

[Second Reprint]
SENATE, No. 1754

STATE OF NEW JERSEY

INTRODUCED DECEMBER 19, 1996

By Senators SINGER and BRYANT

1 AN ACT concerning aquaculture, ²and² amending and supplementing
2 parts of the statutory law²[, and making an appropriation]².

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

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.

² Senate SBA committee amendments adopted May 8, 1997.

1 interest of the citizens of this State that the recommendations
2 contained in the "Aquaculture Development Plan" be adopted by the
3 Legislature.

4

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

6 "Aquaculture" means the propagation, rearing, and ²subsequent²
7 harvesting of aquatic organisms in controlled or selected
8 environments, and the subsequent processing, packaging and
9 marketing, and shall include, but need not be limited to, activities to
10 intervene in the rearing process to increase production such as
11 stocking, feeding, transplanting and providing for protection from
12 predators. ²"Aquaculture" shall not include the construction of
13 facilities and appurtenant structures that might otherwise be regulated
14 pursuant to any State or federal law or regulation.²

15 "Aquaculture Development Plan" means the plan prepared by the
16 Aquaculture Development Task Force, established pursuant to
17 Executive Order No. 104 (1993).

18 "Aquaculturist" means a person engaging in aquaculture.

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

22 "Council" means the Aquaculture Advisory Council established
23 pursuant to section 5 of this act.

24 "Office" means the Office of Aquaculture Coordination established
25 pursuant to section 4 of this act.

26 "Secretary" means the Secretary of Agriculture.

27

28 4. (New section) There is established in the Department of
29 Agriculture the Office of Aquaculture Coordination. The office shall,
30 in consultation with the Department of Environmental Protection
31 ²[¹and the Pinelands Commission as it affects the pinelands area
32 designated pursuant to section 10 of P.L.1979, c.111 (C.13:18A-
33 11)¹]², prepare a guidebook explaining the permit process for receiving
34 all necessary permits or other approvals or exemptions to engage in an
35 aquaculture project in the State. The guidebook shall include a list
36 that identifies the permits or other approvals that may be necessary for
37 an aquaculture project. The list shall identify the application form or
38 forms required for an application to be deemed complete, any
39 documents or other written submissions required to be filed with the
40 application, and any filing, notice, hearing or other requirement that is
41 a precondition for review of an application. The guidebook shall also
42 describe management practices for aquaculture. The guidebook shall
43 be updated as often as necessary. The office shall serve as resource
44 for applicants and prospective applicants for aquaculture projects.

45 The office shall establish, in cooperation with other permitting
46 agencies, a permit coordination system whose purpose is to assist the

1 applicant in the completion of the application and to assist in
2 processing the application. The goal of the system shall be the
3 processing of applications within 90 days of their completion, and at
4 ²[an] a reasonable² application cost ²[not prohibitive to a single
5 proprietor] consistent with the goals and objectives of this act².

6 The office shall develop a protocol for authorizing an individual to
7 engage in an aquaculture demonstration project.

8
9 5. (New section) a. There is established in the Department of
10 Agriculture an Aquaculture Advisory Council which shall consist of 13
11 ²voting and two non-voting² members²[, seven of whom shall be] .
12 The voting members shall include² the Secretary of Agriculture, who
13 shall serve as chairman, the Commissioner of Environmental
14 Protection, the Commissioner of Commerce and Economic
15 Development, the Commissioner of Health, the ²[¹executive¹]² director
16 of the ¹[Aquaculture Technology Transfer Center] ²[New Jersey
17 Agricultural Experiment Station¹] Aquaculture Technology Transfer
18 Center², the director of the Aquaculture Training and Information
19 Center, the ²executive² director of the ²[Fisheries and Aquaculture
20 Technology Extension Center] New Jersey Agricultural Experiment
21 Station², or their designees, who shall serve ex officio, and six citizens
22 of the State, to be appointed as follows: two by the President of the
23 Senate, one of whom shall be a representative from recognized
24 aquaculture organizations or an operator of an aquaculture farm and
25 one of whom shall be a representative of the seafood industry; two by
26 the Speaker of the General Assembly, one of whom shall be a
27 representative of recognized aquaculture organizations or an operator
28 of an aquaculture farm and one of whom shall be a representative of
29 farmers; and two by the Governor from the public at large. ²The
30 chairman of the Marine Fisheries Council and the chairman of the Fish
31 and Game Council shall serve ex officio and as non-voting members.²

32 b. The term of office of each public member shall be three years;
33 except that of the first members to be appointed, one appointed by the
34 Governor, one by the President of the Senate and one by the Speaker
35 of the General Assembly shall be appointed for a term of two years,
36 and the remaining two members shall be appointed for a term of three
37 years. Each member shall serve until a successor has been appointed
38 and qualified, and vacancies shall be filled in the same manner as the
39 original appointments for the remainder of the unexpired term. A
40 member is eligible for reappointment to the council.

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

43 d. Members of the advisory council shall serve without
44 compensation, but shall be entitled to reimbursement for expenses
45 incurred in attendance at meetings to the extent funds are available
46 therefor.

1 e. The advisory council shall act in an advisory capacity to the
2 department and other state agencies on aquaculture matters. The
3 advisory council shall assist the various departments in the evaluation
4 of proposed and existing rules and regulations and the development of
5 policies mandated by provisions of this act. The advisory council shall
6 seek to ensure that aquaculture market development activities and
7 policies reflect the changing needs and characteristics of the
8 aquaculture industry. The advisory council shall review the
9 Aquaculture Development Plan and update the plan as appropriate, but
10 no less frequently than every five years.

11

12 6. (New section) a. Notwithstanding any law, rule, or regulation
13 to the contrary, aquaculture shall be considered a component of
14 agriculture in the State, and aquacultured plants and animals shall be
15 considered to be agriculture crops and animals.

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

19 c. The Department of Agriculture shall be the lead State agency for
20 the development, marketing, promotion, and advocacy of aquaculture
21 in the State.

22 d. The Department of Environmental Protection shall be the lead
23 State agency with respect to regulation of aquaculture activities in
24 ²[public fresh and marine] the² waters of the State.

25 e. The Aquaculture Technology Transfer Center, composed of the
26 Multispecies Aquaculture Demonstration Facility at Rutgers, The State
27 University, ²[¹and¹]² the Aquaculture Training and Information Center
28 at Cumberland County College, ¹[and the Fisheries and Aquaculture
29 Technology Extension Center,]¹ ²and the Rutgers Cooperative
30 Extension² shall be the primary State facility for aquaculture
31 education, extension, demonstration, and industry development and
32 commercialization in the State.

33

34 7. (New section) Within one year of the effective date of this act,
35 the Department of Agriculture, the Department of Environmental
36 Protection, ²[¹the Pinelands Commission as it affects the pinelands
37 area designated pursuant to section 10 of P.L.1979, c.111 (C.13:18A-
38 11).¹]² the Department of Commerce and Economic Development, and
39 the Department of Health shall, after consultation with the
40 Aquaculture Advisory Council, enter into interagency memoranda of
41 agreement concerning the implementation of the Aquaculture
42 Development Plan, and delineating the financial and regulatory
43 responsibility based upon the provisions of this act and any other
44 applicable laws. In developing the interagency memoranda of
45 agreement, the departments shall seek to develop provisions that foster
46 the development of aquaculture in the State.

1
2 8. (New section) Within 180 days of the effective date of this act,
3 the Department of Environmental Protection and the Department of
4 Agriculture, in consultation with the Aquaculture Advisory Council ²,
5 the Shell Fisheries Council² ¹and the Pinelands Commission as it
6 affects the pinelands area designated pursuant to section 10 of
7 P.L.1979, c.111 (C.13:18A-11)¹, jointly shall establish, according to
8 rules and regulations adopted pursuant to the "Administrative
9 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), appropriate
10 policies for the use of aquaculture leases in waters of the State and for
11 lands underneath waters of the State, including but not limited to lease
12 specifications, fees, royalty payments, and assignability and
13 termination of lease agreements. The policies shall provide for an
14 expeditious procedure for finalizing lease agreements. Lease
15 agreements shall convey a necessary degree of exclusivity to minimize
16 the risks to the aquaculturists caused by pollution, vandalism, theft,
17 and other forms of encroachment, while protecting common use rights
18 of the public, and assuring the integrity and protection of the natural
19 wild stocks and their habitat.

20
21 9. (New section) The Department of Environmental Protection
22 and the Department of Agriculture, after consultation with the
23 Aquaculture Advisory Council, shall establish an interagency
24 memorandum of agreement to expand current leasing programs for
25 waters of the State and lands underneath waters of the State to include
26 a statewide aquaculture leasing system. The memorandum of
27 agreement shall determine which additional waters, lands, and aquatic
28 organisms are appropriate for aquaculture development. The
29 Department of Environmental Protection and the Department of
30 Agriculture shall jointly adopt, pursuant to the "Administrative
31 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such additions
32 within one year of the date of enactment of this act.

33
34 10. (New section) a. The Department of Environmental
35 Protection, in consultation with the Department of Agriculture², the
36 Fish and Game Council, the Marine Fisheries Council² and the
37 Aquaculture Advisory Council, shall review the laws, rules, and
38 regulations pertaining to the taking, harvesting, possession, and use of
39 fish, wildlife, shellfish, and plants with regard to the effect of those
40 laws, rules, and regulations on the taking, harvesting, possession, use,
41 importation, containment, transport, and marketing of aquaculture
42 products from public waters of the State. The review shall include,
43 but need not be limited to, such factors as gear, season, area, size
44 limits, and all rules and regulations adopted by the ²[department or]
45 Department of Environmental Protection,² the Fish and Game Council
46 ², or the Marine Fisheries Council² that may impede the potential use

1 of any species in aquaculture.

2 b. Based upon the review performed pursuant to subsection a. of
3 this section ²[and taking into consideration comments from the Fish
4 and Game Council and the Marine Fisheries Council on the proposed
5 changes to laws, regulations, and rules,]² the Department of
6 Environmental Protection ²or the Fish and Game Council, as
7 appropriate², shall adopt, pursuant to the "Administrative Procedure
8 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and within one year of the
9 effective date of this act, modifications that would not cause
10 significant harm to wild stocks, natural habitat, or the environment, so
11 as to either exempt specific types of aquacultural practices from those
12 rules and regulations or reduce any negative impact upon those
13 practices to the maximum extent practicable and feasible. To the
14 extent that modifications in the law are required to accomplish the
15 purposes of this section, the Department of Environmental Protection
16 and the various other entities conducting the review shall make
17 recommendations accordingly to the Governor and the Legislature.

18 c. The Department of Environmental Protection ²or the Fish and
19 Game Council, as appropriate², in consultation with the Department
20 of Agriculture and the Aquaculture Advisory Council, shall establish
21 a program within one year of the effective date of this act and pursuant
22 to the "Administrative Procedure Act,"
23 P.L.1968, c.410 (C.52:14B-1 et seq.), regulating the importation and
24 transport of species used in aquaculture.

25

26 11. (New section) The Department of Environmental Protection,
27 in consultation with the Department of Agriculture ¹, the Pinelands
28 Commission as it affects the pinelands area designated pursuant to
29 section 10 of P.L.1979, c.111 (C.13:18A-11),¹ and the Aquaculture
30 Advisory Council, shall review the laws, rules, and regulations
31 pertaining to endangered and nongame species, migratory birds, and
32 fish and game species with regard to the application and effectiveness
33 of those laws, rules, and regulations in the prevention of predation at
34 aquaculture facilities or sites. Based upon that review, the Department
35 of Environmental Protection in conjunction with the various other
36 entities conducting the review, after allowing for a period of public
37 review and comment and within one year of the effective date of this
38 act, shall make recommendations to all appropriate governmental
39 entities concerning implementation, to the extent permitted by law and
40 as soon as may be practical and feasible, of procedures and
41 mechanisms for the timely and cost effective resolution of specific
42 predation problems occurring at aquaculture facilities or sites.

43

44 12. (New section) a. Notwithstanding any law, rule, or regulation
45 to the contrary, an aquaculture site, for which all appropriate permits
46 required by law have been obtained, that was not originally a

1 freshwater wetland as defined pursuant to the "Freshwater Wetlands
2 Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.) or any other law,
3 or any rule or regulation adopted pursuant thereto, prior to being
4 utilized for aquaculture shall not be designated a freshwater wetland
5 because of the subsequent growth of aquatic organisms at the
6 aquaculture site.

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

12

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

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

26

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

31

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

33 a. in consultation with the Aquaculture Technology Transfer
34 Center, the ¹[New Jersey Cooperative Extension Service] Rutgers
35 Cooperative Extension¹ and the Department of Environmental
36 Protection, shall implement an aquaculture statistics reporting program
37 which may include the collection of information on the numbers of
38 jobs being created in aquaculture, the amount, value and type of
39 product being produced, and the overall economic activity in the
40 aquaculture industry;

41 b. in consultation with the Aquaculture Technology Transfer
42 Center, and the ¹[New Jersey Cooperative Extension Service] Rutgers
43 Cooperative Extension¹, shall assist aquaculturists in obtaining
44 coverage from ¹[the Federal Crop Insurance Program] federal crop
45 insurance programs¹;

46 c. in consultation with the Aquaculture Technology Transfer

1 Center and the ¹[New Jersey Cooperative Extension Service] Rutgers
2 Cooperative Extension¹, shall assist aquaculturists in completing the
3 proper paperwork and other information necessary to develop
4 eligibility for economic emergency loans for disaster relief through the
5 Farmers Services Agency and other programs;

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

9 e. in conjunction with the Aquaculture Technology Transfer Center
10 and the Department of Health, shall assist the aquaculture industry in
11 the development of necessary quality control guidelines and
12 specifications for production, processing, and marketing of
13 aquaculture products;

14 f. in conjunction with the Aquaculture Technology Transfer
15 Center, shall assist (1) the aquaculture industry in promoting its
16 products through techniques that may include the establishment and
17 use of a trademark and other specialized marketing efforts; and (2)
18 aquaculturists interested in developing coordinated efforts or
19 arrangements, including producer cooperatives, joint ventures, market
20 orders, and other forms of association; and

21 g. in conjunction with the Department of Health, the Department
22 of Commerce and Economic Development, ¹[and]¹ the Department of
23 Environmental Protection, ²[¹and the Pinelands Commission as it
24 affects the pinelands area designated pursuant to section 10 of
25 P.L.1979, c.111 (C.13:18A-11).¹]² shall explore the possibilities of
26 establishing private sector joint processing facilities to accommodate
27 agriculture, seafood, and aquaculture products.

28

29 16. (New section) The State Soil Conservation Committee in
30 consultation with the Department of Environmental Protection ²[¹, the
31 Pinelands Commission as it affects the pinelands area designated
32 pursuant to section 10 of P.L.1979, c.111 (C.13:18A-11).¹]² and the
33 Aquaculture Advisory Council, shall develop, pursuant to the
34 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
35 seq.), management practices for control of soil erosion and
36 sedimentation for aquacultural systems.

37

38 17. (New section) The Department of Agriculture, in consultation
39 with the Department of Environmental Protection and the Aquaculture
40 Advisory Council, shall establish, pursuant to the "Administrative
41 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a program for
42 the licensure of the possession and ownership of aquacultured
43 organisms.

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

11

12 19. (New section) The Department of Agriculture, in consultation
13 with the Department of Environmental Protection ²[and the Pinelands
14 Commission as it affects the pinelands area designated pursuant to
15 section 10 of P.L.1979, c.111 (C.13:18A-11)¹]², shall adopt, within
16 one year of the effective date of this act and pursuant to the
17 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
18 seq.), a comprehensive animal waste management program that shall
19 provide for the proper disposal of animal wastes, including wastes
20 generated from aquaculture. The animal waste management program
21 shall include, but need not be limited to, criteria and standards for the
22 composting, handling, storage, processing, utilization and disposal of
23 animal wastes, ²[requirements and procedures for permitting such
24 animal waste facilities and activities,]² the establishment of program
25 compliance provisions including appropriate penalties for program
26 noncompliance and violations, and may include provisions for the
27 assessment of fees to cover reasonable administrative costs.

28

29 20. (New section) The Office of State Planning, established
30 pursuant to section 6 of P.L.1985, c.398 (C.52:18A-201), ¹ ²[and]in
31 consultation with² the Pinelands Commission²[established pursuant
32 to section 10 of P.L.1979, c.111 (C.13:18A-4)]² as it affects the
33 pinelands area designated pursuant to section 10 of P.L.1979, c.111
34 (C.13:18A-11),¹ shall develop, pursuant to the "Administrative
35 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), an aquaculture
36 component for model planning and zoning ordinances.

37

38 21. (New section) The Department of Labor, in conjunction with
39 the Department of Agriculture and the aquaculture industry, shall
40 review worker's compensation package coverages to assess their
41 general applicability to aquaculture industry needs, and make
42 recommendations accordingly to all appropriate entities with respect
43 to any needed modifications.

44

45 22. (New section) The Department of Commerce and Economic
46 Development, in conjunction with the Department of Agriculture, the

1 Department of Environmental Protection, the Aquaculture Technology
2 Transfer Center, and the aquaculture industry, shall, to the extent
3 feasible, develop and implement an information campaign to promote
4 in-State and outside investments in aquaculture operations located or
5 based in New Jersey within one year of the appointment of the
6 Aquaculture Advisory Council pursuant to section 5 of this act.

7

8 23. (New section) The Department of Commerce and Economic
9 Development and the Aquaculture Advisory Council, in consultation
10 with the Department of Agriculture, shall develop mechanisms for
11 providing tax credits or reduced loan payments to a new aquaculture
12 enterprise, and make recommendations accordingly to the Governor
13 and the Legislature for any legislative action that may be necessary to
14 implement those mechanisms.

15

16 24. (New section) The Department of Insurance, in consultation
17 with the Aquaculture Advisory Council, shall review product liability
18 insurance within the State and determine how the coverage might be
19 extended to various segments of the aquaculture industry, and make
20 recommendations accordingly to all appropriate entities regarding any
21 modifications that should be made to existing insurance coverage
22 plans.

23

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

25 4:1-6. Each county board of agriculture shall be entitled to be
26 represented in the annual convention by two delegates.

27 Each of the following organizations shall be entitled to be
28 represented in the annual convention by one delegate: American
29 Cranberry Growers' Association, Board of Managers of the New
30 Jersey Agricultural Experiment Station, Cook College of Rutgers, The
31 State University, The Cooperative Marketing Associations in New
32 Jersey, Inc., Cultivated Sod Association of New Jersey, Inc., Garden
33 State Dairy Goat Association, Inc., Garden State Milk Council,
34 Garden State Service Cooperative Association, Inc., Horse Park of
35 New Jersey at Store Tavern Inc., Morgan Horse Association of New
36 Jersey, New Jersey Angus Association, Inc., New Jersey Agricultural
37 Society, Inc., New Jersey Apple Institute, Inc., New Jersey
38 Aquaculture Association, New Jersey Association of Agricultural
39 Fairs, New Jersey Beekeepers' Association, Inc., New Jersey
40 Christmas Tree Growers' Association, New Jersey Commercial
41 Fisherman's Association, New Jersey Farmers Direct Marketing
42 Association, Inc., New Jersey Farm Bureau, Inc., New Jersey FFA
43 Alumni Association, Grain and Forage Producers' Association of New
44 Jersey, Inc., New Jersey Guernsey Breeders' Association, Inc., New
45 Jersey Hereford Association, New Jersey Holstein-Friesian
46 Association, Inc., New Jersey Horse Council, New Jersey Livestock

1 Cooperative Association, Inc., New Jersey Nursery and Landscape
2 Association, New Jersey Nursery and Landscape Association --
3 Metropolitan Chapter, New Jersey Peach Council, New Jersey Peach
4 Promotion Council, Inc., New Jersey Plant and Flower Growers
5 Association, Inc., New Jersey Pony Breeders and Owners, Inc., New
6 Jersey Quarter Horse Association, New Jersey Sheep and Wool
7 Cooperative Association, Inc., New Jersey State Florists' Association,
8 Inc., New Jersey State Grange, Patrons of Husbandry, Inc., New
9 Jersey State Horticultural Society, Inc., New Jersey State Potato
10 Association, Inc., New Jersey State Poultry Association, Inc., New
11 Jersey State Sweet Potato Industry Association, Inc., New Jersey
12 Turkey Association, New Jersey Veterinary Medical Association, New
13 Jersey Vocational Agriculture Teachers Association, each Pomona
14 Grange, Patrons of Husbandry, Standardbred Breeders and Owners
15 Association of New Jersey, Inc., Thoroughbred Breeders' Association
16 of New Jersey, Tru-Blu Cooperative Association, Inc., South Jersey
17 Flower Growers Association, Inc., and the Vegetable Growers
18 Association of New Jersey, Inc.

19 Prior to the time fixed for the holding of the annual convention each
20 of the organizations named in this section shall choose from its
21 members the authorized number of delegates and certify to the
22 convention their qualifications as such. The credentials shall be filed
23 with the proper convention officer or committee, and upon the
24 acceptance thereof by the convention such persons shall have all the
25 rights and powers of delegates.

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

27

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

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

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

35 b. "Areawide plan" means any plan prepared pursuant to section
36 208 of the Federal Act;

37 c. "Commissioner" means the Commissioner of Environmental
38 Protection or his authorized representative;

39 d. "Department" means the Department of Environmental
40 Protection;

41 e. "Discharge" means an intentional or unintentional action or
42 omission resulting in the releasing, spilling, leaking, pumping, pouring,
43 emitting, emptying, or dumping of a pollutant into the waters of the
44 State, onto land or into wells from which it might flow or drain into
45 said waters or into waters or onto lands outside the jurisdiction of the
46 State, which pollutant enters the waters of the State. "Discharge"

- 1 includes the release of any pollutant into a municipal treatment works;
- 2 f. "Effluent limitation" means any restriction on quantities, quality,
3 rates and concentration of chemical, physical, thermal, biological, and
4 other constituents of pollutants established by permit, or imposed as
5 an interim enforcement limit pursuant to an administrative order,
6 including an administrative consent order;
- 7 g. "Federal Act" means the "Federal Water Pollution Control Act
8 Amendments of 1972" (Public Law 92-500; 33 U.S.C. § 1251 et seq.);
- 9 h. "Municipal treatment works" means the treatment works of any
10 municipal, county, or State agency or any agency or subdivision
11 created by one or more municipal, county or State governments and
12 the treatment works of any public utility as defined in R.S.48:2-13;
- 13 i. "National Pollutant Discharge Elimination System" or "NPDES"
14 means the national system for the issuance of permits under the
15 Federal Act;
- 16 j. "New Jersey Pollutant Discharge Elimination System" or
17 "NJPDES" means the New Jersey system for the issuance of permits
18 under this act;
- 19 k. "Permit" means a NJPDES permit issued pursuant to section 6
20 of this act. "Permit" includes a letter of agreement entered into
21 between a delegated local agency and a user of its municipal treatment
22 works, setting effluent limitations and other conditions on the user of
23 the agency's municipal treatment works;
- 24 l. "Person" means any individual, corporation, company,
25 partnership, firm, association, owner or operator of a treatment works,
26 political subdivision of this State and any state or interstate agency.
27 "Person" shall also mean any responsible corporate official for the
28 purpose of enforcement action under section 10 of this act;
- 29 m. "Point source" means any discernible, confined and discrete
30 conveyance, including but not limited to, any pipe, ditch, channel,
31 tunnel, conduit, well, discrete fissure, container, rolling stock,
32 concentrated animal feeding operation, or vessel or other floating
33 craft, from which pollutants are or may be discharged;
- 34 n. "Pollutant" means any dredged spoil, solid waste, incinerator
35 residue, sewage, garbage, refuse, oil, grease, sewage sludge,
36 munitions, chemical wastes, biological materials, radioactive
37 substance, thermal waste, wrecked or discarded equipment, rock,
38 sand, cellar dirt, and industrial, municipal or agricultural waste or
39 other residue discharged into the waters of the State. "Pollutant"
40 includes both hazardous and nonhazardous pollutants;
- 41 o. "Pretreatment standards" means any restriction on quantities,
42 quality, rates, or concentrations of pollutants discharged into
43 municipal or privately owned treatment works adopted pursuant to
44 P.L.1972, c.42 (C.58:11-49 et seq.);
- 45 p. "Schedule of compliance" means a schedule of remedial
46 measures including an enforceable sequence of actions or operations

1 leading to compliance with water quality standards, an effluent
2 limitation or other limitation, prohibition or standard;

3 q. "Substantial modification of a permit" means any significant
4 change in any effluent limitation, schedule of compliance, compliance
5 monitoring requirement, or any other provision in any permit which
6 permits, allows, or requires more or less stringent or more or less
7 timely compliance by the permittee;

8 r. "Toxic pollutant" means any pollutant identified pursuant to the
9 Federal Act, or any pollutant or combination of pollutants, including
10 disease causing agents, which after discharge and upon exposure,
11 ingestion, inhalation or assimilation into any organism, either directly
12 or indirectly by ingestion through food chains, will, on the basis of
13 information available to the commissioner, cause death, disease,
14 behavioral abnormalities, cancer, genetic mutations, physiological
15 malfunctions, including malfunctions in reproduction, or physical
16 deformation, in such organisms or their offspring;

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

31 t. "Waters of the State" means the ocean and its estuaries, all
32 springs, streams and bodies of surface or ground water, whether
33 natural or artificial, within the boundaries of this State or subject to its
34 jurisdiction;

35 u. "Hazardous pollutant" means:

36 (1) Any toxic pollutant;

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

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

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

45 (5) Any hazardous waste as designated pursuant to section 3 of
46 P.L.1981, c.279 (C.13:1E-51) or the "Resource Conservation and

- 1 Recovery Act," Pub.L.94-580 (42 U.S.C.§6901 et seq.); or
- 2 (6) Any hazardous substance as defined pursuant to section 3 of
- 3 P.L.1976, c.141 (C.58:10-23.11b);
- 4 v. "Serious violation" means an exceedance of an effluent limitation
- 5 for a discharge point source set forth in a permit, administrative order,
- 6 or administrative consent agreement, including interim enforcement
- 7 limits, by 20 percent or more for a hazardous pollutant, or by 40
- 8 percent or more for a nonhazardous pollutant, calculated on the basis
- 9 of the monthly average for a pollutant for which the effluent limitation
- 10 is expressed as a monthly average, or, in the case of an effluent
- 11 limitation expressed as a daily maximum and without a monthly
- 12 average, on the basis of the monthly average of all maximum daily test
- 13 results for that pollutant in any month; in the case of an effluent
- 14 limitation for a pollutant that is not measured by mass or
- 15 concentration, the department shall prescribe an equivalent exceedance
- 16 factor therefor. The department may utilize, on a case-by-case basis,
- 17 a more stringent factor of exceedance to determine a serious violation
- 18 if the department states the specific reasons therefor, which may
- 19 include the potential for harm to human health or the environment.
- 20 "Serious violation" shall not include a violation of a permit limitation
- 21 for color;
- 22 w. "Significant noncomplier" means any person who commits a
- 23 serious violation for the same hazardous pollutant or the same
- 24 nonhazardous pollutant, at the same discharge point source, in any two
- 25 months of any six month period, or who exceeds the monthly average
- 26 or, in a case of a pollutant for which no monthly average has been
- 27 established, the monthly average of the daily maximums for an effluent
- 28 limitation for the same pollutant at the same discharge point source by
- 29 any amount in any four months of any six month period, or who fails
- 30 to submit a completed discharge monitoring report in any two months
- 31 of any six month period. The department may utilize, on a
- 32 case-by-case basis, a more stringent frequency or factor of exceedance
- 33 to determine a significant noncomplier, if the department states the
- 34 specific reasons therefor, which may include the potential for harm to
- 35 human health or the environment. A local agency shall not be deemed
- 36 a "significant noncomplier" due to an exceedance of an effluent
- 37 limitation established in a permit for flow;
- 38 x. "Local agency" means a political subdivision of the State, or an
- 39 agency or instrumentality thereof, that owns or operates a municipal
- 40 treatment works;
- 41 y. "Delegated local agency" means a local agency with an industrial
- 42 pretreatment program approved by the department;
- 43 z. "Upset" means an exceptional incident in which there is
- 44 unintentional and temporary noncompliance with an effluent limitation
- 45 because of an event beyond the reasonable control of the permittee,
- 46 including fire, riot, sabotage, or a flood, storm event, natural cause, or

1 other act of God, or other similar circumstance, which is the cause of
2 the violation. "Upset" also includes noncompliance consequent to the
3 performance of maintenance operations for which a prior exception
4 has been granted by the department or a delegated local agency;

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

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

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

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

19 ee. "Aquaculture" means the propagation, rearing and,
20 ²subsequent² harvesting of aquatic organisms in controlled or selected
21 environments, and the subsequent processing, packaging and
22 marketing, and shall include, but need not be limited to, activities to
23 intervene in the rearing process to increase production such as
24 stocking, feeding, transplanting, and providing for protection from
25 predators². "Aquaculture" shall not include the construction of
26 facilities and appurtenant structures that might otherwise be regulated
27 pursuant to any State or federal law or regulation²;

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

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

32
33 27. Section 6 of P.L.1977, c.74 (C.58:10A-6) is amended to read
34 as follows:

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

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

46 c. The commissioner is hereby authorized to grant, deny, modify,

1 suspend, revoke, and reissue NJPDES permits in accordance with
2 P.L.1977, c.74, and with regulations to be adopted by him. The
3 commissioner may reissue, with or without modifications, an NPDES
4 permit duly issued by the federal government as the NJPDES permit
5 required by P.L.1977, c.74.

6 d. The commissioner may, by regulation, exempt the following
7 categories of discharge, in whole or in part, from the requirement of
8 obtaining a permit under P.L.1977, c.74; provided, however, that an
9 exemption afforded under this section shall not limit the civil or
10 criminal liability of any discharger nor exempt any discharger from
11 approval or permit requirements under any other provision of ²State
12 and federal² law:

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

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

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

20 (4) Discharges of dredged or fill materials into waters for which
21 the State could not be authorized to administer the section 404
22 program under section 404(g) of the "Federal Water Pollution Control
23 Act Amendments of 1972," as amended by the "Clean Water Act of
24 1977" (33 U.S.C.§1344) and implementing regulations;

25 (5) Nonpoint source discharges;

26 (6) Uncontrolled nonpoint source discharges composed entirely of
27 storm water runoff when these discharges are uncontaminated by any
28 industrial or commercial activity unless these particular storm water
29 runoff discharges have been identified by the administrator or the
30 department as a significant contributor of pollution;

31 (7) Discharges conforming to a national contingency plan for
32 removal of oil and hazardous substances, published pursuant to section
33 311(c)(2) of the Federal Act[.];

34 (8) Discharges resulting from agriculture, including aquaculture,
35 activities.

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

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

40 (2) Any discharge which the United States Secretary of the Army,
41 acting through the Chief of Engineers, finds would substantially impair
42 anchorage or navigation;

43 (3) Any discharge to which the administrator has objected in
44 writing pursuant to the Federal Act;

45 (4) Any discharge which conflicts with an areawide plan adopted
46 pursuant to law.

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

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

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

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

38 (8) To report to the department or delegated local agency, as
39 appropriate, any exceedance of an effluent limitation that causes injury
40 to persons, or damage to the environment, or poses a threat to human
41 health or the environment, within two hours of its occurrence, or of
42 the permittee becoming aware of the occurrence. Within 24 hours
43 thereof, or of an exceedance, or of becoming aware of an exceedance,
44 of an effluent limitation for a toxic pollutant, a permittee shall provide
45 the department or delegated local agency with such additional
46 information on the discharge as may be required by the department or

1 delegated local agency, including an estimate of the danger posed by
2 the discharge to the environment, whether the discharge is continuing,
3 and the measures taken, or being taken, to remediate the problem and
4 any damage to the environment, and to avoid a repetition of the
5 problem;

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

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

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

17 The commissioner or delegated local agency may restore the
18 reporting requirements stipulated in the permit if the permittee has not
19 committed any of the violations identified in this paragraph for six
20 consecutive months;

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

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

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

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

43 (2) To establish an effective regulatory program, alone or in
44 conjunction with the operators of sewage collection systems, that will
45 assure compliance and monitor progress toward compliance by
46 industrial users of the facilities with user charge and cost recovery

1 requirements of the Federal Act or State law and toxicity standards
2 adopted pursuant to P.L.1977, c.74 and pretreatment standards.

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

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

30 (2) Of the amount of any penalty assessed and collected pursuant
31 to an action brought by a local agency in accordance with section 10
32 of P.L.1977, c.74 or section 6 of P.L.1990, c.28 (C.58:10A-10.1),
33 10% shall be deposited in the "Wastewater Treatment Operators'
34 Training Account," established in accordance with section 13 of
35 P.L.1990, c.28 (C.58:10A-14.5), and used to finance the cost of
36 training operators of municipal treatment works. The remainder shall
37 be used by the local agency solely for enforcement purposes, and for
38 upgrading municipal treatment works.

39 j. In reviewing permits submitted in compliance with P.L.1977,
40 c.74 and in determining conditions under which such permits may be
41 approved, the commissioner shall encourage the development of
42 comprehensive regional sewerage planning or facilities, which serve
43 the needs of the regional community, conform to the adopted
44 area-wide water quality management plan for that region, and protect
45 the needs of the regional community for water quality, aquifer storage,
46 aquifer recharge, and dry weather based stream flows.

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

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

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

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

1 (3) An evaluation of the maintenance record of the permittee's
2 treatment equipment;

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

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

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

11 The department may inspect a facility required to be inspected by
12 a delegated local agency pursuant to this subsection. Nothing in this
13 subsection shall require the department to conduct more than one
14 inspection per year.

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

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

1 o. Except as otherwise provided in section 3 of P.L.1963, c.73
2 (C.47:1A-3), any records, reports or other information obtained by
3 the commissioner or a local agency pursuant to this section or section
4 5 of P.L.1972, c.42 (C.58:11-53), including any correspondence
5 relating thereto, shall be available to the public; however, upon a
6 showing satisfactory to the commissioner by any person that the
7 making public of any record, report or information, or a part thereof,
8 other than effluent data, would divulge methods or processes entitled
9 to protection as trade secrets, the commissioner or local agency shall
10 consider such record, report, or information, or part thereof, to be
11 confidential, and access thereto shall be limited to authorized officers
12 or employees of the department, the local agency, and the federal
13 government.

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

20 q. The commissioner shall, in consultation with the Department of
21 Agriculture and the Aquaculture Advisory Council, provide for the
22 issuance of general permits for the discharge of pollutants from
23 concentrated aquatic animal production facilities and aquacultural
24 projects. In establishing general permits the commissioner shall take
25 into consideration the source and receiving water quality and the type
26 of aquaculture activity being conducted. The general permits issued
27 pursuant to this subsection shall ²[require the permittee] give priority²
28 to ²[meet] meeting² best management practices rather than ²[to attain
29 a] attaining² numeric pollutant discharge parameter ²[level] levels². If
30 the commissioner determines that a permittee cannot perform the best
31 management practices in order to obtain a general permit or that the
32 performance of best management practices will not be protective of
33 water quality as required by P.L.1977, c.74, the commissioner may
34 require the permittee to obtain an individual permit which may contain
35 numeric pollutant parameter discharge limits. ²[In setting any numeric
36 pollutant parameter discharge limits, the commissioner shall rely on the
37 development of categorical standards that are applicable to specific
38 types of aquaculture activities.]²

39 (cf: P.L.1995, c.16, s.3)

40

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

43 2. After December 31, 1991, the department may not issue a
44 permit to any private, commercial, or industrial applicant for the
45 discharge of any solid, semi-solid, or liquid wastes into the ocean
46 waters of the State, the provisions of any other law, or rule or

1 regulation to the contrary notwithstanding. Any permit issued by the
2 department for the discharge of any such waste prior to January 1,
3 1992 shall expire on January 1, 1992, the provisions of any such
4 permit to the contrary notwithstanding. The provisions of [this act]
5 P.L.1989, c.119 shall not apply to permits applied for, or issued to,
6 municipal treatment works [or] , seafood processing facilities ², public
7 water supply desalinization plants² , or ²[for]² aquaculture activities.
8 As used in this act, "ocean waters" means those waters of the open
9 seas lying seaward of the base line from which the territorial sea is
10 measured, as provided for in the Convention on the Territorial Sea and
11 the Contiguous Zone (15 UST 1606; TIAS 5639).

12 As used in this section, "aquaculture" means the propagation,
13 rearing, and ²subsequent² harvesting of aquatic organisms in controlled
14 or selected environments, and the subsequent processing, packaging
15 and marketing, and shall include, but need not be limited to, activities
16 such as stocking, intervention in the rearing process to increase
17 production, feeding, transplanting, and providing for protection from
18 predators ²and shall not include the construcion of facilities and
19 appurtenant structures that might oterhwise be regulated pursuant to
20 any State or federal law or regulation,² and "aquatic organism" means
21 and includes, but need not be limited to, finfish, mollusks, crustaceans,
22 and aquatic plants which are the property of a person engaged in
23 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 ²[and] ²rearing ²and
13 subsequent harvesting² of aquatic species in controlled or selected
14 environments, and the subsequent processing, packaging and
15 marketing, and shall include, but need not be limited to, activities to
16 intervene in the rearing process to increase production such as
17 stocking, feeding, transplanting, and providing for protection from
18 predators. ²"Aquaculture" shall not include the construction of
19 facilities and appurtenant structures that might otherwise be regulated
20 pursuant to any State or federal law or regulation.²

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

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

25
26 30. Section 6 of P.L.1981, c.262 (C.58:1A-6) is amended to read
27 as follows:

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

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

46 (2) Require any person diverting 100,000 or more gallons of water

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

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

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

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

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

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

46 (1) study water supply availability;

- 1 (2) estimate future water supply needs;
- 2 (3) identify appropriate and reasonable alternative water supply
3 management strategies;
- 4 (4) select and adopt appropriate water supply alternatives; and
- 5 (5) require affected permittees to prepare water supply plans
6 consistent with the adopted water supply management alternatives.

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

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

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

26

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

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

39 As used in this section, "aquaculture" means the propagation,
40 rearing, and ²subsequent² harvesting of aquatic organisms in controlled
41 or selected environments, and the subsequent processing, packaging
42 and marketing, and shall include, but need not be limited to, activities
43 such as stocking, intervention in the rearing process to increase
44 production, feeding, transplanting, and providing for protection from
45 predators ²and shall not include the construction of facilities and
46 appurtenant structures that might otherwise be regulated pursuant to

1 any State or federal law or regulation,² and "aquatic organism" means
2 and includes, but need not be limited to, finfish, mollusks, crustaceans,
3 and aquatic plants which are the property of a person engaged in
4 aquaculture.

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

6

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

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

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

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

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

19 (3) Recommendations for improvements to existing State water
20 supply facilities, the construction of additional State water supply
21 facilities, and for the interconnection or consolidation of existing water
22 supply systems; [and]

23 (4) Recommendations for the diversion or use of fresh surface or
24 ground waters and saline surface or ground water for aquaculture
25 purposes; and

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

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

29 (1) Prepare and make available to all interested persons a proposed
30 plan;

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

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

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

37

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

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

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

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

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

8

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

11 3. As used in this act:

12 a. "Agricultural or horticultural purposes" or "agricultural or
13 horticultural use" means any production of plants or animals useful to
14 man, including but not limited to: forages or sod crops; grains and
15 feed crops; dairy animals and dairy products; poultry and poultry
16 products; livestock, including beef cattle, sheep, swine, horses,
17 ponies, mules or goats, and including the breeding and grazing of any
18 or all of such animals; bees and apiary products; fur animals; aquatic
19 organisms as part of aquaculture; trees and forest products; fruits of
20 all kinds, including grapes, nuts and berries; vegetables; nursery,
21 floral, ornamental and greenhouse products; or any land devoted to
22 and meeting the requirements and qualifications for payments or other
23 compensation pursuant to a soil conservation program under an
24 agency of the Federal Government;

25 b. "Application for development" means the application form and
26 all accompanying documents required by municipal ordinance for
27 approval of a subdivision plat, site plan, planned development,
28 conditional use, zoning variance or other permit as provided in the
29 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), for
30 any use, development or construction other than the improvement,
31 expansion or reconstruction of any single-family dwelling unit or
32 appurtenance thereto, or the improvement, expansion, construction or
33 reconstruction of any structure used exclusively for agricultural or
34 horticultural purposes;

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

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

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

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

43 g. "Major development" means any division or subdivision of land
44 into five or more parcels; any construction or expansion of any
45 housing development of five or more dwelling units; any construction
46 or expansion of any commercial or industrial use or structure on a site

1 of more than 3 acres; or any grading, clearing or disturbance of any
 2 area in excess of 5,000 square feet for other than agricultural or
 3 horticultural purposes;

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

6 i. "Pinelands National Reserve" means the approximately
 7 1,000,000 acre area so designated by the Federal Act and generally
 8 depicted on the map entitled "Pinelands National Reserve Boundary
 9 Map" numbered NPS/80,011A and dated September, 1978;

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

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

14 l. "Aquaculture" means the propagation, rearing, and ²subsequent²
 15 harvesting of aquatic organisms in controlled or selected
 16 environments, ²and the subsequent processing, packaging and
 17 marketing² and shall include but need not be limited to, activities to
 18 intervene in the rearing process to increase production such as
 19 stocking, feeding, transplanting and providing for protection from
 20 predators ². "Aquaculture" shall not include the construction of
 21 faciliteis and appurtenant structures that might otherwise be regulated
 22 pursuant to any other State or federal law or regulation²;

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

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

27

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

35

36 ²[¹[35.] 37.¹ (New section) There is appropriated from the
 37 General Fund to the Department of Agriculture the sum of \$250,000
 38 to implement their responsibilities pursuant to this act.]²

39

40 ²[38.] 37.² This act shall take effect immediately.

41

42

43

44

45 The "New Jersey Aquaculture Development Act."