose of financing remediation activities at sites at  
36 which there is, or is suspected of being, a discharge of hazardous  
37 substances or hazardous wastes.

38 b. The remediation fund shall be credited with:

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

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

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

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

45 (5) moneys deposited into the fund from cost recovery subrogation  
46 actions; and

1 (6) moneys made available to the authority for the purposes of the  
2 fund.

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

4

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

7 27. a. (1) Financial assistance from the remediation fund [, made  
8 to persons other than municipal governmental entities, the New Jersey  
9 Redevelopment Authority, or to persons who voluntarily undertake a  
10 remediation,] may only be rendered to persons who cannot establish  
11 a remediation funding source for the full amount of a remediation.  
12 Financial assistance pursuant to this act may be rendered only for that  
13 amount of the cost of a remediation for which the person cannot  
14 establish a remediation funding source. The limitations on receiving  
15 financial assistance established in this paragraph (1) shall not limit the  
16 ability of municipal governmental entities, the New Jersey  
17 Redevelopment Authority, county improvement authorities, persons  
18 who are not required to establish a remediation funding source for the  
19 part of the remediation involving an innovative technology, or persons  
20 who voluntarily undertake a remediation to receive financial assistance  
21 from the fund.

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

26 (3) Financial assistance rendered to persons who do not have to  
27 provide financial assurance for the part of the remediation that  
28 involves an innovative technology may only be made for that amount  
29 of the cost of the remediation that the person cannot otherwise fund  
30 by any of the authorized methods to establish a remediation funding  
31 source.

32 b. Financial assistance may be rendered from the remediation fund  
33 to (1) owners or operators of industrial establishments who are  
34 required to perform remediation activities pursuant to P.L.1983, c.330  
35 (C.13:1K-6 et al.), upon closing operations or prior to the transfer of  
36 ownership or operations of an industrial establishment, (2) persons  
37 who have discharged a hazardous substance or who are in any way  
38 responsible for a hazardous substance pursuant to P.L.1976, c.141  
39 (C.58:10-23.11 et seq.), and (3) persons who voluntarily undertake the  
40 remediation of a discharge of a hazardous substance or hazardous  
41 waste and who have not been ordered or directed to perform the  
42 remediation by the department or by a court.

43 c. Financial assistance and grants may be made from the  
44 remediation fund to municipal governmental entities, the New Jersey  
45 Redevelopment Authority, or to county improvement authorities that  
46 own or hold a tax sale certificate on real property or that have

1 acquired real property through foreclosure or other similar means or  
2 by voluntary conveyance and on which there has been a discharge or  
3 on which there is a suspected discharge of a hazardous substance or  
4 hazardous waste [or the New Jersey Redevelopment Authority  
5 established pursuant to P.L.1996, c.62 (C.55:19-20 et al.) for any such  
6 real property upon which the New Jersey Redevelopment Authority  
7 owns or holds the tax sale certificate].

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

14 e. Grants may be made from the remediation fund to persons who  
15 propose to perform a remedial action that uses an innovative  
16 technology.

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

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

21

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

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

39 (1) At least 15% of the moneys shall be allocated for financial  
40 assistance to persons, [including] the New Jersey Redevelopment  
41 Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.),  
42 and to any county improvement authority established pursuant to  
43 P.L.1960, c.183 (C.40:37A-44), [other than other governmental  
44 entities,] for remediation of real property located in a qualifying  
45 municipality as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

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

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

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

38 (4) At least 10% of the moneys shall be allocated for financial  
39 assistance to persons [, other than municipal governmental entities,]  
40 who voluntarily undertake the remediation of a hazardous substance  
41 or hazardous waste discharge, and who have not been ordered to  
42 undertake the remediation by the department or by a court;

43 (5) At least [20%] 15% of the moneys shall be allocated for  
44 financial assistance to persons [, other than municipal governmental  
45 entities,] who are required to perform remediation activities at an  
46 industrial establishment pursuant to P.L.1983, c.330 (C.13:1K-6 et

1 al.), as a condition of the closure, transfer, or termination of  
2 operations at that industrial establishment;

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

25 (7) At least 5% of the moneys shall be allocated for loans to  
26 persons [, other than municipal governmental entities,] or county  
27 improvement authorities who own and plan to remediate an  
28 environmental opportunity zone for which an exemption from real  
29 property taxes has been granted pursuant to section 5 of P.L.1995,  
30 c.413 (C.54:4-3.154); [and]

31 (8) At least 5% of the moneys shall be allocated for 25% matching  
32 grants to persons who propose to perform a remedial action that uses  
33 an innovative technology; and

34 (9) Five percent of the moneys in the remediation fund shall be  
35 allocated for financial assistance or grants for any of the purposes  
36 enumerated in paragraphs (1) through [(7)] (8) of this subsection,  
37 except that where moneys in the fund are insufficient to fund all the  
38 applications in any calendar year that would otherwise qualify for  
39 financial assistance or a grant pursuant to this paragraph, the authority  
40 shall give priority to financial assistance applications that meet the  
41 criteria enumerated in paragraph (3) of this subsection.

42 b. Loans issued from the remediation fund shall be for a term not  
43 to exceed ten years, except that upon the transfer of ownership of any  
44 real property for which the loan was made, the unpaid balance of the  
45 loan shall become immediately payable in full. Loans to municipal  
46 governmental entities, county improvement authorities, and the New

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

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

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

33 e. Prior to March 1 of each year, the authority shall submit to the  
34 Senate Environment Committee and the Assembly Agriculture and  
35 Waste Management Committee, or their successors, a report detailing  
36 the amount of money that was available for financial assistance and  
37 grants from the remediation fund for the previous calendar year, the  
38 amount of money estimated to be available for financial assistance and  
39 grants for the current calendar year, the amount of financial assistance  
40 and grants issued for the previous calendar year and the category for  
41 which each financial assistance and grant was rendered, and any  
42 suggestions for legislative action the authority deems advisable to  
43 further the legislative intent to facilitate remediation and promote the  
44 redevelopment and use of existing industrial sites.

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

46

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

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

4           (1) require a financial assistance or grant recipient to provide to  
5 the authority, as necessary or upon request, evidence that financial  
6 assistance or grant moneys are being spent for the purposes for which  
7 the financial assistance or grant was made, and that the applicant is  
8 adhering to all of the terms and conditions of the financial assistance  
9 or grant agreement;

10          (2) require the financial assistance or grant recipient to provide  
11 access at reasonable times to the subject property to determine  
12 compliance with the terms and conditions of the financial assistance or  
13 grant;

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

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

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

27          (6) provide that where financial assistance to a person other than  
28 a municipal governmental entity, the New Jersey Redevelopment  
29 Authority, or a county improvement authority, is for a portion of the  
30 remediation cost, that the proceeds thereof not be disbursed to the  
31 applicant until the costs of the remediation for which a remediation  
32 funding source has been established has been expended;

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

36       b. An applicant for financial assistance or a grant shall be required  
37 to:

38           (1) provide proof, as determined sufficient by the authority, that  
39 the applicant, where applicable, cannot establish a remediation funding  
40 source for all or part of the remediation costs, as required by section  
41 25 of P.L.1993, c.139 (C.58:10B-3). The provisions of this paragraph  
42 do not apply to grants to innocent persons or to the portion of  
43 remediation costs involving innovative technology or to financial  
44 assistance or grants to municipal governmental entities, the New  
45 Jersey Redevelopment Authority, or a county improvement authority;  
46 and

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

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

7 d. In establishing requirements for financial assistance or grant  
8 applications and financial assistance or grant agreements, the  
9 authority:

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

12 (2) may not require financial assistance or grant conditions that  
13 interfere with the everyday normal operations of the recipient's  
14 business activities, except to the extent necessary to ensure the  
15 recipient's ability to repay the financial assistance and to preserve the  
16 value of the loan collateral; and

17 (3) shall expeditiously process all financial assistance or grant  
18 applications in accordance with a schedule established by the authority  
19 for the review and the taking of final action on the application, which  
20 schedule shall reflect the degree of complexity of a financial assistance  
21 or grant application.

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

23

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

26 33. a. There is imposed upon every person who is required to  
27 establish a remediation funding source pursuant to section 25 of  
28 P.L.1993, c.139 (C.58:10B-3) a remediation funding source surcharge.

29 The remediation funding source surcharge shall be in an amount equal  
30 to 1% of the required amount of the remediation funding source  
31 required by the department to be maintained. No surcharge, however,  
32 may be imposed upon (1) that amount of the remediation funding  
33 source that is met by a self-guarantee as provided in subsection f. of  
34 section 25 of P.L.1993, c.139 (C.58:10B-3), (2) that amount of the  
35 remediation funding source that is met by financial assistance or a  
36 grant from the remediation fund, (3) any person who voluntarily  
37 undertakes a remediation without being so ordered or directed by the  
38 department or by a court or pursuant to an administrative consent  
39 order, or (4) any person who entered voluntarily into a memorandum  
40 of understanding with the department to remediate real property, as  
41 long as that person continues the remediation in a reasonable manner,  
42 or as required by law, even if subsequent to initiation of the  
43 memorandum of understanding, the person received an order by the  
44 department or entered into an administrative consent order to perform  
45 the remediation. The surcharge shall be based on the cost of  
46 remediation work remaining to be completed and shall be paid on an

1 annual basis as long as the remediation continues and until the  
2 Department of Environmental Protection [and Energy] issues a no  
3 further action letter for the property subject to the remediation. The  
4 remediation funding source surcharge shall be due and payable within  
5 14 days of the time of the department's approval of a remedial action  
6 workplan or signing an administrative consent order or as otherwise  
7 provided by law. The department shall collect the surcharge and shall  
8 remit all moneys collected to the Economic Development Authority for  
9 deposit into the Hazardous Discharge Site Remediation Fund.

10 b. By February 1 of each year, the department shall issue a report  
11 to the Senate Environment Committee and to the Assembly [Energy  
12 and Hazardous Waste] Agriculture and Waste Management  
13 Committee, or their successors, listing, for the prior calendar year,  
14 each person who owed the remediation funding source surcharge, the  
15 amount of the surcharge paid, and the total amount collected.

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

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

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

30 Until the minimum remediation standards for the protection of  
31 public health and safety as described herein are adopted, the  
32 department shall apply public health and safety remediation standards  
33 for contamination at a site on a case-by-case basis based upon the  
34 considerations and criteria enumerated in this section.

35 The department shall not propose or adopt remediation standards  
36 protective of the environment pursuant to this section, except  
37 standards for groundwater or surface water, until recommendations  
38 are made by the Environment Advisory Task Force created pursuant  
39 to section 37 of P.L.1993, c.139. Until the Environment Advisory  
40 Task Force issues its recommendations and the department adopts  
41 remediation standards protective of the environment as required by  
42 this section, the department shall continue to determine the need for  
43 and the application of remediation standards protective of the  
44 environment on a case-by-case basis in accordance with the guidance  
45 and regulations of the United States Environmental Protection Agency  
46 pursuant to the "Comprehensive Environmental Response,

1 Compensation and Liability Act of 1980," 42 U.S.C. §9601 et seq. and  
2 other statutory authorities as applicable.

3 b. In developing minimum remediation standards the department  
4 shall:

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

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

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

20 (4) where feasible, establish the remediation standards as numeric  
21 or narrative standards setting forth acceptable levels or concentrations  
22 for particular contaminants.

23 c. (1) The department shall develop permanent residential and  
24 nonresidential surface soil remediation standards and permanent  
25 subsurface soil remediation standards that are protective of public  
26 health and safety. For contaminants that are mobile and transportable  
27 to groundwater or surface water, the [residential and nonresidential]  
28 permanent subsurface soil remediation standards shall be protective of  
29 groundwater and surface water. Residential surface soil remediation  
30 standards shall be set at levels or concentrations of contamination for  
31 real property based upon the use of that property for residential or  
32 similar uses and which will allow the unrestricted use of that property  
33 without the need of continuous engineering devices or any institutional  
34 controls and without exceeding a health risk level greater than that  
35 provided in subsection d. of this section. Nonresidential surface soil  
36 remediation standards shall be set at levels or concentrations of  
37 contaminants that recognize the lower likelihood of exposure to  
38 contamination on property that will not be used for residential or  
39 similar uses and that can be met without the need of continuous  
40 engineering controls. Permanent subsurface soil remediation standards  
41 shall be set at levels that assume no direct contact or exposure to the  
42 contamination but are based solely on the need to be protective of  
43 groundwater and surface water. Whenever real property is  
44 remediated to a nonresidential surface soil remediation standard,  
45 except as otherwise provided in paragraph (3) of subsection g. of this  
46 section, the department shall require, pursuant to section 36 of

1 P.L.1993, c.139 (C.58:10B-13), that the use of the property be  
2 restricted to nonresidential or other uses compatible with the extent of  
3 the contamination of the surface soil and that access to that site be  
4 restricted in a manner compatible with the allowable use of that  
5 property. Whenever subsurface soil meets the remediation standards  
6 for subsurface soil, no engineering or institutional controls shall be  
7 required pursuant to section 36 of P.L.1993, c.139 (C.58:10B-13), for  
8 that property even if the level of contamination would exceed the  
9 surface soil remediation standards. The department may not restrict  
10 the use of the surface of a property merely because the subsurface soil  
11 contamination exceeds the surface soil remediation standards.

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

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

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

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

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

46 e. Remediation standards and other requirements established

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

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

1 and available toxicological data that are based upon generally accepted  
2 and peer reviewed scientific evidence or methodologies.

3 Upon a determination by the department that the requested  
4 alternative remediation standard is protective of public health and  
5 safety, as established in subsection d. of this section, and protective of  
6 the environment pursuant to subsection a. of this section, the  
7 alternative residential use or nonresidential use surface or subsurface  
8 soil remediation standard shall be approved by the department.

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

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

29 (1) Permanent and nonpermanent [remedies] remedial actions shall  
30 be allowed [except that permanent remedies shall be preferred over  
31 nonpermanent remedies for remedial actions] and no preference shall  
32 be given to either a permanent or nonpermanent remedial action so  
33 long as the selected remedial action meets the health risk level  
34 established in subsection d. of this section, and where, as applicable,  
35 is protective of the environment. The choice of the remedial action to  
36 be implemented shall be made by the person performing the  
37 remediation and that choice of the remedial action shall be approved  
38 by the department if all the criteria for remedial action selection  
39 enumerated in this section are met. The department may not require  
40 a person performing a remediation to perform any remediation activity  
41 that exceeds the actions necessary to meet the chosen remedial action;

42 (2) Contamination may, upon the department's approval, be left  
43 onsite at levels or concentrations that exceed the minimum surface soil  
44 remediation standards for residential use or nonresidential use if the  
45 implementation of institutional or engineering controls at that site will  
46 result in the protection of public health, safety and the environment at

1 the health risk level established in subsection d. of this section and if  
2 the requirements established in subsections a., b., c. and d. of section  
3 36 of P.L.1993, c.139 (C.58:10B-13) are met;

4 (3) Real property on which there is surface soil that has not been  
5 remediated to the residential surface soil remediation standards, or real  
6 property on which the surface or subsurface soil, groundwater, or  
7 surface water has been remediated to meet the required health risk  
8 level by the use of engineering or institutional controls, may be  
9 developed or used for residential purposes, or for any other similar  
10 purpose, if (a) all areas of that real property at which a person may  
11 come into contact with surface soil are remediated to meet the  
12 residential surface soil remediation standards and (b) it is clearly  
13 demonstrated that for all areas of the real property, other than those  
14 described in subparagraph (a) above, engineering and institutional  
15 controls can be implemented and maintained on the real property  
16 sufficient to meet the health risk level as established in subsection d.  
17 of this section;

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

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

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

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

43 (8) [In the case of a proposed remedial action that will not meet the  
44 established minimum residential use soil remediation standards, the  
45 cost of all available permanent remedies is unreasonable, as determined  
46 by department rules designed to provide a cost-based preference for

1 the use of permanent remedies. The department shall adopt  
2 regulations, no later than 18 months after the effective date of this act,  
3 establishing criteria and procedures for allowing a person to  
4 demonstrate that the cost of all available permanent remedies is  
5 unreasonable. Until the department adopts those regulations, it shall  
6 not require a person performing a remedial action to implement a  
7 permanent remedy, unless the cost of implementing a nonpermanent  
8 remedy is 50 percent or more than the cost of implementing a  
9 permanent remedy; provided, however, that the preceding provision  
10 shall not apply to any owner or operator of an industrial establishment  
11 who is implementing a remedial action pursuant to subsection i. of  
12 section 4 of P.L.1983, c.330;] The use of a remedial action for surface  
13 soil contamination that is determined by the department to be effective  
14 in its guidance document created pursuant to section 38 of P.L.1993,  
15 c.139 (C.58:10-14), is presumed to be an appropriate remedial action  
16 if it is to be implemented on a site in the manner described by the  
17 department in the guidance document and if all of the conditions for  
18 remedy selection provided for in this section are met.

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

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

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

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

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

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

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

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

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

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

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

23  
24 21. Section 36 of P.L.1993, c.139 (C.58:10B-13) is amended to  
25 read as follows:

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

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

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

1 the same manner as are deeds and other interests in real property;  
2 (3) require a notice to the governing body of each municipality in  
3 which the property is located that contaminants will exist at the  
4 property above residential use soil remediation standards or any other  
5 remediation standards and specifying the restrictions on the use of or  
6 access to all or part of that property and of the specific engineering or  
7 institutional controls at the property that exist and that shall be  
8 maintained;  
9 (4) require, when determined necessary by the department, that  
10 signs be posted at any location at the site where access is restricted or  
11 in those areas that must be maintained in a prescribed manner, to  
12 inform persons on the property that there are restrictions on the use of  
13 that property or restrictions on access to any part of the site;  
14 (5) require that a list of the restrictions be kept on site for  
15 inspection by governmental enforcement officials; and  
16 (6) require a person, prior to commencing a remedial action, to  
17 notify the governing body of each municipality wherein the property  
18 being remediated is located. The notice shall include, but not be  
19 limited to, the commencement date for the remedial action; the name,  
20 mailing address and business telephone number of the person  
21 implementing the remedial action, or his designated representative; and  
22 a brief description of the remedial action.  
23 b. If the owner of the real property does not consent to the  
24 recording of a notice pursuant to paragraph (2) of subsection a. of this  
25 section, the department shall require the use of a residential surface  
26 soil remediation standard in the remediation of that real property.  
27 c. Whenever engineering or institutional controls on property as  
28 provided in subsection a. of this section are no longer required, or  
29 whenever the engineering or institutional controls are changed because  
30 of the performance of subsequent remedial activities, a change in  
31 conditions at the site, or the adoption of revised remediation  
32 standards, the department shall require that the owner or operator of  
33 that property record with the office of the county recording officer a  
34 notice that the use of the property is no longer restricted or delineating  
35 the new restrictions. The department shall also require that the owner  
36 or operator notify, in writing, the municipality in which the property  
37 is located of the removal or change of the restrictive use conditions.  
38 d. The owner or lessee of any real property, or any person  
39 operating a business on real property, which has been remediated to  
40 a nonresidential use surface soil remediation standard or on which the  
41 department has allowed engineering or institutional controls for  
42 surface or subsurface soil, groundwater, or surface water to protect  
43 the public health, safety, or the environment, as applicable, shall  
44 maintain the engineering or institutional controls as required by the  
45 department. An owner, lessee, or operator who takes any action that  
46 results in the improper alteration or removal of engineering or

1 institutional controls or who fails to maintain the engineering or  
2 institutional controls as required by the department, shall be subject to  
3 the penalties and actions set forth in section 22 of P.L.1976, c.141  
4 (C.58:10-23.11u) and, where applicable, shall be liable for any  
5 additional remediation and damages pursuant to the provisions of  
6 section 8 of P.L.1976, c.141 (C.58:10-23.11g). The provisions of this  
7 subsection shall not apply if a notification received pursuant to  
8 subsection b. of this section authorizes all restrictions or controls to  
9 be removed from the subject property.

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

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

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

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

45 g. Whenever the department approves or has approved the use of  
46 engineering or institutional controls for the remediation of surface or

1 subsurface soil, groundwater, or surface water, to protect public  
2 health, safety or the environment the department shall inspect that site  
3 at least once every five years in order to ensure that the engineering  
4 and institutional controls are being properly maintained and that the  
5 controls remain protective of public health and safety and of the  
6 environment.

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

8

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

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

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

26

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

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

1 shall be appointed by the President of the Senate; and (7) two  
2 members who shall have at least a master's degree in a science  
3 discipline, have relevant experience, and be employed by an industrial  
4 business, who shall be appointed by the Speaker of the General  
5 Assembly. All the members shall be appointed and qualified within 90  
6 days of the enactment of P.L. , c. (now before the Legislature as  
7 this bill). If any member is not appointed and qualified by this date  
8 that membership slot on the task force shall cease to exist and the task  
9 force membership shall be reduced accordingly.

10 b. The Environment Advisory Task Force shall meet as soon as  
11 practicable after the appointment and qualification of [all] a majority  
12 of its members. The Commissioner of Environmental Protection, or  
13 the commissioner's designee, shall be the chairperson of the  
14 Environment Advisory Task Force. The Environment Advisory Task  
15 Force shall meet at the call of its chairperson and in the locations the  
16 chairperson shall choose.

17 c. The Environment Advisory Task Force shall, within two years  
18 after its first meeting, make recommendations to the department on the  
19 feasibility, development, and application of remediation standards  
20 protective of the environment. A copy of the recommendations shall  
21 be submitted to the Senate Environment Committee and to the  
22 Assembly [Energy and Hazardous Waste] Agriculture and Waste  
23 Management Committee, or to their successors.

24 d. The Environment Advisory Task Force shall:

25 (1) review the scientific literature to identify existing sources of  
26 information and data necessary for the development of remediation  
27 standards protective of the environment and to determine the current  
28 state-of-the-science in the identification of adverse impacts of  
29 contamination on ecological receptors and the establishment of  
30 contaminant concentration levels necessary to protect the environment;

31 (2) review scientific literature on the methods, procedures, data  
32 input needs, limitations, interpretation, and uses of environment risk  
33 assessments;

34 (3) collect information on public and private activities concerning  
35 the development and uses of environment risk assessments and  
36 remediation standards protective of the environment;

37 (4) evaluate the ecological components which should be protected  
38 through the application of remediation standards protective of the  
39 environment;

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

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

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

1 (8) recommend necessary changes in statutes and regulations  
2 necessary to implement the advice of the Environment Advisory Task  
3 Force; and

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

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

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

19

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

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

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

1 up a release or discharge of hazardous substances.

2 The Legislature further finds and declares that many former  
3 industrial sites in the State remain vacant or underutilized in part  
4 because they have been contaminated by a discharge of a hazardous  
5 substance; that these properties constitute an economic drain on the  
6 State and the municipalities in which they exist; that it is in the public  
7 interest to have these properties cleaned up sufficiently so that they  
8 can be safely be returned to productive use; and that it should be a  
9 function of the Department of Environmental Protection to facilitate  
10 and coordinate activities and functions designed to cleanup  
11 contaminated sites in this State.

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

13

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

16 3. Unless the context clearly indicates otherwise, the following  
17 terms shall have the following meanings:

18 "Act of God" means an act exclusively occasioned by an  
19 unanticipated, grave natural disaster without the interference of any  
20 human agency;

21 "Administrator" means the chief executive of the New Jersey Spill  
22 Compensation Fund;

23 "Barrel" means 42 United States gallons or 159.09 liters or an  
24 appropriate equivalent measure set by the director for hazardous  
25 substances which are other than fluid or which are not commonly  
26 measured by the barrel;

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

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

44 "Commissioner" means the Commissioner of Environmental  
45 Protection;

46 "Department" means the Department of Environmental Protection;

1 "Director" means the Director of the Division of Taxation in the  
2 Department of the Treasury;

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

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

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

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

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

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

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

1 only when that vessel is engaged in a transfer of hazardous substances  
2 between it and another vessel, and in any event shall not include a  
3 vessel used solely for activities directly related to recovering,  
4 containing, cleaning up or removing discharges of petroleum in the  
5 surface waters of the State, including training, research, and other  
6 activities directly related to spill response.

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

10 (1) 20,000 gallons or more for hazardous substances which are  
11 other than petroleum or petroleum products, or

12 (2) 200,000 gallons or more for hazardous substances of all kinds.

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

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

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

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

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

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

1 petroleum product for the purposes of P.L.1976, c.141, unless such  
2 compound is to be utilized in the refining or blending of crude  
3 petroleum or petroleum stock in this State;

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

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

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

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

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

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

23

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

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

39 (2) Whenever one or more dischargers or persons cleans up and  
40 removes a discharge of a hazardous substance, those dischargers and  
41 persons shall have a right of contribution against all other dischargers  
42 and persons in any way responsible for a discharged hazardous  
43 substance who are liable for the cost of the cleanup and removal of  
44 that discharge of a hazardous substance. In an action for contribution,  
45 the contribution plaintiffs need prove only that a discharge occurred  
46 for which the contribution defendant or defendants are liable pursuant

1 to the provisions of subsection c. of section 8 of P.L.1976, c.141  
2 (C.58:10-23.11g), and the contribution defendant shall have only the  
3 defenses to liability available to parties pursuant to subsection d. of  
4 section 8 of P.L.1976, c.141 (C.58:10-23.11g). A letter of no  
5 association received from the department pursuant to section 28 of  
6 P.L. , c. (C. )(now before the Legislature as this bill) is prima  
7 facie evidence that a person has a defense to a contribution claim  
8 pursuant to this section. In resolving contribution claims, a court may  
9 allocate the costs of cleanup and removal among liable parties using  
10 such equitable factors as the court determines are appropriate.

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

39 Cleanup and removal of hazardous substances and actions to  
40 minimize damage from discharges shall, to the greatest extent possible,  
41 be in accordance with the National Contingency Plan for cleanup and  
42 removal of oil and hazardous substances established pursuant to  
43 section 311(c)(2) of the federal Water Pollution Control Act  
44 Amendments of 1972 (Pub.L.92-500, 33 U.S.C. §1251 et seq.).  
45 Whenever the department acts to clean up and remove a discharge or  
46 contracts to secure prospective cleanup and removal services, it is

1 authorized to draw upon the money available in the fund. Such money  
2 shall be used to pay promptly for all cleanup and removal costs  
3 incurred by the department in cleaning up, in removing or in  
4 minimizing damage caused by such discharge.

5 Nothing in this section is intended to preclude removal and cleanup  
6 operations by any person threatened by such discharges, provided such  
7 persons coordinate and obtain approval for such actions with ongoing  
8 State or federal operations. No action taken by any person to contain  
9 or clean up and remove a discharge shall be construed as an admission  
10 of liability for said discharge. No person who renders assistance in  
11 containing or cleaning up and removing a discharge shall be liable for  
12 any civil damages to third parties resulting solely from acts or  
13 omissions of such person in rendering such assistance, except for acts  
14 or omissions of gross negligence or willful misconduct. In the course  
15 of cleanup or removal operations, no person shall discharge any  
16 detergent into the waters of this State without prior authorization of  
17 the commissioner.

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

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

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

31 (a) Explosiveness;

32 (b) High flammability;

33 (c) Radioactivity;

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

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

43 (f) High toxicity and is stored or being transported in a container  
44 or motor vehicle, truck, rail car or other mechanized conveyance from  
45 which its discharge is imminent as a result of the significant  
46 deterioration or the precarious location of the container, motor

1 vehicle, truck, rail car or other mechanized conveyance, and such  
2 discharge would create a substantial risk of imminent damage to public  
3 health or safety or imminent and severe damage to the environment;  
4 or

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

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

23 d. The administrator may only approve and make payments for any  
24 cleanup and removal costs incurred by the department for the cleanup  
25 and removal of a hazardous substance discharged prior to the effective  
26 date of P.L.1976, c.141, pursuant to subsection b. of this section, if,  
27 and to the extent that, he determines that adequate funds from another  
28 source are not or will not be available; and provided further, with  
29 regard to the cleanup and removal costs incurred for discharges which  
30 occurred prior to the effective date of P.L.1976, c.141, the  
31 administrator may not during any one-year period pay more than  
32 \$18,000,000 in total or more than \$3,000,000 for any discharge or  
33 related set or series of discharges.

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

45 f. Any expenditures made by the administrator pursuant to this act  
46 shall constitute, in each instance, a debt of the discharger to the fund.

1 The debt shall constitute a lien on all property owned by the discharger  
2 when a notice of lien, incorporating a description of the property of  
3 the discharger subject to the cleanup and removal and an identification  
4 of the amount of cleanup, removal and related costs expended from  
5 the fund, is duly filed with the clerk of the Superior Court. The clerk  
6 shall promptly enter upon the civil judgment or order docket the name  
7 and address of the discharger and the amount of the lien as set forth  
8 in the notice of lien. Upon entry by the clerk, the lien, to the amount  
9 committed by the administrator for cleanup and removal, shall attach  
10 to the revenues and all real and personal property of the discharger,  
11 whether or not the discharger is insolvent. The notice of lien filed  
12 pursuant to this subsection which affects the property of a discharger  
13 subject to the cleanup and removal of a discharge shall create a lien  
14 with priority over all other claims or liens which are or have been filed  
15 against the property, except if the property comprises six dwelling  
16 units or less and is used exclusively for residential purposes, this notice  
17 of lien shall not affect any valid lien, right or interest in the property  
18 filed in accordance with established procedure prior to the filing of this  
19 notice of lien. The notice of lien filed pursuant to this subsection  
20 which affects any property of a discharger, other than the property  
21 subject to the cleanup and removal, shall have priority from the day of  
22 the filing of the notice of the lien over all other claims and liens filed  
23 against the property, but shall not affect any valid lien, right, or  
24 interest in the property filed in accordance with established procedure  
25 prior to the filing of a notice of lien pursuant to this subsection.

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

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

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

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

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

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

2

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

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

8 (1) The cost of restoring, repairing, or replacing any real or  
9 personal property damaged or destroyed by a discharge, any income  
10 lost from the time such property is damaged to the time such property  
11 is restored, repaired or replaced, and any reduction in value of such  
12 property caused by such discharge by comparison with its value prior  
13 thereto;

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

16 (3) Loss of income or impairment of earning capacity due to  
17 damage to real or personal property, including natural resources  
18 destroyed or damaged by a discharge; provided that such loss or  
19 impairment exceeds 10% of the amount which claimant derives, based  
20 upon income or business records, exclusive of other sources of  
21 income, from activities related to the particular real or personal  
22 property or natural resources damaged or destroyed by such discharge  
23 during the week, month or year for which the claim is filed;

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

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

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

44 c. (1) Any person who has discharged a hazardous substance, or is  
45 in any way responsible for any hazardous substance, shall be strictly  
46 liable, jointly and severally, without regard to fault, for all cleanup and

1 removal costs no matter by whom incurred. Such person shall also be  
2 strictly liable, jointly and severally, without regard to fault, for all  
3 cleanup and removal costs incurred by the department or a local unit  
4 pursuant to subsection b. of section 7 of P.L.1976, c.141  
5 (C.58:10-23.11f).

6 (2) In addition to the persons liable pursuant to [paragraph (1) of]  
7 this subsection, in the case of a discharge of a hazardous substance  
8 from a vessel into the waters of the State, the owner or operator of a  
9 refinery, storage, transfer, or pipeline facility to which the vessel was  
10 en route to deliver the hazardous substance who, by contract,  
11 agreement, or otherwise, was scheduled to assume ownership of the  
12 discharged hazardous substance, and any other person who was so  
13 scheduled to assume ownership of the discharged hazardous substance,  
14 shall be strictly liable, jointly and severally, without regard to fault, for  
15 all cleanup and removal costs if the owner or operator of the vessel did  
16 not have the evidence of financial responsibility required pursuant to  
17 section 2 of P.L.1991, c.58 (C.58:10-23.11g2).

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

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

46 To the extent that a person liable pursuant to this paragraph is not

1 otherwise liable pursuant to paragraph (1) of this subsection, or under  
2 any other provision of law or under common law, that person may  
3 bring an action for indemnification for costs paid pursuant to this  
4 paragraph against any other person who is strictly liable pursuant to  
5 paragraph (1) of this subsection.

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

9 (3) In addition to the persons liable pursuant to this subsection, any  
10 person who owns real property acquired on or after September 14,  
11 1993 on which there has been a discharge prior to the persons  
12 acquisition of that property and who knew or should have known that  
13 a hazardous substance had been discharged at the real property, shall  
14 be strictly liable, jointly and severally, without regard to fault, for all  
15 cleanup and removal costs no matter by whom incurred. Such person  
16 shall also be strictly liable, jointly and severally, without regard to  
17 fault, for all cleanup and removal costs incurred by the department or  
18 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141  
19 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter  
20 liability of any person who acquired real property prior to September  
21 14, 1993.

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

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

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

38 (b) (i) at the time the person acquired the real property, the person  
39 did not know and had no reason to know that any hazardous substance  
40 had been discharged at the real property, (ii) the person acquired the  
41 real property by devise or succession, except that any other funds or  
42 property received by that person from the deceased real property  
43 owner who discharged a hazardous substance or was in any way  
44 responsible for a hazardous substance, shall be made available to  
45 satisfy the requirements of P.L.1976, c.141, (iii) the person complies  
46 with the provisions of subparagraph (e) of paragraph (2) of this

1 subsection, or (iv) the person complies with the provisions of  
2 subparagraph (f) of paragraph (2) of this subsection;

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

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

7 To establish that a person had no reason to know that any  
8 hazardous substance had been discharged for the purposes of this  
9 paragraph (2), the person must have undertaken, at the time of  
10 acquisition, all appropriate inquiry into the previous ownership and  
11 uses of the property. For the purposes of this paragraph (2), all  
12 appropriate inquiry shall mean the performance of a preliminary  
13 assessment, and site investigation [], if the preliminary assessment  
14 indicates that a site investigation is necessary [)], as defined in section  
15 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance  
16 with rules and regulations promulgated by the department defining  
17 these terms.

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

21 (e) For the purposes of this subparagraph the person must have (i)  
22 acquired the property subsequent to a contaminant being discharged  
23 on the site and which discharge was discovered at the time of  
24 acquisition as a result of the appropriate inquiry, as defined in this  
25 paragraph (2), (ii) performed a remedial investigation for all soils, (iii)  
26 performed a remedial action to prevent or stop any immediate, direct,  
27 or imminent threats to the public health or the environment, (iv)  
28 performed a remedial action, consistent with section 35 of P.L.1993,  
29 c.139 (C.58:10B-12), to prevent direct contact with contamination in  
30 surface soils consistent with the planned use of the property and under  
31 a Memorandum of Agreement or Administrative Consent Order with  
32 the Department of Environmental Protection, (v) established all  
33 engineering and institutional controls as may be required pursuant  
34 sections 35 and 36 of P.L.1993, c.139, and (vi) complied with the  
35 remedial action workplan approved by the department and any  
36 conditions of a no further action letter issued by the department. In  
37 order for a person to comply with the provisions of this subparagraph,  
38 the person must begin all necessary parts of a remediation within a  
39 reasonable amount of time and complete the remediation within the  
40 reasonable time frames established by the department. A person who  
41 complies with the provisions of this subparagraph shall be issued a no  
42 further action letter by the department and shall not be liable for any  
43 changes in a remediation standard or for the subsequent discovery of  
44 a contaminant at the site that was discharged prior to the person  
45 acquiring the property. Compliance with the provisions of this  
46 subparagraph (e) shall not relieve the person of any liability for a

1 discharge that occurs at that property after the person acquires the  
2 property, for any actions that person negligently takes that aggravates  
3 or contributes to a discharge of a contaminant, or if that person fails  
4 to maintain the institutional or engineering controls on the property.

5 (f) For the purposes of this subparagraph the person must have (i)  
6 acquired the property subsequent to a contaminant being discharged  
7 on the site, (ii) the Department of Environmental Protection had  
8 previously issued a no further action letter for all areas of concern on  
9 the site, and (iii) all institutional and engineering controls are  
10 maintained on the property pursuant to the conditions imposed upon  
11 the department. A person who complies with the provisions of this  
12 subparagraph (f) shall not be liable for any changes in a remediation  
13 standard or for the subsequent discovery of a contaminant at the site  
14 that was discharged prior to the person acquiring the property.  
15 Compliance with the provisions of this subparagraph (f) shall not  
16 relieve the person of any liability for a discharge that occurs at that  
17 property after the person acquires the property, for any actions that  
18 person negligently takes that aggravates or contributes to a discharge  
19 of a contaminant, or if that person fails to maintain the institutional  
20 and engineering controls on the property.

21 (3) Notwithstanding the provisions of paragraph (2) of this  
22 subsection to the contrary, if a person who owns real property obtains  
23 actual knowledge of a discharge of a hazardous substance at the real  
24 property during the period of that person's ownership and  
25 subsequently transfers ownership of the property to another person  
26 without disclosing that knowledge, the transferor shall be strictly liable  
27 for the cleanup and removal costs of the discharge and no defense  
28 under this subsection shall be available to that person.

29 (4) Any federal, State, or local governmental entity which acquires  
30 ownership of real property through bankruptcy, tax delinquency,  
31 abandonment, escheat, eminent domain, condemnation or any  
32 circumstance in which the [government] governmental entity  
33 involuntarily acquires title by virtue of its function as sovereign, or  
34 where the governmental entity acquires the property by any means for  
35 the purpose of promoting the redevelopment of that property, shall not  
36 be liable for the cleanup and removal costs of any discharge which  
37 occurred or began prior to that ownership. This paragraph shall not  
38 apply to any federal, State or local governmental entity which has  
39 caused or contributed to the discharge of a hazardous substance.

40 [e. (1) If the Department of Environmental Protection issues a no  
41 further action letter or approves a remedial action workplan after the  
42 effective date of P.L.1996, c.62 (C.55:19-20 et al.) for a site at which  
43 a discharge occurred prior to or after the effective date of P.L.1996,  
44 c.62 (C.55:19-20 et al.), then any person who is not otherwise liable  
45 for any discharge at the site which occurred prior to the department's  
46 approval of the no further action letter or remedial action workplan

1 shall not be liable for the discharge based solely on that person  
2 becoming an owner or operator of the site of the discharge after the  
3 discharge has occurred. For the purposes of this paragraph, a site  
4 shall constitute the real property defined in the remedial action  
5 workplan or, if no remedial action workplan is required, the no further  
6 action letter. The provisions of this paragraph shall only apply when  
7 the site is located in a qualified municipality as defined pursuant to  
8 section 3 of P.L.1996, c.62 (C.55:19-22) and there is continued  
9 compliance with all of the conditions of the no further action letter, the  
10 remedial action workplan and all applicable engineering and  
11 institutional controls.

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

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

17

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

33

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

36 2. The Legislature finds that there are numerous properties that  
37 are underutilized or that have been abandoned and that are not being  
38 utilized for any commercial use because of contamination that exists  
39 at those properties; that abandoned contaminated properties harm  
40 society by causing a burden on municipal services while failing to  
41 contribute to the funding of those services; that a disproportionate  
42 percentage of these properties are located in older urban municipalities  
43 given the fact that these municipalities were once the center for  
44 industrial production; that the revitalization of these properties will not  
45 only bring tax ratables to the municipality and other local  
46 governments, but will result in job creation and foster urban

1 redevelopment; that one of the central tenets of the State Development  
2 and Redevelopment Plan is to redevelop urban areas with existing  
3 utilities and infrastructure and that the use of these now abandoned or  
4 underutilized sites for commercial purposes will make a significant  
5 contribution toward implementing the plan; that the federal "Clean Air  
6 Act" encourages the reindustrialization of urban areas as this would  
7 provide jobs near where people live thus reducing harmful air  
8 pollutants emitted from automobiles needed to travel distances to  
9 places of employment; and that it is in the economic interest of the  
10 State and the municipalities in which abandoned or underutilized  
11 contaminated properties are located to encourage the remediation of  
12 these properties so that they can be reused or fully used for  
13 commercial, residential, or other productive purposes.

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

15

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

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

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

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

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

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

31 e. A requirement that the environmental opportunity zone will be  
32 remediated in compliance with the remediation standards adopted by  
33 the Department of Environmental Protection pursuant to P.L.1993,  
34 c.139 (C.58:10B-1 et al.), that the owner of the property will enter  
35 into a memorandum of agreement or administrative consent order with  
36 the department to perform the remediation and will complete the  
37 remediation pursuant to the agreement or order, and that, once  
38 remediated, the environmental opportunity zone will be used for a  
39 commercial [or] , industrial, residential, or other productive purpose

1 during the time period for which the real property tax exemption is  
2 given.

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

4

5 31. (New section) This act shall be known and may be cited as the  
6 "Brownfield Redevelopment Incentive Act."

7

8 32. (New section) As used in sections 31 through 37 of P.L. , c.  
9 (C. )(now before the Legislature as this bill):

10 "Developer" means any person that enters or proposes to enter into  
11 a redevelopment agreement with the State pursuant to the provisions  
12 of section 33 of P.L. , c. (C. )(pending in the Legislature as  
13 this bill).

14 "Director" means the Director of the Division of Taxation in the  
15 Department of the Treasury.

16 "Project" or "redevelopment project" means a specific work or  
17 improvement, including lands, buildings, improvements, real and  
18 personal property or any interest therein, including lands under water,  
19 riparian rights, space rights and air rights, acquired, owned, developed  
20 or redeveloped, constructed, reconstructed, rehabilitated or improved,  
21 undertaken by a developer within an area of land whereon a  
22 contaminated site is or located, under a redevelopment agreement with  
23 the State pursuant to section 33 of P.L. , c. (C. ) (pending in the  
24 Legislature as this bill).

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

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

45 "Remediation costs" means all reasonable costs associated with the  
46 remediation of a contaminated site except that "remediation costs"

1 shall not include any costs incurred in financing the remediation.

2

3 33. (New section) a. The provisions of any other law, or rule or  
4 regulation adopted pursuant thereto, to the contrary notwithstanding,  
5 any developer may enter into a redevelopment agreement with the  
6 State pursuant to the provisions of this section.

7 The Commissioner of the Department of Commerce and Economic  
8 Development in consultation with the State Treasurer shall negotiate  
9 the terms and conditions of any redevelopment agreement on behalf of  
10 the State.

11 b. In negotiating a redevelopment agreement with a developer, the  
12 commissioner shall consider the following factors:

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

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

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

18 (4) the likelihood that the redevelopment project shall upon  
19 completion be capable of repaying the remediation costs incurred;

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

23 (6) the need of the redevelopment agreement to the viability of the  
24 project; and

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

27

28 34. (New section) a. The provisions of any other law, or rule or  
29 regulation adopted pursuant thereto, to the contrary notwithstanding,  
30 any developer that enters into a redevelopment agreement pursuant to  
31 section 33 of P.L. , c. (C. ) (pending in the Legislature as this  
32 bill), may be eligible for reimbursement of 75% of the costs of the  
33 remediation of the subject property pursuant to the provisions of this  
34 section upon the commencement of a business operation within a  
35 redevelopment project, the sales receipts of which are subject to the  
36 tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30  
37 (C.54:32B-1 et seq.).

38 b. To be eligible for reimbursement of 75% of the costs of  
39 remediation, a developer shall submit an application, in writing, to the  
40 director for review and certification of the reimbursement. The  
41 director shall review the request for the reimbursement upon receipt  
42 of an application therefor, and shall approve or deny the application  
43 for certification on a timely basis.

44 The director shall certify a developer to be eligible for the  
45 reimbursement if the director shall find that:

46 (1) a place of business is located in the area subject to the

1 redevelopment agreement for the purpose of making retail sales;

2 (2) non-exempt items are regularly exhibited and offered for retail  
3 sale at that location;

4 (3) the place of business is not utilized primarily for the purpose of  
5 catalogue or mail order sales; and

6 (4) the developer has entered into a memorandum of agreement  
7 with the Commissioner of Environmental Protection for the  
8 remediation of contamination located on the site of the redevelopment  
9 project pursuant to section 35 of P.L. , c. (C. ) (pending in  
10 the Legislature as this bill) and is in compliance with the memorandum  
11 of agreement.

12 c. When filing an application for certification for a reimbursement  
13 pursuant to this section, the developer shall submit to the director a  
14 certification of the total remediation costs incurred by the developer  
15 for the remediation of the subject property located at the site of the  
16 redevelopment project as provided in the redevelopment agreement.  
17

18 35. (New section) a. To qualify for the certification of  
19 reimbursement of 75% of the remediation costs authorized pursuant  
20 to section 34 of P.L. , c. (C. ) (pending in the Legislature  
21 as this bill), a developer shall enter into a memorandum of agreement  
22 with the Commissioner of Environmental Protection for the  
23 remediation of the site of the redevelopment project.

24 b. Under the memorandum of agreement, the developer shall agree  
25 to perform and complete any remediation activity as may be required  
26 by the Department of Environmental Protection to ensure the  
27 remediation is conducted pursuant to the remediation standards  
28 adopted by the Department of Environmental Protection pursuant to  
29 P.L.1993, c.139 (C.58:10B-1 et al.).

30 c. After the developer has entered into a memorandum of  
31 agreement with the Commissioner of Environmental Protection, the  
32 commissioner shall submit a copy thereof to the developer, the clerk  
33 of the municipality in which the subject property is located, the  
34 Commissioner of the Department of Commerce and Economic  
35 Development, and the director.  
36

37 36. (New section) a. There is created in the Department of  
38 Treasury a special fund to be known as the Brownfield Site  
39 Remediation Fund. Moneys in the fund shall be dedicated to the  
40 purpose of reimbursing a developer who enters into a redevelopment  
41 agreement pursuant to section 33 of P.L. c. (C. ) (pending in the  
42 Legislature as this bill) and is certified for reimbursement pursuant to  
43 section 34 of P.L. c. (C. ) (pending in the Legislature as this bill)  
44 in an amount equal to 75% of the remediation costs of the subject  
45 property. A special account within the fund shall be created for each  
46 developer upon approval of a certification pursuant to section 34 of

1 P.L. , c. (C. ) (pending in the Legislature as this bill). The  
2 Legislature shall annually appropriate the entire balance of the fund for  
3 the purposes of reimbursement of remediation costs as provided in  
4 section 37 of P.L. , c. (C. ) (pending in the Legislature as this  
5 bill).

6 b. The fund shall be credited with one half of all taxes due and  
7 payable pursuant to the "Sales and Use Tax Act," P.L.1966, c.30  
8 (C.54:32B-1 et seq.) by any person required to collect the tax at the  
9 site of a redevelopment project which is the subject of a  
10 redevelopment agreement with the State pursuant to section 33 of  
11 P.L. , c. (C. ) (pending in the Legislature as this bill) until the  
12 amount credited equals 75% of the dollar amount of the remediation  
13 costs actually and reasonably incurred by the developer, as certified  
14 to the director by the developer.

15

16 37. (New section) a. The State Treasurer shall reimburse the  
17 developer for 75% of the remediation costs of the subject property  
18 from the Brownfield Site Remediation Fund upon approval of  
19 certification of the reimbursement pursuant to section 34 of P.L. ,  
20 c. (C. ) (pending in the Legislature as this bill). The developer  
21 shall be entitled to periodic payments from the fund in an amount equal  
22 to one half of the taxes due and payable pursuant to the "Sales and  
23 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) from any person  
24 required to collect the tax at the site of a redevelopment project which  
25 is subject to a redevelopment agreement between the developer and  
26 the State pursuant to section 33 of P.L. c. (C. ) (pending in the  
27 Legislature as this bill). Payments from the fund shall be made to a  
28 developer at the same frequency in which the payments are made to  
29 the State from the persons required to collect the tax. Payments to the  
30 developer shall be made within 15 days of receipt by the State of the  
31 taxes.

32 b. A developer shall submit to the director updated remediation  
33 costs actually incurred by the developer for the remediation of the  
34 contaminated property located at the site of the redevelopment project  
35 as provided in the redevelopment agreement. The reimbursement  
36 authorized pursuant to this section shall continue until such time as the  
37 aggregate dollar amount of the reimbursement equals 75% of the  
38 dollar amount of the remediation costs actually incurred by the  
39 developer, as certified to the director by the developer. To remain  
40 entitled to the reimbursement authorized pursuant to this section, the  
41 developer shall perform and complete all remediation activities as may  
42 be required pursuant to the memorandum of agreement entered into  
43 with the Commissioner of Environmental Protection pursuant to  
44 section 35 of P.L. , c. (C. )(pending in the Legislature as this  
45 bill). The Department of Environmental Protection may review the  
46 remediation costs incurred by the developer to determine if they are

1 reasonable.

2

3 38. Section 21 of P.L.1983, c.303 (C.52:27H-80) is amended to  
4 read as follows:

5 21. Receipts of retail sales, except retail sales of motor vehicles, of  
6 alcoholic beverages as defined in the "Alcoholic Beverage Tax Law,"  
7 R.S.54:41-1 et seq., cigarettes as defined in the "Cigarette Tax Act,"  
8 P.L.1948, c.65 (C.54:40A-1 et seq.) and of manufacturing machinery,  
9 equipment or apparatus, made by a certified vendor from a place of  
10 business owned or leased and regularly operated by the vendor for the  
11 purpose of making retail sales, and located in a designated enterprise  
12 zone established pursuant to the "New Jersey Urban Enterprise Zones  
13 Act," P.L.1983, c.303 (C.52:27H-60 et al.), are exempt to the extent  
14 of 50% of the tax imposed under the "Sales and Use Tax Act,"  
15 P.L.1966, c.30 (C.54:32B-1 et seq.).

16 Any vendor, which is a qualified business having a place of business  
17 located in a designated enterprise zone, may apply to the Director of  
18 the Division of Taxation in the Department of the Treasury for  
19 certification pursuant to this section. The director shall certify a  
20 vendor if he shall find that the vendor owns or leases and regularly  
21 operates a place of business located in the designated enterprise zone  
22 for the purpose of making retail sales, that items are regularly  
23 exhibited and offered for retail sale at that location, and that the place  
24 of business is not utilized primarily for the purpose of catalogue or  
25 mail order sales. The certification under this section shall remain in  
26 effect during the time the business retains its status as a qualified  
27 business meeting the eligibility criteria of section 27 of P.L.1983,  
28 c.303 (C.52:27H-86). However, the director may at any time revoke  
29 a certification granted pursuant to this section if he shall determine  
30 that the vendor no longer complies with the provisions of this section.

31 Notwithstanding the provisions of this act to the contrary, except  
32 as may otherwise be provided by section 7 of P.L.1983, c.303  
33 (C.52:27H-66), the authority may, in its discretion, determine whether  
34 or not the provisions of this section shall apply to any enterprise zone  
35 designated after the effective date of P.L.1985, c.142 (C.52:27H-66  
36 et al.); provided, however, that the authority may make such a  
37 determination only where the authority finds that the award of an  
38 exemption of 50 percent of the tax imposed under the "Sales and Use  
39 Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) will not have any  
40 adverse economic impact upon any other urban enterprise zone.

41 Notwithstanding any other provisions of law to the contrary, except  
42 as provided in subsection b. of section 36 of P.L. , c. (C. )  
43 (pending in the Legislature as this bill), after first depositing 10  
44 percent of the gross amount of all revenues received from the taxation  
45 of retail sales made by certified vendors from business locations in  
46 designated enterprise zones to which this exemption shall apply into

1 the account created in the name of the authority in the enterprise zone  
2 assistance fund pursuant to section 29 of P.L.1983, c.303  
3 (C.52:27H-88), the remaining 90 percent shall be deposited  
4 immediately upon collection by the Department of the Treasury, as  
5 follows:

6 a. In the first five year period during which the State shall have  
7 collected reduced rate revenues within an enterprise zone, all such  
8 revenues shall be deposited in the enterprise zone assistance fund  
9 created pursuant to section 29 of P.L.1983, c.303 (C.52:27H-88);

10 b. In the second five year period during which the State shall have  
11 collected reduced rate revenues within an enterprise zone, 66 2/3% of  
12 all those revenues shall be deposited in the enterprise zone assistance  
13 fund, and 33 1/3% shall be deposited in the General Fund;

14 c. In the third five year period during which the State shall have  
15 collected reduced rate revenues within an enterprise zone, 33 1/3% of  
16 all those revenues shall be deposited in the enterprise zone assistance  
17 fund, and 66 2/3% shall be deposited in the General Fund;

18 d. In the final five year period during which the State shall have  
19 collected reduced rate revenues within an enterprise zone, but not to  
20 exceed the life of the enterprise zone, all those revenues shall be  
21 deposited in the General Fund.

22 Commencing on the effective date of P.L.1993, c.144, all revenues  
23 in any enterprise zone to which the provisions of this section have  
24 been extended prior to the enactment of P.L.1993, c.144 shall be  
25 deposited into the enterprise zone assistance fund until there shall have  
26 been deposited all revenues into that fund for a total of five full years,  
27 as set forth in subsection a. of this section. The State Treasurer then  
28 shall proceed to deposit funds into the enterprise zone assistance fund  
29 according to the schedule set forth in subsections b. through d. of this  
30 section, beginning at the point where the enterprise zone was located  
31 on that schedule on the effective date of P.L.1993, c.144. No  
32 enterprise zone shall receive the deposit benefit granted by any one  
33 subsection of this section for more than five cumulative years.

34 The revenues required to be deposited in the enterprise zone  
35 assistance fund under this section shall be used for the purposes of that  
36 fund and for the uses prescribed in section 29 of P.L.1983, c.303  
37 (C.52:27H-88), subject to annual appropriations being made for those  
38 purposes and uses.

39 (cf: P.L.1993, c.367, s.6)

40

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

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

45 (a) "Authority" shall mean a public body created pursuant to this  
46 act;

- 1 (b) "Bond resolution" shall have the meaning ascribed thereto in  
2 section 17 of P.L.1960, c.183 (C.40:37A-60);
- 3 (c) "Bonds" shall mean bonds, notes or other obligations issued  
4 pursuant to this act;
- 5 (d) "Construct" and "construction" shall connote and include acts  
6 of clearance, demolition, construction, development or redevelopment,  
7 reconstruction, replacement, extension, improvement and betterment;
- 8 (e) "Cost" shall mean, in addition to the usual connotations thereof,  
9 the cost of planning, acquisition or construction of all or any part of  
10 any public facility or facilities of an authority and of all or any  
11 property, rights, easements, privileges, agreements and franchises  
12 deemed by the authority to be necessary or useful and convenient  
13 therefor or in connection therewith, including interest or discount on  
14 bonds, cost of issuance of bonds, architectural, engineering and  
15 inspection costs and legal expenses, cost of financial, professional and  
16 other estimates and advice, organization, administrative, operating and  
17 other expenses of the authority prior to and during such acquisition or  
18 construction, and all such other expenses as may be necessary or  
19 incident to the financing, acquisition, construction and completion of  
20 such public facility or facilities or part thereof and the placing of the  
21 same fully in operation or the disposition of the same, and also such  
22 provision or reserves for working capital, operating, maintenance or  
23 replacement expenses or for payment or security of principal of or  
24 interest on bonds during or after such acquisition or construction as  
25 the authority may determine, and also reimbursements to the authority  
26 or any governmental unit or person of any moneys theretofore  
27 expended for the purposes of the authority;
- 28 (f) The term "county" shall mean any county of any class of the  
29 State and shall include, without limitation, the terms "the county" and  
30 "beneficiary county" defined in this act, and the term "the county" shall  
31 mean the county which created an authority pursuant to this act;
- 32 (g) "Development project" shall mean any lands, structures, or  
33 property or facilities acquired or constructed or to be acquired or  
34 constructed by an authority for the purposes of the authority described  
35 in subsection (e) of section 11 of P.L.1960, c.183 (C.40:37A-54);
- 36 (h) "Facility charges" shall have the meaning ascribed to said term  
37 in section 14 of P.L.1960, c.183 (C.40:37A-57);
- 38 (i) "Facility revenues" shall have the meaning ascribed to said term  
39 in subsection (e) of section 20 of P.L.1960, c.183 (C.40:37A-63);
- 40 (j) "Governing body" shall mean, in the case of a county, the board  
41 of chosen freeholders, or in the case of a county operating under  
42 article 3 or 5 of the "Optional County Charter Law" (P.L.1972, c.154;  
43 C.40:41A-1 et seq.) as defined thereunder, and, in the case of a  
44 municipality, the commission, council, board or body, by whatever  
45 name it may be known, having charge of the finances of the  
46 municipality;

1 (k) "Governmental unit" shall mean the United States of America  
2 or the State or any county or municipality or any subdivision,  
3 department, agency, or instrumentality heretofore or hereafter created,  
4 designated or established by or for the United States of America or the  
5 State or any county or municipality;

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

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

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

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

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

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

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

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

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

1 determined by the municipality, pursuant to the same procedures as  
2 provided in said law, to be blighted, deteriorated or deteriorating  
3 because of structures or improvements which are dilapidated or  
4 characterized by disrepair, lack of ventilation or light or sanitary  
5 facilities, faulty arrangement, location, or design, or other unhealthful  
6 or unsafe conditions;

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

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

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

45 (x) "Redeveloper" shall mean any person or governmental unit that  
46 shall enter into or propose to enter into a contract with an authority

1 for the redevelopment of an area or any part thereof under the  
2 provisions of this act;

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

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

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

19 (bb) "Contaminated redevelopment site" means any parcel of real  
20 property that is now vacant or underutilized, which is in need of a  
21 remediation due to a perceived or actual discharge or threatened  
22 discharge of a contaminant, and which has been so designated by the  
23 municipality in which it is located. "Contaminated redevelopment site"  
24 shall include any environmental opportunity zone designated as such  
25 by a municipality pursuant to P.L.1995, c.413 (C.54:4-3.150 et seq)  
26 and any blighted, deteriorated or deteriorating area as defined in this  
27 section if the municipality in which the property is located determines  
28 that there is a known, suspected, or threatened discharge of a  
29 contaminant in the area;

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

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

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

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

44

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

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

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

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

33

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

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

42 (a) To adopt and have a common seal and to alter the same at  
43 pleasure;

44 (b) To sue and be sued;

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

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

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

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

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

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

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

40 (j) To borrow money and issue negotiable bonds or notes or other  
41 obligations and provide for and secure the payment of any bonds and  
42 the rights of the holders thereof, and to purchase, hold and dispose of  
43 any bonds;

44 (k) To apply for and to accept gifts or grants of real or personal  
45 property, money, material, labor or supplies for the purposes of the  
46 authority from any governmental unit or person, and to make and

- 1 perform agreements and contracts and to do any and all things  
2 necessary or useful and convenient in connection with the procuring,  
3 acceptance or disposition of such gifts or grants;
- 4 (l) To determine the location, type and character of any public  
5 facility and all other matters in connection with all or any part of any  
6 public facility which it is authorized to own, construct, establish,  
7 effectuate or control;
- 8 (m) To make and enforce bylaws or rules and regulations for the  
9 management and regulation of its business and affairs and for the use,  
10 maintenance and operation of any public facility, and to amend the  
11 same;
- 12 (n) To do and perform any acts and things authorized by this act  
13 under, through or by means of its own officers, agents and employees,  
14 or by contract with any governmental unit or person;
- 15 ( o ) To acquire, purchase, construct, lease, operate, maintain and  
16 undertake any project and to fix and collect facility charges for the use  
17 thereof;
- 18 (p) To mortgage, pledge or assign or otherwise encumber all or any  
19 portion of its revenues and other income, real and personal property,  
20 projects and facilities for the purpose of securing its bonds, notes and  
21 other obligations or otherwise in furtherance of the purpose of this act;
- 22 (q) To extend credit or make loans to redevelopers for the planning,  
23 designing, acquiring, constructing, reconstructing, improving,  
24 remediation, equipping and furnishing any redevelopment project or  
25 redevelopment work;
- 26 (r) To conduct examinations and investigations, hear testimony and  
27 take proof, under oath at public or private hearings of any material  
28 matter, require the attendance of witnesses and the production of  
29 books and papers and issue commissions for the examination of  
30 witnesses who are out of the State, unable to attend, or excused from  
31 attendance;
- 32 (s) To authorize a committee designated by it consisting of one or  
33 more members, or counsel, or any officer or employee to conduct any  
34 such investigation or examination, in which case such committee,  
35 counsel, officer or employee shall have power to administer oaths,  
36 take affidavits and issue [subpenas] subpoenas or commissions; [and]
- 37 (t) To enter into any and all agreements or contracts, execute any  
38 and all instruments, and do and perform any and all acts or things  
39 necessary, convenient or desirable for the purposes of the authority or  
40 to carry out any power expressly given in this act subject to P.L.1971,  
41 c.198, "Local Public Contracts Law" (C.40A:11-1 et seq.) ; and
- 42 (u) To conduct and coordinate public outreach efforts to inform the  
43 public of the health and environmental risks, as well as the economic

1 benefits, of the remediation and redevelopment of contaminated  
2 redevelopment sites.

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

4

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

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

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

22 c. Relocate or arrange for the relocation of residents and occupants  
23 of an area;

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

27 e. Request the municipal planning board, if any, to recommend and  
28 the municipal governing body pursuant to existing law to designate  
29 blighted areas in need of redevelopment and to make recommendations  
30 for such development;

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

36 g. Publish and disseminate information;

37 h. Prepare or arrange by contract for preparation of plans by  
38 registered architects or licensed professional engineers or planners for  
39 the carrying out of the redevelopment projects;

40 i. Arrange or contract with public agencies or redevelopers for the  
41 planning, replanning, conservation, rehabilitation, construction, or  
42 undertaking of any project, or redevelopment work, or any part  
43 thereof, to provide as part of any such arrangement or contract for  
44 extension of credit or making of loans to redevelopers to finance any  
45 project or redevelopment work, and to arrange or contract with public  
46 agencies for the opening, grading or closing of streets, roads,

1 roadways, alleys, or other places or for the furnishing of facilities or  
2 for the acquisition by such agency of property options or property  
3 rights or for the furnishing of property or services in connection with  
4 a redevelopment area;

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

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

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

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

23 n. Develop, test, and report methods and techniques, and carry out  
24 demonstrations and other activities, for the prevention and the  
25 elimination of blight; and

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

29

30 43. There is appropriated to the Department of Environmental  
31 Protection from the "1996 Environmental Cleanup Fund" created  
32 pursuant to section 19 of the "Port of New Jersey Revitalization,  
33 Dredging, Environmental Cleanup, Lake Restoration, and Delaware  
34 Bay Area Economic Development Bond of 1996," P.L.1996, c.70, the  
35 sum of \$5,000,000 for the investigations, determinations, and data  
36 entry as provided in this section.

37

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

45

46 45. This act shall take effect immediately.

## STATEMENT

1  
2  
3 The intent of this bill, the "Brownfields Cleanup Act," is to remove  
4 impediments in the law, and to create incentives, in order to promote  
5 and facilitate the cleanup and reuse of New Jersey's older industrial  
6 sites. The redevelopment of these industrial sites will help protect the  
7 public health and environment, conserve open space, improve the  
8 economy, create jobs, and revitalize our cities and neighborhoods.

9 Because New Jersey is an older, industrial state, it has many  
10 properties that were formerly used for industrial or commercial  
11 purposes but which are, today, either abandoned or underutilized.  
12 Many of these properties are contaminated with hazardous substances  
13 or at least suspected of being contaminated. Most of these properties  
14 are located in the State's urban areas. These former industrial sites,  
15 often referred to as "brownfields," can be a blight to a neighborhood  
16 and a financial drain to a municipality. They can pose environmental  
17 risks due to their uncontrolled environmental condition and a safety  
18 hazard for children. Were these sites to be remediated and  
19 redeveloped the health of New Jersey's citizens and of the  
20 environment would be protected, jobs would be created,  
21 neighborhoods would be restored, and tax revenues on both the State  
22 and local levels would be increased.

23 The need to clean up brownfields and bring them back to  
24 productive use is obvious and has been recognized for some time at  
25 both the state and national levels. However, there exists many  
26 impediments to brownfield remediation and redevelopment. Although  
27 many sites may be difficult to redevelop due to economic and other  
28 factors that are beyond the State's control, many of these brownfield  
29 sites have great economic potential. They remain vacant or  
30 underutilized, however, because of the uncertainties involving the high  
31 or unknown cost and liability in performing an environmental cleanup.  
32 These environmental factors often make the difference between a  
33 viable redevelopment project and a vacant site.

34 New Jersey began the process of facilitating the remediation and  
35 redevelopment of brownfields in 1993 when the Legislature enacted a  
36 comprehensive reform of its site remediation laws. Three years  
37 experience with that reform measure and the legislative actions and  
38 experiences of several other states have demonstrated that more  
39 changes are needed in order to facilitate brownfield redevelopment.

40 There are four general areas that need to be addressed in order to  
41 facilitate brownfield remediation and redevelopment. These areas  
42 include technical, legal, financial, and institutional policies. This bill  
43 addresses each of these areas in a comprehensive manner in order to  
44 fully address the problems posed.

## Technical Policy Issues

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*Elimination of preference for residential soil remediations* - Under present law there is a preference for the performance of a soil remediation to residential limits. This preference exists even if the property is to be used for industrial or commercial purposes, although a cost limitation does exist. Additionally, many people have argued that engineering solutions, such as capping, together with institutional controls are as safe as residential remediations. The draft bill eliminates the preference and allows a person to select whatever remedial action that person wants to implement so long as the health standards are met and the remedy will meet all of the Department of Environmental Protection's regulations. In order to ensure that the remedy will work, and continue to work, the DEP is required to inspect at least once every five years each site that uses engineering or institutional controls.

*Regulatory flexibility* - The bill contains a provision that states that the DEP's regulations should consist of general guidelines and that a person may deviate from the strict adherence to the regulations if that person can demonstrate that the deviation would be as protective of human health and the environment.

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

*Aquifer delineation* - Under existing law and practice of the DEP, aquifers that are contaminated and not used as a drinking water resource can be classified as such and the DEP will allow contamination in the aquifer to be remediated through natural attenuation (e.g. the natural breakdown of contaminants over time). This process would save a person performing the remediation substantial sums of money when compared to a requirement to pump and treat the groundwater. However, it is difficult and costly for a person to prove to the DEP that any particular aquifer meets the criteria for the designation. This is especially so for small businesses and landowners performing relatively minor remediations. The bill requires the DEP to investigate and determine which aquifers meet the standard and to plot those aquifers on the geographic information system. Five million dollars from the site remediation bond act to be on the ballot in November will be used for this purpose. The bill also codifies the natural attenuation policy of the DEP.

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

*Innovative technologies* - The bill contains several provisions

1 designed to encourage the use of innovative technologies, including  
2 the elimination of the requirement to post financial assurance, the  
3 provision of 25% matching grants, expedited review, and other  
4 regulatory changes.

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

12 *Reports and regulations* - Several reports and regulations required  
13 in P.L.1993, c.139, have not yet been issued or adopted. These  
14 include the liability report to be issued by the DEP, the risk report to  
15 be issued by a special commission, and the remediation standards,  
16 technical rules, and large contaminated area regulations to be issued  
17 by the DEP. The bill provides new time limits for the issuance of these  
18 reports and regulations. If they are not issued by the set date, the  
19 relevant General Assembly and Senate committees are instructed to  
20 hold a joint public hearing to determine why the report or regulations  
21 were not issued.

22 *Environmental Advisory Task Force* - This task force was  
23 established by law in 1993 to determine if and how soil site  
24 remediation standards should be adopted that are protective of the  
25 environment. To date, the members of the task force to be appointed  
26 by the Governor have not been selected. The bill would eliminate the  
27 Governor's appointments if not selected in a defined period of time and  
28 would make it easier for the task force to convene.

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

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### **Legal Liability**

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44 *Limited remediation requirements for purchasers* - Often the  
45 extensive, and unknown, cost of a remediation makes the  
46 redevelopment of many properties uneconomic. In order to lower

1 these costs, the bill would limit the extent of a remediation that a  
2 person buying contaminated property would have to perform. The  
3 purchaser would only be liable to perform surface soil remediations,  
4 or use engineering or institutional controls, remove sources of  
5 contamination that pose imminent threats, and maintain any controls  
6 in place. The purchaser would not be liable for groundwater  
7 contamination, for changes in remediation standards, or for  
8 undiscovered contamination. Once the purchaser performs this limited  
9 remediation to make the property safe for its intended use, the  
10 purchaser would have no further remediation liability under the law.

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

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

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

42 *Public entity liability* - Although the law generally provides that  
43 public entities are not liable for existing contamination on land they  
44 acquire through actions such as a tax lien or foreclosure, a public  
45 entity may be liable for knowingly and voluntarily acquiring  
46 contaminated property, even if for a public purpose such as

1 redevelopment. The bill amends the law to limit public entity liability  
2 for contaminated property they acquire by any means.

3 *Contribution treble damage awards* - The bill eliminates the DEP's  
4 role in allocating treble damages in contribution claims. The  
5 imposition of treble damages will be left for the court to award.

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### **Financial Issues**

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9 *Limitation on fees* - The bill provides that cleanup and removal  
10 costs under the Spill Compensation and Control Act are not to include  
11 administrative indirect and fringe benefit costs. This will have the  
12 effect of lowering the fees assessed by the DEP to review a  
13 remediation and thus the cost for a person to perform a remediation.  
14 Over the past several years the fees for site remediation reviews have  
15 increased exponentially as more indirect and unrelated costs are being  
16 recouped by the imposition of fees.

17 *Environmental Opportunity Zone Act expansion* - Last session, the  
18 Legislature enacted the Environmental Opportunity Zone Act in order  
19 to encourage the remediation of contaminated industrial sites by  
20 offering limited property tax exemptions. That law only applied to  
21 properties that were to be used for industrial or commercial purposes.  
22 Because many former contaminated industrial properties are located  
23 in areas that no longer make them suitable for industrial or commercial  
24 purposes, the bill expands the law so that the properties may also be  
25 used for residential or other productive uses.

26 *Sales tax exemptions* - The bill establishes a program whereby a  
27 person can recover 75% of remediation costs incurred. The  
28 reimbursement would be funded from the dedication of 50% of the  
29 sales tax to be collected at any new retail establishments built on the  
30 formerly contaminated property. State approval is needed before a  
31 property qualifies for this benefit.

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

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### **Institutional Issues**

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40 *County Improvement Authorities* - County Improvement  
41 Authorities are given an expanded and defined role to help coordinate,  
42 fund, and market the remediation and redevelopment of contaminated  
43 sites. The authorities are also made eligible for financial assistance  
44 from the Hazardous Discharge Site Remediation Fund.

45 *Geographic information system* - Economic data will be entered  
46 into the GIS system in order to facilitate decisions concerning the

1 redevelopment of brownfields. Three million dollars from the site  
2 remediation bond act to be voted upon in November is appropriated  
3 for this purpose.

4 *DEP mission* - The mission of the DEP as well as its duties under  
5 the Spill Compensation and Control Act have been broadened to  
6 include coordination and facilitating the remediation and  
7 redevelopment of brownfields.

8 *Community involvement and risk communication* - A Brownfields  
9 Environmental Risk Communication Council is established as a  
10 Statewide entity designed to help local governmental entities and  
11 community groups understand the risks and benefits of brownfield  
12 remediation and redevelopment.

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