

SENATE, No. 1754

STATE OF NEW JERSEY

INTRODUCED DECEMBER 19, 1996

By Senators SINGER and BRYANT

1 AN ACT concerning aquaculture, amending and supplementing parts
2 of the statutory law, and making an appropriation.

3

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

6

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

9

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

16 The Legislature further finds and declares that the Aquaculture
17 Development Task Force, established by Executive Order No. 104
18 (1993), was directed to prepare an aquaculture development plan; that
19 the "Aquaculture Development Plan" asserts that legislative and
20 regulatory obstacles are major impediments to aquaculture growth and
21 development in New Jersey, and that the lack of specific legislation
22 defining and permitting various aquaculture activities has greatly
23 hindered aquaculture development in New Jersey; and that the plan
24 also presents a compelling case for State investment in aquaculture,
25 discusses specific suggestions to remove barriers impeding the
26 development of the industry and methods for achieving the
27 interdepartmental cooperation necessary to developing aquaculture.

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

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) As used in sections 1 through 24 of this act:

2 "Aquaculture" means the propagation, rearing, and harvesting of
3 aquatic organisms in controlled or selected environments, and the
4 subsequent processing, packaging and marketing, and shall include,
5 but need not be limited to, activities to intervene in the rearing process
6 to increase production such as stocking, feeding, transplanting and
7 providing for protection from predators.

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

11 "Aquaculturist" means a person engaging in aquaculture.

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

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

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

19 "Secretary" means the Secretary of Agriculture.
20

21 4. (New section) There is established in the Department of
22 Agriculture the Office of Aquaculture Coordination. The office shall,
23 in consultation with the Department of Environmental Protection,
24 prepare a guidebook explaining the permit process for receiving all
25 necessary permits or other approvals or exemptions to engage in an
26 aquaculture project in the State. The guidebook shall include a list
27 that identifies the permits or other approvals that may be necessary for
28 an aquaculture project. The list shall identify the application form or
29 forms required for an application to be deemed complete, any
30 documents or other written submissions required to be filed with the
31 application, and any filing, notice, hearing or other requirement that is
32 a precondition for review of an application. The guidebook shall also
33 describe management practices for aquaculture. The guidebook shall
34 be updated as often as necessary. The office shall serve as resource
35 for applicants and prospective applicants for aquaculture projects.

36 The office shall establish, in cooperation with other permitting
37 agencies, a permit coordination system whose purpose is to assist the
38 applicant in the completion of the application and to assist in
39 processing the application. The goal of the system shall be the
40 processing of applications within 90 days of their completion, and at
41 an application cost not prohibitive to a single proprietor.

42 The office shall develop a protocol for authorizing an individual to
43 engage in an aquaculture demonstration project.
44

45 5. (New section) a. There is established in the Department of
46 Agriculture an Aquaculture Advisory Council which shall consist of 13

1 members, seven of whom shall be the Secretary of Agriculture, who
2 shall serve as chairman, the Commissioner of Environmental
3 Protection, the Commissioner of Commerce and Economic
4 Development, the Commissioner of Health, the director of the
5 Aquaculture Technology Transfer Center, the director of the
6 Aquaculture Training and Information Center, the director of the
7 Fisheries and Aquaculture Technology Extension Center, or their
8 designees, who shall serve ex officio, and six citizens of the State, to
9 be appointed as follows: two by the President of the Senate, one of
10 whom shall be a representative from recognized aquaculture
11 organizations or an operator of an aquaculture farm and one of whom
12 shall be a representative of the seafood industry; two by the Speaker
13 of the General Assembly, one of whom shall be a representative of
14 recognized aquaculture organizations or an operator of an aquaculture
15 farm and one of whom shall be a representative of farmers; and two by
16 the Governor from the public at large.

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

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

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

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

42

43 6. (New section) a. Notwithstanding any law, rule, or regulation
44 to the contrary, aquaculture shall be considered a component of
45 agriculture in the State, and aquacultured plants and animals shall be
46 considered to be agriculture crops and animals.

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

4 c. The Department of Agriculture shall be the lead State agency for
5 the development, marketing, promotion, and advocacy of aquaculture
6 in the State.

7 d. The Department of Environmental Protection shall be the lead
8 State agency with respect to regulation of aquaculture activities in
9 public fresh and marine waters of the State.

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

17
18 7. (New section) Within one year of the effective date of this act,
19 the Department of Agriculture, the Department of Environmental
20 Protection, the Department of Commerce and Economic Development,
21 and the Department of Health shall, after consultation with the
22 Aquaculture Advisory Council, enter into interagency memoranda of
23 agreement concerning the implementation of the Aquaculture
24 Development Plan, and delineating the financial and regulatory
25 responsibility based upon the provisions of this act and any other
26 applicable laws. In developing the interagency memoranda of
27 agreement, the departments shall seek to develop provisions that foster
28 the development of aquaculture in the State.

29
30 8. (New section) Within 180 days of the effective date of this act,
31 the Department of Environmental Protection and the Department of
32 Agriculture, in consultation with the Aquaculture Advisory Council,
33 jointly shall establish, according to rules and regulations adopted
34 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
35 (C.52:14B-1 et seq.), appropriate policies for the use of aquaculture
36 leases in waters of the State and for lands underneath waters of the
37 State, including but not limited to lease specifications, fees, royalty
38 payments, and assignability and termination of lease agreements. The
39 policies shall provide for an expeditious procedure for finalizing lease
40 agreements. Lease agreements shall convey a necessary degree of
41 exclusivity to minimize the risks to the aquaculturists caused by
42 pollution, vandalism, theft, and other forms of encroachment, while
43 protecting common use rights of the public, and assuring the integrity
44 and protection of the natural wild stocks and their habitat.

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

13

14 10. (New section) a. The Department of Environmental Protection,
15 in consultation with the Department of Agriculture and the
16 Aquaculture Advisory Council, shall review the laws, rules, and
17 regulations pertaining to the taking, harvesting, possession, and use of
18 fish, wildlife, shellfish, and plants with regard to the effect of those
19 laws, rules, and regulations on the taking, harvesting, possession, use,
20 importation, containment, transport, and marketing of aquaculture
21 products from public waters of the State. The review shall include,
22 but need not be limited to, such factors as gear, season, area, size
23 limits, and all rules and regulations adopted by the department or the
24 Fish and Game Council that may impede the potential use of any
25 species in aquaculture.

26 b. Based upon the review performed pursuant to subsection a. of
27 this section and taking into consideration comments from the Fish and
28 Game Council and the Marine Fisheries Council on the proposed
29 changes to laws, regulations, and rules, the Department of
30 Environmental Protection, shall adopt, pursuant to the "Administrative
31 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and within one
32 year of the effective date of this act, modifications that would not
33 cause significant harm to wild stocks, natural habitat, or the
34 environment, so as to either exempt specific types of aquacultural
35 practices from those rules and regulations or reduce any negative
36 impact upon those practices to the maximum extent practicable and
37 feasible. To the extent that modifications in the law are required to
38 accomplish the purposes of this section, the Department of
39 Environmental Protection and the various other entities conducting the
40 review shall make recommendations accordingly to the Governor and
41 the Legislature.

42 c. The Department of Environmental Protection, in consultation
43 with the Department of Agriculture and the Aquaculture Advisory
44 Council, shall establish a program within one year of the effective date
45 of this act and pursuant to the "Administrative Procedure Act,"

1 P.L.1968, c.410 (C.52:14B-1 et seq.), regulating the importation and
2 transport of species used in aquaculture.

3

4 11. (New section) The Department of Environmental Protection, in
5 consultation with the Department of Agriculture and the Aquaculture
6 Advisory Council, shall review the laws, rules, and regulations
7 pertaining to endangered and nongame species, migratory birds, and
8 fish and game species with regard to the application and effectiveness
9 of those laws, rules, and regulations in the prevention of predation at
10 aquaculture facilities or sites. Based upon that review, the Department
11 of Environmental Protection in conjunction with the various other
12 entities conducting the review, after allowing for a period of public
13 review and comment and within one year of the effective date of this
14 act, shall make recommendations to all appropriate governmental
15 entities concerning implementation, to the extent permitted by law and
16 as soon as may be practical and feasible, of procedures and
17 mechanisms for the timely and cost effective resolution of specific
18 predation problems occurring at aquaculture facilities or sites.

19

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

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

34

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

43 b. Within 180 days of the effective date of this act, the Department
44 of Environmental Protection, in consultation with the Department of
45 Agriculture and pursuant to the "Administrative Procedure Act,"

1 P.L.1968, c.410 (C.52:14B-1 et seq.), shall develop appropriate
2 methods and procedures to implement this section.

3

4 14. (New section) Notwithstanding any law, or regulations to the
5 contrary, all State grant and loan, financial, and insurance programs
6 that apply to agriculture as of the effective date of this act shall apply
7 also to aquaculture.

8

9 15. (New section) The Department of Agriculture:

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

17 b. in consultation with the Aquaculture Technology Transfer
18 Center, and the New Jersey Cooperative Extension Service, shall assist
19 aquaculturists in obtaining coverage from the Federal Crop Insurance
20 Program;

21 c. in consultation with the Aquaculture Technology Transfer
22 Center and the New Jersey Cooperative Extension Service, shall assist
23 aquaculturists in completing the proper paperwork and other
24 information necessary to develop eligibility for economic emergency
25 loans for disaster relief through the Farmers Services Agency and
26 other programs;

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

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

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

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

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

7
8 17. (New section) The Department of Agriculture, in consultation
9 with the Department of Environmental Protection and the Aquaculture
10 Advisory Council, shall establish, pursuant to the "Administrative
11 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a program for
12 the licensure of the possession and ownership of aquacultured
13 organisms.

14
15 18. (New section) The Department of Agriculture, in consultation
16 with the Department of Environmental Protection and the Aquaculture
17 Advisory Council, shall develop and adopt, within one year of the
18 effective date of this act and in accordance with the "Administrative
19 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
20 regulations establishing an aquatic health management plan designed
21 to protect public and private aquaculturists and wild aquatic
22 populations from the importation of non-endemic disease causing
23 organisms, and to assist in facilitating the exportation and importation
24 of aquatic species in to and out of the State.

25
26 19. (New section) The Department of Agriculture, in consultation
27 with the Department of Environmental Protection, shall adopt, within
28 one year of the effective date of this act and pursuant to the
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
30 seq.), a comprehensive animal waste management program that shall
31 provide for the proper disposal of animal wastes, including wastes
32 generated from aquaculture. The animal waste management program
33 shall include, but need not be limited to, criteria and standards for the
34 composting, handling, storage, processing, utilization and disposal of
35 animal wastes, requirements and procedures for permitting such animal
36 waste facilities and activities, the establishment of program compliance
37 provisions including appropriate penalties for program noncompliance
38 and violations, and may include provisions for the assessment of fees
39 to cover reasonable administrative costs.

40
41 20. (New section) The Office of State Planning, established
42 pursuant to section 6 of P.L.1985, c.398 (C.52:18A-201), shall
43 develop, pursuant to the "Administrative Procedure Act," P.L.1968,
44 c.410 (C.52:14B-1 et seq.), an aquaculture component for model
45 planning and zoning ordinances.

1 21. (New section) The Department of Labor, in conjunction with
2 the Department of Agriculture and the aquaculture industry, shall
3 review worker's compensation package coverages to assess their
4 general applicability to aquaculture industry needs, and make
5 recommendations accordingly to all appropriate entities with respect
6 to any needed modifications.

7
8 22. (New section) The Department of Commerce and Economic
9 Development, in conjunction with the Department of Agriculture, the
10 Department of Environmental Protection, the Aquaculture Technology
11 Transfer Center, and the aquaculture industry, shall, to the extent
12 feasible, develop and implement an information campaign to promote
13 in-State and outside investments in aquaculture operations located or
14 based in New Jersey within one year of the appointment of the
15 Aquaculture Advisory Council pursuant to section 5 of this act.

16
17 23. (New section) The Department of Commerce and Economic
18 Development and the Aquaculture Advisory Council, in consultation
19 with the Department of Agriculture, shall develop mechanisms for
20 providing tax credits or reduced loan payments to a new aquaculture
21 enterprise, and make recommendations accordingly to the Governor
22 and the Legislature for any legislative action that may be necessary to
23 implement those mechanisms.

24
25 24. (New section) The Department of Insurance, in consultation
26 with the Aquaculture Advisory Council, shall review product liability
27 insurance within the State and determine how the coverage might be
28 extended to various segments of the aquaculture industry, and make
29 recommendations accordingly to all appropriate entities regarding any
30 modifications that should be made to existing insurance coverage
31 plans.

32
33 25. R.S.4:1-6 is amended to read as follows:

34 4:1-6. Each county board of agriculture shall be entitled to be
35 represented in the annual convention by two delegates.

36 Each of the following organizations shall be entitled to be
37 represented in the annual convention by one delegate: American
38 Cranberry Growers' Association, Board of Managers of the New
39 Jersey Agricultural Experiment Station, Cook College of Rutgers, The
40 State University, The Cooperative Marketing Associations in New
41 Jersey, Inc., Cultivated Sod Association of New Jersey, Inc., Garden
42 State Dairy Goat Association, Inc., Garden State Milk Council,
43 Garden State Service Cooperative Association, Inc., Horse Park of
44 New Jersey at Store Tavern Inc., Morgan Horse Association of New
45 Jersey, New Jersey Angus Association, Inc., New Jersey Agricultural
46 Society, Inc., New Jersey Apple Institute, Inc., New Jersey

1 Aquaculture Association, New Jersey Association of Agricultural
2 Fairs, New Jersey Beekeepers' Association, Inc., New Jersey
3 Christmas Tree Growers' Association, New Jersey Commercial
4 Fisherman's Association, New Jersey Farmers Direct Marketing
5 Association, Inc., New Jersey Farm Bureau, Inc., New Jersey FFA
6 Alumni Association, Grain and Forage Producers' Association of New
7 Jersey, Inc., New Jersey Guernsey Breeders' Association, Inc., New
8 Jersey Hereford Association, New Jersey Holstein-Friesian
9 Association, Inc., New Jersey Horse Council, New Jersey Livestock
10 Cooperative Association, Inc., New Jersey Nursery and Landscape
11 Association, New Jersey Nursery and Landscape Association --
12 Metropolitan Chapter, New Jersey Peach Council, New Jersey Peach
13 Promotion Council, Inc., New Jersey Plant and Flower Growers
14 Association, Inc., New Jersey Pony Breeders and Owners, Inc., New
15 Jersey Quarter Horse Association, New Jersey Sheep and Wool
16 Cooperative Association, Inc., New Jersey State Florists' Association,
17 Inc., New Jersey State Grange, Patrons of Husbandry, Inc., New
18 Jersey State Horticultural Society, Inc., New Jersey State Potato
19 Association, Inc., New Jersey State Poultry Association, Inc., New
20 Jersey State Sweet Potato Industry Association, Inc., New Jersey
21 Turkey Association, New Jersey Veterinary Medical Association, New
22 Jersey Vocational Agriculture Teachers Association, each Pomona
23 Grange, Patrons of Husbandry, Standardbred Breeders and Owners
24 Association of New Jersey, Inc., Thoroughbred Breeders' Association
25 of New Jersey, Tru-Blu Cooperative Association, Inc., South Jersey
26 Flower Growers Association, Inc., and the Vegetable Growers
27 Association of New Jersey, Inc.

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

35 (cf: P.L.1993, c.265, s.1)

36

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

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

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

44 b. "Areawide plan" means any plan prepared pursuant to section
45 208 of the Federal Act;

46 c. "Commissioner" means the Commissioner of Environmental

- 1 Protection or his authorized representative;
- 2 d. "Department" means the Department of Environmental
3 Protection;
- 4 e. "Discharge" means an intentional or unintentional action or
5 omission resulting in the releasing, spilling, leaking, pumping, pouring,
6 emitting, emptying, or dumping of a pollutant into the waters of the
7 State, onto land or into wells from which it might flow or drain into
8 said waters or into waters or onto lands outside the jurisdiction of the
9 State, which pollutant enters the waters of the State. "Discharge"
10 includes the release of any pollutant into a municipal treatment works;
- 11 f. "Effluent limitation" means any restriction on quantities, quality,
12 rates and concentration of chemical, physical, thermal, biological, and
13 other constituents of pollutants established by permit, or imposed as
14 an interim enforcement limit pursuant to an administrative order,
15 including an administrative consent order;
- 16 g. "Federal Act" means the "Federal Water Pollution Control Act
17 Amendments of 1972" (Public Law 92-500; 33 U.S.C. § 1251 et seq.);
- 18 h. "Municipal treatment works" means the treatment works of any
19 municipal, county, or State agency or any agency or subdivision
20 created by one or more municipal, county or State governments and
21 the treatment works of any public utility as defined in R.S.48:2-13;
- 22 i. "National Pollutant Discharge Elimination System" or "NPDES"
23 means the national system for the issuance of permits under the
24 Federal Act;
- 25 j. "New Jersey Pollutant Discharge Elimination System" or
26 "NJPDES" means the New Jersey system for the issuance of permits
27 under this act;
- 28 k. "Permit" means a NJPDES permit issued pursuant to section 6
29 of this act. "Permit" includes a letter of agreement entered into
30 between a delegated local agency and a user of its municipal treatment
31 works, setting effluent limitations and other conditions on the user of
32 the agency's municipal treatment works;
- 33 l. "Person" means any individual, corporation, company,
34 partnership, firm, association, owner or operator of a treatment works,
35 political subdivision of this State and any state or interstate agency.
36 "Person" shall also mean any responsible corporate official for the
37 purpose of enforcement action under section 10 of this act;
- 38 m. "Point source" means any discernible, confined and discrete
39 conveyance, including but not limited to, any pipe, ditch, channel,
40 tunnel, conduit, well, discrete fissure, container, rolling stock,
41 concentrated animal feeding operation, or vessel or other floating
42 craft, from which pollutants are or may be discharged;
- 43 n. "Pollutant" means any dredged spoil, solid waste, incinerator
44 residue, sewage, garbage, refuse, oil, grease, sewage sludge,
45 munitions, chemical wastes, biological materials, radioactive
46 substance, thermal waste, wrecked or discarded equipment, rock,

1 sand, cellar dirt, and industrial, municipal or agricultural waste or
2 other residue discharged into the waters of the State. "Pollutant"
3 includes both hazardous and nonhazardous pollutants;

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

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

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

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

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

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

44 u. "Hazardous pollutant" means:

45 (1) Any toxic pollutant;

46 (2) Any substance regulated as a pesticide under the Federal

1 Insecticide, Fungicide, and Rodenticide Act, Pub.L.92-516 (7 U.S.C.
2 § 136 et seq.);

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ee. "Aquaculture" means the propagation, rearing, and harvesting
29 of aquatic organisms in controlled or selected environments, and the
30 subsequent processing, packaging and marketing, and shall include,
31 but need not be limited to, activities to intervene in the rearing process
32 to increase production such as stocking, feeding, transplanting, and
33 providing for protection from predators;

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

37 (cf: P.L.1990, c.28, s.1)

38

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

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

1 by the administrator pursuant to the Federal Act, as the case may be.

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

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

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

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

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

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

25 (4) Discharges of dredged or fill materials into waters for which
26 the State could not be authorized to administer the section 404
27 program under section 404(g) of the "Federal Water Pollution Control
28 Act Amendments of 1972," as amended by the "Clean Water Act of
29 1977" (33 U.S.C. § 1344) and implementing regulations;

30 (5) Nonpoint source discharges;

31 (6) Uncontrolled nonpoint source discharges composed entirely of
32 storm water runoff when these discharges are uncontaminated by any
33 industrial or commercial activity unless these particular storm water
34 runoff discharges have been identified by the administrator or the
35 department as a significant contributor of pollution;

36 (7) Discharges conforming to a national contingency plan for
37 removal of oil and hazardous substances, published pursuant to section
38 311(c)(2) of the Federal Act[.];

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

41 e. The commissioner shall not issue any permit for:

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

45 (2) Any discharge which the United States Secretary of the Army,
46 acting through the Chief of Engineers, finds would substantially impair

- 1 anchorage or navigation;
- 2 (3) Any discharge to which the administrator has objected in
3 writing pursuant to the Federal Act;
- 4 (4) Any discharge which conflicts with an areawide plan adopted
5 pursuant to law.
- 6 f. A permit issued by the department or a delegated local agency
7 pursuant to P.L.1977, c.74 shall require the permittee:
- 8 (1) To achieve effluent limitations based upon guidelines or
9 standards established pursuant to the Federal Act or to P.L.1977, c.74,
10 together with such further discharge restrictions and safeguards
11 against unauthorized discharge as may be necessary to meet water
12 quality standards, areawide plans adopted pursuant to law, or other
13 legally applicable requirements;
- 14 (2) Where appropriate, to meet schedules for compliance with the
15 terms of the permit and interim deadlines for progress or reports of
16 progress towards compliance;
- 17 (3) To insure that all discharges are consistent at all times with the
18 terms and conditions of the permit and that no pollutant will be
19 discharged more frequently than authorized or at a level in excess of
20 that which is authorized by the permit;
- 21 (4) To submit application for a new permit in the event of any
22 contemplated facility expansion or process modification that would
23 result in new or increased discharges or, if these would not violate
24 effluent limitations or other restrictions specified in the permit, to
25 notify the commissioner, or delegated local agency, of such new or
26 increased discharges;
- 27 (5) To install, use and maintain such monitoring equipment and
28 methods, to sample in accordance with such methods, to maintain and
29 retain such records of information from monitoring activities, and to
30 submit to the commissioner, or to the delegated local agency, reports
31 of monitoring results for surface waters, as may be stipulated in the
32 permit, or required by the commissioner or delegated local agency
33 pursuant to paragraph (9) of this subsection, or as the commissioner
34 or the delegated local agency may prescribe for ground water.
35 Significant indirect users, major industrial dischargers, and local
36 agencies, other than those discharging only stormwater or noncontact
37 cooling water, shall, however, report their monitoring results for
38 discharges to surface waters monthly to the commissioner, or the
39 delegated local agency. Discharge monitoring reports for discharges
40 to surface waters shall be signed by the highest ranking official having
41 day-to-day managerial and operational responsibilities for the
42 discharging facility, who may, in his absence, authorize another
43 responsible high ranking official to sign a monthly monitoring report
44 if a report is required to be filed during that period of time. The
45 highest ranking official shall, however, be liable in all instances for the
46 accuracy of all the information provided in the monitoring report;

1 provided, however, that the highest ranking official may file, within
2 seven days of his return, amendments to the monitoring report to
3 which he was not a signatory. The highest ranking official having
4 day-to-day managerial and operational responsibilities for the
5 discharging facility of a local agency shall be the highest ranking
6 licensed operator of the municipal treatment works in those instances
7 where a licensed operator is required by law to operate the facility. In
8 those instances where a local agency has contracted with another
9 entity to operate a municipal treatment works, the highest ranking
10 official who signs the discharge monitoring report shall be an
11 employee of the contract operator and not of the local agency.
12 Notwithstanding that an employee of a contract operator is the official
13 who signs the discharge monitoring report, the local agency, as the
14 permittee, shall remain liable for compliance with all permit conditions.
15 In those instances where the highest ranking official having day-to-day
16 managerial and operational responsibilities for a discharging facility of
17 a local agency does not have the responsibility to authorize capital
18 expenditures and hire personnel, a person having that responsibility,
19 or a person designated by that person, shall submit to the department,
20 along with the discharge monitoring report, a certification that that
21 person has received and reviewed the discharge monitoring report. The
22 person submitting the certification to the department shall not be liable
23 for the accuracy of the information on the discharge monitoring report
24 due to the submittal of the certification. Whenever a local agency has
25 contracted with another entity to operate the municipal treatment
26 works, the person submitting the certification shall be an employee of
27 the permittee and not of the contract operator. The filing of
28 amendments to a monitoring report in accordance with this paragraph
29 shall not be considered a late filing of a report for purposes of
30 subsection d. of section 6 of P.L.1990, c.28 (C.58:10A-10.1), or for
31 purposes of determining a significant noncomplier;

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

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

43 (8) To report to the department or delegated local agency, as
44 appropriate, any exceedance of an effluent limitation that causes injury
45 to persons, or damage to the environment, or poses a threat to human
46 health or the environment, within two hours of its occurrence, or of

1 the permittee becoming aware of the occurrence. Within 24 hours
2 thereof, or of an exceedance, or of becoming aware of an exceedance,
3 of an effluent limitation for a toxic pollutant, a permittee shall provide
4 the department or delegated local agency with such additional
5 information on the discharge as may be required by the department or
6 delegated local agency, including an estimate of the danger posed by
7 the discharge to the environment, whether the discharge is continuing,
8 and the measures taken, or being taken, to remediate the problem and
9 any damage to the environment, and to avoid a repetition of the
10 problem;

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

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

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

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

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

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

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

39 (1) To notify the commissioner or local agency in advance of the
40 quality and quantity of all new introductions of pollutants into a
41 facility and of any substantial change in the pollutants introduced into
42 a facility by an existing user of the facility, except for such
43 introductions of nonindustrial pollutants as the commissioner or local
44 agency may exempt from this notification requirement when ample
45 capacity remains in the facility to accommodate new inflows. The
46 notification shall estimate the effects of the changes on the effluents to

1 be discharged into the facility.

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

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

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

35 (2) Of the amount of any penalty assessed and collected pursuant
36 to an action brought by a local agency in accordance with section 10
37 of P.L.1977, c.74 or section 6 of P.L.1990, c.28 (C.58:10A-10.1),
38 10% shall be deposited in the "Wastewater Treatment Operators'
39 Training Account," established in accordance with section 13 of
40 P.L.1990, c.28 (C.58:10A-14.5), and used to finance the cost of
41 training operators of municipal treatment works. The remainder shall
42 be used by the local agency solely for enforcement purposes, and for
43 upgrading municipal treatment works.

44 j. In reviewing permits submitted in compliance with P.L.1977,
45 c.74 and in determining conditions under which such permits may be
46 approved, the commissioner shall encourage the development of

1 comprehensive regional sewerage planning or facilities, which serve
2 the needs of the regional community, conform to the adopted
3 area-wide water quality management plan for that region, and protect
4 the needs of the regional community for water quality, aquifer storage,
5 aquifer recharge, and dry weather based stream flows.

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

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

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

1 once every three years;

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

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

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

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

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

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

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

39 n. To assist the commissioner in assessing a municipal treatment
40 works' NJPDES permit in accordance with paragraph (3) of subsection
41 b. of section 7 of P.L.1977, c.74 (C.58:10A-7), a delegated local
42 agency shall perform a complete analysis that includes a complete
43 priority pollutant analysis of the discharge from, and inflow to, the
44 municipal treatment works. The analysis shall be performed by a
45 delegated local agency as often as the priority pollutant scan is
46 required under the permit, but not less than once a year, and shall be

1 based upon data acquired in the priority pollutant scan and from
2 applicable sludge quality analysis reports. The results of the analysis
3 shall be included in a report to be attached to the annual report
4 required to be submitted to the commissioner by the delegated local
5 agency.

6 o. Except as otherwise provided in section 3 of P.L.1963, c.73
7 (C.47:1A-3), any records, reports or other information obtained by
8 the commissioner or a local agency pursuant to this section or section
9 5 of P.L.1972, c.42 (C.58:11-53), including any correspondence
10 relating thereto, shall be available to the public; however, upon a
11 showing satisfactory to the commissioner by any person that the
12 making public of any record, report or information, or a part thereof,
13 other than effluent data, would divulge methods or processes entitled
14 to protection as trade secrets, the commissioner or local agency shall
15 consider such record, report, or information, or part thereof, to be
16 confidential, and access thereto shall be limited to authorized officers
17 or employees of the department, the local agency, and the federal
18 government.

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

25 q. The commissioner shall, in consultation with the Department of
26 Agriculture and the Aquaculture Advisory Council, provide for the
27 issuance of general permits for the discharge of pollutants from
28 concentrated aquatic animal production facilities and aquacultural
29 projects. In establishing general permits the commissioner shall take
30 into consideration the source and receiving water quality and the type
31 of aquaculture activity being conducted. The general permits issued
32 pursuant to this subsection shall require the permittee to meet best
33 management practices rather than to attain a numeric pollutant
34 discharge parameter level. If the commissioner determines that a
35 permittee cannot perform the best management practices in order to
36 obtain a general permit or that the performance of best management
37 practices will not be protective of water quality as required by
38 P.L.1977, c.74, the commissioner may require the permittee to obtain
39 an individual permit which may contain numeric pollutant parameter
40 discharge limits. In setting any numeric pollutant parameter discharge
41 limits, the commissioner shall rely on the development of categorical
42 standards that are applicable to specific types of aquaculture activities.
43 (cf: P.L.1995, c.16, s.3)

44

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

1 2. After December 31, 1991, the department may not issue a
2 permit to any private, commercial, or industrial applicant for the
3 discharge of any solid, semi-solid, or liquid wastes into the ocean
4 waters of the State, the provisions of any other law, or rule or
5 regulation to the contrary notwithstanding. Any permit issued by the
6 department for the discharge of any such waste prior to January 1,
7 1992 shall expire on January 1, 1992, the provisions of any such
8 permit to the contrary notwithstanding. The provisions of [this act]
9 P.L.1989, c.119 shall not apply to permits applied for, or issued to,
10 municipal treatment works [or] , seafood processing facilities , or for
11 aquaculture activities. As used in this act, "ocean waters" means those
12 waters of the open seas lying seaward of the base line from which the
13 territorial sea is measured, as provided for in the Convention on the
14 Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

15 As used in this section, "aquaculture" means the propagation,
16 rearing, and harvesting of aquatic organisms in controlled or selected
17 environments, and the subsequent processing, packaging and
18 marketing, and shall include, but need not be limited to, activities such
19 as stocking, intervention in the rearing process to increase production,
20 feeding, transplanting, and providing for protection from predators and
21 "aquatic organism" means and includes, but need not be limited to,
22 finfish, mollusks, crustaceans, and aquatic plants which are the
23 property of a person engaged in aquaculture.

24 (cf: P.L.1989, c.119, s.2)

25

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

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

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

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

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

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

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

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

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

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

12 i. "Aquaculture" means the propagation and rearing of aquatic
13 species in controlled or selected environments, and the subsequent
14 processing, packaging and marketing, and shall include, but need not
15 be limited to, activities to intervene in the rearing process to increase
16 production such as stocking, feeding, transplanting, and providing for
17 protection from predators.

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

21 (cf: P.L.1993, c.202, s.11)

22

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

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

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

43 (2) Require any person diverting 100,000 or more gallons of water
44 per day for agricultural or horticultural purposes to obtain approval of
45 the appropriate county agricultural agent of a five-year water usage
46 certification program. This approval shall be based on standards and

1 procedures established by the department. This program shall include
2 the right to construct, repair or reconstruct dams or other structures,
3 the right to divert water for irrigation, frost protection, harvesting and
4 other agriculturally-related purposes, including aquaculture, and the
5 right to measure the amount of water diverted by means of a log or
6 other appropriate record, and shall be obtained in lieu of any permit
7 which would otherwise be required by P.L.1981, c.262 (C.58:1A-1 et
8 al.).

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

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

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

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

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

- 43 (1) study water supply availability;
- 44 (2) estimate future water supply needs;
- 45 (3) identify appropriate and reasonable alternative water supply
46 management strategies;

1 (4) select and adopt appropriate water supply alternatives; and
2 (5) require affected permittees to prepare water supply plans
3 consistent with the adopted water supply management alternatives.

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

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

22 (cf: P.L.1993, c.202, s.1)

23

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

26 2. The provisions of any law, rule or regulation to the contrary
27 notwithstanding, no tax, fee or other charge shall be imposed on the
28 diversion, for agricultural or horticultural purposes, including
29 aquaculture, of any ground or surface water of this State; provided,
30 however, that nothing in this section shall prohibit the imposition of a
31 fee, pursuant to law, for the cost of processing, monitoring and
32 administering a water usage certification program for persons who
33 divert any ground or surface water for agricultural and horticultural
34 purposes, or other agriculturally-related purposes, including
35 aquaculture.

36 As used in this section, "aquaculture" means the propagation,
37 rearing, and harvesting of aquatic organisms in controlled or selected
38 environments, and the subsequent processing, packaging and
39 marketing, and shall include, but need not be limited to, activities such
40 as stocking, intervention in the rearing process to increase production,
41 feeding, transplanting, and providing for protection from predators and
42 "aquatic organism" means and includes, but need not be limited to,
43 finfish, mollusks, crustaceans, and aquatic plants which are the
44 property of a person engaged in aquaculture.

45 (cf: P.L.1981, c.277, s.2)

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

3 13. a. ~~[Within 180 days of the effective date of this act, the]~~ The
4 department shall prepare and adopt the New Jersey Statewide Water
5 Supply Plan, which plan shall be revised and updated at least once
6 every 5 years.

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

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

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

13 (3) Recommendations for improvements to existing State water
14 supply facilities, the construction of additional State water supply
15 facilities, and for the interconnection or consolidation of existing water
16 supply systems; ~~[and]~~

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

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

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

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

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

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

30 (cf: P.L.1981, c.262, s.13)

31

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

34 12. The Department of Agriculture shall, by rule or regulation and
35 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
36 (C.52:14B-1 et seq.), establish criteria and standards for the
37 composting ~~[and], handling, storage, processing, utilization and~~
38 disposal of animal wastes as provided in section 19 of P.L. .c. (now
39 before the Legislature as this bill).

40 (cf: P.L.1989, c.151, s.12)

41

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

44 13. The Department of Environmental Protection shall, pursuant
45 to the "Administrative Procedure Act," adopt rules and regulations
46 necessary to implement ~~[this act]~~ sections 5 through 11 of P.L.1989,

1 c.151 (C.13:1E-99.21a through C.13:1E-99.21e and C.4:24-22.1).
2 (cf: P.L.1989, c.151, s.13)

3

4 35. (New section) There is appropriated from the General Fund to
5 the Department of Agriculture the sum of \$250,000 to implement their
6 responsibilities pursuant to this act.

7

8 36. This act shall take effect immediately.

9

10

11

STATEMENT

12

13 This bill would establish a program to encourage the development
14 of an aquaculture industry in the State. Aquaculture is an important
15 and growing segment of agriculture. The bill would implement, in
16 part, the "Aquaculture Development Plan," prepared by the
17 Aquaculture Development Task Force pursuant to Executive Order
18 No. 104 (1993). The plan presents a strong case for State investment
19 in aquaculture and provides an approach for developing the industry.

20 This bill would codify a definition of aquaculture and clearly
21 identify aquaculture as a component of agriculture. The bill would
22 designate the Department of Agriculture as the lead agency for
23 aquaculture marketing, promotion, advocacy and business
24 development in New Jersey, and would continue the regulatory role of
25 the Department of Environmental Protection in waters of the State.
26 The bill also would designate the Aquaculture Technology Transfer
27 Center, composed of the Multispecies Aquaculture Demonstration
28 Facility at Rutgers, The State University, the Aquaculture Training and
29 Information Center at Cumberland County College, and the Fisheries
30 and Aquaculture Technology Extension Center, as the primary State
31 facility for aquaculture education, extension, demonstration, and
32 industry development and commercialization in the State. The bill also
33 would declare that any person engaged in aquaculture shall have
34 exclusive ownership of the aquatic organisms being aquacultured by
35 that person.

36 The bill would establish the Office of Aquaculture Coordination in
37 the Department of Agriculture. The office would be directed to
38 prepare a guidebook explaining the permit process for receiving all
39 necessary permits or other approvals or exemptions to engage in an
40 aquaculture project in the State. The office would serve as resource
41 for applicants and prospective applicants for aquaculture projects.
42 The office shall establish, in cooperation with other permitting
43 agencies, a permit coordination system whose purpose is to the
44 applicant in the completion of the application and to assist in the
45 processing of the application. Finally, the office shall develop a
46 protocol for authorizing an individual to engage in an aquaculture

1 demonstration project.

2 Under provisions of the bill, a 13-member Aquaculture Advisory
3 Council would be established. The advisory council would function in
4 an advisory capacity to the Department of Agriculture and other state
5 agencies on aquaculture matters. The advisory council is directed to
6 review and update the Aquaculture Development Plan.

7 The bill would direct the Department of Agriculture, the
8 Department of Environmental Protection, the Department of
9 Commerce and Economic Development, and the Department of
10 Health, after consultation with the Aquaculture Advisory Council, to
11 enter into interagency memoranda of agreement concerning the
12 implementation of the Aquaculture Development Plan, and delineating
13 the financial and regulatory responsibility for aquaculture based upon
14 the provisions of this act and any other applicable laws. In developing
15 the interagency memoranda of agreement, the departments shall seek
16 to develop provisions that foster the development of aquaculture in the
17 State.

18 The bill would direct the Department of Environmental Protection
19 to establish appropriate policies for the use of aquaculture leases in
20 public waters and for lands underneath public waters, including but not
21 limited to lease specifications, fees, royalty payments, and assignability
22 and termination of lease agreements. The bill also would direct the
23 Department of Environmental Protection and the Department of
24 Agriculture to establish an interagency memorandum of agreement to
25 expand current leasing programs for waters of the State and lands
26 underneath waters of the State to include a statewide aquaculture
27 leasing system.

28 The bill would direct the Department of Environmental Protection
29 to review the laws, rules, and regulations pertaining to the taking,
30 harvesting, possession, and use of fish, wildlife, shellfish, and plants
31 with regard to the effect of those laws, rules, and regulations on the
32 taking, harvesting, possession, use, and marketing of aquaculture
33 products from public waters of the State. The review shall include,
34 but need not be limited to, such factors as gear, season, area, and size
35 limits. Based upon that review, the Department of Environmental
36 Protection shall adopt modifications that would not cause significant
37 harm to wild stocks, natural habitat, or the environment, so as to
38 either exempt specific types of aquacultural practices from those rules
39 and regulations or reduce any negative impact upon those practices to
40 the maximum extent practicable and feasible. To the extent that
41 modifications in the law are required to accomplish the purposes of
42 this section, the Department of Environmental Protection and the
43 various other entities conducting the review shall make
44 recommendations accordingly to the Governor and the Legislature.
45 The Department of Environmental Protection would be directed to
46 establish a program regulating the importation and transport of species

1 used in aquaculture.

2 The bill would direct the Department of Environmental Protection
3 to review the laws, rules, and regulations pertaining to endangered and
4 nongame species, migratory birds, and fish and game species with
5 regard to the application and effectiveness of those laws, rules, and
6 regulations in the prevention of predation at aquaculture facilities or
7 sites.

8 The bill would provide that an aquaculture site that was not
9 originally a wetlands shall not be considered a wetlands because of
10 subsequent growth or invasion of aquatic organisms at that site.

11 The bill would declare that all State financial and insurance
12 programs that apply to agriculture would also apply to aquaculture.
13 The bill also would direct the Department of Agriculture to provide,
14 in conjunction with other relevant State and federal agencies, business
15 and other technical assistance to the aquaculture industry.

16 The bill would direct the Department of Agriculture to prepare an
17 aquatic health management plan designed to protect public and private
18 aquaculturists and wild aquatic populations from the importation of
19 non-endemic disease causing organisms.

20 The bill would direct the Department of Environmental Protection
21 to adopt a comprehensive animal waste management program that
22 shall provide for the proper disposal of animal wastes, including
23 wastes generated from aquaculture.

24 The bill would direct the State Soil Conservation Committee to
25 develop management practices for control of soil erosion and
26 sedimentation for aquacultural systems.

27 The bill would direct the Department of Agriculture to establish a
28 program for the licensure of the possession and ownership of
29 aquacultured species.

30 The bill would direct the Office of State Planning to develop an
31 aquaculture component for model planning and zoning ordinances.

32 The bill would direct the Department of Labor to review worker's
33 compensation package coverages to assess their general applicability
34 to aquaculture industry needs, and make recommendations accordingly
35 to all appropriate entities with respect to any needed modifications.

36 The bill would direct the Department of Commerce and Economic
37 Development, to the extent feasible, to develop and implement an
38 information campaign to promote in-State and outside investments in
39 aquaculture operations located or based in New Jersey.

40 The bill would direct the Department of Commerce and Economic
41 Development to develop mechanisms for providing tax credits or
42 reduced loan payments to a new aquaculture enterprise, and make
43 recommendations accordingly to the Governor and the Legislature for
44 any legislative action that may be necessary to implement those
45 mechanisms.

46 The bill would direct the Department of Insurance to review

1 product liability insurance within the State and determine how the
2 coverage might be extended to various segments of the aquaculture
3 industry, and make recommendations accordingly to all appropriate
4 entities regarding any modifications that should be made to existing
5 insurance coverage plans.

6 The bill would add the New Jersey Aquaculture Association to the
7 list of organizations represented at the annual State Agricultural
8 Convention.

9 In addition, the bill would direct the Department of Environmental
10 Protection to provide for the issuance of general permits for the
11 discharge of pollutants from concentrated aquatic animal production
12 facilities and aquacultural projects. The bill would also amend existing
13 law regarding water diversion to treat aquaculture in the same manner
14 as agriculture.

15 Finally, the bill would appropriate from the General Fund to the
16 Department of Agriculture the sum of \$250,000 to implement their
17 responsibilities pursuant to this act.

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22 The "New Jersey Aquaculture Development Act;" appropriates
23 \$250,000.