

[First Reprint]
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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SSV committee amendments adopted January 14, 1997.

1 Legislature.

2

3 3. (New section) As used in sections 1 through 24 of this act:

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

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

13 "Aquaculturist" means a person engaging in aquaculture.

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

17 "Council" means the Aquaculture Advisory Council established
18 pursuant to section 5 of this act.

19 "Office" means the Office of Aquaculture Coordination established
20 pursuant to section 4 of this act.

21 "Secretary" means the Secretary of Agriculture.

22

23 4. (New section) There is established in the Department of
24 Agriculture the Office of Aquaculture Coordination. The office shall,
25 in consultation with the Department of Environmental Protection ¹and
26 the Pinelands Commission as it affects the pinelands area designated
27 pursuant to section 10 of P.L.1979, c.111 (C.13:18A-11)¹, prepare a
28 guidebook explaining the permit process for receiving all necessary
29 permits or other approvals or exemptions to engage in an aquaculture
30 project in the State. The guidebook shall include a list that identifies
31 the permits or other approvals that may be necessary for an
32 aquaculture project. The list shall identify the application form or
33 forms required for an application to be deemed complete, any
34 documents or other written submissions required to be filed with the
35 application, and any filing, notice, hearing or other requirement that is
36 a precondition for review of an application. The guidebook shall also
37 describe management practices for aquaculture. The guidebook shall
38 be updated as often as necessary. The office shall serve as resource
39 for applicants and prospective applicants for aquaculture projects.

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

46 The office shall develop a protocol for authorizing an individual to

1 engage in an aquaculture demonstration project.

2

3 5. (New section) a. There is established in the Department of
4 Agriculture an Aquaculture Advisory Council which shall consist of 13
5 members, seven of whom shall be the Secretary of Agriculture, who
6 shall serve as chairman, the Commissioner of Environmental
7 Protection, the Commissioner of Commerce and Economic
8 Development, the Commissioner of Health, the ¹executive¹ director of
9 the ¹[Aquaculture Technology Transfer Center] New Jersey
10 Agricultural Experiment Station¹, the director of the Aquaculture
11 Training and Information Center, the director of the Fisheries and
12 Aquaculture Technology Extension Center, or their designees, who
13 shall serve ex officio, and six citizens of the State, to be appointed as
14 follows: two by the President of the Senate, one of whom shall be a
15 representative from recognized aquaculture organizations or an
16 operator of an aquaculture farm and one of whom shall be a
17 representative of the seafood industry; two by the Speaker of the
18 General Assembly, one of whom shall be a representative of
19 recognized aquaculture organizations or an operator of an aquaculture
20 farm and one of whom shall be a representative of farmers; and two by
21 the Governor from the public at large.

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

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

33 d. Members of the advisory council shall serve without
34 compensation, but shall be entitled to reimbursement for expenses
35 incurred in attendance at meetings to the extent funds are available
36 therefor.

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

1 6. (New section) a. Notwithstanding any law, rule, or regulation
2 to the contrary, aquaculture shall be considered a component of
3 agriculture in the State, and aquacultured plants and animals shall be
4 considered to be agriculture crops and animals.

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

8 c. The Department of Agriculture shall be the lead State agency for
9 the development, marketing, promotion, and advocacy of aquaculture
10 in the State.

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

14 e. The Aquaculture Technology Transfer Center, composed of the
15 Multispecies Aquaculture Demonstration Facility at Rutgers, The State
16 University, ¹and¹ the Aquaculture Training and Information Center at
17 Cumberland County College, ¹[and the Fisheries and Aquaculture
18 Technology Extension Center,]¹ shall be the primary State facility for
19 aquaculture education, extension, demonstration, and industry
20 development and commercialization in the State.

21
22 7. (New section) Within one year of the effective date of this act,
23 the Department of Agriculture, the Department of Environmental
24 Protection, ¹the Pinelands Commission as it affects the pinelands area
25 designated pursuant to section 10 of P.L.1979, c.111 (C.13:18A-11).¹
26 the Department of Commerce and Economic Development, and the
27 Department of Health shall, after consultation with the Aquaculture
28 Advisory Council, enter into interagency memoranda of agreement
29 concerning the implementation of the Aquaculture Development Plan,
30 and delineating the financial and regulatory responsibility based upon
31 the provisions of this act and any other applicable laws. In developing
32 the interagency memoranda of agreement, the departments shall seek
33 to develop provisions that foster the development of aquaculture in the
34 State.

35
36 8. (New section) Within 180 days of the effective date of this act,
37 the Department of Environmental Protection and the Department of
38 Agriculture, in consultation with the Aquaculture Advisory Council
39 ¹and the Pinelands Commission as it affects the pinelands area
40 designated pursuant to section 10 of P.L.1979, c.111 (C.13:18A-
41 11)¹, jointly shall establish, according to rules and regulations adopted
42 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
43 (C.52:14B-1 et seq.), appropriate policies for the use of aquaculture
44 leases in waters of the State and for lands underneath waters of the
45 State, including but not limited to lease specifications, fees, royalty
46 payments, and assignability and termination of lease agreements. The

1 policies shall provide for an expeditious procedure for finalizing lease
2 agreements. Lease agreements shall convey a necessary degree of
3 exclusivity to minimize the risks to the aquaculturists caused by
4 pollution, vandalism, theft, and other forms of encroachment, while
5 protecting common use rights of the public, and assuring the integrity
6 and protection of the natural wild stocks and their habitat.

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

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

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

1 review shall make recommendations accordingly to the Governor and
2 the Legislature.

3 c. The Department of Environmental Protection, in consultation
4 with the Department of Agriculture and the Aquaculture Advisory
5 Council, shall establish a program within one year of the effective date
6 of this act and pursuant to the "Administrative Procedure Act,"
7 P.L.1968, c.410 (C.52:14B-1 et seq.), regulating the importation and
8 transport of species used in aquaculture.

9
10 11. (New section) The Department of Environmental Protection,
11 in consultation with the Department of Agriculture ¹, the Pinelands
12 Commission as it affects the pinelands area designated pursuant to
13 section 10 of P.L.1979, c.111 (C.13:18A-11).¹ and the Aquaculture
14 Advisory Council, shall review the laws, rules, and regulations
15 pertaining to endangered and nongame species, migratory birds, and
16 fish and game species with regard to the application and effectiveness
17 of those laws, rules, and regulations in the prevention of predation at
18 aquaculture facilities or sites. Based upon that review, the Department
19 of Environmental Protection in conjunction with the various other
20 entities conducting the review, after allowing for a period of public
21 review and comment and within one year of the effective date of this
22 act, shall make recommendations to all appropriate governmental
23 entities concerning implementation, to the extent permitted by law and
24 as soon as may be practical and feasible, of procedures and
25 mechanisms for the timely and cost effective resolution of specific
26 predation problems occurring at aquaculture facilities or sites.

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

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

42
43 13. (New section) a. Notwithstanding any law, rule, or regulation
44 to the contrary, an aquaculture site, for which all appropriate permits
45 required by law have been obtained, that was not originally a coastal
46 wetland as defined pursuant to the "The Wetlands Act of 1970,"

1 P.L.1970, c.272 (C.13:9A-1 et seq.) or any other law, or any rule or
2 regulation adopted pursuant thereto, prior to being utilized for
3 aquaculture shall not be designated a coastal wetland because of the
4 subsequent growth of aquatic organisms at the aquaculture site.

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

10
11 14. (New section) Notwithstanding any law, or regulations to the
12 contrary, all State grant and loan, financial, and insurance programs
13 that apply to agriculture as of the effective date of this act shall apply
14 also to aquaculture.

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

17 a. in consultation with the Aquaculture Technology Transfer
18 Center, the ¹[New Jersey Cooperative Extension Service] Rutgers
19 Cooperative Extension¹ and the Department of Environmental
20 Protection, shall implement an aquaculture statistics reporting program
21 which may include the collection of information on the numbers of
22 jobs being created in aquaculture, the amount, value and type of
23 product being produced, and the overall economic activity in the
24 aquaculture industry;

25 b. in consultation with the Aquaculture Technology Transfer
26 Center, and the ¹[New Jersey Cooperative Extension Service] Rutgers
27 Cooperative Extension¹, shall assist aquaculturists in obtaining
28 coverage from ¹[the Federal Crop Insurance Program] federal crop
29 insurance programs¹;

30 c. in consultation with the Aquaculture Technology Transfer
31 Center and the ¹[New Jersey Cooperative Extension Service] Rutgers
32 Cooperative Extension¹, shall assist aquaculturists in completing the
33 proper paperwork and other information necessary to develop
34 eligibility for economic emergency loans for disaster relief through the
35 Farmers Services Agency and other programs;

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

39 e. in conjunction with the Aquaculture Technology Transfer Center
40 and the Department of Health, shall assist the aquaculture industry in
41 the development of necessary quality control guidelines and
42 specifications for production, processing, and marketing of
43 aquaculture products;

44 f. in conjunction with the Aquaculture Technology Transfer
45 Center, shall assist (1) the aquaculture industry in promoting its
46 products through techniques that may include the establishment and

1 use of a trademark and other specialized marketing efforts; and (2)
2 aquaculturists interested in developing coordinated efforts or
3 arrangements, including producer cooperatives, joint ventures, market
4 orders, and other forms of association; and
5 g. in conjunction with the Department of Health, the Department
6 of Commerce and Economic Development, ¹[and]¹ the Department of
7 Environmental Protection, ¹and the Pinelands Commission as it affects
8 the pinelands area designated pursuant to section 10 of P.L.1979,
9 c.111 (C.13:18A-11),¹ shall explore the possibilities of establishing
10 private sector joint processing facilities to accommodate agriculture,
11 seafood, and aquaculture products.

12
13 16. (New section) The State Soil Conservation Committee in
14 consultation with the Department of Environmental Protection ¹, the
15 Pinelands Commission as it affects the pinelands area designated
16 pursuant to section 10 of P.L.1979, c.111 (C.13:18A-11),¹ and the
17 Aquaculture Advisory Council, shall develop, pursuant to the
18 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
19 seq.), management practices for control of soil erosion and
20 sedimentation for aquacultural systems.

21
22 17. (New section) The Department of Agriculture, in consultation
23 with the Department of Environmental Protection and the Aquaculture
24 Advisory Council, shall establish, pursuant to the "Administrative
25 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a program for
26 the licensure of the possession and ownership of aquacultured
27 organisms.

28
29 18. (New section) The Department of Agriculture, in consultation
30 with the Department of Environmental Protection and the Aquaculture
31 Advisory Council, shall develop and adopt, within one year of the
32 effective date of this act and in accordance with the "Administrative
33 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
34 regulations establishing an aquatic health management plan designed
35 to protect public and private aquaculturists and wild aquatic
36 populations from the importation of non-endemic disease causing
37 organisms, and to assist in facilitating the exportation and importation
38 of aquatic species in to and out of the State.

39
40 19. (New section) The Department of Agriculture, in consultation
41 with the Department of Environmental Protection ¹and the Pinelands
42 Commission as it affects the pinelands area designated pursuant to
43 section 10 of P.L.1979, c.111 (C.13:18A-11),¹ shall adopt, within one
44 year of the effective date of this act and pursuant to the
45 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
46 seq.), a comprehensive animal waste management program that shall

1 provide for the proper disposal of animal wastes, including wastes
2 generated from aquaculture. The animal waste management program
3 shall include, but need not be limited to, criteria and standards for the
4 composting, handling, storage, processing, utilization and disposal of
5 animal wastes, requirements and procedures for permitting such animal
6 waste facilities and activities, the establishment of program compliance
7 provisions including appropriate penalties for program noncompliance
8 and violations, and may include provisions for the assessment of fees
9 to cover reasonable administrative costs.

10
11 20. (New section) The Office of State Planning, established
12 pursuant to section 6 of P.L.1985, c.398 (C.52:18A-201), ¹and the
13 Pinelands Commission established pursuant to section 10 of P.L.1979,
14 c.111 (C.13:18A-4) as it affects the pinelands area designated pursuant
15 to section 10 of P.L.1979, c.111 (C.13:18A-11).¹ shall develop,
16 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
17 (C.52:14B-1 et seq.), an aquaculture component for model planning
18 and zoning ordinances.

19
20 21. (New section) The Department of Labor, in conjunction with
21 the Department of Agriculture and the aquaculture industry, shall
22 review worker's compensation package coverages to assess their
23 general applicability to aquaculture industry needs, and make
24 recommendations accordingly to all appropriate entities with respect
25 to any needed modifications.

26
27 22. (New section) The Department of Commerce and Economic
28 Development, in conjunction with the Department of Agriculture, the
29 Department of Environmental Protection, the Aquaculture Technology
30 Transfer Center, and the aquaculture industry, shall, to the extent
31 feasible, develop and implement an information campaign to promote
32 in-State and outside investments in aquaculture operations located or
33 based in New Jersey within one year of the appointment of the
34 Aquaculture Advisory Council pursuant to section 5 of this act.

35
36 23. (New section) The Department of Commerce and Economic
37 Development and the Aquaculture Advisory Council, in consultation
38 with the Department of Agriculture, shall develop mechanisms for
39 providing tax credits or reduced loan payments to a new aquaculture
40 enterprise, and make recommendations accordingly to the Governor
41 and the Legislature for any legislative action that may be necessary to
42 implement those mechanisms.

43
44 24. (New section) The Department of Insurance, in consultation
45 with the Aquaculture Advisory Council, shall review product liability
46 insurance within the State and determine how the coverage might be

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

5

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

7 4:1-6. Each county board of agriculture shall be entitled to be
8 represented in the annual convention by two delegates.

9 Each of the following organizations shall be entitled to be
10 represented in the annual convention by one delegate: American
11 Cranberry Growers' Association, Board of Managers of the New
12 Jersey Agricultural Experiment Station, Cook College of Rutgers, The
13 State University, The Cooperative Marketing Associations in New
14 Jersey, Inc., Cultivated Sod Association of New Jersey, Inc., Garden
15 State Dairy Goat Association, Inc., Garden State Milk Council,
16 Garden State Service Cooperative Association, Inc., Horse Park of
17 New Jersey at Store Tavern Inc., Morgan Horse Association of New
18 Jersey, New Jersey Angus Association, Inc., New Jersey Agricultural
19 Society, Inc., New Jersey Apple Institute, Inc., New Jersey
20 Aquaculture Association, New Jersey Association of Agricultural
21 Fairs, New Jersey Beekeepers' Association, Inc., New Jersey
22 Christmas Tree Growers' Association, New Jersey Commercial
23 Fisherman's Association, New Jersey Farmers Direct Marketing
24 Association, Inc., New Jersey Farm Bureau, Inc., New Jersey FFA
25 Alumni Association, Grain and Forage Producers' Association of New
26 Jersey, Inc., New Jersey Guernsey Breeders' Association, Inc., New
27 Jersey Hereford Association, New Jersey Holstein-Friesian
28 Association, Inc., New Jersey Horse Council, New Jersey Livestock
29 Cooperative Association, Inc., New Jersey Nursery and Landscape
30 Association, New Jersey Nursery and Landscape Association --
31 Metropolitan Chapter, New Jersey Peach Council, New Jersey Peach
32 Promotion Council, Inc., New Jersey Plant and Flower Growers
33 Association, Inc., New Jersey Pony Breeders and Owners, Inc., New
34 Jersey Quarter Horse Association, New Jersey Sheep and Wool
35 Cooperative Association, Inc., New Jersey State Florists' Association,
36 Inc., New Jersey State Grange, Patrons of Husbandry, Inc., New
37 Jersey State Horticultural Society, Inc., New Jersey State Potato
38 Association, Inc., New Jersey State Poultry Association, Inc., New
39 Jersey State Sweet Potato Industry Association, Inc., New Jersey
40 Turkey Association, New Jersey Veterinary Medical Association, New
41 Jersey Vocational Agriculture Teachers Association, each Pomona
42 Grange, Patrons of Husbandry, Standardbred Breeders and Owners
43 Association of New Jersey, Inc., Thoroughbred Breeders' Association
44 of New Jersey, Tru-Blu Cooperative Association, Inc., South Jersey
45 Flower Growers Association, Inc., and the Vegetable Growers
46 Association of New Jersey, Inc.

1 Prior to the time fixed for the holding of the annual convention each
2 of the organizations named in this section shall choose from its
3 members the authorized number of delegates and certify to the
4 convention their qualifications as such. The credentials shall be filed
5 with the proper convention officer or committee, and upon the
6 acceptance thereof by the convention such persons shall have all the
7 rights and powers of delegates.

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

9
10 26. Section 3 of P.L.1977, c.74 (C.58:10A-3) is amended to read
11 as follows:

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

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

17 b. "Areawide plan" means any plan prepared pursuant to section
18 208 of the Federal Act;

19 c. "Commissioner" means the Commissioner of Environmental
20 Protection or his authorized representative;

21 d. "Department" means the Department of Environmental
22 Protection;

23 e. "Discharge" means an intentional or unintentional action or
24 omission resulting in the releasing, spilling, leaking, pumping, pouring,
25 emitting, emptying, or dumping of a pollutant into the waters of the
26 State, onto land or into wells from which it might flow or drain into
27 said waters or into waters or onto lands outside the jurisdiction of the
28 State, which pollutant enters the waters of the State. "Discharge"
29 includes the release of any pollutant into a municipal treatment works;

30 f. "Effluent limitation" means any restriction on quantities, quality,
31 rates and concentration of chemical, physical, thermal, biological, and
32 other constituents of pollutants established by permit, or imposed as
33 an interim enforcement limit pursuant to an administrative order,
34 including an administrative consent order;

35 g. "Federal Act" means the "Federal Water Pollution Control Act
36 Amendments of 1972" (Public Law 92-500; 33 U.S.C.§1251 et seq.);

37 h. "Municipal treatment works" means the treatment works of any
38 municipal, county, or State agency or any agency or subdivision
39 created by one or more municipal, county or State governments and
40 the treatment works of any public utility as defined in R.S.48:2-13;

41 i. "National Pollutant Discharge Elimination System" or "NPDES"
42 means the national system for the issuance of permits under the
43 Federal Act;

44 j. "New Jersey Pollutant Discharge Elimination System" or
45 "NJPDES" means the New Jersey system for the issuance of permits
46 under this act;

- 1 k. "Permit" means a NJPDES permit issued pursuant to section 6
2 of this act. "Permit" includes a letter of agreement entered into
3 between a delegated local agency and a user of its municipal treatment
4 works, setting effluent limitations and other conditions on the user of
5 the agency's municipal treatment works;
- 6 l. "Person" means any individual, corporation, company,
7 partnership, firm, association, owner or operator of a treatment works,
8 political subdivision of this State and any state or interstate agency.
9 "Person" shall also mean any responsible corporate official for the
10 purpose of enforcement action under section 10 of this act;
- 11 m. "Point source" means any discernible, confined and discrete
12 conveyance, including but not limited to, any pipe, ditch, channel,
13 tunnel, conduit, well, discrete fissure, container, rolling stock,
14 concentrated animal feeding operation, or vessel or other floating
15 craft, from which pollutants are or may be discharged;
- 16 n. "Pollutant" means any dredged spoil, solid waste, incinerator
17 residue, sewage, garbage, refuse, oil, grease, sewage sludge,
18 munitions, chemical wastes, biological materials, radioactive
19 substance, thermal waste, wrecked or discarded equipment, rock,
20 sand, cellar dirt, and industrial, municipal or agricultural waste or
21 other residue discharged into the waters of the State. "Pollutant"
22 includes both hazardous and nonhazardous pollutants;
- 23 o. "Pretreatment standards" means any restriction on quantities,
24 quality, rates, or concentrations of pollutants discharged into
25 municipal or privately owned treatment works adopted pursuant to
26 P.L.1972, c.42 (C.58:11-49 et seq.);
- 27 p. "Schedule of compliance" means a schedule of remedial
28 measures including an enforceable sequence of actions or operations
29 leading to compliance with water quality standards, an effluent
30 limitation or other limitation, prohibition or standard;
- 31 q. "Substantial modification of a permit" means any significant
32 change in any effluent limitation, schedule of compliance, compliance
33 monitoring requirement, or any other provision in any permit which
34 permits, allows, or requires more or less stringent or more or less
35 timely compliance by the permittee;
- 36 r. "Toxic pollutant" means any pollutant identified pursuant to the
37 Federal Act, or any pollutant or combination of pollutants, including
38 disease causing agents, which after discharge and upon exposure,
39 ingestion, inhalation or assimilation into any organism, either directly
40 or indirectly by ingestion through food chains, will, on the basis of
41 information available to the commissioner, cause death, disease,
42 behavioral abnormalities, cancer, genetic mutations, physiological
43 malfunctions, including malfunctions in reproduction, or physical
44 deformation, in such organisms or their offspring;
- 45 s. "Treatment works" means any device or systems, whether public
46 or private, used in the storage, treatment, recycling, or reclamation of

1 municipal or industrial waste of a liquid nature including intercepting
2 sewers, outfall sewers, sewage collection systems, cooling towers and
3 ponds, pumping, power and other equipment and their appurtenances;
4 extensions, improvements, remodeling, additions, and alterations
5 thereof; elements essential to provide a reliable recycled supply such
6 as standby treatment units and clear well facilities; and any other
7 works including sites for the treatment process or for ultimate disposal
8 of residues resulting from such treatment. "Treatment works" includes
9 any other method or system for preventing, abating, reducing, storing,
10 treating, separating, or disposing of pollutants, including storm water
11 runoff, or industrial waste in combined or separate storm water and
12 sanitary sewer systems;

13 t. "Waters of the State" means the ocean and its estuaries, all
14 springs, streams and bodies of surface or ground water, whether
15 natural or artificial, within the boundaries of this State or subject to its
16 jurisdiction;

17 u. "Hazardous pollutant" means:

18 (1) Any toxic pollutant;

19 (2) Any substance regulated as a pesticide under the Federal
20 Insecticide, Fungicide, and Rodenticide Act, Pub.L.92-516 (7
21 U.S.C.§136 et seq.);

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

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

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

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

32 v. "Serious violation" means an exceedance of an effluent limitation
33 for a discharge point source set forth in a permit, administrative order,
34 or administrative consent agreement, including interim enforcement
35 limits, by 20 percent or more for a hazardous pollutant, or by 40
36 percent or more for a nonhazardous pollutant, calculated on the basis
37 of the monthly average for a pollutant for which the effluent limitation
38 is expressed as a monthly average, or, in the case of an effluent
39 limitation expressed as a daily maximum and without a monthly
40 average, on the basis of the monthly average of all maximum daily test
41 results for that pollutant in any month; in the case of an effluent
42 limitation for a pollutant that is not measured by mass or
43 concentration, the department shall prescribe an equivalent exceedance
44 factor therefor. The department may utilize, on a case-by-case basis,
45 a more stringent factor of exceedance to determine a serious violation
46 if the department states the specific reasons therefor, which may

1 include the potential for harm to human health or the environment.
2 "Serious violation" shall not include a violation of a permit limitation
3 for color;

4 w. "Significant noncomplier" means any person who commits a
5 serious violation for the same hazardous pollutant or the same
6 nonhazardous pollutant, at the same discharge point source, in any two
7 months of any six month period, or who exceeds the monthly average
8 or, in a case of a pollutant for which no monthly average has been
9 established, the monthly average of the daily maximums for an effluent
10 limitation for the same pollutant at the same discharge point source by
11 any amount in any four months of any six month period, or who fails
12 to submit a completed discharge monitoring report in any two months
13 of any six month period. The department may utilize, on a
14 case-by-case basis, a more stringent frequency or factor of exceedance
15 to determine a significant noncomplier, if the department states the
16 specific reasons therefor, which may include the potential for harm to
17 human health or the environment. A local agency shall not be deemed
18 a "significant noncomplier" due to an exceedance of an effluent
19 limitation established in a permit for flow;

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

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

25 z. "Upset" means an exceptional incident in which there is
26 unintentional and temporary noncompliance with an effluent limitation
27 because of an event beyond the reasonable control of the permittee,
28 including fire, riot, sabotage, or a flood, storm event, natural cause, or
29 other act of God, or other similar circumstance, which is the cause of
30 the violation. "Upset" also includes noncompliance consequent to the
31 performance of maintenance operations for which a prior exception
32 has been granted by the department or a delegated local agency;

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

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

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

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

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

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

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

11
12 27. Section 6 of P.L.1977, c.74 (C.58:10A-6) is amended to read
13 as follows:

14 6. a. It shall be unlawful for any person to discharge any pollutant,
15 except as provided pursuant to subsections d. and p. of this section, or
16 when the discharge conforms with a valid New Jersey Pollutant
17 Discharge Elimination System permit that has been issued by the
18 commissioner pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.) or a
19 valid National Pollutant Discharge Elimination System permit issued
20 by the administrator pursuant to the Federal Act, as the case may be.

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

25 c. The commissioner is hereby authorized to grant, deny, modify,
26 suspend, revoke, and reissue NJPDES permits in accordance with
27 P.L.1977, c.74, and with regulations to be adopted by him. The
28 commissioner may reissue, with or without modifications, an NPDES
29 permit duly issued by the federal government as the NJPDES permit
30 required by P.L.1977, c.74 .

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

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

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

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

44 (4) Discharges of dredged or fill materials into waters for which
45 the State could not be authorized to administer the section 404
46 program under section 404(g) of the "Federal Water Pollution Control

- 1 Act Amendments of 1972," as amended by the "Clean Water Act of
2 1977" (33 U.S.C. §1344) and implementing regulations;
- 3 (5) Nonpoint source discharges;
- 4 (6) Uncontrolled nonpoint source discharges composed entirely of
5 storm water runoff when these discharges are uncontaminated by any
6 industrial or commercial activity unless these particular storm water
7 runoff discharges have been identified by the administrator or the
8 department as a significant contributor of pollution;
- 9 (7) Discharges conforming to a national contingency plan for
10 removal of oil and hazardous substances, published pursuant to section
11 311(c)(2) of the Federal Act[.];
- 12 (8) Discharges resulting from agriculture, including aquaculture,
13 activities.
- 14 e. The commissioner shall not issue any permit for:
- 15 (1) The discharge of any radiological, chemical or biological
16 warfare agent or high-level radioactive waste into the waters of this
17 State;
- 18 (2) Any discharge which the United States Secretary of the Army,
19 acting through the Chief of Engineers, finds would substantially impair
20 anchorage or navigation;
- 21 (3) Any discharge to which the administrator has objected in
22 writing pursuant to the Federal Act;
- 23 (4) Any discharge which conflicts with an areawide plan adopted
24 pursuant to law.
- 25 f. A permit issued by the department or a delegated local agency
26 pursuant to P.L.1977, c.74 shall require the permittee:
- 27 (1) To achieve effluent limitations based upon guidelines or
28 standards established pursuant to the Federal Act or to P.L.1977, c.74,
29 together with such further discharge restrictions and safeguards
30 against unauthorized discharge as may be necessary to meet water
31 quality standards, areawide plans adopted pursuant to law, or other
32 legally applicable requirements;
- 33 (2) Where appropriate, to meet schedules for compliance with the
34 terms of the permit and interim deadlines for progress or reports of
35 progress towards compliance;
- 36 (3) To insure that all discharges are consistent at all times with the
37 terms and conditions of the permit and that no pollutant will be
38 discharged more frequently than authorized or at a level in excess of
39 that which is authorized by the permit;
- 40 (4) To submit application for a new permit in the event of any
41 contemplated facility expansion or process modification that would
42 result in new or increased discharges or, if these would not violate
43 effluent limitations or other restrictions specified in the permit, to
44 notify the commissioner, or delegated local agency, of such new or
45 increased discharges;
- 46 (5) To install, use and maintain such monitoring equipment and

1 methods, to sample in accordance with such methods, to maintain and
2 retain such records of information from monitoring activities, and to
3 submit to the commissioner, or to the delegated local agency, reports
4 of monitoring results for surface waters, as may be stipulated in the
5 permit, or required by the commissioner or delegated local agency
6 pursuant to paragraph (9) of this subsection, or as the commissioner
7 or the delegated local agency may prescribe for ground water.
8 Significant indirect users, major industrial dischargers, and local
9 agencies, other than those discharging only stormwater or noncontact
10 cooling water, shall, however, report their monitoring results for
11 discharges to surface waters monthly to the commissioner, or the
12 delegated local agency. Discharge monitoring reports for discharges
13 to surface waters shall be signed by the highest ranking official having
14 day-to-day managerial and operational responsibilities for the
15 discharging facility, who may, in his absence, authorize another
16 responsible high ranking official to sign a monthly monitoring report
17 if a report is required to be filed during that period of time. The
18 highest ranking official shall, however, be liable in all instances for the
19 accuracy of all the information provided in the monitoring report;
20 provided, however, that the highest ranking official may file, within
21 seven days of his return, amendments to the monitoring report to
22 which he was not a signatory. The highest ranking official having
23 day-to-day managerial and operational responsibilities for the
24 discharging facility of a local agency shall be the highest ranking
25 licensed operator of the municipal treatment works in those instances
26 where a licensed operator is required by law to operate the facility. In
27 those instances where a local agency has contracted with another
28 entity to operate a municipal treatment works, the highest ranking
29 official who signs the discharge monitoring report shall be an
30 employee of the contract operator and not of the local agency.
31 Notwithstanding that an employee of a contract operator is the official
32 who signs the discharge monitoring report, the local agency, as the
33 permittee, shall remain liable for compliance with all permit conditions.
34 In those instances where the highest ranking official having day-to-day
35 managerial and operational responsibilities for a discharging facility of
36 a local agency does not have the responsibility to authorize capital
37 expenditures and hire personnel, a person having that responsibility,
38 or a person designated by that person, shall submit to the department,
39 along with the discharge monitoring report, a certification that that
40 person has received and reviewed the discharge monitoring report. The
41 person submitting the certification to the department shall not be liable
42 for the accuracy of the information on the discharge monitoring report
43 due to the submittal of the certification. Whenever a local agency has
44 contracted with another entity to operate the municipal treatment
45 works, the person submitting the certification shall be an employee of
46 the permittee and not of the contract operator. The filing of

1 amendments to a monitoring report in accordance with this paragraph
2 shall not be considered a late filing of a report for purposes of
3 subsection d. of section 6 of P.L.1990, c.28 (C.58:10A-10.1), or for
4 purposes of determining a significant noncomplier;

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

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

16 (8) To report to the department or delegated local agency, as
17 appropriate, any exceedance of an effluent limitation that causes injury
18 to persons, or damage to the environment, or poses a threat to human
19 health or the environment, within two hours of its occurrence, or of
20 the permittee becoming aware of the occurrence. Within 24 hours
21 thereof, or of an exceedance, or of becoming aware of an exceedance,
22 of an effluent limitation for a toxic pollutant, a permittee shall provide
23 the department or delegated local agency with such additional
24 information on the discharge as may be required by the department or
25 delegated local agency, including an estimate of the danger posed by
26 the discharge to the environment, whether the discharge is continuing,
27 and the measures taken, or being taken, to remediate the problem and
28 any damage to the environment, and to avoid a repetition of the
29 problem;

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

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

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

41 The commissioner or delegated local agency may restore the
42 reporting requirements stipulated in the permit if the permittee has not
43 committed any of the violations identified in this paragraph for six
44 consecutive months;

45 (10) To report to the department or delegated local agency, as
46 appropriate, any serious violation within 30 days of the violation,

1 together with a statement indicating that the permittee understands the
2 civil administrative penalties required to be assessed for serious
3 violations, and explaining the nature of the serious violation and the
4 measures taken to remedy the cause or prevent a recurrence of the
5 serious violation.

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

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

12 (1) To notify the commissioner or local agency in advance of the
13 quality and quantity of all new introductions of pollutants into a
14 facility and of any substantial change in the pollutants introduced into
15 a facility by an existing user of the facility, except for such
16 introductions of nonindustrial pollutants as the commissioner or local
17 agency may exempt from this notification requirement when ample
18 capacity remains in the facility to accommodate new inflows. The
19 notification shall estimate the effects of the changes on the effluents to
20 be discharged into the facility.

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

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

32 i. (1) All local agencies shall prescribe terms and conditions,
33 consistent with applicable State and federal law, or requirements
34 adopted pursuant thereto by the department, upon which pollutants
35 may be introduced into treatment works, and shall have the authority
36 to exercise the same right of entry, inspection, sampling, and copying,
37 and to impose the same remedies, fines and penalties, and to recover
38 costs and compensatory damages as authorized pursuant to subsection
39 a. of section 10 of P.L.1977, c.74 (C.58:10A-10) and section 6 of
40 P.L.1990, c.28 (C.58:10A-10.1), with respect to users of such works,
41 as are vested in the commissioner by P.L.1977, c.74, or by any other
42 provision of State law, except that a local agency, except as provided
43 in P.L.1991, c.8 (C.58:10-10.4 et seq.), may not impose civil
44 administrative penalties, and shall petition the county prosecutor or the
45 Attorney General for a criminal prosecution under that section. Terms
46 and conditions shall include limits for heavy metals, pesticides, organic

1 chemicals and other contaminants in industrial wastewater discharges
2 based upon the attainment of land-based sludge management criteria
3 established by the department in the Statewide Sludge Management
4 Plan adopted pursuant to the "Solid Waste Management Act,"
5 P.L.1970, c.39 (C.13:1E-1 et seq.) or established pursuant to the
6 Federal Water Pollution Control Act Amendments of 1972 (33
7 U.S.C.§1251 et seq.), or any regulations adopted pursuant thereto.

8 (2) Of the amount of any penalty assessed and collected pursuant
9 to an action brought by a local agency in accordance with section 10
10 of P.L.1977, c.74 or section 6 of P.L.1990, c.28 (C.58:10A-10.1),
11 10% shall be deposited in the "Wastewater Treatment Operators'
12 Training Account," established in accordance with section 13 of
13 P.L.1990, c.28 (C.58:10A-14.5), and used to finance the cost of
14 training operators of municipal treatment works. The remainder shall
15 be used by the local agency solely for enforcement purposes, and for
16 upgrading municipal treatment works.

17 j. In reviewing permits submitted in compliance with P.L.1977,
18 c.74 and in determining conditions under which such permits may be
19 approved, the commissioner shall encourage the development of
20 comprehensive regional sewerage planning or facilities, which serve
21 the needs of the regional community, conform to the adopted
22 area-wide water quality management plan for that region, and protect
23 the needs of the regional community for water quality, aquifer storage,
24 aquifer recharge, and dry weather based stream flows.

25 k. No permit may be issued, renewed, or modified by the
26 department or a delegated local agency so as to relax any water quality
27 standard or effluent limitation until the applicant, or permit holder, as
28 the case may be, has paid all fees, penalties or fines due and owing
29 pursuant to P.L.1977, c.74, or has entered into an agreement with the
30 department establishing a payment schedule therefor; except that if a
31 penalty or fine is contested, the applicant or permit holder shall satisfy
32 the provisions of this section by posting financial security as required
33 pursuant to paragraph (5) of subsection d. of section 10 of P.L.1977,
34 c.74 (C.58:10A-10). The provisions of this subsection with respect to
35 penalties or fines shall not apply to a local agency contesting a penalty
36 or fine.

37 l. Each permitted facility or municipal treatment works, other than
38 one discharging only stormwater or non-contact cooling water, shall
39 be inspected by the department at least once a year; except that each
40 permitted facility discharging into the municipal treatment works of a
41 delegated local agency, other than a facility discharging only
42 stormwater or non-contact cooling water, shall be inspected by the
43 delegated local agency at least once a year. Except as hereinafter
44 provided, an inspection required under this subsection shall be
45 conducted within six months following a permittee's submission of an
46 application for a permit, permit renewal, or, in the case of a new

1 facility or municipal treatment works, issuance of a permit therefor,
2 except that if for any reason, a scheduled inspection cannot be made
3 the inspection shall be rescheduled to be performed within 30 days of
4 the originally scheduled inspection or, in the case of a temporary
5 shutdown, of resumed operation. Exemption of stormwater facilities
6 from the provisions of this subsection shall not apply to any permitted
7 facility or municipal treatment works discharging or receiving
8 stormwater runoff having come into contact with a hazardous
9 discharge site on the federal National Priorities List adopted by the
10 United States Environmental Protection Agency pursuant to the
11 "Comprehensive Environmental Response, Compensation, and
12 Liability Act," Pub.L.96-510 (42 U.S.C.A. §9601 et seq.), or any other
13 hazardous discharge site included by the department on the master list
14 for hazardous discharge site cleanups adopted pursuant to section 2 of
15 P.L.1982, c.202 (C.58:10-23.16). Inspections shall include:

16 (1) A representative sampling of the effluent for each permitted
17 facility or municipal treatment works, except that in the case of
18 facilities or works that are not major facilities or significant indirect
19 users, sampling pursuant to this paragraph shall be conducted at least
20 once every three years;

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

25 (3) An evaluation of the maintenance record of the permittee's
26 treatment equipment;

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

28 (5) A random check of written summaries of test results, prepared
29 by the certified laboratory providing the test results, for the
30 immediately preceding 12-month period, signed by a responsible
31 official of the certified laboratory, certifying the accuracy of the test
32 results; and

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

35 The department may inspect a facility required to be inspected by
36 a delegated local agency pursuant to this subsection. Nothing in this
37 subsection shall require the department to conduct more than one
38 inspection per year.

39 m. The facility or municipal treatment works of a permittee
40 identified as a significant noncomplier shall be subject to an inspection
41 by the department, or the delegated local agency, as the case may be,
42 which inspection shall be in addition to the requirements of subsection
43 l. of this section. The inspection shall be conducted within 60 days of
44 receipt of the discharge monitoring report that initially results in the
45 permittee being identified as a significant noncomplier. The inspection
46 shall include a random check of written summaries of test results,

1 prepared by the certified laboratory providing the test results, for the
2 immediately preceding 12-month period, signed by a responsible
3 official of the certified laboratory, certifying the accuracy of the test
4 results. A copy of each summary shall be maintained by the permittee.
5 The inspection shall be for the purpose of determining compliance.
6 The department or delegated local agency is required to conduct only
7 one inspection per year pursuant to this subsection, and is not required
8 to make an inspection hereunder if an inspection has been made
9 pursuant to subsection l. of this section within six months of the period
10 within which an inspection is required to be conducted under this
11 subsection.

12 n. To assist the commissioner in assessing a municipal treatment
13 works' NJPDES permit in accordance with paragraph (3) of subsection
14 b. of section 7 of P.L.1977, c.74 (C.58:10A-7), a delegated local
15 agency shall perform a complete analysis that includes a complete
16 priority pollutant analysis of the discharge from, and inflow to, the
17 municipal treatment works. The analysis shall be performed by a
18 delegated local agency as often as the priority pollutant scan is
19 required under the permit, but not less than once a year, and shall be
20 based upon data acquired in the priority pollutant scan and from
21 applicable sludge quality analysis reports. The results of the analysis
22 shall be included in a report to be attached to the annual report
23 required to be submitted to the commissioner by the delegated local
24 agency.

25 o. Except as otherwise provided in section 3 of P.L.1963, c.73
26 (C.47:1A-3), any records, reports or other information obtained by
27 the commissioner or a local agency pursuant to this section or section
28 5 of P.L.1972, c.42 (C.58:11-53), including any correspondence
29 relating thereto, shall be available to the public; however, upon a
30 showing satisfactory to the commissioner by any person that the
31 making public of any record, report or information, or a part thereof,
32 other than effluent data, would divulge methods or processes entitled
33 to protection as trade secrets, the commissioner or local agency shall
34 consider such record, report, or information, or part thereof, to be
35 confidential, and access thereto shall be limited to authorized officers
36 or employees of the department, the local agency, and the federal
37 government.

38 p. The provisions of this section shall not apply to a discharge of
39 petroleum to the surface waters of the State that occurs as a result of
40 the process of recovering, containing, cleaning up or removing a
41 discharge of petroleum in the surface waters of the State and that is
42 undertaken in compliance with the instructions of a federal on-scene
43 coordinator or of the commissioner or the commissioner's designee.

44 q. The commissioner shall, in consultation with the Department of
45 Agriculture and the Aquaculture Advisory Council, provide for the
46 issuance of general permits for the discharge of pollutants from

1 concentrated aquatic animal production facilities and aquacultural
2 projects. In establishing general permits the commissioner shall take
3 into consideration the source and receiving water quality and the type
4 of aquaculture activity being conducted. The general permits issued
5 pursuant to this subsection shall require the permittee to meet best
6 management practices rather than to attain a numeric pollutant
7 discharge parameter level. If the commissioner determines that a
8 permittee cannot perform the best management practices in order to
9 obtain a general permit or that the performance of best management
10 practices will not be protective of water quality as required by
11 P.L.1977, c.74, the commissioner may require the permittee to obtain
12 an individual permit which may contain numeric pollutant parameter
13 discharge limits. In setting any numeric pollutant parameter discharge
14 limits, the commissioner shall rely on the development of categorical
15 standards that are applicable to specific types of aquaculture activities.
16 (cf: P.L.1995, c.16, s.3)

17

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

20 2. After December 31, 1991, the department may not issue a
21 permit to any private, commercial, or industrial applicant for the
22 discharge of any solid, semi-solid, or liquid wastes into the ocean
23 waters of the State, the provisions of any other law, or rule or
24 regulation to the contrary notwithstanding. Any permit issued by the
25 department for the discharge of any such waste prior to January 1,
26 1992 shall expire on January 1, 1992, the provisions of any such
27 permit to the contrary notwithstanding. The provisions of [this act]
28 P.L.1989, c.119 shall not apply to permits applied for, or issued to,
29 municipal treatment works [or] , seafood processing facilities , or for
30 aquaculture activities. As used in this act, "ocean waters" means those
31 waters of the open seas lying seaward of the base line from which the
32 territorial sea is measured, as provided for in the Convention on the
33 Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

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

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

44

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

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

3 a. "Commissioner" means the Commissioner of the Department of
4 Environmental Protection or his designated representative;

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

8 c. "Department" means the Department of Environmental
9 Protection;

10 d. "Diversion" means the taking or impoundment of water from a
11 river, stream, lake, pond, aquifer, well, other underground source, or
12 other water body, whether or not the water is returned thereto,
13 consumed, made to flow into another stream or basin, or discharged
14 elsewhere;

15 e. "Nonconsumptive use" means the use of water diverted from
16 surface or ground waters in such a manner that it is returned to the
17 surface or ground water at or near the point from which it was taken
18 without substantial diminution in quantity or substantial impairment of
19 quality;

20 f. "Person" means any individual, corporation, company,
21 partnership, firm, association, owner or operator of a water supply
22 facility, political subdivision of the State and any state, or interstate
23 agency or Federal agency;

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

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

31 i. "Aquaculture" means the propagation and rearing of aquatic
32 species in controlled or selected environments, and the subsequent
33 processing, packaging and marketing, and shall include, but need not
34 be limited to, activities to intervene in the rearing process to increase
35 production such as stocking, feeding, transplanting, and providing for
36 protection from predators.

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

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

41
42 30. Section 6 of P.L.1981, c.262 (C.58:1A-6) is amended to read
43 as follows:

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

46 (1) Permit privileges previously allowed pursuant to lawful

1 legislative or administrative action, except that the department may,
2 after notice and public hearing, limit the exercise of these privileges to
3 the extent currently exercised, subject to contract, or reasonably
4 required for a demonstrated future need. All diversion permits issued
5 by the Water Policy and Supply Council prior to August 13, 1981 shall
6 remain in effect until modified by the department pursuant to
7 P.L.1981, c.262 (C.58:1A-1 et al.). Persons having or claiming a right
8 to divert more than 100,000 gallons of water per day pursuant to prior
9 legislative or administrative action, including persons previously
10 exempted from the requirement to obtain a permit, shall renew that
11 right by applying for a diversion permit, or water usage certification,
12 as the case may be, no later than February 9, 1982. Thereafter, the
13 conditions of the new diversion permit or water usage certification
14 shall be deemed conclusive evidence of such previously allowed
15 privileges.

16 (2) Require any person diverting 100,000 or more gallons of water
17 per day for agricultural or horticultural purposes to obtain approval of
18 the appropriate county agricultural agent of a five-year water usage
19 certification program. This approval shall be based on standards and
20 procedures established by the department. This program shall include
21 the right to construct, repair or reconstruct dams or other structures,
22 the right to divert water for irrigation, frost protection, harvesting and
23 other agriculturally-related purposes, including aquaculture, and the
24 right to measure the amount of water diverted by means of a log or
25 other appropriate record, and shall be obtained in lieu of any permit
26 which would otherwise be required by P.L.1981, c.262 (C.58:1A-1 et
27 al.).

28 (3) Require any person diverting more than 100,000 gallons per
29 day of any waters of the State or proposing to construct any building
30 or structure which may require a diversion of water to obtain a
31 diversion permit. Prior to issuing a diversion permit, the department
32 shall afford the general public with reasonable notice of a permit
33 application, and with the opportunity to be heard thereon at a public
34 hearing held by the department.

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

45 In designating an area of critical water supply concern, the
46 department shall be required to demonstrate that the specific area is

1 stressed to a degree which jeopardizes the integrity and viability of the
2 water supply source or poses a threat to the public health, safety, or
3 welfare. This designation shall conform to and satisfy the criteria of an
4 area of critical water supply concern as defined in rules and regulations
5 adopted by the department pursuant to the "Administrative Procedure
6 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

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

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

- 16 (1) study water supply availability;
- 17 (2) estimate future water supply needs;
- 18 (3) identify appropriate and reasonable alternative water supply
19 management strategies;
- 20 (4) select and adopt appropriate water supply alternatives; and
- 21 (5) require affected permittees to prepare water supply plans
22 consistent with the adopted water supply management alternatives.

23 d. Following implementation of the adopted water supply
24 management alternatives, the department shall monitor water levels
25 and water quality within the designated area of critical water supply
26 concern to determine the effectiveness of the alternative water supply
27 management strategies selected. If the department determines that the
28 alternatives selected are not effective in protecting the water supply
29 source of concern, the department may revise the designation and
30 impose further restrictions in accordance with the procedures set forth
31 in this section. The results of all monitoring conducted pursuant to
32 this section shall be reported to all affected permittees on an annual
33 basis.

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

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

42

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

45 2. The provisions of any law, rule or regulation to the contrary
46 notwithstanding, no tax, fee or other charge shall be imposed on the

1 diversion, for agricultural or horticultural purposes, including
2 aquaculture, of any ground or surface water of this State; provided,
3 however, that nothing in this section shall prohibit the imposition of a
4 fee, pursuant to law, for the cost of processing, monitoring and
5 administering a water usage certification program for persons who
6 divert any ground or surface water for agricultural and horticultural
7 purposes, or other agriculturally-related purposes, including
8 aquaculture.

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

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

19

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

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

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

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

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

32 (3) Recommendations for improvements to existing State water
33 supply facilities, the construction of additional State water supply
34 facilities, and for the interconnection or consolidation of existing water
35 supply systems; [and]

36 (4) Recommendations for the diversion or use of fresh surface or
37 ground waters and saline surface or ground water for aquaculture
38 purposes; and

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

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

42 (1) Prepare and make available to all interested persons a proposed
43 plan;

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

46 (3) Consider the comments made at these meetings, make any

1 revisions to the proposed plan as it deems necessary, and adopt the
2 plan.

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

4

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

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

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

14

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

17 13. The Department of Environmental Protection shall, pursuant
18 to the "Administrative Procedure Act," adopt rules and regulations
19 necessary to implement ~~[this act]~~ sections 5 through 11 of P.L.1989,
20 c.151 (C.13:1E-99.21a through C.13:1E-99.21e and C.4:24-22.1).

21 (cf: P.L.1989, c.151, s.13)

22

23 ¹35. Section 3 of P.L.1979, C.111 (C.13:18A-3) is amended to
24 read as follows:

25 3. As used in this act:

26 a. "Agricultural or horticultural purposes" or "agricultural or
27 horticultural use" means any production of plants or animals useful to
28 man, including but not limited to: forages or sod crops; grains and
29 feed crops; dairy animals and dairy products; poultry and poultry
30 products; livestock, including beef cattle, sheep, swine, horses,
31 ponies, mules or goats, and including the breeding and grazing of any
32 or all of such animals; bees and apiary products; fur animals; aquatic
33 organisms as part of aquaculture; trees and forest products; fruits of
34 all kinds, including grapes, nuts and berries; vegetables; nursery,
35 floral, ornamental and greenhouse products; or any land devoted to
36 and meeting the requirements and qualifications for payments or other
37 compensation pursuant to a soil conservation program under an
38 agency of the Federal Government;

39 b. "Application for development" means the application form and
40 all accompanying documents required by municipal ordinance for
41 approval of a subdivision plat, site plan, planned development,
42 conditional use, zoning variance or other permit as provided in the
43 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), for
44 any use, development or construction other than the improvement,
45 expansion or reconstruction of any single-family dwelling unit or
46 appurtenance thereto, or the improvement, expansion, construction or

1 reconstruction of any structure used exclusively for agricultural or
2 horticultural purposes;

3 c. "Commission" means the Pinelands Commission created by
4 section 4 of this act;

5 d. "Comprehensive management plan" means the plan prepared
6 and adopted by the commission pursuant to section 7 of this act;

7 e. "Council" means the Pinelands Municipal Council created by
8 section 6.1 of this act;

9 f. "Federal Act" means section 502 of the "National Parks and
10 Recreation Act of 1978" (P.L.95-625);

11 g. "Major development" means any division or subdivision of land
12 into five or more parcels; any construction or expansion of any
13 housing development of five or more dwelling units; any construction
14 or expansion of any commercial or industrial use or structure on a site
15 of more than 3 acres; or any grading, clearing or disturbance of any
16 area in excess of 5,000 square feet for other than agricultural or
17 horticultural purposes;

18 h. "Pinelands area" means that area so designated by subsection a.
19 of section 10 of this act;

20 i. "Pinelands National Reserve" means the approximately
21 1,000,000 acre area so designated by the Federal Act and generally
22 depicted on the map entitled "Pinelands National Reserve Boundary
23 Map" numbered NPS/80,011A and dated September, 1978;

24 j. "Preservation area" means that portion of the pinelands area so
25 designated by subsection b. of section 10 of this act;

26 k. "Protection area" means that portion of the pinelands area not
27 included within the preservation area ;

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

33 m. "Aquatic organism " means and includes, but need not be
34 limited to, finfish, mollusks, crustaceans, and aquatic plants which are
35 the property of a person engaged in aquaculture.¹

36 (cf: P.L.1979, c.111, s.3)

37

38 ¹36. (New section) Except as provided in section 3 of P.L.1979,
39 c.111 (C.13:18A-3) as amended by section 35 of P.L. .c. (C.)
40 (pending in the Legislature as this bill), nothing in this act shall be
41 construed to modify the provisions of the "Pinelands Protection Act,"
42 P.L.1979, c.111 (C.13:18A-1 et seq.) or any regulations promulgated
43 pursuant thereto and section 502 of the "National Parks and
44 Recreation Act of 1978" (Pub.L.95-625).¹

45

46 ¹[35.] 37.¹ (New section) There is appropriated from the General

1 Fund to the Department of Agriculture the sum of \$250,000 to
2 implement their responsibilities pursuant to this act.

3

4 ¹[36.] 38.¹ This act shall take effect immediately.

5

6

7

8

9 The "New Jersey Aquaculture Development Act;" appropriates
10 \$250,000.