13:1K-9.6 et al.

LEGISLATIVE HISTORY CHECKLIST
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(Industrial Site Recovery Act--amends ECRA)

NJSA: 13:1K-9.6 et al

LAWS OF: 1993 **CHAPTER:** 139

BILL NO: S1070

SPONSOR(S) McNamara and other

DATE INTRODUCED: July 23, 1992

COMMITTEE: **ASSEMBLY:** Policy and Rules

SENATE: Environment; Budget and Appropriations

AMENDED DURING PASSAGE: Yes Amendments during passage denoted by superscript numbers
Senate Committee substitute
(Second Reprint enacted)

DATE OF PASSAGE: **ASSEMBLY:** June 10, 1992

SENATE: March 22, 1993

DATE OF APPROVAL: June 16, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes 3-15-93 & 3-[illegible]-93

FISCAL NOTE: yes

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: Yes

(over)

Do Not Remove From File

974.90 P777 1992t — New Jersey. Legislature. Senate. Environment Committee and Assembly. Energy and Hazardous Waste Committee. Committee meeting on S.1070, held 9-21-92 & 10-5-92.

974.90 P777 1993 — New Jersey. Lesiglature. Senate. Environment Committee. Public hearing on S.1070, held 1-26-93. Trenton, 1993.

974.90 P777 1992c — New Jersey. Legislature. Senate. Environment Committee. Public hearing on discussion oof the 1Environmental Cleanup and Responsibility Act' (ECRA)...held 3-16-92 and 3-19-93. Trenton, 1992.

See newspaper clippings--attached:
"N.J. loosens toxic cleanup regulations," 6-11-93 Bergen Record.
"Environment cleanup bill awaits Florio signature," 6-11-93 Asbury Park Press.
"New law to ease GM sale," 6-17-93 Trentonian.
"Cleanup standards eased for industry," 6-17-93 Star Ledger.

KBG:pp

NJSA: 13:1K-9.6 and 13:1K-9.7

Legislative History Checklist
(Compiled by the Office of Legislative Services Library)

Synopsis: Makes various changes to various hazardous discharge site remediation programs; imposes a surcharge on remediations; establishes a loan and grant fund for remediation activities; appropriates bond moneys.

Bill No.: S1070 **P.L.** 1993, c. 139

Identical to: A162/A1727/A1835
Substituted for: A162/A1727/A1835
Combined with:
Last Session Bill No.:

See Above Bill(s) for Additional History

NJSA: 13:1K-9.6 and 13:1K-9.7
13:1K-11.2 et seq.
58:10B-1 et seq.

Sponsor(s): McNamara/Rice+6

Date Introduced: 07/23/92

Committee Reference:	**Statement:**	**Public Hearing:**
Assembly:		
Energy and Hazardous Waste	No	Yes*
Policy and Rules	Yes	No
Senate:		
Environment	Yes	Yes**
Budget and Appropriations	Yes	No

Sponsor Statement: Yes

Fiscal Note: Yes

Dates of Passage:

Assembly:	*Senate:*
06/10/93 (76-3)	03/22/93 (39-0) 06/10/93 (35-1)

Amended During Passage: Yes

Governor's Action:

Veto: No **Date of Veto:**

Date of Approval: 06/16/93 **Message on Signing:** Yes

Additional Information:

*Committee meeting before the Senate Environment Committee and Assembly Energy and Hazardous Waste Committee on S1070 and A1727, held September 21, 1992 and October 5, 1992.

**Public hearing before the Senate Environment Committee on S1036 and S1070 held January 26, 1993.

Governor's News Release "Gov. Florio Hails ECRA Reforms," June 10, 1993

§§8,9 -
C.13:1K-9.6,
C.13:1K-9.7
§§13-22 -
C.13:1K-11.2
to 13:1K-11.11
§§23-33,35,36,
38-43,45
Title 58.
Chapter 10B.(New)
Hazardous
Discharge Site
Remediation
C.58:10B-1 to
58:10B-20
§34-Approp.
§§37,47-49 T&E
§50-Note to §44

P.L.1993, CHAPTER 139, *approved June 16, 1993*
Senate Committee Substitute *(Second Reprint)* for
1992 Senate No. 1070

AN ACT concerning the remediation of contaminated property, amending and supplementing P.L.1983, c.330, amending P.L.1976, c.141, supplementing Title 58 of the Revised Statutes, [1]amending P.L.1993, c.112,[1] and making an appropriation from the "Hazardous Discharge Bond Act of 1986."

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

1. Section 1 of P.L.1983, c.330 (C.13:1K-6) is amended to read as follows:

1. This act shall be known and may be cited as the [~~"Environmental Cleanup Responsibility Act."~~] "Industrial Site Recovery Act."

(cf: P.L.1983, c.330, s.1)

2. Section 2 of P.L.1983, c.330 (C.13:1K-7) is amended to read as follows:

2. [~~The Legislature finds and declares that the generation, handling, storage and disposal of hazardous substances and wastes pose an inherent danger of exposing the citizens, property and natural resources of this State to substantial risk of harm or degradation; that the closing of operations and the transfer of real property utilized for the generation, handling, storage and disposal of hazardous substances and wastes should be conducted in a rational and orderly way, so as to mitigate potential risks; and that it is necessary to impose a precondition on any closure or transfer of these operations by requiring the adequate preparation and implementation of acceptable cleanup procedures therefor.~~]

The Legislature finds that discharges of toxic chemicals dating back to early industrialization has left a legacy of contaminated industrial property in this State; that in 1983, due to the growing public awareness and concern of the risks to the public health and the environment and the potential costs to the State to clean up abandoned contaminated sites, the "Environmental Cleanup and

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

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1] Assembly APR committee amendments adopted June 3, 1993.
[2] Assembly floor amendments adopted June 10, 1993.

Responsibility Act 1[,]1" was enacted. The Legislature also finds that the act's imposition of a cleanup plan approval before the transfer or upon the closing of an industrial establishment and the requirement to establish a funding source for the cleanup 1[is] are1 in the general public interest by ensuring the discovery of contamination, by assuring that funding for cleanup is set aside at the time it is available from a transfer or closing, and by assuring that contaminated property is not abandoned to the State for cleanup. The Legislature further finds that at the time of the act's passage, the extent of the State's industrial contamination 1[,]1 and the cost and complexity of remediations 1[,]1 were not well understood; that in the intervening years, there has been a significant advance in the body of knowledge concerning how to remediate contaminated sites effectively and how to manage the remediation efficiently; that the regulated and financial 1[community is] communities are1 now more familiar with the liabilities involving contaminated property and with the necessity to discover and remediate that contamination; and that it is in the interest of the environment and the State's economic health to promote certainty in the regulatory process by incorporating that knowledge to create a more efficient regulatory structure and to allow greater privatization of that process where it is possible to do so without incurring unnecessary risks to the public health or the environment.

The Legislature therefore declares that it is the policy of this State to protect the public health, safety, and the environment, to promote efficient and timely cleanups, and to eliminate any unnecessary financial burden of remediating contaminated sites; that these policies can be achieved by streamlining the regulatory process, by establishing summary administrative procedures for industrial establishments that have previously undergone an environmental review, and by reducing oversight of those industrial establishments where less extensive regulatory review will 1[assure] ensure1 the same degree of protection to 1[human] public1 health 1, safety,1 and the environment; and that the new procedures established pursuant to this act shall be designed to 1[remove] guard against1 redundancy from the regulatory process and to minimize governmental involvement in certain business transactions.

(cf: P.L.1983, c.330, s.2)

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

3. As used in this act:

[a. "Cleanup plan"] "Remedial action workplan" means a plan for the [cleanup of] remedial action to be undertaken at an industrial [establishments, approved by the department, which may include a description of the locations, types and quantities of hazardous substances and wastes that will remain on the premises; a description of the types and locations of storage vessels, surface impoundments, or secured landfills containing hazardous substances and wastes; recommendations regarding the most practicable method of cleanup; and] establishment, or at any area to which a discharge originating at the industrial establishment is migrating or has migrated; a description of the remedial action to be used to remediate the industrial

establishment; a time schedule and cost estimate of the [cleanup plan.] implementation of the remedial action; and any other [1]relevant[1] information the department deems necessary;

[The department, upon a finding that the evaluation of a site for cleanup purposes necessitates additional information, may require graphic and narrative descriptions of geographic and hydrogeologic characteristics of the industrial establishment and evaluation of all residual soil, groundwater, and surface water contamination;

b. "Closing, terminating or transferring operations" means the cessation of all operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes, or any temporary cessation for a period of not less than two years, or any other transaction or proceeding through which an industrial establishment becomes nonoperational for health or safety reasons or undergoes change in ownership, except for corporate reorganization not substantially affecting the ownership of the industrial establishment, including but not limited to sale of stock in the form of a statutory merger or consolidation, sale of the controlling share of the assets, the conveyance of the real property, dissolution of corporate identity, financial reorganization and initiation of bankruptcy proceedings]

"Closing operations" means:

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

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

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

(4) the initiation of bankruptcy proceedings pursuant to Chapter 7 of the federal Bankruptcy Code, 11 U.S.C. [2][§70100] §701[2] et seq. or the filing of a plan of reorganization that provides for a liquidation pursuant to Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. §1101 et seq.; [1][or][1]

(5) any change in operations of an industrial establishment that changes the industrial establishment's Standard Industrial Classification number to one that is not subject to this act; [1]or

(6) the termination of a lease unless there is no disruption in operations of the industrial establishment, or the assignment of a lease;[1]

"Transferring ownership or operations" means:

(1) any transaction or proceeding through which an industrial

establishment undergoes a change in ownership,

(2) the sale or transfer of more than 50% of the assets of an industrial establishment within any five year period [1], as measured on a constant, annual date-specific basis[1];

(3) the execution of a lease for a period of 99 years or longer for an industrial establishment; [1]or[1]

(4) [1][the termination of a lease unless renewed without a disruption in operations of the industrial establishment, or the assignment of a lease; or

(5)][1] the dissolution of an entity that is an owner or operator or an indirect owner of an industrial establishment, except for any dissolution of an indirect owner of an industrial establishment whose assets would have been unavailable for the remediation of the industrial establishment if the dissolution had not occurred;

"Change in ownership" means:

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

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

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

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

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

"Change in ownership" shall not include:

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

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

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

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

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

(6) [1][the execution of a mortgage, the filing of a lien, the

granting of a security interest, or the assignment of a lease to secure a loan, or the refinancing of a debt, not including a sale and lease back agreement, by the owner or operator of an industrial establishment;

(7)]1 a transfer to release a contingent or reversionary interest except for any transfer of a lessor's reversionary interest in leased real property;

1[(8)] (7)1 a transfer of an industrial establishment by devise or intestate succession;

1[(9)] (8)1 the granting or termination of an easement or a license to any portion of an industrial establishment; 1[or

(10)] (9)1 the sale or transfer of real property pursuant to a condemnation proceeding initiated pursuant to the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.) 1;

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

(11) any transfer of personal property pursuant to a valid security agreement, collateral assignment or other lien, including, but not limited to, seizure or replevin of such personal property which transfer is for the purpose of implementing the secured party's rights in the personal property which is the collateral1.

[c.] "Department" means the Department of Environmental Protection 1and Energy1;

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

[e.] "Hazardous waste" [means any amount of any waste substances required to be reported to the Department of Environmental Protection on the special waste manifest pursuant to N.J.A.C.7:26-7.4, or as otherwise provided by law] shall have the same meaning as provided in section 1 of P.L.1976, c.99 (C.13:1E-38);

[f.] "Industrial establishment" means any place of business engaged in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or hazardous wastes on-site, above or below ground, having a Standard Industrial Classification number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard Industrial Classifications Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States. Those facilities or parts of facilities subject to operational closure and post-closure maintenance requirements pursuant to the "Solid Waste

Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.) or the "Solid Waste Disposal Act" (42 U.S.C.§6901 et seq.), or any establishment engaged in the production or distribution of agricultural commodities, shall not be considered industrial establishments for the purposes of this act. The department may, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), exempt certain sub-groups or classes of operations within those sub-groups within the Standard Industrial Classification major group numbers listed in this subsection upon a finding that the operation of the industrial establishment does not pose a risk to public health and safety;

[g.] "Negative declaration" means a written declaration, submitted by the owner or operator of an industrial establishment [1]or other person assuming responsibility for the remediation under paragraph (3) of subsection b. of section 4 of P.L.1983, c.330[1] [and approved by the department] to the department, certifying that there has been no discharge of hazardous substances or hazardous wastes on the site, or that any such discharge on the site or discharge that has migrated or is migrating from the site has been [cleaned up] remediated in accordance with procedures approved by the department [, and there remain no hazardous substances or wastes at the site of the industrial establishment] and in accordance with any applicable remediation regulations;

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

"No further action letter" means a written determination by the department that, based upon an evaluation of the historical use of the industrial establishment and the property, or of an area of concern or areas of concern, as applicable, and any other investigation or action the department deems necessary, there are no discharged hazardous substances or hazardous wastes present at the site of the industrial establishment, at the area of concern or areas of concern, or at any other site to which [1][a discharge] discharged hazardous substances or hazardous wastes[1] originating at the industrial establishment [1][has] have[1] migrated, and that any discharged hazardous substances or hazardous wastes present at the industrial establishment or that have migrated from the site have been remediated in accordance with applicable remediation regulations;

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

"Direct owner or operator" means any person that directly owns or operates an industrial establishment [2]. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be a direct owner or operator of the industrial establishment unless or until it loses its

exemption under P.L.1993, c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process[2];

"Area of concern" means any [2][existing or former][2] location where hazardous substances or hazardous wastes are or were known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, or disposed, or where hazardous substances or hazardous wastes have or may have migrated;

"Remediation standards" means the combination of numeric and narrative standards to which hazardous substances or hazardous wastes must be investigated or remediated as established by the department pursuant to section 35 of P.L. , c. (C.)(now before the Legislature as this bill);

"Owner" means any person who owns the real property of an industrial establishment or who owns the industrial establishment [2]. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be an owner of the industrial establishment unless or until it loses its exemption under P.L.1993, c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process[2] ;

"Operator" means any person, including users, tenants, [1]or[1] occupants, [1][or trespassers,][1] having and exercising direct actual control of the operations of an industrial establishment [2]. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be an operator of the industrial establishment unless or until it loses its exemption under P.L.1993, c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process[2] ;

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether hazardous substances or hazardous wastes are or were present at an industrial establishment or have migrated or are migrating from the industrial establishment, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or [1][potential] latent[1] discharge of any hazardous substance or hazardous waste is required [1]. The evaluation of historic information shall be conducted from [2][1900] 1932[2] to the present, except that the department may require the search for and evaluation of additional information relating to ownership and use of the site prior to [2][1900] 1932[2] if such information is available through diligent inquiry of public records[1];

"Remediation" or "remediate" means all necessary actions to investigate and clean up any known [1][or] ,[1] suspected [1], or threatened[1] discharge of hazardous substances or hazardous wastes, including [1], as necessary,[1] the preliminary assessment, site investigation, remedial investigation, and remedial action;

"Remedial action" means those actions taken at an industrial establishment or offsite of an industrial establishment if

hazardous substances or hazardous wastes have migrated or are migrating therefrom, as may be required by the department [1][, including] to protect public health, safety, and the environment. These actions may include[1] the removal, treatment, containment, transportation, securing, or other engineering [1][or treatment][1] measures, whether of a permanent nature or otherwise, designed to ensure that any discharged hazardous substances or hazardous wastes at the site or that have migrated or are migrating from the site, are remediated in compliance with the applicable remediation standards;

"Remedial investigation" means a process to determine the nature and extent of a discharge of hazardous substances or hazardous wastes at an industrial establishment or a discharge of hazardous substances or hazardous wastes that have migrated or are migrating from the site and the problems presented by a discharge, and may include data [2][collected] collection[2], site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the evaluation of [1][remediated alternatives] remedial actions if necessary[1];

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

(cf: P.L.1983, c.330, s.3)

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

4. [a. The owner or operator of an industrial establishment planning to close operations shall:

(1) Notify the department in writing, no more than five days subsequent to public release, of its decision to close operations;

(2) Upon closing operations, or 60 days subsequent to public release of its decision to close or transfer operations, whichever is later, the owner or operator shall submit a negative declaration or a copy of a cleanup plan to the department for approval and a surety bond or other financial security for approval by the department guaranteeing performance of the cleanup in an amount equal to the cost estimate for the cleanup plan.

b. The owner or operator of an industrial establishment planning to sell or transfer operations shall:

(1) Notify the department in writing within five days of the execution of an agreement of sale or any option to purchase;

(2) Submit within 60 days prior to transfer of title a negative declaration to the department for approval, or within 60 days prior to transfer of title, attach a copy of any cleanup plan to the contract or agreement of sale or any option to purchase which may be entered into with respect to the transfer of operations. In the event that any sale or transfer agreements or options have been executed prior to the submission of the plan to the department, the cleanup plan shall be transmitted, by certified mail, prior to the transfer of operations, to all parties to any

transaction concerning the transfer of operations, including purchasers, bankruptcy trustees, mortgagees, sureties, and financiers;

(3) Obtain, upon approval of the cleanup plan by the department, a surety bond or other financial security approved by the department guaranteeing performance of the cleanup plan in an amount equal to the cost estimate for the cleanup plan.

c. The cleanup plan and detoxification of the site shall be implemented by the owner or operator, provided that the purchaser, transferee, mortgagee or other party to the transfer may assume that responsibility pursuant to the provisions of this act.]

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

b. (1) Subsequent to the submittal of the notice required pursuant to subsection a. of this section, the owner or operator of an industrial establishment shall, except as otherwise provided by P.L.1983, c.330 or P.L. , c. (C.)(now before the Legislature as this bill), remediate the industrial establishment. The remediation shall be conducted in accordance with criteria, procedures, and time schedules established by the department.

(2) The owner or operator shall attach a copy of any approved negative declaration, approved remedial action workplan, [1]no further action letter,[1] or remediation agreement approval to the contract or agreement of sale or agreement to transfer or any option to purchase which may be entered into with respect to the transfer of ownership or operations. In the event that any sale or transfer agreements or options have been executed prior to the approval of a negative declaration, remedial action workplan, [1]no further action letter,[1] or remediation agreement, these documents, as relevant, shall be transmitted by the owner or operator, by certified mail, [1]overnight delivery, or personal

service,[1] prior to the transfer of ownership or operations, to all parties to any transaction concerning the transfer of ownership or operations, including purchasers, bankruptcy trustees, mortgagees, sureties, and financiers.

(3) The preliminary assessment, site investigation, remedial investigation, [1][remedial action workplan,][1] and remedial action for the industrial establishment shall be performed and implemented by the owner or operator of the industrial establishment, except that any other party may assume that responsibility pursuant to the provisions of P.L.1983, c.330.

c. The owner or operator of an industrial establishment shall, subsequent to closing operations, or of its public release of its decision to close operations, or prior to transferring ownership or operations except as otherwise provided in subsection e. of this section, as applicable, submit to the department for approval a proposed negative declaration or proposed remedial action workplan. Except as otherwise provided in [2]section 6 of P.L.1983, c.330 (C.13:1K-11), and[2] sections [2][1]11[1][2] , 13, [1][14,][1] 16, 17 and 18 of P.L. , c. (C.)(now before the Legislature as this bill), the owner or operator of an industrial establishment shall not transfer ownership or operations until a negative declaration or a remedial action workplan has been approved by the department or the conditions of subsection e. of this section for remediation agreements have been met and until, in cases where a remedial action workplan is required to be approved or a remediation agreement has been approved, a remediation funding source, as required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill), has been established.

d. (1) Upon the submission of the results of either the preliminary assessment, site investigation, [2][or][2] remedial investigation, [2]or remedial action, where applicable,[2] which demonstrate that there are no discharged hazardous substances or hazardous wastes at the industrial establishment, or that have migrated from or are migrating from the industrial establishment, in violation of the applicable remediation standards, the owner or operator may submit to the department for approval a proposed negative declaration as provided in subsection c. of this section.

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

e. The owner or operator of an industrial establishment [1],[1] who has submitted a notice to the department pursuant to subsection a. of this section , may transfer ownership or operations of the industrial establishment prior to the approval of a negative declaration or remedial action workplan upon

application to and approval by the department of a remediation agreement. The owner or operator requesting a remediation agreement shall submit the following documents: (1) an [1][estimation] estimate[1] of the cost of the remediation that is approved by the department; (2) a certification of the statutory liability of the owner or operator pursuant to P.L.1983, c.330 to perform and to complete a remediation of the industrial establishment in the manner and time limits provided by the department in regulation and consistent with all applicable laws and regulations; however, nothing in this paragraph shall be construed to be an admission of liability, or to impose liability on the owner or operator, pursuant to P.L.1976, c.141 [1](C.58:10-23.11 et seq.)[1] or pursuant to any other statute or common law; (3) evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with the provisions of section 25 of P.L. , c. (C.)(now before the Legislature as this bill); (4) a certification that the owner or operator is subject to the provisions of P.L.1983, c.330, including the liability for penalties for violating the act, defenses to liability and limitations thereon, the requirement to perform a remediation as required by the department, allowing the department access to the industrial establishment as provided in section 5 of P.L.1983, c.330 (C.13:1K-10), and the requirement to prepare and submit any document required by the department relevant to the remediation of the industrial establishment; and (5) evidence of the payment of all applicable fees required by the department.

The department may require in the remediation agreement [1][,][1] that all plans for and results of the preliminary assessment, site investigation, remedial investigation, and [1]the implementation of the[1] remedial action workplan [1][and the implementation thereof][1] , prepared or initiated subsequent to the transfer of ownership or operations, be submitted to the department, for review purposes only, at the completion of each phase of the remediation.

The department shall adopt regulations establishing the manner in which the documents required pursuant to paragraphs (1) through (5), inclusive, of this subsection shall be submitted. The department shall approve the application for the remediation agreement upon the complete and accurate submission of the documents required to be submitted pursuant to this subsection. The regulations shall include a sample form of the certifications. Approval of a remediation agreement shall not affect an owner's or [1][operator'] operator's[1] right to avail itself of the provisions of section 6 of P.L.1983, c.330 (C.13:1K-11), of sections 12, 13, 14, 15, 16, 17, or 18 of P.L. , c. (C.)(now before the Legislature as this bill), or of the other provisions of this section.

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

site investigation, and remedial investigation may, at the discretion of the owner or operator, be submitted to the department for its review and approval at the completion of each phase of the remediation.

g. [1][(1)]1 [2](1)2 The soil remediation standard to be implemented on an industrial establishment shall be selected in conformance with the policies and criteria enumerated in section 35 of P.L. , c. (C.)(now before the Legislature as this bill).

(2) [1][The owner or operator proposing to implement the nonresidential use soil remediation standards shall review and consider for implementation, at a minimum, each relevant remedial action that is set forth in the guidance document published pursuant to section 38 of P.L. , c. (C.)(now before the Legislature as this bill).

(3)]1 The department may not disapprove the use of the minimum nonresidential soil remediation standards adopted by the department except upon a finding that the use of 2[a] the2 nonresidential soil remediation standards at that site would not be protective of public health, safety, or the environment or except as provided in subsection 1[j.] i.1 of this section.

h. An owner or operator of an industrial establishment may implement a soil remedial action at an industrial establishment without prior department approval of the remedial action workplan for the remediation of soil when the remedial action can reasonably be expected to be completed pursuant to standards, criteria, and time schedules established by the department 1[within] , which schedules shall not exceed1 five years 1[of] from1 the commencement of the implementation of the remedial action and if 1[:

(1) the owner or operator is transferring ownership or operations of the industrial establishment and the soil remediation meets the established minimum residential or nonresidential use soil remediation standards adopted by the department; or

(2) the owner or operator is closing operations of the industrial establishment and the soil remediation meets the established minimum residential use soil remediation standards adopted by the department] the owner or operator is implementing a soil remediation which meets the established minimum residential or nonresidential use soil remediation standards adopted by the department1.

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

i. An owner or operator of an industrial establishment 1[proposing to implement soil remediation of an industrial establishment shall submit a proposed remedial action workplan for the remediation of soil to the department for its prior review and approval if:

(1) the remedial action cannot reasonably be expected to be completed pursuant to standards, criteria, and time schedules

established by the department within five years of the commencement of the implementation of the remedial action;

(2) the owner or operator of the industrial establishment is closing operations and the remediation will meet the established minimum nonresidential use soil remediation standards; or

(3) the soil remediation does not meet either the established minimum residential or nonresidential use soil remediation standards adopted by the department] shall base 2[its] his2 decision to use the nonresidential use soil remediation standards for the industrial establishment upon the criteria listed below, as applicable:

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

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

(3) The transferee of the industrial establishment has agreed to the implementation of the nonresidential use soil remediation 2[standard] standards2 ;

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

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

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

The department shall, within 18 months of the effective date of 2[this amendatory and supplementary act,] P.L. , c. (C.) (now before the Legislature as this bill),2 promulgate regulations to clearly define how the department will evaluate the application of the criteria enumerated in paragraphs (1) through (6) of this subsection; provided, however, that notwithstanding the preceding requirement, 2the2 criteria 2enumerated in paragraphs2 (1) through (4) and 2in paragraph2 (6) shall become immediately operative. Until the department promulgates those regulations, it shall impose reasonable standards and requirements upon any owner or operator deciding to use nonresidential use soil remediation standards pursuant to this subsection. Furthermore, the department shall not impose any requirement or standard with regard to 2the2 criterion 2enumerated in paragraph2 (5) that would require an owner or operator to implement residential use soil remediation standards unless the cost difference between implementing the residential standards and the nonresidential standards is a de 2[minimus] minimis2 amount. For the purposes of the preceding, de 2[minimus] minimis2 shall mean a cost difference not exceeding 10 percent of the cost of implementing the nonresidential standards.

At any time after the effective date of 2[this amendatory and supplementary act] P.L. , c. (now before the Legislature as this bill)2, an owner or operator may request the department to provide a determination as to whether a proposed remedial action is consistent with the criteria set forth above in paragraphs (1) through (6). The department shall provide any such determination

within 30 calendar days of the department's receipt of the request[1].

j. [1][The department shall review and approve or disapprove the proposed remedial action workplan required to be submitted pursuant to subsection i. of this section to determine if the proposed remedial action workplan is in compliance with the rules and regulations regarding remediation and, if applicable, that the use of the nonresidential use soil remediation standards are appropriate for the industrial establishment. The department shall base its decision to approve or disapprove the use of nonresidential use soil remediation standards for the industrial establishment upon the criteria listed below, as applicable.

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

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

(3) The transferee of the industrial establishment agrees to the implementation of the nonresidential use soil remediation standard;

(4) The potential for the hazardous substances or hazardous wastes to affect other property; and

(5) The difference in cost between the use of the residential use soil remediation standards and the nonresidential use soil remediation standards] An owner or operator proposing to implement a [2]soil[2] remedial action other than one which is set forth in subsection h. of this section must receive department approval prior to implementation of the remedial action[1].

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

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

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

The department shall review all information submitted to it by the owner or operator at the completion of the remediation to determine whether the actions taken were in compliance with

rules and regulations of the department regarding remediation.

The department may review and approve or disapprove every remedial action workplan, no matter when submitted, to determine, in accordance with the criteria listed in subsection g. of section 35 of P.L. , c. (C.)(now before the Legislature as this bill) if the remedial action that has occurred or that will occur is appropriate to meet the [1][established] applicable[1] remediation standards.

The department may order additional remediation activities at the industrial establishment, or offsite where necessary, or may require the submission of additional information, where (a) the department determines that the remediation activities undertaken were not in compliance with [1]the[1] applicable rules or regulations of the department; (b) all documents required to be submitted to the department were not submitted or, if submitted, were inaccurate, or deficient; or (c) [2][if][2] discharged hazardous substances or hazardous wastes remain at the industrial establishment, or have migrated or are migrating offsite, at levels or concentrations in violation of the applicable remediation standards. Upon a finding by the department that the remediation conducted at the industrial establishment was in compliance with all applicable regulations, that no hazardous substances or hazardous wastes remain at the industrial establishment in violation of the applicable remediation standards, and that all hazardous substances or hazardous wastes that migrated from the industrial establishment have been remediated in conformance with the applicable remediation standards, the department shall approve the remediation for that industrial establishment by the issuance of a no further action letter.

(cf: P.L.1983, c.330, s.4)

5. Section 2 of P.L.1991, c.238 (C.13:1K-9.2) is amended to read as follows:

2. The acquiring of title to an industrial establishment by a municipality pursuant to a foreclosure action pertaining to a certificate of tax sale purchased and held by the municipality shall not relieve the previous owner or operator of the industrial establishment of his duty to [implement a cleanup plan if the implementation is deemed necessary by the Department of Environmental Protection] remediate the industrial establishment as required pursuant to P.L.1983, c.330.

(cf: P.L.1991, c.238, s.2)

6. Section 3 of P.L.1991, c.238 (C.13:1K-9.3) is amended to read as follows:

3. If a municipality undertakes [to clean up hazardous substances and wastes on the site of] a remediation of an industrial establishment, the title to which the municipality acquired pursuant to a foreclosure action pertaining to a certificate of tax sale, all expenditures incurred in the [cleanup] remediation shall be a debt of the immediate past [owners] owner or operator of the industrial establishment. The debt shall constitute a lien on all property owned by the immediate past owner or operator when a notice of lien, incorporating a description of the property subject to the [cleanup and removal]

remediation and an identification of the amount of [cleanup, removal] remediation and related costs expended by the municipality is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment or order docket the name and address of the immediate past owner or operator and the amount of the lien as set forth in the notice of lien. Upon entry by the clerk, the lien shall attach to the revenues and all real and personal property of the immediate past owner or operator, whether or not he is insolvent. The notice of lien filed pursuant to this section which affects any property of an immediate past owner or operator shall have priority from the day of the filing of the notice of the lien, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this section.

(cf: P.L.1991, c.238, s.3)

7. Section 5 of P.L.1991, c.238 (C.13:1K-9.5) is amended to read as follows:

5. If a municipality undertakes a [cleanup of hazardous substances and wastes on the site] remediation of an industrial establishment, the municipality shall [make any submissions required by P.L.1983, c.330 (C.13:1K-6 et seq.) and] undertake that remediation and shall obtain [approval of] all approvals required by the Department of Environmental Protection [1]and Energy[1] [prior to the initiation of the sampling plan and the cleanup plan].

(cf: P.L.1991, c.238, s.5)

8. (New section) Upon the submission of the complete and accurate results of a phase of the remediation pursuant to section 4 of P.L.[2][1993] 1983[2] , c.330 [1][(C.13:1K-7)] (C.13:1K-9)[1] or of any other document required to be submitted that requires the department's review and approval in order to comply with P.L.1983, c.330, the department shall review and approve, approve with conditions, or disapprove the submission or other documents in accordance with the review schedules established pursuant to section 2 of P.L.1991, c.423 (C.13:1D-106).

9. (New section) The owner or operator of an industrial establishment may, upon submission of a written notice to the department, transfer ownership or operations or close operations without complying with the provisions of section 4 of P.L.1983, c.330 (C.13:1K-9) if the total quantity of hazardous substances and hazardous wastes generated, manufactured, refined, transported, treated, stored, handled, or disposed of at the industrial establishment at any one time during the [1][owner] owner's[1] or operator's period of ownership or operations [1]:

(a)[1] does not exceed 500 pounds or 55 gallons [1][, or,] ;[1]

[1](b)[1] if a hazardous substance or hazardous waste is mixed with nonhazardous substances, the total quantity [2][of] in[2] the mixture does not exceed 500 pounds or 55 gallons [1]; or

(c) if, in the aggregate, hydraulic or lubricating oil, does not exceed 220 gallons[1].

10. Section 5 of P.L.1983, c.330 (C.13:1K-10) is amended to read as follows:

5. a. The department shall, pursuant to the "Administrative

Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing: [minimum standards for soil, groundwater and surface water quality necessary for the detoxification of the site of an industrial establishment, including buildings and equipment, to ensure that the potential for harm to public health and safety is minimized to the maximum extent practicable, taking into consideration the location of the site and surrounding ambient conditions;] (1) criteria and minimum standards necessary for the submission, evaluation and approval of [cleanup plans;] plans or results of preliminary assessments, site investigations, remedial investigations, and remedial action workplans and for the implementation thereof. The documents for the preliminary assessment, site investigation, remedial investigation, and remedial action workplan required to be submitted for a remediation 1[,]1 shall not be 1[based on] identical to1 the 1[same]1 criteria and standards used for similar 1[or identical]1 documents submitted pursuant to federal law 1,1 except as may be required by federal law. In establishing criteria and minimum standards for these terms 1,1 the department shall strive to avoid duplicate or unnecessarily costly or time consuming conditions or standards; (2) a fee schedule, as necessary, reflecting the actual costs associated with the review of plans for or results of negative declarations, preliminary assessments, site investigations, remedial investigations, and [cleanup plans] remedial 1[action workplans] actions1 , and review of the implementation thereof and for any other review or approval required by the department; (3) standards and procedures for remediation agreements authorized pursuant to subsection 2[d.] e.2 of section 4 of P.L.1983, c.330 (C.13:1K-9); and (4) any other provisions or procedures necessary to implement this act. [Until the minimum standards described herein are adopted, the department shall review, approve or disapprove negative declarations and cleanup plans on a case by case basis.]

b. [The department shall, within 45 days of submission, approve the negative declaration, or inform the industrial establishment that a cleanup plan shall be submitted.

c. The department shall, in accordance with the schedule contained in an approved cleanup plan, inspect the premises to determine conformance with the minimum standards for soil, groundwater and surface water quality and shall certify that the cleanup plan remedial action workplan has been executed and that the site has been detoxified.] The owner or operator shall allow the department reasonable access to the industrial establishment and to offsite areas under the owner's or operator's control to inspect the premises, review records, and to take soil, groundwater, or other samples or measurements as deemed necessary by the department to verify the results of any submission made to the department and to verify the owner's or operator's compliance with the requirements of this act.

(cf: P.L.1983, c.330, s.5)

11. Section 6 of P.L.1983, c.330 (C.13:1K-11) is amended to read as follows:

6. a. [The provisions of any law, rule or regulation to the contrary notwithstanding, the transferring of an industrial

establishment is contingent on the implementation of the provisions of this act.

b. If the premises of] The owner or operator of an industrial establishment planning to transfer ownership or operations may apply to the department for a deferral of the preparation, approval, and implementation of a remedial action workplan for the industrial establishment. The applicant shall submit to the department:

(1) a certification signed by the purchaser, transferee, mortgagee or other party to the transfer, approved by the department, that the industrial establishment would be subject to substantially the same use by the purchaser, transferee, mortgagee or other party to the transfer[, and upon written certification thereto and approval by the department thereof, the implementation of a cleanup plan and the detoxification of the site] ;

(2) a certification, approved by the department, that the owner or operator has satisfactorily completed a preliminary assessment, site investigation, and remedial investigation [1][,]1 of the industrial establishment;

(3) a cost estimate for the remedial action necessary at the industrial establishment, approved by the department [1]based upon the information collected in the preliminary assessment, site investigation, and remedial investigation and developed in accordance with department regulations[1]; and

(4) a certification, approved by the department, that the purchaser, transferee, mortgagee or other party to the transfer [1][,]1 has the financial ability to pay for the implementation of the necessary remedial action.

The preparation, approval, and implementation of a remedial action workplan for the industrial establishment may be deferred [2]for that transfer[2] until the use changes or until the purchaser, transferee, mortgagee or other party to the transfer closes[, terminates or transfers] operations [1][or transfers ownership or operations]1.

[(1) Within 60 days of receiving notice of the sale or realty transfer and the certification that the industrial establishment would be subject to substantially the same use, the department shall approve, conditionally approve, or deny the certification.

(2) Upon approval of the certification, the implementation of a cleanup plan and detoxification of the site shall be deferred.

(3) Upon denial of the certification, the cleanup plan and detoxification of the site shall be implemented pursuant to the provisions of this act.

c.] b. Upon [1][satisfactory]1 submission of a complete and accurate application, the department shall approve the deferral. Upon approval of the deferral, the preparation, approval, and implementation of remedial action workplan at the industrial establishment shall be deferred. [1][The deferral shall be denied by the department if a complete and accurate application is not submitted to the department or if the department fails to approve any of the components of the application. Upon denial of the deferral, the remediation of the industrial establishment shall be continued pursuant to the provisions of this act.]1

c. The authority to defer [implementation of the cleanup plan] the preparation, approval, and implementation of a remedial action workplan set forth in [2][subsection [b.] a. of][2] this section shall not be construed to limit, restrict, or prohibit the department from directing site [cleanup] remediation under any other statute, rule, or regulation, but shall be solely applicable to the obligations of the owner or operator of an industrial establishment, pursuant to the provisions of this act, nor shall any other provisions of this act be construed to limit, restrict, or prohibit the department from directing site [cleanup] remediation under any other statute, rule, or regulation.

[1]For the purposes of this section, substantially the same use means that the industrial establishment shall retain the same three digit Industry Group Number, as designated in the Standard Industrial Classifications Manual prepared by the federal Office of Management and Budget in the Executive Office of the President of the United States. In a manner and form, and in accordance with the specific criteria prescribed by the department, an applicant may petition for a finding by the department that the affected industrial establishment be deemed subject to substantially the same use based upon its retention of the same two digit Major Group Number, as designated in the Standard Industrial Classifications Manual.[1]

(cf: P.L.1983, c.330, s.6)

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

8. a. Failure of the transferor to [comply with any of] perform a remediation and obtain department approval thereof as required pursuant to the provisions of this act is grounds for voiding the sale or transfer of an industrial establishment or any real property utilized in connection therewith by the transferee, entitles the transferee to recover damages from the transferor, and renders the owner or operator of the industrial establishment strictly liable, without regard to fault, for all [cleanup and removal] remediation costs and for all direct and indirect damages resulting from the failure to implement the [cleanup plan] remedial action workplan. A transferee may not act to void the sale or transfer of an industrial establishment or any real property except upon providing notice to the transferor of the failure to perform and affording the transferor a reasonable amount of time to comply with the provisions of this act.

b. [Failure to submit a negative declaration, or cleanup plan pursuant to the provisions of section 4 of this act is grounds for voiding the sale by the department.

c.] Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of this act is liable for a penalty of not more than $25,000.00 for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense. Penalties shall be collected in a civil action by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). Any officer or management official of an industrial establishment who knowingly directs or authorizes the violation of any provisions of this act shall be personally

liable for the penalties established in this subsection.
(cf: P.L.1983, c.330, s.8)

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

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

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department [1]or the [2][federal] United States[2] Environmental Protection Agency, pursuant to the [2][federal][2] "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act [2]of 1980[2]," 42 U.S.C. §9601 et seq.,[1] [2]or any other law,[2] has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment [1][,] that are[1] consistent with current regulations established by the department [1][,][1] in order to identify areas of concern that are new or have continued in use since the issuance of a no further action letter, negative declaration approval, or remediation approval as described in paragraph (2) of this subsection, and [1][that] ,[1] based on those remediation activities [1][the owner or operator certifies] ,[1] that there has been no discharge of a hazardous substance or hazardous waste at the industrial establishment subsequent to the approval of the negative declaration, the issuance of the no further action letter, or the equivalent remediation; or, if any discharge has occurred, a certification listing any discharge, describing the action taken to remediate the discharge, a certification that the remediation was performed in accordance with procedures established by the department, a certification that the remediation was approved by the department and a copy of the document evidencing the departmental approval;

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

(5) a copy of the [1]most recent[1] negative declaration, or no further action letter, or other approval [1],[1] as applicable, [1][last][1] approved by the department for the entire industrial establishment; and

(6) a proposed negative declaration.

b. Upon the submission of a complete and accurate application

and after an inspection, if necessary, the department shall approve or disapprove the negative declaration. The department shall approve the negative declaration upon a finding that the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the proposed negative declaration by the department pursuant to this section, the owner or operator shall comply with the provisions of section 4 of P.L.1983, c.330.

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

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

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department [1]or the [2][federal] United States[2] Environmental Protection Agency, pursuant to the [2][federal "resource] "Resource[2] Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act [2]of 1980[2]," 42 U.S.C. §9601 et seq.,[1] [2]or any other law,[2] has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment [1][,] that are[1] consistent with current regulations established by the department [1][,][1] in order to identify areas of concern and [1][that] ,[1] based on those remediation activities [1][the owner or operator certifies] ,[1] that subsequent to the issuance of the negative declaration, no further action letter or remediation approval described in paragraph (2) of this subsection, a discharge has occurred at the industrial establishment that was not remediated in accordance with the procedures established by the department or that any remediation performed has not been approved by the department and that no other discharge of a hazardous substance or hazardous waste has occurred at the industrial establishment;

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

(5) a copy of the [1]most recent[1] negative declaration, no further action letter, or other approval, as applicable, [1][last][1] approved by the department for the industrial establishment; and

(6) a proposed negative declaration, if applicable.

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

(1) approve the negative declaration upon a finding that any discharge of a hazardous substance or hazardous waste, as certified to pursuant to paragraph (3) of subsection a. of this section, has been remediated consistent with the applicable remediation standards as established by the department; or

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

c. The owner or operator of an industrial establishment subject to the provisions of this section shall not close operations or transfer ownership or operations until a remedial action workplan, or a negative declaration, as applicable, has been approved by the department or upon approval of a remediation agreement as provided in subsection [1]d.[1] e.[1] of section 4 of P.L.1983, c.330.

15. (New section) a. The owner or operator of an industrial establishment who is required to perform a remediation at an industrial establishment pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) [1][,][1] may apply to the department for an area of concern waiver. Approval of the area of concern waiver shall relieve the owner or operator of the requirement to perform a remediation pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) for any area of concern at that industrial establishment for which a remediation has previously been conducted and approved by the department. An application pursuant to this subsection shall include:

(1) a certification that the department [1]or the [2][federal] United States[2] Environmental Protection Agency, pursuant to the [2][federal][2] "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act [2]of 1980[2]," 42 U.S.C. §9601 et seq.,[1] [2]or any other law,[2] has previously approved a remediation at an area of concern and has issued a no further action letter or an equivalent approval of a remediation for that area of concern [1][,] ;[1]

(2) a copy of the [1]most recent[1] no further action letter or equivalent approval for that area of concern, [1][last][1] approved by the department [1][,] ;1 and

(3) a certification that the owner or operator has performed remediation activities at that area of concern [1][,] that are[1] consistent with current regulations established by the department, and [1][that][1] based on those remediation activities [1][the owner or operator certifies] ,[1] that subsequent to the issuance of the no further action letter or equivalent approval described in paragraph (1) of this subsection, there has been no discharge of a hazardous substance or hazardous waste at that area of concern.

b. Upon submission of a complete and accurate application and after an inspection, if necessary, the department shall approve the application for an area of concern waiver upon a finding that

the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the application by the department pursuant to this section, the owner or operator shall perform a remediation of the subject area of concern as may be required pursuant to subsection b. of section 4 of P.L.1983, c.330.

16. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 (C.13:1K-9), if the industrial establishment is already in the process of a remediation pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) or a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330 [1], including a cleanup being performed under the [2][federal]2 "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act [2]of 1980[2]," 42 U.S.C. §9601 et seq.[1]. The application shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330 [1][,] ;[1]

(2) a certification that there has been no discharge of any hazardous substance or hazardous waste at the industrial establishment during the applicant's period of operation or ownership or that the remediation of any discharge of a hazardous substance or hazardous waste that [1][occured] occurred[1] during the applicant's period of ownership or operation was approved by the department [1][,] ;[1]

(3) a certification by the owner or operator that a remediation funding source for the cost of the remediation or the implementation of the remedial action workplan at the industrial establishment has been established as required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) [1][,] ;[1] and

(4) a certification, as applicable, that any transferee of the industrial establishment has been notified that the industrial establishment is the subject of a remediation.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, that the applicant may close operations or transfer ownership or operations of the industrial establishment.

17. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 if the only areas of concern or the only discharges at the industrial establishment are from an underground storage tank [1]or tanks[1] regulated pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.). The application shall

include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330 [,] ;

(2) the submission of a preliminary assessment that shows that the only area of concern at an industrial establishment is an underground storage tank or tanks as defined pursuant to section 2 of P.L.1986, c.102 (C.58:10A-22), or the submission of a site investigation that shows that the only discharged hazardous substances or hazardous wastes at the industrial establishment, or that has migrated offsite, above the applicable remediation standards are from a leak or discharge from that underground storage tank or tanks [,] ; and

(3) a certification that the owner or operator of the industrial establishment is in compliance with the provisions of P.L.1986, c.102 for all underground storage tanks at the industrial establishment that are covered by that act [, at the industrial establishment]. The owner or operator of an industrial establishment, at which a discharge of a hazardous substance or hazardous waste from an underground storage tank has occurred, shall be deemed in compliance with the provisions of P.L.1986, c.102, as it relates to that discharge for the purposes of this paragraph, if the owner or operator has been issued an order by or has entered into an agreement with the department to remediate that discharge and the owner or operator is in compliance with that order or agreement.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, the applicant to close operations or transfer ownership or operations of the industrial establishment.

18. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or without the approval of a remediation agreement as provided in subsection [d.] e. of section 4 of P.L.1983, c.330 if the discharge of hazardous substances or hazardous wastes at the industrial establishment is of minimal environmental concern. Upon the completion of a preliminary assessment, site investigation, and remedial investigation for the industrial establishment, conducted pursuant to subsection b. of section 4 of P.L.1983, c.330, any owner or operator may submit to the department an application for a determination that the discharge at an industrial establishment is of minimal environmental concern, which application shall include:

(1) a certification, supported by the submission of data from the preliminary assessment, site investigation, and remedial investigation, that there are no more than two areas of concern at the industrial establishment that are contaminated at levels above the applicable remediation standards, and that remedial action at those areas of concern can be completed pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(2) a certification that a remediation workplan shall be prepared pursuant to standards and criteria established by the department and that [2][in the case of a closure the remediation will meet the residential use soil remediation standards and that in the case of a transfer of ownership or operations][2] the remediation will meet either the nonresidential use or residential use soil remediation standards [2]and the applicable surface water and groundwater remediation standards[2];

(3) a certification that the remediation workplan will be prepared and implemented pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(4) evidence that the remediation funding source required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) has been established [1][or if all or part of the remediation funding source is to be established by a grant or loan from the remediation fund pursuant to section 27 and 28 of P.L. , c. (C.)(now before the Legislature as this bill), evidence that an application has been made for that loan or grant and that there is a reasonable expectation that the loan or grant will be awarded][1] ;

(5) the payment of all fees or surcharges related to the remediation imposed pursuant to P.L.1983, c.330, P.L. , c. (C.)(now before the Legislature as this bill), and section 33 of P.L. , c. (C.) (now before the Legislature as this bill), and any rules or regulations adopted pursuant thereto; and

(6) documentation establishing that the discharged hazardous substances or hazardous wastes at the industrial establishment do not pose a threat to human health because of the proximity of an area of concern to a drinking water source or because of the location, complexity, or the nature of the discharge.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall approve the application for a determination that the discharge at an industrial establishment is of minimal environmental concern. Prior to making a finding upon the application pursuant to this section, the department may inspect the industrial establishment, as necessary, to verify the information in the application. The decision of the department shall be made within 30 days of the submission of a complete application. In determining the amount of time necessary to complete the remedial action, the department shall not include that time in which it takes the department to issue a permit for a discharge to surface water pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.).

c. The owner or operator shall, upon the completion of the remedial action at the subject areas of concern, certify to the department that the remedial action workplan has been implemented in accordance with the standards and criteria established by the department and in compliance with the certifications made pursuant to this section. The certification shall include a copy of the remedial action workplan and the results of all sampling analysis and any tests performed as part of

the remedial action. Within 45 days of receipt of the certification, the department shall issue a no further action letter to the owner or operator. The department may perform an inspection of the industrial establishment or any area offsite that is under the owner's or operator's control, as relevant, prior to issuing the no further action letter.

The department may refuse to issue the no further action letter pursuant to this section only upon a finding that hazardous substances or hazardous wastes remain at the relevant areas of concern at levels or concentrations in excess of the applicable remediation standards.

d. Upon the failure of an owner or operator to complete the implementation of a remedial action workplan within the six month period as provided in subsection a. of this section, the owner or operator shall so notify the department in writing and [1]provide[1] the reasons therefor. The owner or operator shall have no more than 120 additional days to complete the implementation of the remedial action. If the implementation of the remedial action is not completed within this additional time, the department may rescind its determination that the industrial establishment is of minimal environmental concern and may require that a new remedial action workplan be submitted and implemented by the owner or operator in a manner and under the terms and conditions provided in its general regulations for remedial action workplan submissions and implementation.

19. (New section) a. The owner of an industrial establishment may transfer a portion of the real property on which an industrial establishment is situated without conducting a remediation of the entire industrial establishment pursuant to the provisions of P.L.1983, c.330, if, upon application by the owner, the department issues a certificate of limited conveyance [1]pursuant to subsections b. through e. of this section, or if the owner transfers the portion of real property in accordance with the provisions of subsection f. of this section[1].

b. An application for a certificate of limited conveyance shall be in the form of a certification by the owner which shall include a description of the real property to be transferred, an appraisal of the real property to be transferred, the sale price or market value of the real property to be transferred, an appraisal of the entire industrial establishment, and an appraisal of the remaining property if the certificate of limited conveyance were issued, as well as any other information the department deems necessary to make the findings required in subsection c. of this section.

c. The department shall issue a certificate of limited conveyance for a portion of the real property on which an industrial establishment is situated after the submission of a complete and accurate application and upon a finding that the sales price or market value of the real property to be conveyed, together with any additional diminution in value to the remaining property as a result of the conveyance is not more than one third of the total appraised value of the industrial establishment prior to the transfer, and that the remaining real property is an industrial establishment subject to the provisions of P.L.1983, c.330. The appraisals shall be made no more than one year prior

to the submission of application for a certificate of limited conveyance. Conveyances made pursuant to this section shall not exceed one third of the value of the industrial establishment during the period of ownership of the applicant.

d. Upon issuance of the certificate of limited conveyance, the owner or operator shall, prior to the conveyance, comply with the provisions of section 4 of P.L.1983, c.330 for that portion of the real property certified for conveyance. The remediation that may be required on the real property subject to the certificate of limited conveyance shall include any hazardous substances or hazardous wastes that are migrating from the remaining portion of the industrial establishment onto the real property being conveyed. The remaining portion of the industrial establishment, upon the subsequent closing [1][,][1] of operations or transferring of ownership or operations [1],[1] shall be subject to the provisions of P.L.1983, c.330 and [2][this act] P.L. , c. (C.)(now before the Legislature as this bill)[2] .

e. A certificate of limited conveyance shall be valid for three years from the date of issuance.

[1]f. An owner, either as part of or subsequent to a conveyance made in accordance with subsections b. through e. of this section, may transfer additional portions of the real property of the industrial establishment in excess of the conveyance limitation set forth in subsection c. of this section; provided, however, that the additional portions proposed for transfer do not constitute a closing of operations or transferring of ownership or operations, subject to section 4 of P.L.1983, c.330.

The amount paid for the additional portion of real property, or any part thereof, which exceeds the permissible conveyance limitation under subsection c. of this section shall be used exclusively for the purposes of remediating that parcel of real property in accordance with the provisions of subsection d. of this section; provided, however, if any portion of that amount shall remain unexpended for the remediation of the parcel, that unexpended amount shall be deposited in a remediation trust fund as provided in subsection g. of this section.

g. To provide for the subsequent remediation of that portion of the real property of an industrial establishment which was not transferred pursuant to subsection f. of this section, the owner shall establish a remediation trust fund in accordance with subsection c. of section 25 of P.L. , c. (C.)(now pending before the Legislature as this bill) and [2][to] shall[2] deposit any unexpended amounts, as provided in subsection f. of this section, into that fund.[1]

20. (New section) a. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, the landlord shall be responsible for providing any information that is requested by the tenant that is not otherwise available through a diligent inquiry by the tenant, and the tenant shall be responsible for providing any information that is requested by the landlord that is not otherwise available through a diligent inquiry by the landlord.

b. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, the

person that remediates the industrial establishment shall provide copies to the other person of all submissions to the department concerning the remediation.

c. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, and there has been a failure to comply with the provisions of P.L.1983, c.330, the landlord or the tenant may petition the department, in writing, to first compel that party who is responsible pursuant to the provisions of the lease, to comply with the requirements of P.L.1983, c.330. The petition shall include a copy of the signed lease between the landlord and the tenant. Upon a determination by the department that the provisions of the lease are unclear as it relates to the responsibility of either party to comply with the provisions of P.L.1983, c.330, or upon the failure by the person responsible pursuant to the provisions of the lease to comply, the department may compel compliance by all persons subject to the requirements of P.L.1983, c.330 for the industrial establishment.

21. (New section). a. Any person who, prior to the effective date of [1][this act] P.L. , c. (now before the Legislature as this bill)[1], violated the provisions of P.L.1983, c.330 by closing operations or transferring ownership or operations of an industrial establishment without receiving departmental approval of a cleanup plan or a negative declaration pursuant to the provisions of P.L.1983, c.330, or without entering into an administrative consent order that allows the closure of operations or transfer of ownership or operations, shall not be subject to a penalty for that violation if the person notifies the department of the closure of operations or of the transfer of ownership or operations of the industrial establishment, and, within one year of the effective date of [1][this section] P.L. , c. (now before the Legislature as this bill)[1], enters into an administrative consent order or a memorandum of agreement with the department to complete a remediation of the industrial establishment pursuant to the provisions of P.L.1983, c.330 and any rules or regulations adopted pursuant thereto.

b. Notwithstanding the provisions of subsection a. of this section, any person who enters into a memorandum of agreement or an administrative consent order with the department pursuant to this section and fails to remediate the industrial establishment in accordance with the memorandum of agreement or administrative consent order [1][,][1] shall be subject to penalties for violations that occurred before the effective date of [1][this act] P.L. , c.)(now before the Legislature as this bill)[1] as well as any penalties for subsequent violations.

c. Any documents or information provided to the department pursuant to this section may not be used in a criminal investigation or criminal prosecution against the person providing the information or documents for those violations that occurred before the effective date of [1][this act] P.L. , c. (now before the Legislature as this bill)[1] as long as the person remediates the industrial establishment in conformance with the administrative consent order or memorandum of agreement entered into pursuant to subsection a. of this section.

22. (New section) a. Within one year of the effective date of [1][this act] P.L. , c. (now before the Legislature as this bill)[1], the Department of Environmental Protection [1]and Energy[1] shall conduct an audit of the negative declarations and remedial action workplans that have been submitted to the department pursuant to P.L.1983, c.330 [1](C.13:1K-6 et seq.)[1]. On the basis of this audit, and any other information it may have available to it, the department shall adopt regulations identifying, within the Standard Industrial Classification major group numbers listed in the definition of "industrial establishment," all industries designated by Standard Industrial Classification number subgroups, or classes of operations within those subgroups, that should not pose a risk to public health and safety or to the environment. The audit shall, to the extent practicable, distinguish between hazardous substances or hazardous wastes at an industrial establishment caused by a particular type of industry and hazardous substances or hazardous wastes that exists as a result of activities at an industrial establishment unrelated to the activities of that industry.

b. An industrial establishment for which a remedial action workplan was previously implemented and a no further action letter was received pursuant to P.L.1983, c.330, a negative declaration was previously approved by the department pursuant to P.L.1983, c.330, or for which the department has previously approved a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330, and [1][which industrial establishment] that[1] is designated by a Standard Industrial Classification subgroup or class of operations that does not pose a risk to public health and safety or to the environment as identified in subsection a. of this section, shall not be considered an industrial establishment for the purposes of P.L.1983, c.330.

23. (New section) As used in sections 23 through 43 of P.L. , c. (C.)(now before the Legislature as this bill):

"Area of concern" means any [2][existing or former][2] location where contaminants are or were known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, or disposed, or where contaminants have or may have migrated;

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

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

"Department" means the Department of Environmental Protection [1]and Energy[1];

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

"Engineering controls" means any mechanism to contain or stabilize contamination or ensure the effectiveness of a remedial

action. Engineering controls may include, without limitation, caps, covers, dikes, trenches, leachate collection systems, signs, fences and access controls;

[1]"Financial assistance" means loans [2][,] or[2] loan guarantees [2][, bonds and such other funding mechanisms as may be established by the authority][2] ;[1]

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

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

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether contaminants are or were present at a site or have migrated or are migrating from a site, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or [1][potential] latent[1] discharge of any contaminant is required [1]. The evaluation of historic information shall be conducted from [2][1900] 1932[2] to the present, except that the department may require the search for and evaluation of additional information relating to ownership and use of the site prior to [2][1900] 1932[2] if such information is available through diligent inquiry of the public records[1];

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

"Remedial investigation" means a process to determine the nature and extent of a discharge of a contaminant at a site or a discharge of a contaminant that has migrated or is migrating from the site and the problems presented by a discharge, and may include data collected, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant

information necessary to determine the necessity for remedial action and to support the 1[valuation] evaluation1 of 1[remediated alternatives] remedial actions if necessary1;

"Remediation" or "remediate" means all necessary actions to investigate and clean up any known 1[or] ,1 suspected 1, or threatened1 discharge of contaminants, including 1, as necessary,1 the preliminary assessment, site investigation, remedial investigation, and remedial action;

"Site investigation" means the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site or has migrated or is migrating from the site at levels in excess of the applicable remediation standards. A site investigation shall be developed based upon the information collected pursuant to the preliminary assessment.

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

"Remediation fund" means the Hazardous Discharge Site Remediation Fund established pursuant to section 26 of P.L. , c. (C.)(now before the Legislature as this bill);

"Remediation funding source" means the methods of financing the remediation of a discharge required to be established by a person performing the remediation pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill);

"Remediation standards" means the combination of numeric and narrative standards to which contaminants must be remediated for soil, groundwater, or surface water as provided by the department pursuant to section 35 of P.L. , c. (C.)(now before the Legislature as this bill).

24. (New section) The department shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing criteria and minimum standards necessary for the submission, evaluation and approval of plans or results of preliminary assessments, site investigations, remedial investigations, and remedial action workplans and for the implementation thereof. The documents for the preliminary assessment, site investigation, remedial investigation, and remedial action workplan required to be submitted for a remediation, shall not be 1[based on] identical to1 the 1[same]1 criteria and standards used for similar 1[or identical]1 documents submitted pursuant to federal law 1,1 except as may be required by federal law. In establishing criteria and minimum standards for these terms the department shall strive to avoid duplicate or unnecessarily costly or time consuming conditions or standards.

25. (New section) a. The owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), or a discharger or person in any way responsible for a hazardous substance who has been issued a directive or an order

by a State agency, who has entered into an administrative consent order with a State agency, or who has been ordered by a court to clean up and remove a hazardous substance or hazardous waste discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall [1][,][1] establish and maintain a remediation funding source in the amount necessary to pay the estimated cost of the required remediation. A person who voluntarily undertakes a remediation pursuant to a memorandum of agreement with the department, or without the department's oversight, is not required to establish or maintain a remediation funding source. A person required to establish a remediation funding source pursuant to this section shall provide to the department satisfactory documentation that the requirement has been met.

The remediation funding source shall be established in an amount equal to or greater than the cost estimate of the implementation of the remediation (1) as approved by the department, (2) as provided in an administrative consent order or remediation agreement as required pursuant to subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330, (3) as stated in a departmental order or directive, or (4) as agreed to by a court, and shall be in effect for a term not less than the actual time necessary to perform the remediation at the site. Whenever the remediation cost estimate increases, the person required to establish the remediation funding source shall cause the amount of the remediation funding source to be increased to an amount at least equal to the new estimate. Whenever the remediation or cost estimate decreases, the person required to obtain the remediation funding source may file a written request to the department to decrease the amount in the remediation funding source. The remediation funding source may be decreased to the amount of the new estimate upon written approval by the department delivered to the person who established the remediation funding source and to the trustee or the person or institution providing the remediation trust [2], the environmental insurance policy,[2] or the line of credit, as applicable. The department shall approve the request upon a finding that the remediation cost estimate decreased [1]by the requested amount[1].

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

the remediation funding source to be established by a grant or [1][loan] financial assistance[1] from the [2][Remediation Fund] remediation fund[2] may be established for the purposes of this subsection by the application for a grant or [1][loan] financial assistance[1] from the remediation fund and satisfactory evidence submitted to the department that the grant or [1][loan] financial assistance[1] will be awarded. However, if the [1][loan] financial assistance[1] or grant is denied or the department finds that the person responsible for establishing the remediation funding source did not take reasonable action to obtain the grant or [1][loan] financial assistance[1], the department shall require that the full amount of the remediation funding source be established within 14 days of the denial or finding. The remediation funding source shall be evidenced by the establishment and maintenance of (1) a remediation trust fund, (2) [1]an environmental insurance policy, issued by an entity licensed by the Department of Insurance to transact business in the State of New Jersey, to fund the remediation, (3)[1] a line of credit from a person or institution satisfactory to the department authorizing the person responsible for performing the remediation to borrow money, or [1][(3) a self guarantee] (4) a self-guarantee[1], or by any combination thereof. Where it can be demonstrated that a person cannot establish and maintain a remediation funding source for the full cost of the remediation by a method specified in this subsection, that person may establish the remediation funding source for all or a portion of the remediation, by securing [2][a][2] [1][loan] financial assistance[1] from the Hazardous Discharge Site Remediation Fund as provided in section 29 of P.L. , c. (C)(now before the Legislature as this bill).

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

The trust fund agreement shall provide that the remediation trust fund may not be revoked or terminated by the person required to establish the remediation funding source or by the trustee without the written consent of the department. The trustee shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those monies as the department authorizes, in writing, to be released. The person entitled to receive money from the remediation trust fund shall submit documentation to the department detailing the costs incurred or

to be incurred as part of the remediation. Upon a determination by the department that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement of moneys from the remediation trust fund in the amount of the documented costs.

The department shall return the original remediation trust fund agreement to the trustee for termination after the person required to establish the remediation funding source substitutes an alternative remediation funding source as specified in this section or the department notifies the person that [2]that[2] person is no longer required to maintain a remediation funding source for remediation of the contaminated site.

[1]d. An environmental insurance policy shall be established pursuant to the provisions of this subsection. An originally signed duplicate of the insurance policy shall be delivered to the department by certified mail [2],overnight delivery, or personal service[2] within 30 days of receipt of notice from the department that the remedial action workplan or remediation agreement, as provided in subsection e. of section 4 of P.L.1983, c.330, is approved or as specified in an administrative consent order, civil order, or order of the department, as applicable.

The environmental insurance policy may not be revoked or terminated without the written consent of the department. The insurance company shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those monies as the department authorizes, in writing, to be released. The person entitled to receive money from the environmental insurance policy shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation.[1]

[1][d.] e.[1] A line of credit shall be established pursuant to the provisions of this subsection. A line of credit shall allow the person establishing it to borrow money up to a limit established in a written agreement in order to pay for the cost of the remediation for which the line of credit was established. An originally signed duplicate of the line of credit agreement shall be delivered to the department by certified mail [2], overnight delivery, or personal service[2] within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 is approved, or as specified in an administrative consent order, civil order, or order of the department, as applicable. The line of credit agreement shall conform to a model agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department.

A line of credit agreement shall provide that the line of credit may not be revoked or terminated by the person required to obtain the remediation funding source or the person or institution providing the line of credit without the written consent of the department. The person or institution providing the line of credit shall release to the person required to establish the remediation funding source, or to the department or transferee of the property as appropriate, only those monies as the department

authorizes, in writing, to be released. The person entitled to draw upon the line of credit shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation. Upon a determination that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement from the line of credit in the amount of the documented costs.

The department shall return the original line of credit agreement to the person or institution providing the line of credit for termination after the person required to establish the remediation funding source substitutes an alternative remediation funding source as specified in this section, or after the department notifies the person that [2]that[2] person is no longer required to maintain a remediation funding source for remediation of the contaminated site.

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

[1][f.] g.[1] (1) [1][Where] If[1] the person required to establish the remediation funding source [1][has failed] fails[1] to perform the

remediation as required, the department shall make a written determination of this fact. A copy of the determination by the department shall be delivered to the person required to establish the remediation funding source and, in the case of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), to any transferee of the property. Following this written determination, the department may perform the remediation in place of the person required to establish the remediation funding source. In order to finance the cost of the remediation the department may make disbursements from the remediation trust fund or the line of credit [2]or claims upon the environmental insurance policy,[2] as appropriate, or, if sufficient moneys are not available from those funds, from the remediation guarantee fund created pursuant to section 45 of P.L. , c. (C.)(now before the Legislature as this bill).

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

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

26. (New section) a. There is established in the New Jersey Economic Development Authority a special, revolving fund to be known as the Hazardous Discharge Site Remediation Fund. Moneys in the remediation fund shall be dedicated for the provision of [1][loans] financial assistance[1] or grants to municipal governmental entities, individuals, corporations, partnerships, and other private business entities, for the purpose of financing remediation activities at sites at which there is, or is suspected of being, a discharge of hazardous substances or hazardous wastes.

b. The remediation fund shall be credited with:

(1) moneys as are appropriated by the Legislature;

(2) moneys deposited into the fund as repayment of principal

and interest on outstanding loans made from the fund;

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

(4) remediation funding source surcharges imposed pursuant to section 33 of P.L. , c. (C.)(now before the Legislature as this bill);

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

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

27. (New section) a. (1) [1][Loans] Financial assistance[1] from the remediation fund, made to persons other than municipal governmental entities or to persons who voluntarily undertake a remediation, may only be [1][made] rendered[1] to persons who cannot establish a remediation funding source for the full amount of a remediation. [1][Loans] Financial assistance pursuant to this act[1] may be [1][made] rendered[1] only for that amount of the cost of a remediation for which the person cannot establish a remediation funding source.

(2) [1][Loans made] Financial assistance rendered[1] to persons who voluntarily undertake a remediation may only be made for that amount of the cost of the remediation that the person cannot otherwise fund by any of the authorized methods to establish a remediation funding source.

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

c. [1][Loans] Financial assistance[1] and grants may be made from the remediation fund to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste.

d. Grants may be made from the remediation fund to persons other than governmental entities who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant pursuant to section 28 of P.L. , c. (C.)(now before the Legislature as this bill).

28. (New section) a. Except for moneys deposited in the remediation fund for specific purposes, [1][loans] financial assistance[1] and grants [1][of moneys]1 from the remediation fund shall be [1][made] rendered[1] for the following purposes and, on an annual basis, obligated in the percentages as provided in this subsection. Upon a written [1]joint[1] determination by the [1][Economic Development Authority] authority and the department[1] that it is [1]in[1] the public interest, [1][loans] financial

assistance[1] and grants dedicated for the purposes and in the percentages set forth in paragraphs (1), (2), or (3) of this subsection, may, for any particular year, be obligated to other purposes set forth in this subsection. The written determination shall be sent to the Senate Environment Committee, and the Assembly Energy and Hazardous Waste Committee, or their successors.

(1) At least 15% of the moneys shall be allocated for [1][loans] financial assistance[1] to persons, other than governmental entities, for remediation of real property located in a qualifying municipality as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

(2) At least 10% of the moneys shall be allocated for [1][loans] financial assistance[1] and grants to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been or on which there is suspected of being a discharge of hazardous substances or hazardous wastes. Grants shall be used for performing preliminary assessments and site investigations on property owned by a municipal governmental entity, or on which the municipality holds a tax sale certificate, in order to determine the existence or extent of any hazardous substance or hazardous waste contamination on those properties. A municipal governmental entity that has performed a preliminary assessment and site investigation on property may obtain a loan for the purpose of continuing the remediation on those properties it owns as necessary to comply with the applicable remediation standards adopted by the department;

(3) At least 15% of the moneys shall be allocated for [1][loans] financial assistance[1] to persons or municipal government entities for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area;

(4) At least 10% of the moneys shall be allocated for [1][loans] financial assistance[1] to persons, other than municipal government entities, who voluntarily undertake the remediation of a hazardous substance or hazardous waste discharge, and who have not been ordered to undertake the remediation by the department or by a court [1][,] ;[1]

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

(6) At least 20% of the moneys shall be allocated for grants to persons, other than municipal government entities, who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant. A person qualifies for an innocent party grant if that person acquired the property prior to December 31,

1983, the hazardous substance or hazardous waste that was discharged at the property was not used by the person at that site, and that person certifies that he did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered. A grant authorized pursuant to this paragraph may be for up to 50% of the remediation costs at the area of concern for which the person qualifies for an innocent party grant, except that no grant awarded pursuant to this paragraph to any person may exceed $1,000,000.

(7) Ten percent of the moneys in the remediation fund shall be allocated for 1[loans] financial assistance1 or grants for any of the purposes enumerated in paragraphs (1) through (6) of this subsection 1[, except that where moneys in the fund are insufficient to fund all the applications in any calendar year that would otherwise qualify for a loan or grant pursuant this paragraph, the authority shall give priority to loan applications that meet the criteria enumerated in paragraph (3) of this subsection]1 2,except that where moneys in the fund are insufficient to fund all the applications in any calendar year that would otherwise qualify for financial assistance or a grant pursuant this paragraph, the authority shall give priority to financial assistance applications that meet the criteria enumerated in paragraph (3) of this subsection2 .

b. Loans issued from the remediation fund shall be for a term not to exceed ten years, except that upon the transfer of ownership of any real property for which the loan was made, the unpaid balance of the loan shall become immediately payable in full. Loans shall bear an interest rate 1[of 1% below the prime rate as published in Publication No. H15 entitled "Selected Rates," available from the Federal Reserve System in Washington, except that the rate shall be no lower than 3%] equal to the 2[lower of the]2 Federal Discount Rate at the time of approval or at the time of the loan closing, 2[with a minimum of] whichever is lower, except that the rate shall be no lower than2 five percent1. 1[Loans and grants, upon request of the applicant and if qualified, shall] Financial assistance and grants may1 be issued for up to 100% of the estimated applicable remediation cost, except that 1[no loan] the cumulative maximum amount of financial assistance which may be issued1 to a person other than a governmental entity 1[may be issued to any applicant]1 in any calendar year, for one or more properties, 1[in an amount that exceeds] shall be1 $1,000,000. 1[Loans] Financial assistance1 and grants 1[,]1 to any one municipal governmental entity may not exceed $2,000,000 in any calendar year. Repayments of principal and interest on the loans issued from the remediation fund shall be paid to the authority and shall be deposited into the remediation fund.

c. No person, other than a municipal governmental entity, or a person engaging in a voluntary remediation, shall be eligible for 1[a loan] financial assistance1 from the remediation fund to the extent that person is capable of establishing a remediation funding source for the remediation as required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill).

d. The authority may use a sum that represents up to 2% of the moneys issued as [1][loans] financial assistance[1] or grants from the remediation fund each year for administrative expenses incurred in connection with the operation of the fund and the issuance of [1][loans] financial assistance[1] and grants.

e. Prior to March 1 of each year, the authority shall submit to the Senate Environment Committee and the Assembly Energy and Hazardous Waste Committee, or their successors, a report detailing the amount of money that was available for [1][loans] financial assistance[1] and grants from the remediation fund for the previous calendar year, the amount of money estimated to be available for [1][loans] financial assistance[1] and grants for the current calendar year, the amount of [1][loans] financial assistance[1] and grants issued for the previous calendar year and the category for which each [1][loan] financial assistance[1] and grant was [1][made] rendered[1], and any suggestions for legislative action the authority deems advisable to further the legislative intent to facilitate remediation and promote [1]the[1] redevelopment and use of existing industrial sites.

29. (New section) a. [1][A qualified applicant for a loan or grant from the remediation fund shall be awarded a loan or grant by the authority upon the availability of sufficient moneys in the remediation fund for the purpose of the loan or grant.][1] [2]A qualified applicant for financial assistance or a grant from the remediation fund shall be awarded financial assistance or a grant by the authority upon the availability of sufficient moneys in the remediation fund for the purpose of the financial assistance or grant.[2] Priority for awarding [1][loans] financial assistance[1] and grants from the remediation fund shall be based upon the date of receipt by the authority of a complete application from the applicant. If an application is determined to be incomplete by the authority, an applicant shall have 30 days from receipt of written notice of incompleteness to file any additional information as may be required by the authority for a completed application. If an applicant fails to file the additional information within those 30 days, the filing date for that application shall be the date that the additional information is received by the authority. An application shall be deemed complete when all the information required by the authority has been received in the required form.

b. Within 90 days, for a private entity, or 180 days for a municipal government entity, of notice of approval of a [2][loan] financial assistance[2] or grant application, an applicant shall submit to the authority an executed contract for the remediation activities for which the [2][loan] financial assistance[2] or grant application was made. The contract shall be consistent with the terms and conditions for which the [1][loan] financial assistance[1] or grant was [1][made] rendered[1]. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for the alteration of an applicant's priority ranking for the awarding of [2][a loan] financial assistance[2] or [2]a[2] grant.

[2][1]c. Information submitted as part of a financial assistance application or agreement shall be deemed a public record subject

to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.).]2

30. (New section) a. The authority 1[, in consultation with the Department of Environmental Protection,]1 shall, by rule or regulation:

(1) 1[prescribe forms for, and procedures for the filing of, loan and grant applications;

(2) require a person applying for a loan who is not the owner of the subject property to provide a copy of the contract or lease between the operator and owner;

(3) require, if the applicant is an owner who is not the operator of the subject property, the owner to provide a copy of the contract or lease between the owner and the operator;

(4) prohibit the assignment or encumbrance of a loan or loan payment;

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

(6) provide that moneys from the approved loan or grant shall be released by the authority to the applicant in only those amounts that represent work completed;

(7) require the loan or grant recipient to provide access at reasonable times to the subject property to determine compliance with the terms and conditions of the loan or grant;

(8) require that, during the life of the loan, the applicant will comply with all environmental laws, and pay all required taxes or other governmental assessments due on the subject property for which a loan application is made, or on the loan collateral;

(9) reserve the right to suspend or terminate a loan or grant or declare a loan in default if any term or condition of the loan or grant is violated by a loan or grant recipient, and take any necessary action to secure repayment of the loan or grant;

(10) reserve the right to modify, as necessary and by mutual consent, the terms or conditions of a loan or grant, which modification shall, however, not be inconsistent with regulations of the Department of Environment Protection concerning the performance of remediation of contaminated property;

(11)]1 2require a financial assistance or grant recipient to provide to the authority, as necessary or upon request, evidence that financial assistance or grant moneys are being spent for the purposes for which the financial assistance or grant was made, and that the applicant is adhering to all of the terms and conditions of the financial assistance or grant agreement;

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

(3)2 establish a priority system for 1[making loans] rendering financial assistance1 or grants for remediations 1identified by the department as1 involving an imminent and significant threat to a public water source, human health, or to a sensitive or significant ecological area pursuant to paragraph (7) of subsection a. of section 28 of P.L. , c. (C.)(now before the Legislature

as this bill);

[1][(12)] [2][(2)[1]] (4)[2] provide that payment of a grant shall be conditioned upon the subrogation to the department of all rights of the recipient to recover remediation costs from the discharger or other responsible party. All monies collected in a cost recovery subrogation action shall be deposited into the remediation fund;

[1][(13)] [2][(3)[1]] (5)[2] provide that an applicant for [1][a loan] financial assistance[1] or [1]a[1] grant pay a reasonable fee for the application which shall be used by the authority for the administration of the loan and grant program;

[1][(14)] [2][(4)[1]] (6)[2] provide that where [1][a loan] financial assistance[1] to a person other than a municipal governmental entity , is for a portion of the remediation cost, that the [1][loan money] proceeds thereof[1] not be disbursed to the applicant until the costs of the remediation for which a remediation funding source has been established has been expended;

[1][(15)] [2][(5)[1]] (7)[2] adopt such other requirements as [1]the authority[1] shall [1][be deemed] deem[1] necessary or appropriate in carrying out the purposes for which the Hazardous Discharge Site Remediation Fund was created.

b. An applicant for [1][a loan] financial assistance[1] or [1]a[1] grant shall be required to:

(1) provide proof, as determined sufficient by the authority, that the applicant, where applicable, cannot establish a remediation funding source for all or part of the remediation costs, as required by section 25 of P.L. , c. (C.)(now before the Legislature as this bill). The provisions of the paragraph do not apply to grants to innocent persons or to [1][loans] financial assistance[1] or grants to municipal governmental entities; [1]and[1]

(2) [1][submit documentation on the nature and scope of the remediation to be performed, costs estimates thereon, and, as available, proofs of the actual cost of all work performed;

(3) submit copies of all court orders, administrative consent orders, memoranda of agreement, or directives issued by the Department of Environmental Protection [1]and Energy[1] and, if deemed necessary by the authority, any reports, plans, or results of any preliminary assessment, site investigation, remedial investigation, remedial action workplan, remedial action, or other documentation required to be prepared or submitted to the department; and

(4)][1] demonstrate the ability to repay the amount of the [1][loan] financial assistance[1] and interest, and, if necessary, to provide adequate collateral to secure the [1][loan] financial assistance[1] amount.

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

d. In establishing requirements for [1][loan] financial assistance[1] or grant applications and [1][loan] financial assistance[1] or grant agreements, the authority:

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

(2) may not require [1][loan] financial assistance[1] or grant

conditions that interfere with the everyday normal operations of [1][a loan or grant] the[1] recipient's business activities, except to the extent necessary to [1][prevent intentional actions designed to avoid repayment of the loan, or that significantly affect] ensure the recipient's ability to repay the financial assistance and to preserve[1] the value of the loan collateral; and

(3) shall expeditiously process all [1][loan] financial assistance[1] or grant applications in accordance with a schedule established by the authority for the review and the taking of final action on the application, which schedule shall reflect the degree of complexity of a [1][loan] financial assistance[1] or grant application.

31. (New section) No [1][loan] financial assistance[1] or grant from the remediation fund shall be [1][made] rendered[1] to a person who is currently in violation of an administrative or judicial order, judgment, or consent agreement regarding violation or threatened violation of an environmental law regarding the subject property, unless the violation, fee, penalty or assessment is currently being contested by the person in a manner prescribed by law or unless the violation resulted from a lack of sufficient money to perform required remediation activities.

32. (New section) a. The lack of sufficient moneys in the remediation fund to satisfy all [1][loan] financial assistance[1] or grant applications shall not affect in any way an applicant's legal responsibility to comply with the requirements of P.L.1983, c.330 (C.13:1K-6 et seq.), P.L.1976, c.141 (C.58:10-23.11 et seq.), or any other applicable provision of law.

b. Nothing in sections 23 through 43 of P.L. , c. (C.) (now before the Legislature as this bill) shall be construed to:

(1) impose any obligation on the State for any [1][loan] financial assistance[1] or grant commitments [1][made] rendered[1] by the authority, and the authority's obligations shall be limited to the amount of otherwise unobligated moneys available in the fund therefor; or

(2) impose any obligation on the authority for the quality of any work performed pursuant to a remediation undertaken with [1][a loan] financial assistance[1] or grant [1][made] rendered[1] pursuant section 28 of P.L. , c. (C.)(now before the Legislature as this bill).

33. (New section) a. There is imposed upon every person who is required to establish a remediation funding source pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) a remediation funding source surcharge. The remediation funding source surcharge shall be in an amount equal to 1% of the required amount of the remediation funding source required by the department to be maintained. No surcharge, however, may be imposed upon (1) that amount of the remediation funding source that is met by a self-guarantee as provided in subsection [1][e.] f.[1] of section 25 of P.L. , c. (C.)(now before the Legislature as this bill), (2) that amount of the remediation funding source that is met by [1][a loan] financial assistance[1] or [2]a[2] grant from the remediation fund, (3) any person who voluntarily undertakes a remediation without being so ordered or directed by the department or by a court or pursuant to an administrative consent order, or (4) any person who entered

voluntarily into a memorandum of understanding with the department to remediate real property, as long as that person continues the remediation in a reasonable manner, or as required by law, even if subsequent to initiation of the memorandum of understanding, the person received an order by the department or entered into an administrative consent order to perform the remediation. The surcharge shall be based on the cost of remediation work remaining to be completed and shall be paid on an annual basis as long as the remediation continues and until the Department of Environmental Protection [2]and Energy[2] issues a no further action letter for the property subject to the remediation. The [2][cleanup][2] remediation funding source surcharge shall be due and payable within 14 days of the time of the department's approval of a remedial action workplan or signing an administrative consent order or as otherwise provided by law. The department shall collect the surcharge and shall remit all moneys collected to the Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund.

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

34. (New section) a. There is appropriated from the "Hazardous Discharge Fund of 1986," created pursuant to "Hazardous Discharge Bond Act of 1986," P.L.1986, c.113, the sum of $45,000,000 to the New Jersey Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund, created pursuant to section 26 of P.L. , c. (C.)(now before the Legislature as this bill) for the purposes of issuing [1][loans] financial assistance[1] and grants for the investigation of property suspected of being contaminated by a hazardous substance or hazardous waste or for the remediation of property contaminated by a hazardous substance or hazardous waste.

[1][Of the money appropriated pursuant to this subsection, (1)$15,000,000 shall be dedicated to the issuance of loans or grants to municipal governmental entities in accordance with the purposes of the remediation fund; (2) $10,000,000 shall be dedicated to the issuance of loans to persons other than governmental entities in accordance with the purposes of the remediation fund; and (3) $20,000,000 shall be dedicated to the issuance of grants to innocent parties in accordance with the purposes of the remediation fund.][1]

b. There is appropriated from the "Hazardous Discharge Fund of 1986," created pursuant to "Hazardous Discharge Bond Act of 1986," P.L.1986, c.113, the sum of $5,000,000 to the Department of Environmental Protection for deposit into the Remediation Guarantee Fund, created pursuant to section 45 of P.L. , c. (C.)(now before the Legislature as this bill), for the purposes of that fund.

35. (New section) a. The Department of Environmental

Protection [1]and Energy[1] shall adopt minimum remediation standards for soil, groundwater, and surface water quality necessary for the remediation of contamination of real property. The remediation standards shall be developed to ensure that the potential for harm to public health and safety and to the environment is minimized to acceptable levels, taking into consideration the location, [1]the[1] surroundings, the intended use of the property, the potential exposure to the discharge, and the surrounding ambient conditions, whether naturally occurring or man-made.

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

The department shall not propose or adopt remediation standards protective of the environment pursuant to this section, except standards for groundwater or surface water, until recommendations are made by the Environment Advisory Task Force created pursuant to section 37 of P.L. , c. (C.)(now before the Legislature as this bill). Until the Environment Advisory Task Force issues its recommendations and the department adopts remediation standards protective of the environment as required by this section, the department shall continue to determine the need for and the application of remediation standards protective of the environment on a case-by-case basis in accordance with the guidance and regulations of the [2][federal] United States[2] Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable.

b. In developing minimum remediation standards the department shall:

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

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

(3) avoid the use of redundant conservative assumptions. The department shall avoid the use of redundant conservative assumptions by the use of parameters that provide an adequate margin of safety and which avoid the use of unrealistic conservative exposure parameters and which [1][are consistent with][1] guidelines [1]make use of the guidance and regulations[1] for exposure assessment developed by the [2][federal] United States[2] Environmental Protection Agency [1]pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act [2]of 1980[2]," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable[1]; and

(4) where feasible, establish the remediation standards as numeric or narrative standards setting forth acceptable levels or

concentrations for particular contaminants.

c. (1) The department shall develop residential and nonresidential soil remediation standards that are protective of public health and safety. For contaminants that are mobile and [1][may be transported] transportable[1] to groundwater, the residential and nonresidential soil remediation standards shall be protective of groundwater [1]and surface water[1]. Residential soil remediation standards shall be set at levels or concentrations of contamination for real property based upon the use of that property for residential or similar uses and which will allow the unrestricted use of that property without exceeding a health risk level greater than that provided in subsection d. of this section. Nonresidential soil remediation standards shall be set at levels or concentrations of contaminants that recognize the lower likelihood of exposure to contamination on property that will not be used for residential or similar uses. Whenever real property is remediated to a nonresidential soil remediation standard, except as otherwise provided in paragraph (3) of subsection g. of this section, the department shall require [1][, pursuant to section 36 of P.L. , c. (C.)(now before the Legislature as this bill),]1 [2], pursuant to section 36 of P.L. , c. (C.)(now before the Legislature as this bill),[2] that the use of the property be restricted to nonresidential or other uses compatible with the extent of the contamination of the soil and that access to that site be restricted in a manner compatible with the allowable use of that property.

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

d. In developing minimum remediation standards intended to be protective of public health and safety, the department shall identify the [1][hazard] hazards[1] posed by a contaminant to determine whether exposure to that contaminant can cause an increase in the incidence of an adverse health effect and whether the adverse health effect may occur in humans. The department shall set minimum soil remediation standards for both residential and nonresidential uses that:

(1) for [1]human[1] carcinogens, [1]as categorized by the [2][federal] United States[2] Environmental Protection Agency,[1] will result in an additional cancer risk of one in one million;

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

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

e. Remediation standards and other requirements established pursuant to this section shall apply to remediation activities required pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21 et seq.), the "Industrial Site Recovery Act,"

P.L.1983, c.330 (C.13:1K-6 et seq.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the "Comprehensive Regulated Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the "Sanitary Landfill Facility Closure and Contingency Fund Act," P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333 (C.13:1E-177 et seq.), 2[1P.L.1986, c.102 (C.58:10A-21 et seq.)1]2 or any other law or regulation by which the State may compel a person to perform remediation activities on contaminated property. However, nothing in this subsection shall be construed to limit the authority of the department to establish discharge limits for pollutants or to prescribe penalties for violations of those limits pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), or to require the complete removal of 1[nonhazardous]1 2nonhazardous2 solid waste pursuant to law.

f. (1) A person performing a remediation of contaminated real property, in lieu of using the established minimum soil remediation standard for either residential use or nonresidential use adopted by the department pursuant to subsection c. of this section, may submit to the department a request to use an alternative residential use or nonresidential use soil remediation standard. The use of an alternative soil remediation standard shall be based upon site specific factors which may include (1) physical site characteristics which may vary from those used by the department in the development of the soil remediation standards adopted pursuant to this section; or (2) a site specific risk assessment. If a person performing a remediation requests to use an alternative soil remediation standard based upon a site specific risk assessment, that person shall demonstrate to the department that the requested deviation from the risk assessment protocol used by the department in the development of soil remediation standards pursuant to this section is consistent with the 1[guidelines] guidance and regulations1 for exposure assessment developed by the 2[federal] United States2 Environmental Protection Agency 1pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act 2of 19802 ," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable1. A site specific risk assessment may consider exposure scenarios and assumptions that take into account the form of the contaminant present, natural biodegradation, fate and transport of the contaminant, and available toxicological data that are based upon generally accepted and peer reviewed scientific evidence or methodologies.

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

(2) The department may, upon its own initiative 1,1 require an alternative remediation standard for a particular contaminant for a specific real property site, in lieu of using the established

minimum residential use or nonresidential use soil remediation standard adopted by the department for a particular contaminant pursuant to this section. The department may require an alternative remediation standard pursuant to this paragraph upon a determination by the department, based on the weight of the scientific evidence, that due to specific physical site characteristics of the subject real property, the use of the adopted residential use or nonresidential use soil remediation standards would not be protective of public health or safety or of the environment, as appropriate.

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

(1) Permanent and nonpermanent remedies shall be allowed except that permanent remedies shall be preferred over nonpermanent remedies for remedial actions;

(2) Contamination may, upon the department's approval, be left onsite at levels or concentrations that exceed the minimum soil remediation standards for residential use or nonresidential use if the 1[requirement] implementation1 of institutional or engineering controls at that site will result in the protection of public health, safety and the environment at the risk level established in subsection d. of this section and 1[where] if1 the requirements established in subsections a., b., c. and d. of section 36 of P.L. , c. (C.)(now before the Legislature as this bill) are met.

(3) Real property on which there is soil that has not been remediated to the residential soil remediation standards, or real property on which the soil, groundwater, or surface water has been remediated to meet the required health risk level by the use of engineering or institutional controls, may be developed or used for residential purposes, or for any other similar purpose, if (a) all areas of that real property at which a person may come into contact with soil are remediated to meet the residential soil remediation standards and (b) it is 1clearly1 demonstrated that for all areas of the real property, other than those described in subparagraph (a) above, engineering and institutional controls can be implemented and maintained on the real property sufficient to meet the health risk level as established in subsection d. of this section;

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

(5) Remediation shall not be required 1[by] of1 the owner or

operator of real property for contamination coming onto the site from another property owned and operated by another person [1], unless [2][said] the[2] owner or operator is in any way responsible for the discharge[1];

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

(7) [1][The effectiveness of each remedial action alternative in protecting public health, safety and the environment] The technical performance, effectiveness and reliability of the proposed remedial action in attaining and maintaining compliance with applicable remediation standards and required health risk levels. In reviewing a proposed remedial action, the department shall also consider the ability of the owner or operator to implement the proposed remedial action within a reasonable time frame without jeopardizing public health, safety or the environment[1];

(8) [1][The implementability of each alternative] In the case of a proposed remedial action that will not meet the established minimum residential use soil remediation standards, the cost of all available permanent remedies [2][are] is[2] unreasonable, as determined by department rules designed to provide a cost-based preference for the use of permanent remedies. The department shall adopt regulations, no later than 18 months after the effective date of this act, establishing criteria and procedures for allowing a person to demonstrate that the cost of [2][a proposed remedial action using a nonpermanent remedy is reasonable] all available permanent remedies is unreasonable[2]. Until the department [2][promulgates] adopts[2] those regulations, it shall not require a person performing a remedial action to implement a permanent remedy, unless the cost of implementing a nonpermanent remedy is 50 percent or more [2][then] than[2] the cost of implementing a permanent remedy; provided, however, that the preceding provision shall not apply to any owner or operator of an industrial establishment who is implementing a remedial action pursuant to subsection i. of section 4 of P.L.1983 [2], c.330[2].[1];

(9) [1][The time it would take to implement each alternative;

(10) The cost of each alternative including capital costs, operation, maintenance and monitoring costs, whether a particular remedial action is cost effective, and whether the cost of performing a specific remedial action is excessive compared to the cost of other alternatives; and

(11) The technological efficacy of any particular remedial action] The use of the established nonresidential soil remediation standard shall not be unreasonably disapproved by the department[1].

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

h. (1) The department shall adopt regulations which establish

a procedure for a person to demonstrate that a particular parcel of land contains large quantities of historical fill material. Upon a determination by the department that large quantities of historic fill material exist on that parcel of land, there is a rebuttable presumption that the department shall not require any person to remove or treat the fill material in order to comply with a remediation standard. In these areas the department shall establish by regulation the requirement for engineering or institutional controls that are designed to prevent exposure of these contaminants to humans, that allow for the continued use of the property, that are less costly than removal or treatment, which maintain the health risk levels as established in subsection d. of this section, and, as applicable, are protective of the environment. The department may rebut the presumption only upon a finding by the preponderance of the evidence that the use of engineering or institutional controls would not be effective in protecting 1[human] public1 health, safety, and the environment. For the purposes of this paragraph "historic fill material" means generally large volumes of non-indigenous material, used to raise the topographic elevation of a site, which were contaminated prior to emplacement and are in no way connected with the operations at the location of emplacement and which include, but 1are1 not limited to, construction debris, dredge spoils, incinerator residue, demolition debris, fly ash, and 1[non hazardous] non-hazardous1 solid waste. Historic fill material shall not include any material which is substantially chromate chemical production waste or any other chemical production waste or waste from 1[mining or]1 processing of metal or mineral ores, residues, slags or tailings.

(2) The department shall develop recommendations for remedial actions in large areas of historic industrial contamination. These recommendations shall be designed to meet the health risk levels established in subsection d. of this section, and 1to1 be protective of the environment and shall take into account the industrial history of these sites, the extent of the contamination that may exist, the costs of 1[alternative]1 remedial actions, the economic impacts of these policies, and the anticipated uses of these properties. The department, within one year of the enactment of this act, shall issue a report to the Senate Environment Committee and to the Assembly Energy and Hazardous Waste Committee, or their successors, explaining these recommendations and making any recommendations for legislative or regulatory action.

(3) The department may not, as a condition of allowing the use of a nonresidential use soil remediation standard, or the use of institutional or engineering controls, require the owner of that real property, except as provided in section 36 of P.L. , c. (C.)(now before the Legislature as this bill), to restrict the use of that property through the filing of a deed easement, covenant, or condition.

i. The department may not require a remedial action workplan to be prepared or implemented or engineering or institutional controls to be imposed upon any real property unless sampling performed at that real property demonstrates the existence of

contamination above the applicable remediation standards.

j. Upon the approval by the department of a remedial action workplan, or similar [1][approval] plan[1] that describes the extent of contamination at a site and the remedial action to be implemented to address that contamination, the department may not subsequently require a change to that workplan or similar [1][approval] plan[1] in order to compel a different remediation standard due to the fact that the established remediation standards have changed; however, the department may compel a different remediation standard if the difference between the new remediation standard and the remediation standard approved in the workplan or other [1][approval] plan[1] differs by an order of magnitude. The limitation to the department's authority to change a workplan or similar [1][approval] plan[1] pursuant to this subsection shall only apply [1][where] if[1] the workplan or similar [1][approval] plan[1] is being implemented in a reasonable timeframe [1], as may be indicated in the approved remedial action workplan or similar plan[1].

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

l. Upon the adoption of a remediation standard for a particular contaminant in soil, groundwater, or surface water pursuant to this section, the department may amend that remediation standard only upon a finding that a new standard is necessary to maintain the health risk levels established in subsection d. of section 35 of P.L. , c. (C.)(now before the Legislature as this bill) or to protect the environment, as applicable. The department may not amend a public health based soil remediation standard to a level that would result in a health risk level more protective than that provided for in subsection d. of section 35 of P.L. , c. (C.).

[1]m. Nothing in [2][this amendatory and supplementary act,][2] P.L. , c. (now before the Legislature as this bill), shall be construed to restrict or in any way diminish the public participation which is otherwise provided under the provisions of the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.).[1]

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

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

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

(3) require a notice to the governing body of each municipality in which the property is located that contaminants will exist at the property above residential use soil remediation standards or [1][of][1] any other remediation standards and specifying the restrictions on the use of or access to all or part of that property and of the specific engineering or institutional controls at the property that exist and that shall be maintained;

(4) require, when determined necessary by the department, that signs be posted at any location at the site where access is restricted or in those areas that must be maintained in a prescribed manner, to inform persons on the property that there are restrictions on the use of that property or restrictions on access to any part of the site; [1][and][1]

(5) require that a list of the restrictions be kept on site for inspection by governmental enforcement officials [1]; and

(6) require a person, prior to commencing a remedial action, to notify the governing body of each municipality wherein the property being remediated is located. The notice shall include, but not be limited to, the commencement date for the remedial action; the name, mailing address and business telephone number of the person implementing the remedial action, or his designated representative; and a brief description of the remedial action[1].

b. If the owner of the real property does not consent to the recording of a notice pursuant to paragraph (2) of subsection a. of this section, the department shall [1][not allow] require[1] the use of a [1][nonresidential] residential[1] soil remediation standard [1][or the use of engineering or institutional controls][1] in the remediation of that real property.

c. [1][Where] Whenever[1] engineering or institutional controls on property as provided in subsection a. of this section are no longer required, or [1][where] whenever[1] the engineering or institutional controls are changed because of the performance of subsequent remedial activities, a change in conditions at the site, or the adoption of revised remediation standards, the department shall [1][,][1] require that the owner or operator of that property [1][,][1] record with the office of the county recording officer a notice that the use of the property is no longer restricted or delineating the new restrictions. The department shall also require that the owner or operator notify, in writing, the municipality in which the property is located of the removal or change of the restrictive use conditions.

d. The owner or lessee of any real property, or any person operating a business on real property, which has been remediated

to a nonresidential use soil remediation standard or on which the department has allowed engineering or institutional controls for soil, groundwater, or surface water to protect the public health, safety, or the environment, as applicable, shall maintain the engineering or institutional controls as required by the department. An owner, lessee, or operator who takes any action that results in the improper alteration or removal of engineering or institutional controls or who fails to maintain the engineering or institutional controls as required by the department, shall be subject to the penalties and actions set forth in section 22 of P.L.1976, c.141 (C.58:10-23.11u). The provisions of this subsection shall not apply if a notification received pursuant to subsection b. of this section authorizes all restrictions or controls to be removed from the subject property.

e. Notwithstanding the provisions of any other law, or any rule, regulation, or order adopted pursuant thereto to the contrary, whenever contamination at a property is remediated in compliance with any soil, groundwater, or surface water remediation standards that were in effect at the completion of the remediation, the owner or operator of the property or person performing the remediation, except as otherwise provided in this section, shall not be liable for the cost of any additional remediation that may be required by a subsequent adoption by the department of a more stringent remediation standard for a particular contaminant. Upon the adoption of a regulation that amends a remediation standard, only a person who is liable to clean up [1]and remove[1] that contamination pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g) shall be liable for any additional remediation costs necessary to bring the site into compliance with the new remediation standards except that no person shall be so liable unless the difference between the new remediation standard and the level or concentration of a contaminant at the property differs by an order of magnitude.

Nothing in the provisions of this subsection shall be construed to affect the authority of the department, pursuant to subsection f. of this section, to require additional remediation on real property where engineering or institutional controls were implemented [1][of this section][1].

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

f. [1][Where] Whenever[1] the department approves or has approved the use of engineering or institutional controls for the remediation of soil, groundwater, or surface water, to protect public health, safety or the environment in lieu of remediating a site to a condition that meets an established [1]residential[1] remediation standard, the department shall not require additional remediation of that site unless the engineering or institutional controls no longer are protective of public health, safety, or the environment.

37. (New section) a. There is established, in but not of the Department of Environmental Protection [1]and Energy[1], an Environment Advisory Task Force. The Task Force shall consist

of 15 members as follows: (1) the Commissioner of Environmental Protection [1]and Energy[1], or his designee; (2) one representative from the National Academy of Sciences who shall be selected by the Academy; (3) one representative from the New Jersey Environmental and Occupational Health Sciences Institute who has experience in risk assessment, who shall be selected by the Institute; (4) one representative each from the industrial real estate development industry, the environmental consulting profession, a public interest environmental organization, and the legal community, who shall be appointed by the Governor with the advice and consent of the Senate; (5) four members who shall have at least a master's degree in a relevant science discipline and who shall, to the greatest extent possible, include a plant or animal biologist, a toxicologist, an ornithologist, and a physiologist, who shall be appointed by the Governor with the advice and consent of the Senate; (6) two members who shall have at least a master's degree in a science discipline, have relevant experience, and be employed by an industrial business, who shall be appointed by the President of the Senate; and (7) two members who shall have at least a master's degree in a science discipline, have relevant experience, and be employed by an industrial business, who shall be appointed by the Speaker of the General Assembly.

b. The Environment Advisory Task Force shall meet as soon as practicable after the appointment and qualification of all its members. The Commissioner of Environmental Protection, or the commissioner's designee, shall be the chairperson of the Environment Advisory Task Force. The Environment Advisory Task Force shall meet at the call of its chairperson and in the locations the chairperson shall choose.

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

d. The Environment Advisory Task Force shall:

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

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

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

(4) evaluate the ecological components which should be protected through the application of remediation standards

protective of the environment;

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

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

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

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

(9) review and make recommendations on any other aspect of the adoption of these remediation standards the [1][department] task force[1] determines is necessary for a complete evaluation of these issues.

e. Prior to the submittal of its recommendations to the department, the Environment Advisory Task Force shall release a proposed recommendation to the public. The Environment Advisory Task Force shall hold at least one public meeting at least 14 days after public release of its proposed recommendations. Members of the public shall be allowed to present written and oral comments on the proposed recommendations at the public meeting. The [1][Task Force] task force[1] is not required to record, consider, or comment upon the public comments. Upon submittal of its final recommendations to the department concerning the adoption of remediation standards protective of the environment, the Environment Advisory Task Force shall expire.

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

39. (New section) a. Any person who, before the effective date of P.L. , c. (C.)(now before the Legislature as this bill), has discharged a hazardous substance in violation of P.L.1976, c.141, and:

(1) has not been issued a directive to remove or arrange for the removal of the discharge pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f) [1][,] ;1

(2) has not been assessed a civil penalty, a civil administrative penalty, or is not the subject of an action pursuant to the provisions of section 22 of P.L.1976, c.141 (C.58:10-23.11u) [1][,] ;1

(3) has not entered in to an administrative consent order to

clean up and remove the discharge [1][, or] ; and[1]

(4) has not been ordered by a court to clean up and remove the discharge, shall not be subject to a monetary penalty for the failure to report the discharge or for any civil violation of P.L.1976, c.141 (C.58:10-23.11 et seq.) or P.L.1977, c.74 (C.58:10A-1 et seq.) that resulted in the discharge if the person notifies the department of the discharge and enters into an administrative consent order or a memorandum of agreement with the department to remediate the discharge in accordance with the provisions of P.L.1976, c.141 (C.58:10-23.11 et seq.), or any rules or regulations adopted pursuant thereto, within one year of the effective date of P.L. , c. (C.)(now before the Legislature as this bill). Any person who notifies the department of the discharge pursuant to this section shall be liable for all cleanup and removal costs as provided in section 8 of P.L.1976, c.141 (C.58:10-23.11g).

b. Notwithstanding the provisions of subsection a. of this subsection, any person who enters into a memorandum of agreement or administrative consent order pursuant to this section and fails to remediate the discharge in accordance with the memorandum of agreement or administrative consent order, shall be subject to all penalties for violations that occurred before the effective date of P.L. , c. (C.)(now before the Legislature as this bill) as well as any penalties for subsequent violations.

c. The provisions of this section shall not apply to violations of a permit issued pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.).

d. Any documents or information provided to the department pursuant to this section may not be used in a criminal investigation or criminal prosecution against the person providing the information or documents for those violations that occurred before the effective date of this act as long as the person remediates the discharge in conformance with the administrative consent order or memorandum of agreement entered into pursuant to subsection a. of this section.

40. (New section) a. [1][Any person who undertakes the remediation of suspected or actual contamination on real or personal property that is not owned by that person, may enter upon the property to conduct the necessary remediation if there is an agreement, in writing, between the person conducting the remediation and the owner of the property authorizing the entry onto the property.

If, after a good faith effort, the person undertaking the remediation and the property owner fail to reach an agreement concerning access to the property, the person may seek a court order authorizing access which shall be issued pursuant to subsection b. of this section.

b. Any person who undertakes the remediation of suspected or actual contamination on real or personal property that is not owned by the person responsible for the remediation, and fails to reach an agreement with the property owner pursuant to subsection a. of this section may institute an action in the Superior Court for injunctive and other relief, to gain access to the property and the court may proceed in the action in a

summary manner.] (1) Any person who undertakes the remediation of suspected or actual contamination and who requires access to conduct such remediation on real or personal property that is not owned by that person, may enter upon the property to conduct the necessary remediation if there is an agreement, in writing, between the person conducting the remediation and the owner of the property authorizing the entry onto the property. If, after good faith efforts, the person undertaking the remediation and the property owner fail to reach an agreement concerning access to the property, the person undertaking the remediation shall seek an order from the Superior Court directing the property owner to grant reasonable access to the property and the court may proceed in the action in a summary manner.

(2)[1] Such relief may include, singly or in combination:

[1][(1)] (a)[1] A temporary or permanent injunction;

[1][(2)] (b)[1] Assessment of the person undertaking the remediation for costs associated with any disruption in operations on the property;

[1][(3)] (c)[1] Assessment of the person undertaking the remediation for any costs to return the property to its condition before the commencement of the remediation;

[1][(4)] (d)[1] A requirement that the person undertaking the remediation indemnify the owner of the property for any damages, penalties or liabilities resulting from the remediation;

[1][(5)] (e)[1] A requirement that the person undertaking the remediation indemnify the owner of the property for any liability resulting from the entry of persons onto the property to perform the remediation.

[1]b. The court shall promptly issue any access order sought pursuant to this section upon a showing that (1) a reasonable possibility exists that contamination from another site has migrated onto the owner's property, or (2) access to the property is reasonable and necessary to remediate contamination. The presence of an applicable department oversight document or a remediation obligation pursuant to law involving the property for which access is sought shall constitute prima facie evidence sufficient to support the issuance of an order.

Unless the court otherwise orders for notice and for good cause shown, an action for an access order shall not be joined with non-germane issues against the owner of the property for which access is sought or other person who may be liable for the contamination. Non-germane issues shall include, but not be limited to, issues concerning contribution, treble damages, or other damages involving either the contamination or the remediation.

The court may impose reasonable conditions as part of the access order, including without limitation, that the person undertaking the remediation take all reasonable measures to minimize the disruption to the property and the activities conducted there and return the property to its condition prior to the commencement of remediation.[1]

c. The department may not impose or seek to impose any civil or civil administrative penalties upon any person for failure to

perform a remediation on property not owned by that person within the time schedule required by regulation on property not owned by that person if (1) the failure to perform the remediation was the result of an inability of that person to enter upon real or personal property owned by another person, and (2) the person took all appropriate action pursuant to this section to obtain access to the property.

[1]d. Nothing herein shall be construed as limiting the rights of the owner of the property against which the access order is issued to initiate a civil action to seek any damages available under law.

e. Nothing herein shall be construed as limiting the rights of the person conducting the remediation from initiating any subsequent civil action against the owner of the property [2]upon which access was ordered[2].[1]

41. (New section) a. Any person conducting a remediation of a contaminated site may dispute a decision by the department concerning the remediation in accordance with the guidelines developed pursuant to subsection b. of this section. The disputed decision shall be reviewed, and a determination shall be made, by the next level of the department's management, and the review may continue, upon the request of the person seeking review, until the Commissioner or his designee has issued a decision on the dispute. Each successive level of management review and the resulting determination on the dispute, shall occur within seven days of the department's receipt of the request for review.

b. Within 60 days of the effective date of [1][this act] P.L. , c. (now pending before the Legislature as this bill)[1], the department shall develop guidelines that establish a procedure through which a person conducting a remediation of a contaminated site may dispute a department decision concerning the remediation. [1]Those guidelines shall include provisions for an expedited review procedure under which the Commissioner, or his designee, shall issue a decision of the dispute within 21 calendar days of the date on which the request for that review was received.[1]

42. (New section) The Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Department of Environmental Protection [1]and Energy[1], shall prepare, and the department shall distribute, for the cost of reproduction and postage, to any interested person, informational materials that set forth criteria that may be used to evaluate the qualifications of environmental consultants, environmental consulting firms, engineers, geologists or any other consultant, whose expertise or training may be required by a person to comply with the provisions of P.L.1986, c.102 [1](C.58:10A-21 et seq.)[1], P.L.1983, c.330 [1](C.13:1K-6 et seq.)[1], P.L.1976, c.141 [1](C.58:10-23.11 et seq.)[1], and P.L. , c. (C.)(now before the Legislature as this bill) relating to the remediation of contaminated real property. The materials may describe the expertise or training necessary to address specific types of environmental cleanups, sites or contamination, the significance and availability of various types of [1]professional[1] liability insurance [1], issued by an entity licensed by the Department of Insurance to transact business in the State of New Jersey[1], the

average cost of services and tests commonly performed by consultants, the significance of available accreditations or certifications, the ethics code applicable to any consultant, the references that may be requested and any other relevant factor that may be used to evaluate the qualifications and expertise of persons performing remediation services.

43. (New section) The owner or operator of an industrial establishment 1[,]1 who has submitted a notice to the department pursuant to subsection a. of section 4 of P.L.1983, c.330 (C.13:1K-9), or any person who has discharged a hazardous substance or is liable for the remediation of that discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), 1or any person who1 has been directed to or has entered into an agreement with the department to remediate a discharge, may implement an interim response action prior to departmental approval of that action. The interim response action may be implemented when the expeditious temporary or partial remediation of a discharged hazardous substance or hazardous waste is necessary to contain or stabilize a discharge prior to implementation of an approved remedial action workplan in order to prevent, minimize, or mitigate damage to public health or safety or to the environment which may otherwise result from a discharge. The interim response action shall be implemented in compliance with the procedures and standards established by the department. The department may require submission of a notice of intent to implement an interim response action, what those actions will be, and may require, subsequent to completion of the interim response action, a report detailing the actions taken and a certification that the interim response action was implemented in accordance with all applicable laws and regulations. The department shall review these submissions to verify whether the interim response action was implemented in accordance with applicable laws and regulations. The department shall not require that additional remediation be undertaken at an area of concern subject to the interim response action except in instances when further remediation is necessary to bring that area of concern into compliance with the applicable remediation standards.

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

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

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

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

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

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

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

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

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

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

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

Where a person is liable for cleanup and removal costs as

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

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

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

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

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

(2) A person, including an owner or operator of a major facility, who owns real property acquired after the effective date of P.L. , c. (C.)(now before the Legislature as this bill), on which there has been a discharge, shall be considered a person in any way responsible for the discharged hazardous substance pursuant to subsection c. of this section, unless that person can establish by a preponderance of the evidence that all of the following apply:

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

(b) (i) at the time the person acquired the real property, the person did not know and had no reason to know that any hazardous substance had been discharged at the real property, or (ii) the person acquired the real property by devise or succession, except that any other funds or property received by that person from the deceased real property owner who discharged a hazardous substance or was in any way responsible for a hazardous substance, shall be made available to satisfy the requirements of P.L.1976, c.141;

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

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

To establish that a person had no reason to know that any hazardous substance had been discharged for the purposes of this paragraph (2), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property. [2][In order to determine if all appropriate inquiry was undertake, any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the fair market value of the property if not impacted by discharges of hazardous substances, commonly known or reasonably ascertainable information about the property, the obviousness of the discharge at the property, and the ability to detect the discharge of hazardous substances by appropriate inspection shall be taken into account] For the purposes of this paragraph (2), all appropriate inquiry shall mean the performance of a preliminary assessment, and site investigation (if the preliminary assessment indicates that a site investigation is necessary), as defined in section 23 of P.L. , c. (C.)(now before the Legislature as this bill), and performed in accordance with rules and regulations promulgated by the department defining these terms[2] .

Nothing in this paragraph (2) shall be construed to alter liability of any person who acquired real property prior to the effective date of P.L. , c. (C.) (now before the Legislature as this bill).

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

(4) Any federal, State, or local government entity which acquires ownership of real property through bankruptcy, tax delinquency, abandonment, escheat, eminent domain, condemnation or any circumstance in which the government involuntarily acquires title by virtue of its function as sovereign, shall not be liable for the cleanup and removal costs of any

discharge which occurred or began prior to that ownership. This paragraph shall not apply to any federal, State or local government entity which has caused or contributed to the discharge of a hazardous substance.

(cf: P.L.1991, c.85, s.4)

45. (New section) a. There is created in the Department of Environmental Protection a special, revolving fund to be known as the Remediation Guarantee Fund. The fund shall be credited with all monies appropriated to it by law, all monies collected in subrogation actions to recover monies expended from the fund, and all moneys earned from the investment of the monies in the fund.

b. The Commissioner of Environmental Protection shall appoint and supervise an administrator of the fund. The administrator shall be the chief executive of the fund, shall approve all disbursements of monies from the fund and, and shall ensure the proper deposit of all monies authorized to be deposited into the fund.

c. Monies in the fund shall be used by the Department of Environmental Protection to remediate, or contract for the remediation of, any real property for which a person was required to establish a remediation funding source pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) and where that person fails to conduct or properly conduct that remediation.

d. Any monies expended by the department from the fund pursuant to this subsection shall constitute a debt of the person required to establish the remediation funding source and against the discharger. The debt shall constitute a lien on all property owned by the person required to establish the remediation funding source and against the discharger to the same extent and in the same manner as provided for liens in subsection f. of section 7 of P.L.1976, c.141 (C.58:10-23.11f).

e. Whenever the department expends monies from the fund for a remediation, it shall have a cause of action to recover from the person required to establish the remediation funding source or from any other person liable for the discharge pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g) triple the amount of monies expended for the remediation.

f. Monies in the fund may be appropriated to pay for the costs to administer the fund except that those appropriations may not exceed the amount of monies deposited into the fund earned from the investment of monies in the fund.

[1]46. Section 7 of P.L.1993, c.112 (C.13:1K-11.1) is amended to read as follows:

7. [a. The following transactions shall be excluded from the provisions of the "Environmental Cleanup Responsibility Act," P.L.1983, c.330 (C.13:1K-6 et al.):

(1) Execution, delivery and filing or recording of any mortgage, security interest, collateral assignment or other lien on real or personal property; and

(2) Any transfer of personal property pursuant to a valid security agreement, collateral assignment or other lien, including, but not limited to, seizure or replevin of such personal

property which transfer is for the purpose of implementing the secured party's rights in the personal property which is the collateral.

b.] In the event of the closing, termination or transfer of an industrial establishment, which industrial establishment is all or part of a trust, receivership estate, guardianship estate or estate of a deceased person, only the assets of the trust or estate, or assets of any discharger other than the fiduciary of such trust or estate shall be subject to the obligation to remove the discharge as set forth in P.L.1983, c.330 (C.13:1K-6 et al.).[1]

(cf: P.L.1993, c.112, s.7)

[1]47. (New section) a. There is created a special Environmental Risk Assessment and Risk Management Study Commission. The commission shall consist of 10 members and shall include the Commissioner of Environmental Protection and Energy, or his designee, as a non-voting member, and eight members who shall have advanced degrees and relevant experience in any of the following disciplines: (1) environmental medicine, health, or epidemiology; (2) environmental toxicology; (3) soil science, geology, or hydrogeology, and (4) environmental engineering with experience in site remediation. The Governor shall appoint one representative from each of those disciplines; the Senate President shall appoint two representatives, provided, however, both of those appointees shall not be from the same discipline; and the Speaker of the General Assembly shall appoint two representatives, provided, however, both of those appointees shall not be from the same discipline. A ninth member, who shall be a recognized expert in the field of risk assessment as it applies to contaminated sites or to the remediation of such sites, shall be jointly appointed by the Governor, Senate President, and the Speaker. The chairman of the commission shall be jointly appointed by the Governor, Senate President, and Speaker from among the appointed members. All members shall serve without compensation. Vacancies in the membership shall be filled in the same manner as the original appointments were made.

b. It shall be the duty of the commission:

(1) To examine and assess the scientific basis for selecting the risk management standard of one in one million for the purposes of P.L. , c. (C.)(now pending before the Legislature as this bill) and to consider and assess alternative scientific standards and criteria for that purpose; and

(2) To examine and assess methodologies of risk assessment and their efficacy and applicability for the purposes of establishing remediation standards.

c. The commission shall organize as soon after the appointment of its members as is practicable.

d. The commission shall be entitled to call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes, and to employ such stenographic and clerical assistants and incur such traveling and other miscellaneous expenses as it may deem necessary, in order to perform its duties, and as may be within the limits of funds appropriated or otherwise made

available to it.

e. The commission may meet and hold hearings at such place or places as it shall designate. The commission shall hold at least one public hearing to accept written and oral testimony from the public prior to commencing its deliberations. The commission shall hold at least one other public hearing prior to formally submitting its findings and recommendations to the Governor and the Legislature. This public hearing, or hearings, as the case may be, shall be held at least 14 days after the commission has made public its proposed findings and recommendations. The public shall be permitted to present written and oral comments on the proposed findings and recommendations at that public hearing, or hearings, as the case may be. Thereafter, the commission shall report its findings and recommendations to the Governor and Legislature, along with any recommendations for Legislative action, as follows:

(1) The report and recommendations concerning the scientific basis for selecting risk management standards shall be delivered no later than six months after the effective date of P.L. , c. (now pending before the Legislature and this bill); and

(2) The report and recommendations concerning risk assessment methodologies and their efficacy and applicability for establishing remediation standards shall be delivered no later than one year after the effective date of P.L. , c. (now before the Legislature as this bill).

f. The commission shall expire upon the issuance of its final report.[1]

[1]48. (New section) Within nine months of the enactment of P.L. , c. (now before the Legislature as this bill), the Commissioner of the Department of Environmental Protection and Energy, in consultation with the Attorney General, shall issue a report to the Governor and the Legislature concerning the effectiveness and fairness of the imposition of strict, joint and several liability on persons who have discharged, or are in any way responsible for, a hazardous substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.). The report shall:

a. analyze methods to expedite the securing of funding for the remediation of hazardous discharge sites;

b. analyze methods to lower the public and private legal costs associated with the determinations of liability for discharges of hazardous substances;

c. examine the historical and legal basis for the imposition of strict, joint and several liability for the discharge of a hazardous substance;

d. discuss the effect on the Department of Environmental Protection and Energy's site remediation program of modifying the existing statutory scheme of strict, joint and several liability and replacing it with another standard of liability; and

e. review and discuss methods to enhance the fairness of the imposition of liability for hazardous substance discharges including the possible use of mixed public and private funding for site remediations and the use of de minimis settlements for potentially responsible parties.

In preparing its report, the department shall review the

provisions of the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," as amended by the "Superfund Amendments and Reauthorization Act of 1986," the regulations and policies of the federal Environmental Protection Agency in implementing that act, proposed changes being considered by Congress in the reauthorization of that act, and the discharge liability laws of other states as may be relevant. The report shall contain recommendations for regulatory or legislative actions.[1]

[1]49. (New section) Within six months of the enactment of P.L. , c. (now before the Legislature as this bill), the Commissioner of Environmental Protection and Energy shall issue a report to the Governor and the Legislature providing an evaluation, recommendations, and a plan of action for developing and implementing a certification program for persons engaging in the remediation of contaminated sites. In preparing his report, the commissioner shall review the certification programs for persons engaging in the remediation of contaminated sites which other states have implemented and which may be relevant.[1]

[1][46.] 50.[1] This act shall take effect immediately except that section 44 shall remain inoperative until the 90th day following enactment.

Makes various changes to various hazardous discharge site remediation programs; imposes a surcharge on remediations; establishes a loan and grant fund for remediation activities; appropriates bond moneys.

SENATE, No. 1070

STATE OF NEW JERSEY

INTRODUCED JULY 23, 1992

By Senators McNAMARA, RICE, DiFrancisco and Dorsey

AN ACT concerning the remediation of contaminated property, establishing the "Hazardous Discharge Site Remediation Fund," making an appropriation from the "Hazardous Discharge Bond Act of 1986," amending and supplementing the "Environmental Cleanup Responsibility Act", P.L.1983, c.330, and supplementing Title 58 of the Revised Statutes.

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

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

3. As used in this act:

[a. "Cleanup plan"] "Remedial action workplan" means a plan for the [cleanup of] remedial action to be undertaken at an industrial [establishments, approved by the department] establishment, or at any area to which a discharge originating at the industrial establishment is migrating or has migrated[, which may include a description of the locations, types and quantities of hazardous substances and wastes that will remain on the premises; a description of the types and locations of storage vessels, surface impoundments, or secured landfills containing hazardous substances and wastes; recommendations regarding the most practicable method of cleanup; and]; a description of the remedial action to be used to remediate the industrial establishment; a cost estimate of the [cleanup plan.] implementation of the remedial action workplan; and any other information the department deems necessary;

[The department, upon a finding that the evaluation of a site for cleanup purposes necessitates additional information, may require graphic and narrative descriptions of geographic and hydrogeologic characteristics of the industrial establishment and evaluation of all residual soil, groundwater, and surface water contamination;

b. "Closing, terminating or transferring operations" means the cessation of all operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes, or any temporary cessation for a period of not less than two years, or any other transaction or proceeding through which an industrial establishment becomes nonoperational for health or safety reasons or undergoes change in ownership, except for corporate reorganization not substantially affecting the ownership of the

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

Matter underlined thus is new matter.

industrial establishment, including but not limited to sale of stock in the form of a statutory merger or consolidation, sale of the controlling share of the assets, the conveyance of the real property, dissolution of corporate identity, financial reorganization and initiation of bankruptcy proceedings]

"Closing operations" means:

(1) the cessation of all or substantially all operations of an industrial establishment,

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

(3) any transaction or proceeding through which an industrial establishment becomes nonoperational for health or safety reasons, and

(4) the initiation of bankruptcy proceedings;

"Transferring ownership or operations" means:

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

(2) the sale or transfer of the controlling share of the assets of an industrial establishment,

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

(4) the termination of a lease unless renewed without a disruption in operations of the industrial establishment,

(5) the dissolution of corporate identity, except for any dissolution of an indirect owner of an industrial establishment whose assets would have been unavailable for the remediation of the industrial establishment if the dissolution had not occurred,

(6) the financial reorganization,

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

"Change in ownership" means:

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

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

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

(4) the sale or transfer of title to an industrial establishment or the real property of an industrial establishment by exercising an option to purchase, or

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

"Change in ownership" shall not include:

(1) a corporate reorganization not substantially affecting the ownership of the industrial establishment,

(2) a transaction or series of transactions involving the transfer of stock, assets or both, among corporations under common ownership, where the transactions will not result in the aggregate

diminution of the net worth of the corporation that directly owns or operates the industrial establishment, will not result in the aggregate diminution of the net worth of the industrial establishment by more than 10 percent, and an equal or greater amount in assets is available for the remediation of the industrial establishment before and after the transactions,

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

(4) transfers between members of the same family. "Family" means siblings, spouse, children, grandchildren, parents and grandparents;

[c.] "Department" means the Department of Environmental Protection;

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

[e.] "Hazardous waste" means any amount of any waste substances required to be reported to the Department of Environmental Protection on the special waste manifest pursuant to N.J.A.C.7:26-7.4, or as otherwise provided by law;

[f.] "Industrial establishment" means any place of business engaged in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or hazardous wastes on-site, above or below ground, having a Standard Industrial Classification number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard Industrial Classifications Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States. Those facilities or parts of facilities subject to operational closure and post-closure maintenance requirements pursuant to the Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.) or the "Solid Waste Disposal Act" (42 U.S.C.§6901 et seq.), or any establishment engaged in the production or distribution of agricultural commodities, shall not be considered industrial establishments for the purposes of this act. The department may, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), exempt certain sub-groups or classes of operations within those

sub-groups within the Standard Industrial Classification major group numbers listed in this subsection upon a finding that the operation of the industrial establishment does not pose a risk to public health and safety;

[g.] "Negative declaration" means a written declaration, submitted by the owner or operator of an industrial establishment [and approved by the department], certifying that there has been no discharge of hazardous substances or hazardous wastes on the site, or that any such discharge on the site or discharge that has migrated or is migrating from the site has been cleaned up in accordance with procedures approved by the department, and there remain no hazardous substances or hazardous wastes at the site of the industrial establishment, and there remain no hazardous substances or hazardous wastes that migrated from the site of the industrial establishment, at levels that are above the applicable cleanup standards established by the department;

"Discharge" means an intentional or unintentional action or omission resulting in the actual or threatened releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a hazardous substance or hazardous waste onto the land or into the waters of the State;

"No further action letter" means a written determination by the department that based upon an evaluation of the historical use of the industrial establishment and the property, and any other investigation or action the department deems necessary, there are no discharged hazardous substances or hazardous wastes present at the site of the industrial establishment, at any other site to which a hazardous discharge originating at the industrial establishment has migrated, or that any discharged hazardous substances or hazardous wastes present at the industrial establishment or that have migrated from the industrial establishment are below the applicable cleanup standards;

"Indirect owner" means a corporation that owns any subsidiary that owns or operates an industrial establishment;

"Direct owner or operator" means a corporation that directly owns or operates an industrial establishment;

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

"Cleanup standards" means the combination of numeric and narrative standards to which hazardous substances or hazardous waste must be cleaned up as established by the department pursuant to section 30 of P.L. , c. (C.)(now before the Legislature as this bill);

"Feasibility study" means a study to develop and evaluate options for remedial action using data gathered during the remedial investigation to develop possible remedial action alternatives, to evaluate those alternatives and create a list of feasible alternatives, and to analyze the engineering, scientific, institutional, human health, environmental, and cost of each selected alternative;

"Owner" means any person who owns the real property of an industrial establishment or who owns the industrial establishment;

"Operator" means any person, including users, tenants, occupants, or trespassers, having and exercising direct actual control of the operations of an industrial establishment;

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether hazardous substances or hazardous wastes are present at an industrial establishment or have migrated or are migrating from the industrial establishment, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or potential discharge of any hazardous substance or hazardous waste is required by the department;

"Remediation" or "remediate" means all necessary actions to investigate and clean up any known or suspected discharge or threatened discharge of hazardous substances or hazardous wastes, including the preliminary assessment, site investigation, remedial investigation, feasibility study, and remedial action;

"Remedial action" means those actions taken at an industrial establishment or offsite of an industrial establishment if hazardous substances or hazardous wastes have migrated or are migrating therefrom, as may be required by the department, including the removal, treatment, containment, transportation securing, or other engineering or treatment measures, whether of a permanent nature or otherwise, designed to ensure that any discharged hazardous substances or hazardous wastes at the site or that have migrated or are migrating offsite, is brought into compliance with the applicable cleanup standards;

"Remedial investigation" means a process to determine the nature and extent of a discharge of hazardous substances or hazardous wastes at an industrial establishment or a discharge of hazardous substances or hazardous wastes that have migrated or are migrating from an industrial establishment and the problems presented by a discharge, and may include data collected, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action including a feasibility study;

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

(cf: P.L.1983, c.330, s.3)

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

4. a. The owner or operator of an industrial establishment planning to close operations, or transfer ownership or operations shall [:

(1) Notify] notify the department in writing, no more than five

days subsequent to closing operations or of its public release[,] of its decision to close operations [;] , whichever occurs first, or within five days after the execution of an agreement to transfer ownership or operations, as applicable. The notice to the department shall: identify the subject industrial establishment; describe the transaction requiring compliance with the act; state the date of the closing of operations or the date of the public release of the decision to close operations and a copy of the appropriate public announcement, if applicable; state the date of execution of the agreement to transfer ownership or operations and the name of the parties to the transfer, if applicable; state the proposed date for closing operations or transferring ownership or operations; list the name, address, and telephone number of an authorized agent for the owner or operator; and include any other information the department deems necessary to provide it with sufficient notice of the transaction. The notice shall be transmitted to the department in the manner and form as required by the department.

b. Subsequent to the submittal of the notice required pursuant to subsection a. of this section, the owner or operator of an industrial establishment shall, except as otherwise provided by P.L.1983, c.330 or P.L. , c. (now before the Legislature as this bill), remediate the industrial establishment. The remediation may include, as necessary, a preliminary assessment, site investigation, remedial investigation, feasibility study, and a remedial action of the industrial establishment.

The preliminary assessment, site investigation, remedial investigation, feasibility study, and remedial action shall be conducted in accordance with criteria, procedures, and time schedules established by the department. The results of the preliminary assessment, site investigation, remedial investigation, feasibility study, and remedial action shall be submitted to the department for its review and approval, except as otherwise provided by P.L.1983, c.330 or P.L. , c. (now before the Legislature as this bill). Submissions shall be in a manner and form as provided by the department.

Upon the submission of the results of either the preliminary assessment, site investigation, or remedial investigation, which results demonstrate that there are no hazardous substances or hazardous wastes at the industrial establishment, or that have migrated from or are migrating from the industrial establishment, at levels or concentrations above the applicable cleanup standards, the owner or operator may submit to the department for approval a proposed negative declaration as provided in subsection c. of this section.

c. The owner or operator of an industrial establishment shall, subsequent to closing operations, or of its public release of its decision to close operations, or prior to transferring ownership or operations, as applicable, submit to the department for approval a proposed negative declaration or proposed remedial action workplan. Except as otherwise provided by P.L.1983, c.330 or P.L. , c. (now before the Legislature as this bill), the owner or operator of an industrial establishment shall not transfer ownership or operations until a negative declaration or a remedial

action workplan has been approved by the department or an administrative consent order has been executed, and until, in cases where a remedial action workplan is required to be approved or an administrative consent order has been executed, a cleanup funding source, as required pursuant to section 21 of P.L. , c. (C.)(now before the Legislature as this bill), has been established.

[(2) Upon closing operations, or 60 days subsequent to public release of its decision to close or transfer operations, whichever is later, the owner or operator shall submit a negative declaration or a copy of a cleanup plan to the department for approval and a surety bond or other financial security for approval by the department guaranteeing performance of the cleanup in an amount equal to the cost estimate for the cleanup plan.

b. The owner or operator of an industrial establishment planning to sell or transfer operations shall:

(1) Notify the department in writing within five days of the execution of an agreement of sale or any option to purchase;

(2) Submit within 60 days prior to transfer of title a negative declaration to the department for approval, or within 60 days prior to transfer of title,] The owner or operator shall attach a copy of any [cleanup plan] approved negative declaration, remedial action workplan, or administrative consent order to the contract or agreement of sale or agreement to transfer or any option to purchase which may be entered into with respect to the transfer of ownership or operations. In the event that any sale or transfer agreements or options have been executed prior to the submission of the plan to the department, the [cleanup plan] approved negative declaration, remedial action workplan, or administrative consent order shall be transmitted by the owner or operator, by certified mail, prior to the transfer of ownership or operations, to all parties to any transaction concerning the transfer of ownership or operations, including purchasers, bankruptcy trustees, mortgagees, sureties, and financiers [;

(3) Obtain, upon approval of the cleanup plan by the department, a surety bond or other financial security approved by the department guaranteeing performance of the cleanup plan in an amount equal to the cost estimate for the cleanup plan.

c.] d. The department, upon application by the owner or operator of an industrial establishment who has submitted a notice to the department pursuant to subsection a. of this section, shall enter into an administrative consent order with the owner or operator in which the owner or operator agrees to perform the necessary remediation at the industrial establishment, as required by this act, pursuant to a schedule established by the department, agrees to establish a cleanup funding source as required pursuant to section 21 of P.L. , c. (C.)(now before the Legislature as this bill), agrees to obtain an approved negative declaration or remedial action workplan, and agrees to perform any necessary remedial actions. The administrative consent order may provide that a purchaser, transferee, mortgagee, or other party to the transfer may perform the remedial action as provided in subsection e. of this section. Upon entering into an administrative consent order the

owner or operator may transfer ownership or operations of the industrial establishment prior to approval of a negative declaration or remedial action workplan.

The department shall adopt regulations establishing the terms and conditions for obtaining, amending, and complying with an administrative consent order. The regulations shall include a sample form of the administrative consent order. An administrative consent order may not grant authority to the department beyond that provided to the department by law and may not require an owner or operator to waive any right to appeal a departmental decision involving the substantive requirements of a remediation or an issue of fact. The administrative consent order may require the owner or operator to waive any right to appeal the department's authority to enter into the adminstrative consent order, the obligation of the owner or operator to perform the remediation, or the substantive provisions of the administrative consent order. Entering into an administrative consent order shall not affect an owner's or operator' right to avail itself of the provisions of section 6 of P.L.1983, c.330 (C.13:1K-11) or of sections 9, 10, 12, 13, or 17 of P.L. , c. (C.)(now before the Legislature as this bill).

e. The [cleanup plan and detoxification of] approved remedial action workplan for the [site] industrial establishment shall be implemented by the owner or operator, [provided] except that the purchaser, transferee, mortgagee or other party to the transfer may assume that responsibility pursuant to the provisions of this act.

f. The department shall, within 45 days of submission of a complete and accurate negative declaration, approve the negative declaration, or inform the owner or operator of the industrial establishment that a remedial action workplan shall be submitted.

g. The department shall, in accordance with the schedule contained in an approved remedial action workplan, inspect the premises to determine conformance with the cleanup standards and shall certify that the remedial action workplan has been executed and that the industrial establishment has been remediated in compliance with applicable cleanup standards.

(cf: P.L.1983, c.330, s.4)

3. Section 2 of P.L.1991, c.238 (C.13:1K-9.2) is amended to read as follows:

2. The acquiring of title to an industrial establishment by a municipality pursuant to a foreclosure action pertaining to a certificate of tax sale purchased and held by the municipality shall not relieve the previous owner or operator of the industrial establishment of his duty to [implement a cleanup plan if the implementation is deemed necessary by the Department of Environmental Protection] remediate the industrial establishment as required pursuant to P.L.1983, c.330.

(cf: P.L.1991, c.238, s.2)

4. Section 3 of P.L.1991, c.238 (C.13:1K-9.3) is amended to read as follows:

3. If a municipality undertakes [to clean up hazardous substances and wastes on the site of] a remediation of an

industrial establishment, the title to which the municipality acquired pursuant to a foreclosure action pertaining to a certificate of tax sale, all expenditures incurred in the [cleanup] remediation shall be a debt of the immediate past [owners] owner or operator of the industrial establishment. The debt shall constitute a lien on all property owned by the immediate past owner or operator when a notice of lien, incorporating a description of the property subject to the [cleanup and removal] remediation and an identification of the amount of [cleanup, removal] remediation and related costs expended by the municipality is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment or order docket the name and address of the immediate past owner or operator and the amount of the lien as set forth in the notice of lien. Upon entry by the clerk, the lien shall attach to the revenues and all real and personal property of the immediate past owner or operator, whether or not he is insolvent. The notice of lien filed pursuant to this section which affects any property of an immediate past owner or operator shall have priority from the day of the filing of the notice of the lien, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this section.

(cf: P.L.1991, c.238, s.3)

5. Section 5 of P.L.1991, c.238 (C.13:1K-9.5) is amended to read as follows:

5. If a municipality undertakes a [cleanup of hazardous substances and wastes on the site] remediation of an industrial establishment, the municipality shall make any submissions required by P.L.1983, c.330 (C.13:1K-6 et seq.) and shall obtain [approval] all approvals of the Department of Environmental Protection [prior to the initiation of the sampling plan and the cleanup plan] as required pursuant to the provisions of P.L.1983, c.330 and any rules or regulations adopted pursuant thereto.

(cf: P.L.1991, c.238, s.5)

6. Section 5 of P.L.1983, c.330 (C.13:1K-10) is amended to read as follows:

5. a. The department shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing: [minimum standards for soil, groundwater and surface water quality necessary for the detoxification of the site of an industrial establishment, including buildings and equipment, to ensure that the potential for harm to public health and safety is minimized to the maximum extent practicable, taking into consideration the location of the site and surrounding ambient conditions;] criteria necessary for the evaluation and approval of [cleanup plans] preliminary assessments, site investigations, remedial investigations, feasibility studies, and remedial action workplans and for the implementation thereof; a fee schedule, as necessary, reflecting the actual costs associated with the review of negative declarations, preliminary assessments, site investigations, remedial action workplans, feasibility studies, and [cleanup plans] remedial action workplans, and implementation thereof and for

any other review or approval required by the department; and any other provisions or procedures necessary to implement this act. [Until the minimum standards described herein are adopted, the department shall review, approve or disapprove negative declarations and cleanup plans on a case by case basis.]

b. [The department shall, within 45 days of submission, approve the negative declaration, or inform the industrial establishment that a cleanup plan shall be submitted.

c. The department shall, in accordance with the schedule contained in an approved cleanup plan, inspect the premises to determine conformance with the minimum standards for soil, groundwater and surface water quality and shall certify that the cleanup plan remedial action workplan has been executed and that the site has been detoxified.] The owner or operator shall allow the department reasonable access to the industrial establishment to inspect the premises and to take soil, groundwater, or other samples or measurements as deemed necessary by the department to verify the results of any submission made to the department and to verify the owner's or operator's compliance with the requirements of this act.

(cf: P.L.1983, c.330, s.5)

7. Section 6 of P.L.1983, c.330 (C.13:1K-11) is amended to read as follows:

6. a. [The provisions of any law, rule or regulation to the contrary notwithstanding, the transferring of an industrial establishment is contingent on the implementation of the provisions of this act.

b. If] The owner or operator of an industrial establishment planning to transfer ownership or operations may apply to the department for a deferral of the preparation, approval, and implementation of a remedial action workplan at the industrial establishment. The applicant shall submit to the department:

(1) a certification signed by the purchaser, transferee, mortgagee or other party to the transfer, approved by the department, that [the premises of] the industrial establishment would be subject to substantially the same use by the purchaser, transferee, mortgagee or other party to the transfer, [and upon written certification thereto and approval by the department thereof, the implementation of a cleanup plan and the detoxification of the site]

(2) a certification, approved by the department, that the owner or operator has satisfactorily completed a preliminary assessment, site investigation, remedial investigation, and feasibility study of the industrial establishment,

(3) a cost estimate for the remedial action necessary at the industrial establishment, approved by the department, and

(4) a certification, approved by the department, that the purchaser, transferee, mortgagee or other party to the transfer, has the financial ability to pay for the implementation of the necessary remedial action.

The preparation, approval, and implementation of a remedial action workplan for the industrial establishment may be deferred until the use changes or until the purchaser, transferee, mortgagee or other party to the transfer closes[, terminates or

transfers] operations or transfers ownership or operations.

[(1) Within 60 days of receiving notice of the sale or realty transfer and the certification that the industrial establishment would be subject to substantially the same use, the department shall approve, conditionally approve, or deny the certification.

(2) Upon approval of the certification, the implementation of a cleanup plan and detoxification of the site shall be deferred.

(3) Upon denial of the certification, the cleanup plan and detoxification of the site shall be implemented pursuant to the provisions of this act.]

[c.] b. Upon satisfactory submission of a complete and accurate application, the department shall approve the deferral. Upon approval of the deferral, the preparation, approval, and implementation of remedial action workplan at the industrial establishment shall be deferred. The deferral shall be denied by the department if a complete and accurate application is not submitted to the department or if the department fails to approve any of the components of the application. Upon denial of the deferral, the remediation of the industrial establishment shall be continued pursuant to the provisions of this act.

c. The authority to defer [implementation of the cleanup plan] the preparation, approval, and implementation of a remedial action workplan set forth in subsection [b.] a. of this section shall not be construed to limit, restrict, or prohibit the department from directing site [cleanup] remediation under any other statute, rule, or regulation, but shall be solely applicable to the obligations of the owner or operator of an industrial establishment, pursuant to the provisions of this act, nor shall any other provisions of this act be construed to limit, restrict, or prohibit the department from directing site [cleanup] remediation under any other statute, rule, or regulation.

(cf: P.L.1983, c.330, s.6)

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

8. a. Failure of the transferor to comply with any of the provisions of this act is grounds for voiding the sale or transfer of an industrial establishment or any real property utilized in connection therewith by the transferee, entitles the transferee to recover damages from the transferor, and renders the owner or operator of the industrial establishment strictly liable, without regard to fault, for all [cleanup and removal] remediation costs and for all direct and indirect damages resulting from the failure to implement the [cleanup plan] remedial action workplan.

b. Failure to submit a valid negative declaration [,] or [cleanup plan] a remedial action workplan pursuant to the provisions of section 4 of [this act] P.L.1983, c.330 (C.13:1K-9) is grounds for voiding the sale by the department.

c. Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of this act is liable for a penalty of not more than $25,000.00 for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense. Penalties shall be collected in a civil action by a summary proceeding under "the penalty enforcement law"

(N.J.S.2A:58-1 et seq.). Any officer or management official of an industrial establishment who knowingly directs or authorizes the violation of any provisions of this act shall be personally liable for the penalties established in this subsection.
(cf: P.L.1983, c.330, s.8)

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

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

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330,

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment, consistent with regulations established by the department, in order to identify areas of concern that are new or have continued in use since the issuance of a no further action letter, negative declaration approval, or remediation approval as described in paragraph (2) of this subsection, and that based on those remediation activities the owner or operator certifies that there has been no discharge of a hazardous substance or hazardous waste at the industrial establishment subsequent to the approval of the negative declaration, the issuance of the no further action letter, or the equivalent remediation; or, if any discharge has occured, a certification listing any discharge, describing the action taken to remediate the discharge, a certification that the remediation was performed in accordance with procedures established by the department, and a certification that the remediation was approved by the department,

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

(5) a copy of the negative declaration or no further action letter, as applicable, last approved by the department for the entire industrial establishment, and

(6) a proposed negative declaration.

b. Upon the submission of a complete and accurate application and after an inspection, if necessary, the department shall approve or disapprove the negative declaration. The department shall approve the negative declaration upon a finding that the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the proposed

negative declaration by the department pursuant to this section, the owner or operator shall comply with the provisions of section 4 of P.L.1983, c.330.

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

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

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department has previously approved a remediation equivalent to that performed, pursuant to the provisions of P.L.1983, c.330,

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment, consistent with regulations established by the department, in order to identify areas of concern that are new or have continued in use since the issuance of a no further action letter, negative declaration approval, or remediation approval as described in paragraph (2) of this subsection, and that based on those remediation activities the owner or operator certifies that subsequent to the issuance of the negative declaration, no further action letter or remediation approval described in paragraph (2) of this subsection, a discharge has occurred at the industrial establishment that was not remediated in accordance with the procedures established by the department or any remediation performed has not been approved by the department,

(4) the negative declaration or no further action letter, as applicable, last approved by the department for the industrial establishment,

(5) a certification listing any information required to be provided in a preliminary assessment that has changed since the last departmental approval of a negative declaration, issuance of a no further action letter, or remediation approval, as applicable, for the industrial establishment,

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

(7) a proposed negative declaration, if applicable.

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

(1) approve the negative declaration upon a finding that any discharge of a hazardous substance or hazardous waste, as certified to pursuant to paragraph (3) of subsection a. of this section, has been remediated to levels that are below the applicable cleanup standards as established by the department, or

(2) require the owner or operator perform the remediation process set forth in subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) only for those areas of concern identified by the information provided pursuant to paragraphs (3) and (5) of subsection a. of this section upon a finding that further investigation or remediation is necessary to bring the industrial establishment into compliance with the applicable cleanup standards.

c. The owner or operator of an industrial establishment subject to the provisions of this section shall not close operations or transfer ownership or operations until a remedial action workplan, or a negative declaration, as applicable, has been approved by the department or an administrative consent order has been entered into.

11. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without entering into an administrative consent order if the industrial establishment is already in the process of a remediation pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9). The application shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330,

(2) a certification that there has been no discharge of any hazardous substance or hazardous waste at the industrial establishment during the applicant's period of operation or ownership or that the remediation of any discharge of a hazardous substance or hazardous waste that occured during the applicant's period of ownership or operation was approved by the department,

(3) a certification by the owner or operator that a cleanup funding source for the cost of the remediation or the implementation of the remedial action workplan at the industrial establishment has been established pursuant to section 21 of P.L. , c. (C.) (now before the Legislature as this bill, and

(4) a certification, as applicable, that any transferee has been notified that the industrial establishment is the subject of a remediation.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, that the applicant may close operations or transfer ownership or operations of the industrial establishment.

12. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without entering into an administrative consent order if the only areas of concern or the only discharges at the industrial establishment are from an underground storage tank regulated pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.). The application shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330.

(2) the submission of a preliminary assessment that shows that the only area of concern at an industrial establishment is an underground storage tank or tanks as defined pursuant to section 2 of P.L.1986, c.102 (C.58:10A-22), or the submission of a site investigation that shows that the only discharged hazardous substances or hazardous wastes at the industrial establishment, or that has migrated offsite, above the applicable cleanup standards are from a leak or discharge from that underground storage tank or tanks, and

(3) a certification that the owner or operator of the industrial establishment is in compliance with the provisions of P.L.1986, c.102 for all underground storage tanks covered by that act, at the industrial establishment.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing,. the applicant to close operations or transfer ownership or operations of the industrial establishment.

13. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or without entering into an administrative consent order, if the discharge of hazardous substances or hazardous wastes at the industrial establishment is of minimal environmental concern. Upon the completion of a preliminary assessment, site investigation, remedial investigation, and feasibility study for the industrial establishment, conducted pursuant to subsection b. of section 4 of P.L.1983, c.330, any owner or operator may submit to the department an application for a determination that the discharge at an industrial establishment is of minimal environmental concern, which application shall include:

(1) a certification, supported by the submission of data from the preliminary assessment, site investigation, remedial investigation and feasibility study, that there are no more than two areas of concern at the industrial establishment that are contaminated at levels above the applicable cleanup standards, and that remedial action at those areas of concern can be completed pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(2) a certification that a remedial action workplan shall be prepared pursuant to standards and criteria established by the department;

(3) a certification that the remedial action workplan will be completed pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(4) a demonstration that the cleanup funding source required pursuant to section 21 of P.L. , c. (C.)(now before the Legislature as this bill) has or will be established;

(5) the payment of all fees or surcharges imposed pursuant to P.L.1983, c.330 and section 28 of P.L. , c. (C.) (now before the Legislature as this bill), and any rules or regulations adopted pursuant thereto; and

(6) documentation establishing that the discharged hazardous substances or hazardous wastes at the particular industrial establishment do not pose a threat to human health because of the proximity of an area of concern to a drinking water source or because of the location, complexity, or the nature of the discharge.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall approve the application for a determination that the discharge at an industrial establishment is of minimal environmental concern. Prior to making a finding upon the application pursuant to this section, the department may inspect the industrial establishment, as necessary, to verify the information in the application. The decision of the department shall be made within 30 days of the submission of a complete application. In determining the amount of time necessary to complete remedial action, the department shall not include that time in which it takes the department to issue a permit for a discharge to surface water pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.).

c. The owner or operator shall, upon the completion of the remedial action workplan at the subject areas of concern, certify to the department that the remedial action workplan has been implemented in accordance with the standards and criteria established by the department. The certification shall include a copy of the remedial action workplan and the results of any tests performed as part of the remedial action. Within 30 days of receipt of the certification, the department shall issue a no further action letter to the owner or operator. The department may perform an inspection of the industrial establishment prior to issuing the no further action letter.

The department may refuse to issue the no further action letter pursuant to this section only upon a finding that hazardous substances or hazardous wastes remain at the relevant areas of concern at levels or concentrations in excess of, the applicable cleanup standards.

d. Upon the failure of an owner or operator to complete the implementation of a remedial action workplan within the six month period as provided in subsection a. of this section, the owner or operator shall so notify the department in writing and the reasons therefor. The owner or operator shall have no more than 120 additional days to complete the implementation of the remedial action workplan. If the implementation of the remedial action workplan is not completed within this additional time, the department may rescind its determination that the industrial establishment is of minimal environmental concern and may require that a remedial action workplan be submitted and implemented by the owner or operator in a manner and under the terms and conditions provided in its general regulations for remedial action workplan submissions and implementation.

14. (New section) a. The owner of an industrial establishment may transfer a portion of the real property on which an industrial establishment is situated without conducting a remediation of the entire industrial establishment pursuant to the provisions of P.L.1983, c.330 and this act, if, upon application by the owner, the department issues a certificate of limited conveyance.

b. An application for a certificate of limited conveyance shall be in the form of a certification by the owner which shall include a description of the real property to be transferred, an appraisal of the real property to be transferred, the sale price or market value of the real property to be transferred, an appraisal of the entire industrial establishment, and an appraisal of the remaining property if the certificate of limited conveyance were issued, as well as any other information the department deems necessary to make the findings required in subsection c. of this section.

c. The department shall issue a certificate of limited conveyance for a portion of the real property on which an industrial establishment is situated after the submission of a complete and accurate application and upon a finding that the sales price or market value of the real property to be conveyed, together with any additional diminution in value to the remaining property as a result of the conveyance is not more than one third of the total appraised value of the industrial establishment prior to the transfer, and that the remaining real property is an industrial establishment subject to the provisions of P.L.1983, c.330. The appraisals shall be made no more than one year prior to the submission of application for a certificate of limited conveyance. Conveyances made pursuant to this section shall not exceed one third of the value of the industrial establishment during the period of ownership of the applicant.

d. Upon issuance of the certificate of limited conveyance, the owner or operator shall, prior to the conveyance, comply with the provisions of section 4 of P.L.1983, c.330 for that portion of the real property certified for conveyance. The remediation that may be required on the real property subject to the certificate of limited conveyance shall include any hazardous substances or hazardous wastes that are migrating from the remaining portion of the industrial establishment onto the real property being conveyed. The remaining portion of the industrial establishment, upon closing, terminating or transferring operations shall be subject to the provisions of P.L.1983, c.330 and this act.

e. A certificate of limited conveyance shall be valid for three years from the date of issuance.

15. (New section) a. When a portion of an industrial establishment is the subject of a condemnation proceeding initiated pursuant to the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.) the provisions of section 4 of P.L.1983, c.330 shall apply only to that portion of the industrial establishment to be transferred pursuant to the condemnation proceeding, except as provided in subsections b. and c. of this section. The remaining portion of the industrial establishment, upon closing operations or transferring ownership or operations, shall be subject to the provisions of P.L.1983, c.330 notwithstanding that at the time of the closure of operations or

the transfer of ownership or operations, the remaining portion may not be an industrial establishment as defined pursuant to section 2 of P.L.1983, c.330. (C.13:1K-7).

b. In the case where the owner or operator closes operations or transfers ownership or operations of the entire industrial establishment as a result of the condemnation of a portion of the industrial establishment, the entire industrial establishment shall be subject to the provisions of P.L.1983, c.330 at the time of the transfer of the portion of the real property that is the subject of a condemnation proceeding.

c. The entire industrial establishment shall be subject to the provisions of P.L.1983, c.330 at the time of the transfer of the portion of the real property that is the subject of a condemnation proceeding, if the value of the real property to be conveyed pursuant to the condemnation proceeding, together with any additional diminution in value to the remaining property as a result of the conveyance, is two thirds or more of the total appraised value of the entire industrial establishment.

16. (New section) Where the closure of operations or the transfer of ownership or operations of an industrial establishment by an owner or operator who is a tenant requires compliance with P.L.1983, c.330, the area of the industrial establishment subject to the provisions of P.L.1983, c.330 shall be limited to that area under the exclusive current control of the tenant. The area under exclusive current control of the tenant shall not include any area of common use among more than one tenant. The area under exclusive current control of the tenant may include areas in which the landlord has access in the capacity as a landlord. In the event that an owner or operator of an industrial establishment receives a negative declaration or remedial action workplan approval for the area under the tenant's exclusive current control pursuant to this section, those areas of the industrial establishment not under the tenant's exclusive current control but that were once used by that tenant or that were used by that tenant and were subject to common use by other tenants, shall be subject to all of the requirements of P.L.1983, c.330 (C.13:1E-9), at the time of closure of operations or transfer of ownership or operations by the owner, notwithstanding that at the time of the closure of operations or transfer or ownership or operations by the owner, the subject real property may not be an industrial establishment as defined pursuant to section 2 of P.L.1983, c.330 (C.13:1K-7).

17. (New section) The owner or operator of an industrial establishment, who has submitted a notice to the department pursuant to subsection a. of section 4 of P.L.1983, c.330 (C.13:1K-9), may implement an interim response action prior to departmental approval of that action. The interim response action may be implemented when the expeditious temporary or partial remediation of a discharged hazardous substance or hazardous waste is necessary to contain or stabilize a discharge prior to implementation of an approved remedial action workplan in order to prevent, minimize, or mitigate damage to public health or safety or to the environment which may otherwise result from a discharge. The interim response action shall be

implemented in compliance with the procedures and standards established by the department. The department may require submission of a notice of intent to implement an interim response action and may require, subsequent to completion of the interim response action, a report detailing the actions taken and a certification that the interim response action was implemented in accordance with all applicable laws and regulations. The department shall review these submissions to verify whether the interim response action was implemented in accordance with applicable laws and regulations. The department shall not require that additional remediation be undertaken at an area of concern subject to the interim response action except in instances when further remediation is necessary to bring that area of concern into compliance with the applicable cleanup standards, when the actions taken were temporary in nature requiring additional long-term remedial action take place, or when the department determines that the interim response action was not performed in substantial compliance with applicable laws or regulations.

18. (New section). Any person who, prior to July 1, 1992, violated the provisions of P.L.1983, c.330 by closing operations or transferring ownership or operations of an industrial establishment without receiving departmental approval of a cleanup plan or a negative declaration pursuant to the provisions of P.L.1983, c.330, or without entering into an administrative consent order that allows the closure of operations or transfer of ownership or operations, shall not be subject to a penalty for that violation if the person notifies the department of the closure of operations or of the transfer of ownership or operations of the industrial establishment, and enters into an administrative consent order with the department to initiate a remediation of the industrial establishment pursuant to the provisions of P.L.1983, c.330 and any rules or regulations adopted pursuant thereto, within one year of the effective date of this section.

19. (New section) a. Within one year of the effective date of this act, the Department of Environmental Protection shall conduct an audit of the negative declarations and remedial action workplans that have been submitted to the department pursuant to P.L.1983, c.330. On the basis of this audit the department shall adopt regulations identifying, within the Standard Industrial Classification major group numbers listed in the definition of "industrial establishment," all industries designated by Standard Industrial Classification number subgroups, or classes of operations within those subgroups, that do not pose a risk to public health and safety or to the environment by their normal operation. The audit shall distinguish between hazardous substances or hazardous wastes at an industrial establishment caused by a particular type of industry and hazardous substances or hazardous wastes that exists as a result of activities at an industrial establishment unrelated to the activities of that industry.

b. An industrial establishment for which a remedial action workplan was previously implemented and a no further action letter was received pursuant to P.L.1983, c.330, a negative declaration was previously approved by the department pursuant

to P.L.1983, c.330, or for which the department has previously approved a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330, and which industrial establishment is designated by a Standard Industrial Classification subgroup or class of operations that does not pose a risk to public health and safety or to the environment by its normal operations as identified in subsection a. of this section, shall not be considered an industrial establishment for the purposes of P.L.1983, c.330.

20. (New section) As used in sections 20 through 33 of P.L. , c. (C.)(now before the Legislature as this bill):

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

"Cleanup funding source" means the methods of financing the remediation of a discharge required to be established by the person performing the remediation pursuant to section 21 of P.L. , c. (C.)(now before the Legislature as this bill);

"Cleanup standards" means the combination of numeric and narrative standards to which contaminants must be cleaned up as provided by the department pursuant to section 30 of P.L. , c. (C.)(now before the Legislature as this bill);

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

"Department" means the Department of Environmental Protection;

"Discharge" means an intentional or unintentional action or omission resulting in the actual or threatened releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a contaminant onto the land or into the waters of the State or into the waters outside the jurisdiction of the State which contaminant enters the waters of the State;

"No further action letter" means a written determination by the department that at a particular site, based upon an evaluation of the historical use of the site, and any other investigation or action the department deems necessary, there are no discharged contaminants present, or any discharged contaminants present are below the applicable cleanup standards;

"Remediation" or "remediate" means all necessary actions to investigate and cleanup any known or suspected discharge or threatened discharge of contaminants, including, without limitation, a preliminary assessment, site investigation, remedial investigation, feasibility study, and remedial action;

"Remediation fund" means the Hazardous Discharge Site Remediation Fund established pursuant to section 22 of P.L. , c. (C.)(now before the Legislature as this bill);

"Special ecological receptors" means all natural resources that are protected, managed, or otherwise regulated by federal or state law, pursuant to the "Comprehensive Response, Compensation, and Liability Act of 1980," 42 U.S.C.§9601 et seq.; the "Delaware and Raritan Canal State Park Law of 1974,"

P.L.1974, c.118, (C.13:13A-1 et seq.); the "Federal Endangered Species Act of 1973," 16 U.S.C.§1531 et seq.; the "Federal Water Pollution Control Act," 33 U.S.C.§§ 1251 et seq.; Title 23 of the Revised Statutes, Fish and Game, Wild Birds and Animals; the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.); the "Marine Mammal Protection Act of 1972," 16 U.S.C. §1361; the "Natural Areas System Act," P.L.1975 c.363 (C.13:1B-15.12a et seq.); Chapter 8A of Title 13 of the Revised Statutes, Green Acres; the "New Jersey Natural Lands Trust," P.L.1968, c.425 (C.13:1B-15.119); the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.); the "New Jersey Wild and Scenic Rivers Act," P.L.1977, c.236 (C.13:8-45 et seq.); the "State Park and Forestry Resources Act," P.L.1983, c.324, (C.13:1L-1 et seq.); the "Spill Compensation and Control Act," P.L.1976, c.141, (C.58:10-23.11 et seq.); the "Water Pollution Control Act," P.L.1977, 74 (C.58:10A-1 et seq.); the "Wetlands Act of 1970," P.L.1970, c.272, (C.13:9A-1 et seq.); and the "Wildlife Sanctuaries Act," P.L.1982, c.167, (C.13:8-64 et seq.).

21. (New section) a. The owner or operator of an industrial establishment required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), or a discharger or person in any way responsible for a hazardous substance who has been issued a directive or an order, who has entered into an administrative consent order, or who has been ordered by a court to clean up and remove a hazardous substance discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall, no more than 14 days after approval by the department of a remedial action workplan or as a condition in an administrative consent order with the department for the remediation of a contaminated site, establish and maintain a cleanup funding source in the amount necessary to pay the cost of the required remediation. A person required to establish a cleanup funding source pursuant to this section shall provide to the department satisfactory documentation that the requirement has been met. The provisions of this section shall not apply to the remediation of a discharge at a business having a Standard Industrial Classification Number 5541 as designated in the Standard Industrial Classification Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States.

b. The person responsible for the remediation may use the cleanup funding source to pay the cost of remediation. The department may not require any other financial assurance by the person responsible for the remediation other than that provided in this section. In the case of a remediation performed pursuant to P.L.1983, c.330, the cleanup funding source shall be established no more than 14 days after the approval by the department of a remedial action workplan or as provided in an administrative consent order entered into pursuant to section 4 of P.L.1983, c.330 (C.13:1K-9). In the case of a remediation performed pursuant to P.L.1976, c.141, the cleanup funding source shall be established as provided in an administrative consent order signed by the parties, as provided by a court, or as directed by the

department. The cleanup funding source shall be evidenced by the establishment and maintenance of (1) a fully funded trust account, (2) a line of credit, or (3) a self guarantee, or by any combination thereof. Where it can be demonstrated that a person cannot establish and maintain a cleanup funding source for the full cost of the remediation by a method specified in this subsection, that person may establish the cleanup funding source by securing a loan for the estimated costs of the remediation from the Hazardous Discharge Site Remediation Fund as provided in section 23 of P.L. , c. (C)(now before the Legislature as this bill).

c. A fully funded trust shall be established pursuant to the provisions of this subsection. An originally signed duplicate of the trust agreement shall be delivered to the department by certified mail within 14 days of receipt of notice from the department that the remedial action workplan is approved or as specified in an administrative consent order, civil order, or order of the department, as applicable. The fully funded trust agreement shall conform to a model trust agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or New Jersey agency.

The trust shall be established in an amount equal to or greater than (1) the cost estimate of the implementation of the remedial action workplan as approved by the department, (2) as provided in an administrative consent order, (3) as stated in a departmental order or directive, or (4) as agreed to by a court, and shall be in effect or a term not less than the actual time necessary to perform the remediation at the site. Whenever the remediation or remedial action workplan cost estimate increases, the person required to establish the cleanup funding source shall, within 60 days after the increase, cause the amount of the fully funded trust to be increased to an amount at least equal to the new estimate, establish a new cleanup funding source pursuant to subsection b. of this section in an amount at least equal to the new estimate, or obtain an additional cleanup funding source as specified in this section in an amount at least equal to the increase. Whenever the remediation or remedial action workplan cost estimate decreases, the person required to obtain the cleanup funding source may file a written request to the department to decrease the amount in the fully funded trust. The fully funded trust may be decreased to the amount of the new estimate only upon written approval by the department to the trustee.

The trust agreement shall provide that the fully funded trust may not be revoked or terminated by the person required to establish the cleanup funding source or by the trustee without the written consent of the department. The trustee shall release to the person required to establish the cleanup funding source, or to the department or transferee of the property, as appropriate, only those funds as the department authorizes, in writing, to be

released. The person entitled to draw upon the fully funded trust shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation. Upon a determination by the department that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement of moneys from the fully funded trust in the amount of the documented costs.

The department shall return the original fully funded trust agreement to the trustee for termination after the person required to establish the cleanup funding source substitutes an alternative cleanup funding source as specified in this section or the department notifies the person that that person is no longer required to maintain a cleanup funding source for remediation of the contaminated site.

d. A line of credit shall be established in a manner pursuant to the provisions of this subsection. An originally signed duplicate of the line of credit agreement shall be delivered to the department by certified mail within 14 days of receipt of notice from the department that the remedial action workplan is approved, or as specified in an administrative consent order, civil order, or order of the department, as applicable. The line of credit agreement shall conform to a model agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department.

The line of credit shall be established in an amount equal to or greater than (1) the cost estimate of the implementation of the remedial action workplan as approved by the department, (2) as provided in an administrative consent order, (3) as stated in a departmental order or directive, or (4) as agreed to by a court, and shall be in effect for a term not less than the actual time necessary to perform the remediation at the site. Whenever the remediation or remedial action workplan cost estimate increases, the person required to establish the cleanup funding source shall, within 60 days after the increase, cause the amount of the line of credit to be increased to an amount at least equal to the new estimate, establish a new cleanup funding source pursuant to subsection b. of this section in an amount at least equal to the new estimate, or obtain an additional cleanup funding source as specified in this section in an amount at least equal to the increase. Whenever the remediation or remedial action workplan cost estimate decreases, the person required to establish the cleanup funding source may file a written request to the department to decrease the amount in the line of credit. The line of credit may be decreased to the amount of the new estimate only upon written approval by the department to the person or institution who provides the line of credit.

A line of credit agreement shall provide that the line of credit may not be revoked or terminated by the person required to obtain the cleanup funding source or the person or institution providing the line of credit without the written consent of the department. The person or institution providing the line of credit shall release to the person required to establish the cleanup funding source, or to the department or transferee of the

property as appropriate, only those funds as the department authorizes, in writing, to be released. The person entitled to draw upon the line of credit shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation. Upon a determination that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement from the line of credit in the amount of the documented costs.

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

e. A person may self-guarantee a cleanup funding source upon the submittal of documentation to the department demonstrating that the cost of the remediation as estimated in the remedial action workplan or in the administrative consent order would not exceed one-third the tangible net worth of the person required to establish cleanup funding source, and that the person has a net cash flow and liabilities sufficient to assure the availability of sufficient moneys for the remediation during the time necessary for the remediation. The department may establish requirements and reporting obligations to ensure that the person proposing to self guarantee a cleanup funding source meets the criteria for self guaranteeing prior to the initiation of remedial action and until completion of the remediation.

f. (1) Following a written determination that the person required to obtain the cleanup funding source has failed to perform the remediation as required, the department may make disbursements from the fully funded trust or the line of credit. A copy of the determination by the department shall be delivered to the person required to establish the cleanup funding source and, in the case of a remediation conducted pursuant to P.L.1983, c.330 (C.15:1K-6 et seq.), to any transferee of the property.

(2) The transferee of property, subject to a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), may, at any time after the department's determination of nonperformance by the owner or operator required to establish the cleanup funding source, petition the department, in writing, with a copy being sent to the owner and operator, for authority to perform the remediation at the industrial establishment. The department, upon a determination that the transferee is competent to do so, shall grant that petition which shall authorize the transferee to perform the remediation as specified in an approved remedial action workplan, or to perform the activities as required in an administrative consent order, and to avail itself of the moneys in the fully funded trust or line of credit for these purposes unless the owner or operator continues or begins to perform its obligations within 14 days of the petition being filed with the department.

(3) After the department has begun to perform the remediation in the place of the person required to establish the

cleanup funding source or has granted the petition of the transferee to perform the remediation, the person required to establish the cleanup funding source shall not be permitted by the department to continue its performance obligations except upon the agreement of the department or the transferee, as applicable, or except upon a determination by the department that the transferee is not adequately performing the remediation.

22. (New section) a. There is established in the New Jersey Economic Development Authority a special, revolving fund to be known as the Hazardous Discharge Site Remediation Fund. Moneys in the remediation fund shall be dedicated for the provision of loans and grants to municipal governmental entities and individuals, corporations, partnerships, and other private business entities for the purpose of financing remediation activities at sites that are, or are suspected of being, contaminated by hazardous substances or hazardous wastes that have been or may be discharged into the environment.

b. The remediation fund shall be credited with:

(1) moneys as are appropriated by the Legislature;

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

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

(4) cleanup funding source surcharges imposed pursuant to section 28 of P.L. , c. (C.)(now before the Legislature as this bill);

(5) moneys made available to the authority for the purposes of the fund.

23. (New section) a. Loans may be made from the remediation fund to (1) owners or operators of industrial establishments that are required to perform remediation activities pursuant to the "Environmental Cleanup Responsibility Act," P.L.1983, c.330 (C.13:1K-6 et seq.), as a condition of a closure, transfer, or termination of operations of an industrial establishment and (2) persons who have discharged a hazardous substance or who are in any way responsible for a hazardous substance pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.) and (3) persons who voluntarily undertake the remediation of a discharge of a hazardous substance or hazardous waste. No loans may be made from the remediation fund for the remediation of a discharge from an underground storage tank at a place of business that has a Standard Industrial Classification Number 5541 as designated in the Standard Industrial Classification Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States. Loans and grants may be made from the remediation fund to municipal governmental entities that own real property on which there has been a discharge or there is a suspected discharge of a hazardous substance or hazardous waste.

b. Loans and grants of moneys from the remediation fund shall be made for the following purposes and, on an annual basis, obligated in the following percentages:

(1) at least 20% of the moneys shall be allocated for loans to persons, other than governmental entities for remediation of real property located in a qualifying municipality as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

(2) at least 15% of the moneys shall be allocated for loans and grants to municipal governmental entities. Grants shall be used for performing preliminary assessments and site investigations on property owned by a municipal governmental entity in order to determine the existence or extent of any hazardous substance or hazardous waste on those properties. A municipal governmental entity that has performed a preliminary assessment and site investigation on its property may obtain a loan for the purpose of continuing the remediation on those properties as necessary to be in compliance with the applicable cleanup standards adopted by the department;

(3) at least 20% of the moneys shall be allocated for loans for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area;

(4) at least 10% of the moneys shall be allocated for loans to persons, other than government entities, who voluntarily undertake the remediation of a hazardous substance or hazardous waste discharge, and who have not been ordered to undertake the remediation by the department, or by a court,

(5) at least 20% of the moneys shall be allocated for loans to persons, other than governmental entities, who are required to perform remediation activities at an industrial establishment pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), as a condition of the closure, transfer, or termination of operations at that industrial establishment; and

(6) the remainder of the moneys in the remediation fund shall be allocated for loans and grants to municipal governmental entities or loans to individuals, corporations, partnerships and other private business entities for the purposes enumerated in paragraphs (1) through (5) of this subsection, except that where moneys in the fund are insufficient to fund all the applications in any calendar year that would otherwise qualify for a loan or grant pursuant this paragraph, the authority shall give priority to loan applications that meet the criteria enumerated in paragraph (3) of this subsection.

c. Loans issued from the remediation fund shall be for a term not to exceed ten years, except that upon the transfer of ownership of any real property for which the loan was made, the unpaid balance of the loan shall become immediately payable in full. Loans shall bear an interest rate of 2%. Loans and grants, upon request of the applicant, shall be issued for up to 100% of the estimated applicable remediation cost, except that no loan or grant may be issued to any applicant in any calendar year, for one or more properties, in an amount that exceeds $1,000,000. Repayments of principal and interest on the loans issued from the remediation fund shall be paid to the authority and shall be deposited into the remediation fund.

d. No person, other than a municipal governmental entity, shall be eligible for a loan from the remediation fund if that

person is capable of establishing a cleanup funding source for the remediation as required pursuant to section 21 of P.L. . c. (C.)(now before the Legislature as this bill), by any means other than a loan from the remediation fund.

e. The authority may use a sum that represents up to 2% of the moneys issued as loans or grants from the remediation fund each year for administrative expenses incurred in connection with the operation of the fund and the issuance of loans and grants.

f. Prior to March 1 of each year, the authority shall submit to the Senate Environment Committee and the Assembly Energy and Hazardous Waste Committee, or their successors, a report detailing the amount of money that was available for loans and grants from the remediation fund for the previous calendar year, the amount of money available for loans and grants for the current calendar year, the amount of loans and grants issued for the previous calendar year and the catagory for which each loan and grant was made, and any suggestions for legislative action the authority deems advisable to further the legislative intent to facilitate remediation and promote redevelopment and use of existing industrial establishments.

24. (New section) a. A qualified applicant for a loan or grant from the remediation fund shall be awarded a loan or grant by the authority upon the availability of sufficient moneys in the remediation fund for the purpose of the loan or grant. Priority for awarding loans and grants from the remediation fund shall be based upon the date of receipt by the authority of a complete application from the applicant. If an application is determined to be incomplete by the authority, an applicant shall have 30 days from receipt of written notice of incompleteness to file any additional information as may be required by the authority for a completed application. If an applicant fails to file the additional information within 30 days, the filing date for that application shall be the date that the additional information is received by the authority. An application shall be deemed complete when all the information required by the authority has been received in the required form.

b. Within 90 days, for a private entity, or 180 days for a municipal government entity, of notice of approval of a loan or grant application, an applicant shall submit to the authority an executed contract for the remediation activities for which the loan or grant application was made. The contract shall be consistent with the terms and conditions for which the loan or grant was made. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for the alteration of an applicant's priority ranking for the awarding of a loan or grant.

25. (New section) a. The authority, in consultation with the Department of Environmental Protection, shall, by rule or regulation:

(1) prescribe forms for, and procedures for the filing of, loan and grant applications;

(2) require a person applying for a loan who is not the owner of the subject property to provide a copy of the contract or lease between the operator and owner, and certification that the owner approves of the loan;

(3) require, if the applicant is an owner who is not the operator of the subject property, the owner to provide a copy of the contract or lease between the owner and the operator;

(4) prohibit the assignment or encumbrance of a loan or loan payment;

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

(6) provide that moneys from the approved loan or grant shall be released by the authority to the applicant in only those amounts that represent work completed;

(7) require the loan or grant recipient to provide access at reasonable times to the subject property to determine compliance with the terms and conditions of the loan or grant;

(8) require that, during the life of the loan, the applicant will comply with all environmental laws, and pay all required taxes or other governmental assessments due on the subject property for which a loan application is made, or on the loan collateral;

(9) reserve the right to suspend or terminate a loan or grant or declare a loan in default if any term or condition of the loan or grant is violated by a loan or grant recipient, and take any necessary action to secure repayment of the loan or grant;

(10) reserve the right to modify, as necessary and by mutual consent, the terms or conditions of a loan or grant, which modification shall, however, not be inconsistent with regulations of the Department of Environment Protection concerning the performance of remediation of contaminated property;

(11) establish a priority system for making loans or grants for remediations involving an imminent and significant threat to a public water source, human health, or to a sensitive or significant ecological area pursuant to paragraph (6) of subsection b. of section 23 of P.L. , c. (C.)(now before the Legislature as this bill);

(12) provide that payment of a grant to a municipal government entity shall be conditioned upon the subrogation to the authority of all rights of the municipal government entity to recover remediation costs from the discharger or other responsible party; and

(13) adopt such other requirements as shall be deemed necessary or appropriate in carrying out the legislative purposes for which the Hazardous Discharge Site Remediation Fund was created.

b. An applicant for a loan or grant shall be required to:

(1) provide proof, as determined sufficient by the authority, that the applicant, other than a municipal governmental entity, where applicable, could not establish a cleanup funding source, other than a loan from the remediation fund, as required by section 21 of P.L. , c. (C.)(now before the Legislature as this bill);

(2) submit documentation on the nature and scope of the remediation to be performed, costs estimates thereon, and, as available, proofs of the actual cost of all work performed;

(3) submit copies of all court orders, administrative consent orders or directives issued by the Department of Environmental Protection and, if deemed necessary by the authority, any reports, plans, or results of any preliminary assessment, site investigation, remedial investigation, feasibility study, remedial action workplan, remedial action, or other documentation required to be prepared or submitted to the department; and

(4) demonstrate the ability to repay the amount of the loan and interest, and, if necessary, to provide adequate collateral to secure the loan amount.

c. Information submitted as part of a loan or grant application or agreement shall be deemed a public record subject to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.). An applicant may, however, request the authority to maintain the confidentiality of any information relating to the personal or business finances of the applicant, and the authority shall establish procedures for safeguarding information determined to be of a confidential nature.

d. In establishing requirements for loan or grant applications and loan or grant agreements, the authority:

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

(2) may not require loan or grant conditions that interfere with the everyday normal operations of a loan or grant recipient's business activities, except to the extent necessary to prevent intentional actions designed to avoid repayment of the loan, or that significantly affect the value of the loan collateral; and

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

26. (New section) No loan or grant from the remediation fund shall be made to a person who is currently in violation of an administrative or judicial order, judgment, or consent agreement regarding violation or threatened violation of an environmental law regarding the subject property, unless the violation, fee, penalty or assessment is currently being contested by the person in a manner prescribed by law or unless the violation resulted from a lack of sufficient money to perform required remediation activities.

27. (New section) a. The lack of sufficient moneys in the remediation fund to satisfy all loan or grant applications shall not affect in any way an applicant's legal responsibility to comply with the requirements of P.L.1983, c.330 (C.13:1K-6 et seq.), P.L.1976, 141 (C.58:10-23.11 et seq.), or any other applicable provision of law.

b. Nothing in sections 20 through 32 of P.L. , c. (C.) (now before the Legislature as this bill) shall be construed to:

(1) impose any obligation on the State for any loan or grant commitments made by the authority, and the authority's obligations shall be limited to the amount of otherwise unobligated moneys available in the fund therefor; or

(2) impose any obligation on the authority for the quality of

any work performed pursuant to a remediation undertaken with a loan or grant made pursuant section 23 of that act.

28. (New section) a. There is imposed upon every person who is required to establish a cleanup funding source pursuant to section 21 of P.L. , c. (C.)(now before the Legislature as this bill) a cleanup funding source surcharge. The cleanup funding source surcharge shall be in an amount equal to 1% of the required amount of the cleanup funding source required by the department. The surcharge shall be paid on an annual basis as long as the remediation continues and until the Department of Environmental Protection issues a no further action letter for the property subject to the remediation. The cleanup funding source surcharge shall be due and payable within 14 days of the time of the department's approval of a remedial action workplan or signing an administrative consent order or as otherwise provided by law. The cleanup funding source surcharge shall not be imposed upon any person who voluntarily undertakes a remediation without being so ordered or directed by the department or by a court or pursuant to an administrative consent order.

The department shall collect the surcharge and shall remit all moneys collected to the Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund.

b. By February 1 of each year, the department shall issue a report to the Senate Environment Committee and to the Assembly Energy and Hazardous Waste Committee listing, for the prior calendar year, each person who paid the cleanup funding source surcharge, the amount of the surcharge paid, and the total amount collected.

29. (New section) There is appropriated from the "Hazardous Discharge Fund of 1986," created pursuant to "Hazardous Discharge Bond Act of 1986," P.L.1986, c.113, the sum of $100,000,000 to the New Jersey Economic Development Authority for deposit in the Hazardous Discharge Site Remediation Fund, created pursuant to section 22 of P.L. , c. (C.)(now before the Legislature as this bill) for the purposes of issuing loans and grants for the investigation of property suspected of being contaminated by a hazardous substance or hazardous waste discharge or for the remediation of property contaminated by a hazardous substance or hazardous waste discharge in accordance with the provisions of section 23 of P.L. , c. (C.) (now before the Legislature as this bill).

30. (New section) a. The Department of Environmental Protection shall adopt minimum cleanup standards for soil, groundwater, and surface water quality necessary for the remediation of contamination of real property, including, for remediations conducted pursuant to P.L.1983, c.330, buildings and equipment. Where feasible the cleanup standards shall be established as numeric or narrative standards for particular contaminants. The standards shall apply to remediation activities required pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21 et seq.), the "Environmental

Cleanup Responsibility Act," P.L.1983, c.330 (C.13:1K-6 et seq.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the "Comprehensive Regulated Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the "Sanitary Landfill Facility Closure and Contingency Fund Act," P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333 (C.13:1E-177 et seq.), or any other law or regulation by which the State may compel a person to perform remediation activities on contaminated property.

The cleanup standards shall be developed to ensure that the potential for harm to public health and safety and to the continued viability of special ecological receptors is minimized to the maximum extent practicable, taking into consideration the location, surroundings, the intended use of the property, the potential exposure to the discharge, and the surrounding ambient conditions, whether naturally occurring or man made. Until the minimum standards described herein are adopted, the department shall establish cleanup standards for contaminants at a site on a case by case basis.

The department shall not propose or adopt cleanup standards protective of special ecological receptors pursuant to this subsection until two years following the effective date of this act or until recommendations are made by the Ecology Advisory Task Force pursuant to section 31 of P.L. , as (C.)(now before the Legislature as this bill).

b. The Department of Environmental Protection may provide for differential cleanup standards pursuant to subsection a. of this section based upon the intended use of a property or an area of a property. The department may not, however, as a condition of allowing a differential cleanup standard based on intended use, require the owner of that property to restrict the use of that property through the filing of a deed covenant, condition, or other similar restriction. Where the department provides for a differential cleanup standard based on the intended use of the property, it shall, as a condition of permitting a remediation to occur that would leave contamination at the property at levels or concentrations above the most protective standards established by the department:

(1) require the owner or operator, discharger, person in any way responsible, or other relevant person, to take any remedial action reasonably necessary to prevent exposure to the contaminants, to maintain, as necessary, those remedial measures, and to agree to restrict the use of the property in a manner that prevents exposure;

(2) require the recording with the office of the county recording officer in the county in which the property is located, a notice designed to inform prospective holders of an interest in the property that contamination exists on the property at a level that may restrict certain uses of all or part of that property, and a delineation of those restrictions and a description of all specific engineering or other controls at the property that exist and that need to be maintained in order to prevent exposure to

contaminants remaining on the property; and

(3) require a notice to the governing body of each municipality in which the property is located that contaminants exist at the property and specifying the restrictions on the use of the property.

c. Where restrictive use conditions of a property as provided in subsection b. of this section are no longer required, or where the restrictive use conditions have varied, because of the performance of subsequent remedial activities, a change in conditions at the site, or the adoption of revised cleanup standards, the department shall, upon written application by the owner or operator of that property, record with the office of the county recording officer a notice that the use of the property is no longer restricted or delineating the new restrictions. The department shall also notify, in writing, the municipality in which the property is located of the removal or change of the restrictive use conditions.

d. Upon receipt of the notification sent pursuant to subsection b. or c. of this section, a municipality shall send a copy of the notification to the construction official for the municipality. The construction official shall maintain the notification in a manner whereby it will be known and available to the construction official prior to issuing a construction permit for the construction or alteration of a building or structure at the subject property. The construction official shall not issue a construction permit for the construction or alteration of a building or structure at the subject property if the construction or alteration would be in conflict with any of the restrictions contained in the notification. The provisions of this subsection shall not apply if a notification received pursuant to subsection c. of this section authorizes all restrictions to be removed from the subject property.

e. Notwithstanding the provisions of any other law, or any rule, regulation, or order adopted pursuant thereto to the contrary, upon the adoption of the cleanup standards pursuant to subsection a. of this section, whenever contamination at a property is remediated in compliance with the cleanup standards that were in effect at the completion of the remediation, the owner or operator of the property, the discharger, or any other person in any way responsible for any containment shall not be liable for the cost of any additional remediation that may be required by a subsequent adoption by the department of a more stringent cleanup standard for a particular contaminant. However, if the department adopts a new cleanup standard for a contaminant based upon a finding that the new standard is necessary to prevent a substantial risk to human health or safety or to special ecological receptors, a person who is liable to clean up that contamination pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g) shall be liable for any additional remediation costs necessary to bring the property into compliance with the new cleanup standards.

31. (New section) a. There is established, in but not of the Department of Environmental Protection, an Ecology Advisory Task Force. The Task Force shall consist of 15 members as

follows: the Commissioner of Environmental Protection, or a designee, and two representatives each from industrial businesses, the environmental consulting profession, the real estate industry, the environmental science academic community, public interest environmental organizations, the legal community, and from municipal government. The members on the Task Force shall be selected by the Commissioner of Environmental Protection, to the extent possible, from a list of names provided by the represented interests or from names of persons who have testified before the department on previously proposed cleanup standards. The Ecology Advisory Task Force shall, within two years, make recommendations to the department on the development of standards protective of special ecological receptors.

b. The Ecology Advisory Task Force shall:

(1) review the scientific literature to identify existing sources of information and data necessary for the development of cleanup standards protective of special ecological receptors and to determine the current state-of-the-science in the identification of adverse impacts of contamination on these receptors and the establishment of containment concentration levels necessary to protect these receptors;

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

(3) collect information on public and private activities concerning the development and uses of ecological risk assessments and cleanup standards protective of special ecological receptors;

(4) evaluate the ecological components which should be protected through the application of cleanup standards protective of special ecological receptors;

(5) identify public policy issues involved in the development of cleanup standards protective of special ecological receptors;

(6) suggest an approach and methodology for the development of cleanup standards protective of special ecological receptors;

(7) evaluate the social, economic and environmental impacts of regulations which would incorporate state-of-the science ecological risk assessment methodologies;

(8) recommend necessary changes in statutes and regulations necessary to implement the advise of the Ecology Advisory Task Force; and

(9) review and make recommendations on any other aspect of the adoption of these cleanup standards the department determines is necessary for a complete evaluation of these issues.

c. Upon submittal of its recommendations to the department concerning the adoption of cleanup standards protective of special ecological receptors, the Ecology Advisory Task Force may, at the discretion of the commissioner, continue in existence in order to continue to research these issues and advise the department on the matters specified in this section.

32. (New section) Any person who, before July 1, 1992, has discharged a hazardous substance in violation of P.L.1976, c.141, and prior to July 1, 1992:

(1) has not been issued a directive to remove or arrange for the removal of the discharge pursuant to section of P.L.1976, c.141 (C.58:10-23.11f), or

(2) has not been assessed a civil penalty, a civil administrative penalty, or is not the subject of an action pursuant to the provisions of section of P.L.1976, c.141 (C.58:10-23.11u),

(3) has not entered in an administrative consent order to clean up and remove the discharge, or

(4) has not been ordered by a court to clean up and remove the discharge,

shall not be subject to a monetary penalty for the failure to report the discharge or for any civil violation of P.L.1976, c.141 (C.58:10-23.11 et seq.) or P.L.1977, c.74 (C.58:10A-1 et seq.) that resulted in the discharge if the person notifies the department of the discharge and enters into an administrative consent order with the department to remediate the discharge in accordance with the provisions of P.L.1976, c.141 (C.58:10-23.11 et seq.), or any rules or regulations adopted pursuant thereto, within one year of the effective date of this act. Any person who notifies the department of the discharge pursuant to this section shall be liable for all cleanup and removal costs as provided in section 8 of P.L.1976, c.141 (C.58:10-23.11g).

33. (New section) The Attorney General, in consultation with the Department of Environmental Protection, shall prepare, and the department shall distribute, for the cost of reproduction and postage, to any interested person, informational materials that set forth criteria that may be used to evaluate the qualifications of environmental consultants, environmental consulting firms, engineers, geologists or any other consultant, other than attorneys, whose expertise or training may be required by a person to comply with the provisions of P.L.1986, c.102, P.L.1983, c.330, P.L.1976, c.141, and P.L. , c. (now before the Legislature as this bill). The materials may describe the expertise or training necessary to address specific types of environmental cleanups, sites or contamination, the significance and availability of various types of liability insurance, the average cost of services and tests commonly performed by consultants, the significance of available accreditations or certifications and any other relevant factor that may be used to evaluate the qualifications and expertise of environmental consultants.

34. (New section) Notwithstanding the provisions of Executive Order 66 of 1978, the regulations adopted by the Department of Environmental Protection pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.) and allocated in the New Jersey Administrative Code as Chapter 26B of Title 7, shall not expire as provided in that Executive Order but shall remain in effect until that time the department adopts new regulations revising the existing regulations to conform with the provisions of P.L. , c. (now before the Legislature as this bill).

35. This act shall take effect immediately.

STATEMENT

This bill would substantially amend the "Environmental Cleanup Responsibility Act" (ECRA) and the State's other hazardous discharge remediation programs in order to encourage cleanups, reduce costs of compliance, provide financial resources for cleanups, encourage the redevelopment of the State's industrialized areas, and protect the public health and environment. It is also the intent of this bill to begin a change in the perception of New Jersey from that of a State antagonistic toward business concerns to a State that seeks to work with businesses and property owners to solve environmental problems in a manner beneficial to all and to the economic future of the State.

The original intent of ECRA was that contaminated industrial property should be cleaned up as a precondition to its closure or transfer. The cleanup would thus occur when private money was available, thereby avoiding the abandonment of contaminated property that would require publicly funded remediation. Because ECRA compelled the owner or operator to perform the cleanup no matter who caused the contamination, cleanups would occur without lengthy litigation to determine responsibility. The owner or operator could seek reimbursement from the responsible parties after the cleanup.

The act also protected a buyer from acquiring contaminated property and the commensurate liability. A purchaser of property in New Jersey, as well as the lending institution, would thus feel reasonably assured that the acquired property would be free of contamination.

Despite the laudable goals of ECRA, neither the Legislature nor the Department of Environmental Protection anticipated the law's impact on commercial and industrial real estate transactions in the State. At the time of the enactment of ECRA the hazardous waste cleanup industry was in its infancy, and thus the act provided only broad directives concerning the cleanup of contaminated sites, which in effect required the Department of Environmental Protectionto adopt the technical rules and regulations necessary to implement the act. Because of the general nature of the act, confusion arose as to which industrial establishments were subject to the act, when the act was triggered, and what was expected of the owner or operator of the industrial establishment performing an ECRA cleanup. The answer to these questions was crucial, because ECRA not only imposed high monetary penalties for noncompliance, but allowed the department to void the transfer of property undertaken in violation of the act. Additionally, because transfers were conditioned on certain departmental approvals, property transfers and stock transactions were delayed while all parties wrangled with a vague and cumbersome law. The initial confusion, backlogs, and problems of the early years of ECRA's implementation have only recently been resolved.

In the eight years since ECRA was enacted, the department, environmental attorneys and consultants, and the business community have acquired extensive knowledge of the manner in

which remedial activities should occur. The ECRA and other site remediation programs have evolved, establishing new procedures and terminology not reflected in existing statutory law. Additionally, both the federal and State liability laws for hazardous substance discharges have made the public and the real estate community aware of the dangers and liabilities of contaminated properties. Also, since the enactment of ECRA, the State has enacted a number of other laws that overlap with ECRA.

In the light of the experience and events of the last eight years, this bill would amend ECRA, as well as certain other hazardous discharge site remediation laws, to reflect the current state of scientific and regulatory knowledge and public policy priorities.

This bill does not remove the requirement that contaminated industrial establishments be cleaned up when they are closed or transfered, nor does it privatize the remediation of these sites. Rather the bill attempts to carefully draw a balance between the public's interest in ensuring that hazardous contamination is cleaned up so that it poses no threat to public health or to the environment with the interest of businesses in performing expeditious and cost effective cleanups and with transfering property in a timely fashion.

The bill also provides loan and grant moneys for cleanups, promotes the redevelopment of industrial areas, and clarifies the intent and operation of the law.

This bill balances the various interests by taking certain properties out of the ECRA process and by allowing the privitization of the remediation process under certain circumstances. This bill defines the various stages of a remediation - preliminary assessment, site investigation, remedial investigation, feasibility study, and remedial action - and recognizes that the State's interest in overseeing a particular type of cleanup may vary depending on the stage of a cleanup.

This bill provides that the owner or operator of an industrial establishment previously subject to an ECRA or similar full site remediation can close or transfer the industrial establishment without going through the ECRA process by submitting a certification. The bill also allows properties that are of minimal environmental concern to be cleaned without departmental oversight and approval and for properties where underground storage tanks are the only environmental problem to be transfered without the necessity of a negative declaration or a remedial action workplan approval. The bill provides that up to one third of a property may be conveyed, even if contaminated, without triggering ECRA for the remaining parcel and that a condemnation of less than two thirds of an industrial establishment will not trigger ECRA review on the remaining parcel.

This bill provides that when a tenant closes or transfers operations, ECRA will be triggered for only the property in the tenant's exclusive control. The areas in common control will be subject to ECRA when ECRA is triggered by the landlord.

This bill provides that certain transfers between subsidiaries would not be subject to ECRA. Also, deferrals of cleanups, currently permissive by law, shall be approved by the department once a preliminary assessment, site investigation, remedial investigation, and feasibility study are performed. This bill removes from ECRA compliance, owners or operators who close or transfer an industrial establishment while that property is still in a prior ECRA review process.

This bill also would allow a person, pursuant to ECRA or otherwise, to perform an emergency cleanup to prevent the spread of contamination without the risk of having to redo the cleanup as long as the measures were taken in compliance with department requirements and standards. This provision should help speed up cleanups and reduce environmental risks to the public. In order to balance the needs of the public to be protected from risks caused by hazardous discharges, and the need of businesses to have finality of a cleanup action, the bill provides that if a discharge is remediated to the cleanup standards in effect, the person liable for the original discharge can not be compelled to further clean that site if the cleanup standards change absent a substantial threat to the public health or to the environment.

This bill codifies the ability of the department to adopt cleanup standards for all site remediation activities performed pursuant to the State's various environmental laws, and allows differential standards to be established based on exposure risk. This bill provides that the department cannot adopt ecologically based cleanup standards until after an Ecology Advisory Task Force offers input. This bill also codifies the natural resources that can be protected so as to avoid uncertainty in future rulemaking.

This bill deliniates these natural resources to include those natural resources which either federal or State law has identified as needing protection, management, or regulation in order to ensure that the State's discharge remediation program complements the State's natural resource protection and management programs.

This bill precludes the department from requiring a deed restriction on the property if the property is cleaned to a standard less then the most protective. Rather, notice to subsequent owners or operators will be provided by a deed notice. Enforcement of the restrictions will be by the local construction official in the building permit process.

This bill codifies a recent State Supreme Court decision, In Re Adoption of N.J.A.C.7:26B, by stating affirmatively that offsite contamination is required as part of an ECRA cleanup. This bill also codifies the issuing of administrative consent orders under ECRA and states what these orders may provide. This bill provides that a pamphlet on how to select an environmental consultant will be prepared by the Department of Law and Public Safety.

This bill seeks to lower the cost of remediation by eliminating the requirement for financial assurance that is currently required in addition to paying for the remediation activities. In its place is a requirement that a person undertaking a cleanup establish

and maintain a cleanup funding source by establishing a fully funded trust, a line of credit, or being able to fund the operations out of working capital. The bill allows the department, or the transferee in an ECRA process, to use the moneys in the cleanup funding source guarantee to complete the cleanup in the event of a stoppage in the remediation activities.

The person providing the cleanup funding source will be assessed a 1% surcharge on the amount of the cleanup costs. The moneys collected by the surcharge will be placed into a Hazardous Discharge Site Remediation Fund. The fund would be used to give low interest loans to persons performing ECRA or other cleanups. Moneys would be targeted for urban areas, municipally owned properties, voluntary cleanups, ECRA cleanups, and for emergency cleanups. Additionally, muncipalities would be able to obtain grants for the identification of municipally owned contaminated property. Only those persons, other than municipalities, who could not otherwise provide a cleanup funding source would qualify for a loan.

The fund would be administered by the New Jersey Economic Development Authority and would be funded by a $100 million appropriation from the "Hazardous Discharge Bond Act of 1986," by the surcharges, interest, loan repayments, legislative appropriations, and by any moneys placed into the fund by the authority.

Finally, the bill seeks to encourage the cleanups of sites by providing a one year amnesty from all ECRA or other discharge penalties for any person who agrees to comply with the relevant law within that one year period.

Makes various changes to ECRA and to other hazardous discharge site remediation programs; imposes a surcharge on remediations; establishes a loan and grant fund for remediation activities; appropriates bond moneys.

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1070

STATE OF NEW JERSEY

ADOPTED MARCH 15, 1993

Sponsored by Senators McNAMARA and RICE

AN ACT concerning the remediation of contaminated property, amending and supplementing P.L.1983, c.330, amending P.L.1976, c.141, supplementing Title 58 of the Revised Statutes, and making an appropriation from the "Hazardous Discharge Bond Act of 1986."

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

1. Section 1 of P.L.1983, c.330 (C.13:1K-6) is amended to read as follows:

1. This act shall be known and may be cited as the [**"Environmental Cleanup Responsibility Act."**] "Industrial Site Recovery Act."

(cf: P.L.1983, c.330, s.1)

2. Section 2 of P.L.1983, c.330 (C.13:1K-7) is amended to read as follows:

2. [**The Legislature finds and declares that the generation, handling, storage and disposal of hazardous substances and wastes pose an inherent danger of exposing the citizens, property and natural resources of this State to substantial risk of harm or degradation; that the closing of operations and the transfer of real property utilized for the generation, handling, storage and disposal of hazardous substances and wastes should be conducted in a rational and orderly way, so as to mitigate potential risks; and that it is necessary to impose a precondition on any closure or transfer of these operations by requiring the adequate preparation and implementation of acceptable cleanup procedures therefor.**]

The Legislature finds that discharges of toxic chemicals dating back to early industrialization has left a legacy of contaminated industrial property in this State; that in 1983, due to the growing public awareness and concern of the risks to the public health and the environment and the potential costs to the State to clean up abandoned contaminated sites, the "Environmental Cleanup and Responsibility Act," was enacted. The Legislature also finds that the act's imposition of a cleanup plan approval before the transfer or upon the closing of an industrial establishment and the requirement to establish a funding source for the cleanup is in the general public interest by ensuring the discovery of contamination, by assuring that funding for cleanup is set aside at the time it is available from a transfer or closing, and by assuring that contaminated property is not abandoned to the State for cleanup. The Legislature further finds that at the time of the

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

Matter underlined thus is new matter.

act's passage, the extent of the State's industrial contamination, and the cost and complexity of remediations, were not well understood; that in the intervening years, there has been a significant advance in the body of knowledge concerning how to remediate contaminated sites effectively and how to manage the remediation efficiently; that the regulated and financial community is now more familiar with the liabilities involving contaminated property and with the necessity to discover and remediate that contamination; and that it is in the interest of the environment and the State's economic health to promote certainty in the regulatory process by incorporating that knowledge to create a more efficient regulatory structure and to allow greater privatization of that process where it is possible to do so without incurring unnecessary risks to the public health or the environment.

The Legislature therefore declares that it is the policy of this State to protect the public health, safety, and the environment, to promote efficient and timely cleanups, and to eliminate any unnecessary financial burden of remediating contaminated sites; that these policies can be achieved by streamlining the regulatory process, by establishing summary administrative procedures for industrial establishments that have previously undergone an environmental review, and by reducing oversight of those industrial establishments where less extensive regulatory review will assure the same degree of protection to human health and the environment; and that the new procedures established pursuant to this act shall be designed to remove redundancy from the regulatory process and to minimize governmental involvement in certain business transactions.

(cf: P.L.1983, c.330, s.2)

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

3. As used in this act:

[a. "Cleanup plan"] "Remedial action workplan" means a plan for the [cleanup of] remedial action to be undertaken at an industrial [establishments, approved by the department, which may include a description of the locations, types and quantities of hazardous substances and wastes that will remain on the premises; a description of the types and locations of storage vessels, surface impoundments, or secured landfills containing hazardous substances and wastes; recommendations regarding the most practicable method of cleanup; and] establishment, or at any area to which a discharge originating at the industrial establishment is migrating or has migrated; a description of the remedial action to be used to remediate the industrial establishment; a time schedule and cost estimate of the [cleanup plan.] implementation of the remedial action; and any other information the department deems necessary;

[The department, upon a finding that the evaluation of a site for cleanup purposes necessitates additional information, may require graphic and narrative descriptions of geographic and hydrogeologic characteristics of the industrial establishment and evaluation of all residual soil, groundwater, and surface water contamination;

b. "Closing, terminating or transferring operations" means the cessation of all operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes, or any temporary cessation for a period of not less than two years, or any other transaction or proceeding through which an industrial establishment becomes nonoperational for health or safety reasons or undergoes change in ownership, except for corporate reorganization not substantially affecting the ownership of the industrial establishment, including but not limited to sale of stock in the form of a statutory merger or consolidation, sale of the controlling share of the assets, the conveyance of the real property, dissolution of corporate identity, financial reorganization and initiation of bankruptcy proceedings]

"Closing operations" means:

(1) the cessation of operations resulting in at least a 90 percent reduction in the total value of the product output from the entire industrial establishment within any five year period, or, for industrial establishments for which the product output is undefined, a 90 percent reduction in the number of employees or a 90 percent reduction in area of operations of an industrial establishment within any five year period;

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

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

(4) the initiation of bankruptcy proceedings pursuant to Chapter 7 of the federal Bankruptcy Code, 11 U.S.C. §70100 et seq. or the filing of a plan of reorganization that provides for a liquidation pursuant to Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. §1101 et seq.; or

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

"Transferring ownership or operations" means:

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

(2) the sale or transfer of more than 50% of the assets of an industrial establishment within any five year period;

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

(4) the termination of a lease unless renewed without a disruption in operations of the industrial establishment, or the assignment of a lease; or

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

"Change in ownership" means:

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

(2) the sale or transfer of stock in a corporation resulting in a

merger or consolidation involving the direct owner or operator or indirect owner of the industrial establishment;

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

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

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

"Change in ownership" shall not include:

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

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

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

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

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

(6) the execution of a mortgage, the filing of a lien, the granting of a security interest, or the assignment of a lease to secure a loan, or the refinancing of a debt, not including a sale and lease back agreement, by the owner or operator of an industrial establishment;

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

(8) a transfer of an industrial establishment by devise or intestate succession;

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

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

[c.] "Department" means the Department of Environmental Protection;

[d.] "Hazardous substances" means those elements and

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

[e.] "Hazardous waste" [means any amount of any waste substances required to be reported to the Department of Environmental Protection on the special waste manifest pursuant to N.J.A.C.7:26-7.4, or as otherwise provided by law] shall have the same meaning as provided in section 1 of P.L.1976, c.99 (C.13:1E-38);

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

[g.] "Negative declaration" means a written declaration, submitted by the owner or operator of an industrial establishment [and approved by the department] to the department, certifying that there has been no discharge of hazardous substances or hazardous wastes on the site, or that any such discharge on the site or discharge that has migrated or is migrating from the site has been [cleaned up] remediated in accordance with procedures approved by the department [, and there remain no hazardous substances or wastes at the site of the industrial establishment] and in accordance with any applicable remediation regulations;

"Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a hazardous substance

or hazardous waste into the waters or onto the lands of the State;

"No further action letter" means a written determination by the department that, based upon an evaluation of the historical use of the industrial establishment and the property, or of an area of concern or areas of concern, as applicable, and any other investigation or action the department deems necessary, there are no discharged hazardous substances or hazardous wastes present at the site of the industrial establishment, at the area of concern or areas of concern, or at any other site to which a discharge originating at the industrial establishment has migrated, and that any discharged hazardous substances or hazardous wastes present at the industrial establishment or that have migrated from the site have been remediated in accordance with applicable remediation regulations;

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

"Direct owner or operator" means any person that directly owns or operates an industrial establishment;

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

"Remediation standards" means the combination of numeric and narrative standards to which hazardous substances or hazardous wastes must be investigated or remediated as established by the department pursuant to section 35 of P.L. , c. (C.)(now before the Legislature as this bill);

"Owner" means any person who owns the real property of an industrial establishment or who owns the industrial establishment;

"Operator" means any person, including users, tenants, occupants, or trespassers, having and exercising direct actual control of the operations of an industrial establishment;

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether hazardous substances or hazardous wastes are or were present at an industrial establishment or have migrated or are migrating from the industrial establishment, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or potential discharge of any hazardous substance or hazardous waste is required;

"Remediation" or "remediate" means all necessary actions to investigate and clean up any known or suspected discharge of hazardous substances or hazardous wastes, including the preliminary assessment, site investigation, remedial investigation, and remedial action;

"Remedial action" means those actions taken at an industrial establishment or offsite of an industrial establishment if

hazardous substances or hazardous wastes have migrated or are migrating therefrom, as may be required by the department, including the removal, treatment, containment, transportation, securing, or other engineering or treatment measures, whether of a permanent nature or otherwise, designed to ensure that any discharged hazardous substances or hazardous wastes at the site or that have migrated or are migrating from the site, are remediated in compliance with the applicable remediation standards;

"Remedial investigation" means a process to determine the nature and extent of a discharge of hazardous substances or hazardous wastes at an industrial establishment or a discharge of hazardous substances or hazardous wastes that have migrated or are migrating from the site and the problems presented by a discharge, and may include data collected, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the evaluation of remediated alternatives;

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

(cf: P.L.1983, c.330, s.3)

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

4. [a. The owner or operator of an industrial establishment planning to close operations shall:

(1) Notify the department in writing, no more than five days subsequent to public release, of its decision to close operations;

(2) Upon closing operations, or 60 days subsequent to public release of its decision to close or transfer operations, whichever is later, the owner or operator shall submit a negative declaration or a copy of a cleanup plan to the department for approval and a surety bond or other financial security for approval by the department guaranteeing performance of the cleanup in an amount equal to the cost estimate for the cleanup plan.

b. The owner or operator of an industrial establishment planning to sell or transfer operations shall:

(1) Notify the department in writing within five days of the execution of an agreement of sale or any option to purchase;

(2) Submit within 60 days prior to transfer of title a negative declaration to the department for approval, or within 60 days prior to transfer of title, attach a copy of any cleanup plan to the contract or agreement of sale or any option to purchase which may be entered into with respect to the transfer of operations. In the event that any sale or transfer agreements or options have been executed prior to the submission of the plan to the department, the cleanup plan shall be transmitted, by certified mail, prior to the transfer of operations, to all parties to any transaction concerning the transfer of operations, including

purchasers, bankruptcy trustees, mortgagees, sureties, and financers;

(3) Obtain, upon approval of the cleanup plan by the department, a surety bond or other financial security approved by the department guaranteeing performance of the cleanup plan in an amount equal to the cost estimate for the cleanup plan.

c. The cleanup plan and detoxification of the site shall be implemented by the owner or operator, provided that the purchaser, transferee, mortgagee or other party to the transfer may assume that responsibility pursuant to the provisions of this act.]

a. The owner or operator of an industrial establishment planning to close operations or transfer ownership or operations shall notify the department in writing, no more than five days subsequent to closing operations or of its public release of its decision to close operations, whichever occurs first, or within five days after the execution of an agreement to transfer ownership or operations, as applicable. The notice to the department shall: identify the subject industrial establishment; describe the transaction requiring compliance with P.L.1983, c.330; state the date of the closing of operations or the date of the public release of the decision to close operations and a copy of the appropriate public announcement, if applicable; state the date of execution of the agreement to transfer ownership or operations and the names, addresses and telephone numbers of the parties to the transfer, if applicable; state the proposed date for closing operations or transferring ownership or operations; list the name, address, and telephone number of an authorized agent for the owner or operator; and certify that the information submitted is accurate. The notice shall be transmitted to the department in the manner and form required by the department. The department may, by regulation, require the submission of any additional information in order to improve the efficient implementation of P.L.1983, c.330.

b. (1) Subsequent to the submittal of the notice required pursuant to subsection a. of this section, the owner or operator of an industrial establishment shall, except as otherwise provided by P.L.1983, c.330 or P.L. , c. (C.) (now before the Legislature as this bill), remediate the industrial establishment. The remediation shall be conducted in accordance with criteria, procedures, and time schedules established by the department.

(2) The owner or operator shall attach a copy of any approved negative declaration, approved remedial action workplan, or remediation agreement approval to the contract or agreement of sale or agreement to transfer or any option to purchase which may be entered into with respect to the transfer of ownership or operations. In the event that any sale or transfer agreements or options have been executed prior to the approval of a negative declaration, remedial action workplan, or remediation agreement, these documents, as relevant, shall be transmitted by the owner or operator, by certified mail, prior to the transfer of ownership or operations, to all parties to any transaction concerning the transfer of ownership or operations, including purchasers, bankruptcy trustees, mortgagees, sureties, and financiers.

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

c. The owner or operator of an industrial establishment shall, subsequent to closing operations, or of its public release of its decision to close operations, or prior to transferring ownership or operations except as otherwise provided in subsection e. of this section, as applicable, submit to the department for approval a proposed negative declaration or proposed remedial action workplan. Except as otherwise provided in sections 13, 14, 16, 17 and 18 of P.L. , c. (C.) (now before the Legislature as this bill), the owner or operator of an industrial establishment shall not transfer ownership or operations until a negative declaration or a remedial action workplan has been approved by the department or the conditions of subsection e. of this section for remediation agreements have been met and until, in cases where a remedial action workplan is required to be approved or a remediation agreement has been approved, a remediation funding source, as required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill), has been established.

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

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

e. The owner or operator of an industrial establishment who has submitted a notice to the department pursuant to subsection a. of this section, may transfer ownership or operations of the industrial establishment prior to the approval of a negative declaration or remedial action workplan upon application to and approval by the department of a remediation agreement. The owner or operator requesting a remediation agreement shall submit the following documents: (1) an estimation of the cost of the remediation that is approved by the department; (2) a certification of the statutory liability of the owner or operator pursuant to P.L.1983, c.330 to perform and to complete a remediation of the industrial establishment in the manner and

time limits provided by the department in regulation and consistent with all applicable laws and regulations; however, nothing in this paragraph shall be construed to be an admission of liability, or to impose liability on the owner or operator, pursuant to P.L. 1976, c. 141 or pursuant to any other statute or common law; (3) evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with the provisions of section 25 of P.L. , c. (C.)(now before the Legislature as this bill); (4) a certification that the owner or operator is subject to the provisions of P.L.1983, c.330, including the liability for penalties for violating the act, defenses to liability and limitations thereon, the requirement to perform a remediation as required by the department, allowing the department access to the industrial establishment as provided in section 5 of P.L.1983, c.330 (C.13:1K-10), and the requirement to prepare and submit any document required by the department relevant to the remediation of the industrial establishment; and (5) evidence of the payment of all applicable fees required by the department.

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

The department shall adopt regulations establishing the manner in which the documents required pursuant to paragraphs (1) through (5), inclusive, of this subsection shall be submitted. The department shall approve the application for the remediation agreement upon the complete and accurate submission of the documents required to be submitted pursuant to this subsection. The regulations shall include a sample form of the certifications. Approval of a remediation agreement shall not affect an owner's or operator' right to avail itself of the provisions of section 6 of P.L.1983, c.330 (C.13:1K-11), of sections 12, 13, 14, 15, 16, 17, or 18 of P.L. , c. (C.)(now before the Legislature as this bill), or of the other provisions of this section.

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

g. (1)The soil remediation standard to be implemented on an industrial establishment shall be selected in conformance with the policies and criteria enumerated in section 35 of P.L. , c. (C.) (now before the Legislature as this bill).

(2) The owner or operator proposing to implement the

nonresidential use soil remediation standards shall review and consider for implementation, at a minimum, each relevant remedial action that is set forth in the guidance document published pursuant to section 38 of P.L. , c. (C.) (now before the Legislature as this bill).

(3) The department may not disapprove the use of the minimum nonresidential soil remediation standards adopted by the department except upon a finding that the use of a nonresidential soil remediation standards at that site would not be protective of public health, safety, or the environment or except as provided in subsection j. of this section.

h. An owner or operator of an industrial establishment may implement a soil remedial action at an industrial establishment without prior department approval of the remedial action workplan for the remediation of soil when the remedial action can reasonably be expected to be completed pursuant to standards, criteria, and time schedules established by the department within five years of the commencement of the implementation of the remedial action and if:

(1) the owner or operator is transferring ownership or operations of the industrial establishment and the soil remediation meets the established minimum residential or nonresidential use soil remediation standards adopted by the department; or

(2) the owner or operator is closing operations of the industrial establishment and the soil remediation meets the established minimum residential use soil remediation standards adopted by the department.

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

i. An owner or operator of an industrial establishment proposing to implement soil remediation of an industrial establishment shall submit a proposed remedial action workplan for the remediation of soil to the department for its prior review and approval if:

(1) the remedial action cannot reasonably be expected to be completed pursuant to standards, criteria, and time schedules established by the department within five years of the commencement of the implementation of the remedial action;

(2) the owner or operator of the industrial establishment is closing operations and the remediation will meet the established minimum nonresidential use soil remediation standards; or

(3) the soil remediation does not meet either the established minimum residential or nonresidential use soil remediation standards adopted by the department.

j. The department shall review and approve or disapprove the proposed remedial action workplan required to be submitted pursuant to subsection i. of this section to determine if the proposed remedial action workplan is in compliance with the rules and regulations regarding remediation and, if applicable, that the use of the nonresidential use soil remediation standards are

appropriate for the industrial establishment. The department shall base its decision to approve or disapprove the use of nonresidential use soil remediation standards for the industrial establishment upon the criteria listed below, as applicable.

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

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

(3) The transferee of the industrial establishment agrees to the implementation of the nonresidential use soil remediation standard;

(4) The potential for the hazardous substances or hazardous wastes to affect other property; and

(5) The difference in cost between the use of the residential use soil remediation standards and the nonresidential use soil remediation standards.

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

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

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

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

The department may review and approve or disapprove every remedial action workplan, no matter when submitted, to determine, in accordance with the criteria listed in subsection g. of section 35 of P.L. , c. (C.) (now before the Legislature as this bill) if the remedial action that has occurred or that will occur is appropriate to meet the established remediation standards.

The department may order additional remediation activities at the industrial establishment, or offsite where necessary, or may require the submission of additional information, where (a) the

department determines that the remediation activities undertaken were not in compliance with applicable rules or regulations of the department; (b) all documents required to be submitted to the department were not submitted or, if submitted, were inaccurate, or deficient; or (c) if discharged hazardous substances or hazardous wastes remain at the industrial establishment, or have migrated or are migrating offsite, at levels or concentrations in violation of the applicable remediation standards. Upon a finding by the department that the remediation conducted at the industrial establishment was in compliance with all applicable regulations, that no hazardous substances or hazardous wastes remain at the industrial establishment in violation of the applicable remediation standards, and that all hazardous substances or hazardous wastes that migrated from the industrial establishment have been remediated in conformance with the applicable remediation standards, the department shall approve the remediation for that industrial establishment by the issuance of a no further action letter.

(cf: P.L.1983, c.330, s.4)

5. Section 2 of P.L.1991, c.238 (C.13:1K-9.2) is amended to read as follows:

2. The acquiring of title to an industrial establishment by a municipality pursuant to a foreclosure action pertaining to a certificate of tax sale purchased and held by the municipality shall not relieve the previous owner or operator of the industrial establishment of his duty to [implement a cleanup plan if the implementation is deemed necessary by the Department of Environmental Protection] remediate the industrial establishment as required pursuant to P.L.1983, c.330.

(cf: P.L.1991, c.238, s.2)

6. Section 3 of P.L.1991, c.238 (C.13:1K-9.3) is amended to read as follows:

3. If a municipality undertakes [to clean up hazardous substances and wastes on the site of] a remediation of an industrial establishment, the title to which the municipality acquired pursuant to a foreclosure action pertaining to a certificate of tax sale, all expenditures incurred in the [cleanup] remediation shall be a debt of the immediate past [owners] owner or operator of the industrial establishment. The debt shall constitute a lien on all property owned by the immediate past owner or operator when a notice of lien, incorporating a description of the property subject to the [cleanup and removal] remediation and an identification of the amount of [cleanup, removal] remediation and related costs expended by the municipality is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment or order docket the name and address of the immediate past owner or operator and the amount of the lien as set forth in the notice of lien. Upon entry by the clerk, the lien shall attach to the revenues and all real and personal property of the immediate past owner or operator, whether or not he is insolvent. The notice of lien filed pursuant to this section which affects any property of an immediate past owner or operator shall have priority from the

day of the filing of the notice of the lien, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this section.
(cf: P.L.1991, c.238, s.3)

7. Section 5 of P.L.1991, c.238 (C.13:1K-9.5) is amended to read as follows:

5. If a municipality undertakes a [cleanup of hazardous substances and wastes on the site] remediation of an industrial establishment, the municipality shall [make any submissions required by P.L.1983, c.330 (C.13:1K-6 et seq.) and] undertake that remediation and shall obtain [approval of] all approvals required by the Department of Environmental Protection [prior to the initiation of the sampling plan and the cleanup plan].
(cf: P.L.1991, c.238, s.5)

8. (New section) Upon the submission of the complete and accurate results of a phase of the remediation pursuant to section 4 of P.L.1993, c.330 (C.13:1K-7) or of any other document required to be submitted that requires the department's review and approval in order to comply with P.L.1983, c.330, the department shall review and approve, approve with conditions, or disapprove the submission or other documents in accordance with the review schedules established pursuant to section 2 of P.L.1991, c.423 (C.13:1D-106).

9. (New section) The owner or operator of an industrial establishment may, upon submission of a written notice to the department, transfer ownership or operations or close operations without complying with the provisions of section 4 of P.L.1983, c.330 (C.13:1K-9) if the total quantity of hazardous substances and hazardous wastes generated, manufactured, refined, transported, treated, stored, handled, or disposed of at the industrial establishment at any one time during the owner or operator's period of ownership or operations does not exceed 500 pounds or 55 gallons, or, if a hazardous substance or hazardous waste is mixed with nonhazardous substances, the total quantity of the mixture does not exceed 500 pounds or 55 gallons.

10. Section 5 of P.L.1983, c.330 (C.13:1K-10) is amended to read as follows:

5. a. The department shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing: [minimum standards for soil, groundwater and surface water quality necessary for the detoxification of the site of an industrial establishment, including buildings and equipment, to ensure that the potential for harm to public health and safety is minimized to the maximum extent practicable, taking into consideration the location of the site and surrounding ambient conditions;] (1) criteria and minimum standards necessary for the submission, evaluation and approval of [cleanup plans;] plans or results of preliminary assessments, site investigations, remedial investigations, and remedial action workplans and for the implementation thereof. The documents for the preliminary assessment, site investigation, remedial investigation, and remedial action workplan required to be submitted for a remediation, shall not be based on the same

criteria and standards used for similar or identical documents submitted pursuant to federal law except as may be required by federal law. In establishing criteria and minimum standards for these terms the department shall strive to avoid duplicate or unnecessarily costly or time consuming conditions or standards; (2) a fee schedule, as necessary, reflecting the actual costs associated with the review of plans for or results of negative declarations, preliminary assessments, site investigations, remedial investigations, and [cleanup plans] remedial action workplans, and review of the implementation thereof and for any other review or approval required by the department; (3) standards and procedures for remediation agreements authorized pursuant to subsection d. of section 4 of P.L.1983, c.330 (C.13:1K-9); and (4) any other provisions or procedures necessary to implement this act. [Until the minimum standards described herein are adopted, the department shall review, approve or disapprove negative declarations and cleanup plans on a case by case basis.]

b. [The department shall, within 45 days of submission, approve the negative declaration, or inform the industrial establishment that a cleanup plan shall be submitted.

c. The department shall, in accordance with the schedule contained in an approved cleanup plan, inspect the premises to determine conformance with the minimum standards for soil, groundwater and surface water quality and shall certify that the cleanup plan remedial action workplan has been executed and that the site has been detoxified.] The owner or operator shall allow the department reasonable access to the industrial establishment and to offsite areas under the owner's or operator's control to inspect the premises, review records, and to take soil, groundwater, or other samples or measurements as deemed necessary by the department to verify the results of any submission made to the department and to verify the owner's or operator's compliance with the requirements of this act.

(cf: P.L.1983, c.330, s.5)

11. Section 6 of P.L.1983, c.330 (C.13:1K-11) is amended to read as follows:

6. a. [The provisions of any law, rule or regulation to the contrary notwithstanding, the transferring of an industrial establishment is contingent on the implementation of the provisions of this act.

b. If the premises of] The owner or operator of an industrial establishment planning to transfer ownership or operations may apply to the department for a deferral of the preparation, approval, and implementation of a remedial action workplan for the industrial establishment. The applicant shall submit to the department:

(1) a certification signed by the purchaser, transferee, mortgagee or other party to the transfer, approved by the department, that the industrial establishment would be subject to substantially the same use by the purchaser, transferee, mortgagee or other party to the transfer[, and upon written certification thereto and approval by the department thereof, the implementation of a cleanup plan and the detoxification of the

site] ;

(2) a certification, approved by the department, that the owner or operator has satisfactorily completed a preliminary assessment, site investigation, and remedial investigation, of the industrial establishment;

(3) a cost estimate for the remedial action necessary at the industrial establishment, approved by the department; and

(4) a certification, approved by the department, that the purchaser, transferee, mortgagee or other party to the transfer, has the financial ability to pay for the implementation of the necessary remedial action.

The preparation, approval, and implementation of a remedial action workplan for the industrial establishment may be deferred until the use changes or until the purchaser, transferee, mortgagee or other party to the transfer closes[, terminates or transfers] operations or transfers ownership or operations.

[(1) Within 60 days of receiving notice of the sale or realty transfer and the certification that the industrial establishment would be subject to substantially the same use, the department shall approve, conditionally approve, or deny the certification.

(2) Upon approval of the certification, the implementation of a cleanup plan and detoxification of the site shall be deferred.

(3) Upon denial of the certification, the cleanup plan and detoxification of the site shall be implemented pursuant to the provisions of this act.

c.] b. Upon satisfactory submission of a complete and accurate application, the department shall approve the deferral. Upon approval of the deferral, the preparation, approval, and implementation of remedial action workplan at the industrial establishment shall be deferred. The deferral shall be denied by the department if a complete and accurate application is not submitted to the department or if the department fails to approve any of the components of the application. Upon denial of the deferral, the remediation of the industrial establishment shall be continued pursuant to the provisions of this act.

c. The authority to defer [implementation of the cleanup plan] the preparation, approval, and implementation of a remedial action workplan set forth in subsection [b.] a. of this section shall not be construed to limit, restrict, or prohibit the department from directing site [cleanup] remediation under any other statute, rule, or regulation, but shall be solely applicable to the obligations of the owner or operator of an industrial establishment, pursuant to the provisions of this act, nor shall any other provisions of this act be construed to limit, restrict, or prohibit the department from directing site [cleanup] remediation under any other statute, rule, or regulation.

(cf: P.L.1983, c.330, s.6)

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

8. a. Failure of the transferor to [comply with any of] perform a remediation and obtain department approval thereof as required pursuant to the provisions of this act is grounds for voiding the sale or transfer of an industrial establishment or any real property utilized in connection therewith by the transferee,

entitles the transferee to recover damages from the transferor, and renders the owner or operator of the industrial establishment strictly liable, without regard to fault, for all [cleanup and removal] remediation costs and for all direct and indirect damages resulting from the failure to implement the [cleanup plan] remedial action workplan. A transferee may not act to void the sale or transfer of an industrial establishment or any real property except upon providing notice to the transferor of the failure to perform and affording the transferor a reasonable amount of time to comply with the provisions of this act.

b. [Failure to submit a negative declaration, or cleanup plan pursuant to the provisions of section 4 of this act is grounds for voiding the sale by the department.

c.] Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of this act is liable for a penalty of not more than $25,000.00 for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense. Penalties shall be collected in a civil action by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). Any officer or management official of an industrial establishment who knowingly directs or authorizes the violation of any provisions of this act shall be personally liable for the penalties established in this subsection.

(cf: P.L.1983, c.330, s.8)

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

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

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment, consistent with current regulations established by the department, in order to identify areas of concern that are new or have continued in use since the issuance of a no further action letter, negative declaration approval, or remediation approval as described in paragraph (2) of this subsection, and that based on those remediation activities the owner or operator certifies that there has been no discharge of a hazardous substance or hazardous waste at the industrial establishment subsequent to the approval of the negative declaration, the issuance of the no further action letter, or the equivalent remediation; or, if any discharge has

occurred, a certification listing any discharge, describing the action taken to remediate the discharge, a certification that the remediation was performed in accordance with procedures established by the department, a certification that the remediation was approved by the department and a copy of the document evidencing the departmental approval;

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

(5) a copy of the negative declaration, or no further action letter, or other approval as applicable, last approved by the department for the entire industrial establishment; and

(6) a proposed negative declaration.

b. Upon the submission of a complete and accurate application and after an inspection, if necessary, the department shall approve or disapprove the negative declaration. The department shall approve the negative declaration upon a finding that the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the proposed negative declaration by the department pursuant to this section, the owner or operator shall comply with the provisions of section 4 of P.L.1983, c.330.

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

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

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

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

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

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

(6) a proposed negative declaration, if applicable.

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

(1) approve the negative declaration upon a finding that any discharge of a hazardous substance or hazardous waste, as certified to pursuant to paragraph (3) of subsection a. of this section, has been remediated consistent with the applicable remediation standards as established by the department; or

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

c. The owner or operator of an industrial establishment subject to the provisions of this section shall not close operations or transfer ownership or operations until a remedial action workplan, or a negative declaration, as applicable, has been approved by the department or upon approval of a remediation agreement as provided in subsection d. of section 4 of P.L.1983, c.330.

15. (New section) a. The owner or operator of an industrial establishment who is required to perform a remediation at an industrial establishment pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9), may apply to the department for an area of concern waiver. Approval of the area of concern waiver shall relieve the owner or operator of the requirement to perform a remediation pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) for any area of concern at that industrial establishment for which a remediation has previously been conducted and approved by the department. An application pursuant to this subsection shall include:

(1) a certification that the department has previously approved a remediation at an area of concern and has issued a no further action letter or an equivalent approval of a remediation for that area of concern,

(2) a copy of the no further action letter or equivalent approval for that area of concern, last approved by the department, and

(3) a certification that the owner or operator has performed remediation activities at that area of concern, consistent with current regulations established by the department, and that based on those remediation activities the owner or operator certifies that subsequent to the issuance of the no further action letter or equivalent approval described in paragraph (1) of this subsection, there has been no discharge of a hazardous substance or

hazardous waste at that area of concern.

b. Upon submission of a complete and accurate application and after an inspection, if necessary, the department shall approve the application for an area of concern waiver upon a finding that the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the application by the department pursuant to this section, the owner or operator shall perform a remediation of the subject area of concern as may be required pursuant to subsection b. of section 4 of P.L.1983, c.330.

16. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement as provided in subsection d. of section 4 of P.L.1983, c.330 (C.13:1K-9), if the industrial establishment is already in the process of a remediation pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) or a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330. The application shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330,

(2) a certification that there has been no discharge of any hazardous substance or hazardous waste at the industrial establishment during the applicant's period of operation or ownership or that the remediation of any discharge of a hazardous substance or hazardous waste that occured during the applicant's period of ownership or operation was approved by the department,

(3) a certification by the owner or operator that a remediation funding source for the cost of the remediation or the implementation of the remedial action workplan at the industrial establishment has been established as required pursuant to section 25 of P.L. , c. (C.) (now before the Legislature as this bill), and

(4) a certification, as applicable, that any transferee of the industrial establishment has been notified that the industrial establishment is the subject of a remediation.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, that the applicant may close operations or transfer ownership or operations of the industrial establishment.

17. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement as provided in subsection d. of section 4 of P.L.1983, c.330 if the only areas of concern or the only discharges at the industrial establishment are from an underground storage tank regulated pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.). The application shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330,

(2) the submission of a preliminary assessment that shows that the only area of concern at an industrial establishment is an underground storage tank or tanks as defined pursuant to section 2 of P.L.1986, c.102 (C.58:10A-22), or the submission of a site investigation that shows that the only discharged hazardous substances or hazardous wastes at the industrial establishment, or that has migrated offsite, above the applicable remediation standards are from a leak or discharge from that underground storage tank or tanks, and

(3) a certification that the owner or operator of the industrial establishment is in compliance with the provisions of P.L.1986, c.102 for all underground storage tanks covered by that act, at the industrial establishment. The owner or operator of an industrial establishment, at which a discharge of a hazardous substance or hazardous waste from an underground storage tank has occurred, shall be deemed in compliance with the provisions of P.L.1986, c.102, as it relates to that discharge for the purposes of this paragraph, if the owner or operator has been issued an order by or has entered into an agreement with the department to remediate that discharge and the owner or operator is in compliance with that order or agreement.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, the applicant to close operations or transfer ownership or operations of the industrial establishment.

18. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or without the approval of a remediation agreement as provided in subsection d. of section 4 of P.L.1983, c.330 if the discharge of hazardous substances or hazardous wastes at the industrial establishment is of minimal environmental concern. Upon the completion of a preliminary assessment, site investigation, and remedial investigation for the industrial establishment, conducted pursuant to subsection b. of section 4 of P.L.1983, c.330, any owner or operator may submit to the department an application for a determination that the discharge at an industrial establishment is of minimal environmental concern, which application shall include:

(1) a certification, supported by the submission of data from the preliminary assessment, site investigation, and remedial investigation, that there are no more than two areas of concern at the industrial establishment that are contaminated at levels above the applicable remediation standards, and that remedial action at those areas of concern can be completed pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(2) a certification that a remedial action workplan shall be prepared pursuant to standards and criteria established by the

department and that in the case of a closure the remediation will meet the residential use soil remediation standards and that in the case of a transfer of ownership or operations the remediation will meet either the nonresidential use or residential use soil remediation standards;

(3) a certification that the remedial action workplan will be prepared and implemented pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(4) evidence that the remediation funding source required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) has been established or if all or part of the remediation funding source is to be established by a grant or loan from the remediation fund pursuant to section 27 and 28 of P.L. , c. (C.)(now before the Legislature as this bill), evidence that an application has been made for that loan or grant and that there is a reasonable expectation that the loan or grant will be awarded;

(5) the payment of all fees or surcharges related to the remediation imposed pursuant to P.L.1983, c.330, P.L. , c. (C.) (now before the Legislature as this bill), and section 33 of P.L. , c. (C.) (now before the Legislature as this bill), and any rules or regulations adopted pursuant thereto; and

(6) documentation establishing that the discharged hazardous substances or hazardous wastes at the industrial establishment do not pose a threat to human health because of the proximity of an area of concern to a drinking water source or because of the location, complexity, or the nature of the discharge.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall approve the application for a determination that the discharge at an industrial establishment is of minimal environmental concern. Prior to making a finding upon the application pursuant to this section, the department may inspect the industrial establishment, as necessary, to verify the information in the application. The decision of the department shall be made within 30 days of the submission of a complete application. In determining the amount of time necessary to complete the remedial action, the department shall not include that time in which it takes the department to issue a permit for a discharge to surface water pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.).

c. The owner or operator shall, upon the completion of the remedial action at the subject areas of concern, certify to the department that the remedial action workplan has been implemented in accordance with the standards and criteria established by the department and in compliance with the certifications made pursuant to this section. The certification shall include a copy of the remedial action workplan and the results of all sampling analysis and any tests performed as part of the remedial action. Within 45 days of receipt of the certification, the department shall issue a no further action letter to the owner or operator. The department may perform an

inspection of the industrial establishment or any area offsite that is under the owner's or operator's control, as relevant, prior to issuing the no further action letter.

The department may refuse to issue the no further action letter pursuant to this section only upon a finding that hazardous substances or hazardous wastes remain at the relevant areas of concern at levels or concentrations in excess of the applicable remediation standards.

d. Upon the failure of an owner or operator to complete the implementation of a remedial action workplan within the six month period as provided in subsection a. of this section, the owner or operator shall so notify the department in writing and the reasons therefor. The owner or operator shall have no more than 120 additional days to complete the implementation of the remedial action. If the implementation of the remedial action is not completed within this additional time, the department may rescind its determination that the industrial establishment is of minimal environmental concern and may require that a new remedial action workplan be submitted and implemented by the owner or operator in a manner and under the terms and conditions provided in its general regulations for remedial action workplan submissions and implementation.

19. (New section) a. The owner of an industrial establishment may transfer a portion of the real property on which an industrial establishment is situated without conducting a remediation of the entire industrial establishment pursuant to the provisions of P.L.1983, c.330, if, upon application by the owner, the department issues a certificate of limited conveyance.

b. An application for a certificate of limited conveyance shall be in the form of a certification by the owner which shall include a description of the real property to be transferred, an appraisal of the real property to be transferred, the sale price or market value of the real property to be transferred, an appraisal of the entire industrial establishment, and an appraisal of the remaining property if the certificate of limited conveyance were issued, as well as any other information the department deems necessary to make the findings required in subsection c. of this section.

c. The department shall issue a certificate of limited conveyance for a portion of the real property on which an industrial establishment is situated after the submission of a complete and accurate application and upon a finding that the sales price or market value of the real property to be conveyed, together with any additional diminution in value to the remaining property as a result of the conveyance is not more than one third of the total appraised value of the industrial establishment prior to the transfer, and that the remaining real property is an industrial establishment subject to the provisions of P.L.1983, c.330. The appraisals shall be made no more than one year prior to the submission of application for a certificate of limited conveyance. Conveyances made pursuant to this section shall not exceed one third of the value of the industrial establishment during the period of ownership of the applicant.

d. Upon issuance of the certificate of limited conveyance, the owner or operator shall, prior to the conveyance, comply with the

provisions of section 4 of P.L.1983, c.330 for that portion of the real property certified for conveyance. The remediation that may be required on the real property subject to the certificate of limited conveyance shall include any hazardous substances or hazardous wastes that are migrating from the remaining portion of the industrial establishment onto the real property being conveyed. The remaining portion of the industrial establishment, upon the subsequent closing, of operations or transferring of ownership or operations shall be subject to the provisions of P.L.1983, c.330 and this act.

e. A certificate of limited conveyance shall be valid for three years from the date of issuance.

20. (New section) a. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, the landlord shall be responsible for providing any information that is requested by the tenant that is not otherwise available through a diligent inquiry by the tenant, and the tenant shall be responsible for providing any information that is requested by the landlord that is not otherwise available through a diligent inquiry by the landlord.

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

c. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, and there has been a failure to comply with the provisions of P.L.1983, c.330, the landlord or the tenant may petition the department, in writing, to first compel that party who is responsible pursuant to the provisions of the lease, to comply with the requirements of P.L.1983, c.330. The petition shall include a copy of the signed lease between the landlord and the tenant. Upon a determination by the department that the provisions of the lease are unclear as it relates to the responsibility of either party to comply with the provisions of P.L.1983, c.330, or upon the failure by the person responsible pursuant to the provisions of the lease to comply, the department may compel compliance by all persons subject to the requirements of P.L.1983, c.330 for the industrial establishment.

21. (New section). a. Any person who, prior to the effective date of this act, violated the provisions of P.L.1983, c.330 by closing operations or transferring ownership or operations of an industrial establishment without receiving departmental approval of a cleanup plan or a negative declaration pursuant to the provisions of P.L.1983, c.330, or without entering into an administrative consent order that allows the closure of operations or transfer of ownership or operations, shall not be subject to a penalty for that violation if the person notifies the department of the closure of operations or of the transfer of ownership or operations of the industrial establishment, and, within one year of the effective date of this section, enters into an administrative consent order or a memorandum of agreement with the department to complete a remediation of the industrial

establishment pursuant to the provisions of P.L.1983, c.330 and any rules or regulations adopted pursuant thereto.

b. Notwithstanding the provisions of subsection a. of this section, any person who enters into a memorandum of agreement or an administrative consent order with the department pursuant to this section and fails to remediate the industrial establishment in accordance with the memorandum of agreement or administrative consent order, shall be subject to penalties for violations that occurred before the effective date of this act as well as any penalties for subsequent violations.

c. Any documents or information provided to the department pursuant to this section may not be used in a criminal investigation or criminal prosecution against the person providing the information or documents for those violations that occurred before the effective date of this act as long as the person remediates the industrial establishment in conformance with the administrative consent order or memorandum of agreement entered into pursuant to subsection a. of this section.

22. (New section) a. Within one year of the effective date of this act, the Department of Environmental Protection shall conduct an audit of the negative declarations and remedial action workplans that have been submitted to the department pursuant to P.L.1983, c.330. On the basis of this audit, and any other information it may have available to it, the department shall adopt regulations identifying, within the Standard Industrial Classification major group numbers listed in the definition of "industrial establishment," all industries designated by Standard Industrial Classification number subgroups, or classes of operations within those subgroups, that should not pose a risk to public health and safety or to the environment. The audit shall, to the extent practicable, distinguish between hazardous substances or hazardous wastes at an industrial establishment caused by a particular type of industry and hazardous substances or hazardous wastes that exists as a result of activities at an industrial establishment unrelated to the activities of that industry.

b. An industrial establishment for which a remedial action workplan was previously implemented and a no further action letter was received pursuant to P.L.1983, c.330, a negative declaration was previously approved by the department pursuant to P.L.1983, c.330, or for which the department has previously approved a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330, and which industrial establishment is designated by a Standard Industrial Classification subgroup or class of operations that does not pose a risk to public health and safety or to the environment as identified in subsection a. of this section, shall not be considered an industrial establishment for the purposes of P.L.1983, c.330.

23. (New section) As used in sections 23 through 43 of P.L. , c. (C.)(now before the Legislature as this bill):

"Area of concern" means any existing or former location where contaminants are or were known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, or disposed, or where contaminants have

or may have migrated;

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

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

"Department" means the Department of Environmental Protection;

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

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

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

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

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether contaminants are or were present at a site or have migrated or are migrating from a site, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or potential discharge of any contaminant is required;

"Remedial action" means those actions taken at a site or offsite if a contaminant has migrated or is migrating therefrom, as may be required by the department, including the removal, treatment, containment, transportation securing, or other engineering or treatment measures, whether of a permanent nature or otherwise, designed to ensure that any discharged

contaminant at the site or that have migrated or are migrating from the site, is remediated in compliance with the applicable remediation standards;

"Remedial investigation" means a process to determine the nature and extent of a discharge of a contaminant at a site or a discharge of a contaminant that has migrated or is migrating from the site and the problems presented by a discharge, and may include data collected, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the valuation of remediated alternatives;

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

"Site investigation" means the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site or has migrated or is migrating from the site at levels in excess of the applicable remediation standards. A site investigation shall be developed based upon the information collected pursuant to the preliminary assessment.

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

"Remediation fund" means the Hazardous Discharge Site Remediation Fund established pursuant to section 26 of P.L. , c. (C.)(now before the Legislature as this bill);

"Remediation funding source" means the methods of financing the remediation of a discharge required to be established by a person performing the remediation pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill);

"Remediation standards" means the combination of numeric and narrative standards to which contaminants must be remediated for soil, groundwater, or surface water as provided by the department pursuant to section 35 of P.L. , c. (C.)(now before the Legislature as this bill).

24. (New section) The department shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing criteria and minimum standards necessary for the submission, evaluation and approval of plans or results of preliminary assessments, site investigations, remedial investigations, and remedial action workplans and for the implementation thereof. The documents for the preliminary assessment, site investigation, remedial investigation, and remedial action workplan required to be submitted for a remediation, shall not be based on the same criteria and standards used for similar or identical documents submitted pursuant to federal law except as may be required by federal law. In establishing criteria and minimum standards for these terms the department shall strive to avoid duplicate or

unnecessarily costly or time consuming conditions or standards.

25. (New section) a. The owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), or a discharger or person in any way responsible for a hazardous substance who has been issued a directive or an order by a State agency, who has entered into an administrative consent order with a State agency, or who has been ordered by a court to clean up and remove a hazardous substance or hazardous waste discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall, establish and maintain a remediation funding source in the amount necessary to pay the estimated cost of the required remediation. A person who voluntarily undertakes a remediation pursuant to a memorandum of agreement with the department, or without the department's oversight, is not required to establish or maintain a remediation funding source. A person required to establish a remediation funding source pursuant to this section shall provide to the department satisfactory documentation that the requirement has been met.

The remediation funding source shall be established in an amount equal to or greater than the cost estimate of the implementation of the remediation (1) as approved by the department, (2) as provided in an administrative consent order or remediation agreement as required pursuant to subsection d. of section 4 of P.L.1983, c.330, (3) as stated in a departmental order or directive, or (4) as agreed to by a court, and shall be in effect for a term not less than the actual time necessary to perform the remediation at the site. Whenever the remediation cost estimate increases, the person required to establish the remediation funding source shall cause the amount of the remediation funding source to be increased to an amount at least equal to the new estimate. Whenever the remediation or cost estimate decreases, the person required to obtain the remediation funding source may file a written request to the department to decrease the amount in the remediation funding source. The remediation funding source may be decreased to the amount of the new estimate upon written approval by the department delivered to the person who established the remediation funding source and to the trustee or the person or institution providing the remediation trust or the line of credit, as applicable. The department shall approve the request upon a finding that the remediation cost estimate decreased.

b. The person responsible for performing the remediation and who established the remediation funding source may use the remediation funding source to pay for the actual cost of the remediation. The department may not require any other financial assurance by the person responsible for performing the remediation other than that required in this section. In the case of a remediation performed pursuant to P.L.1983, c.330, the remediation funding source shall be established no more than 14 days after the approval by the department of a remedial action workplan or upon approval of a remediation agreement pursuant to subsection d. of section 4 of P.L.1983, c.330 (C.13:1K-9). In the case of a remediation performed pursuant to P.L.1976, c.141,

the remediation funding source shall be established as provided in an administrative consent order signed by the parties, as provided by a court, or as directed or ordered by the department. The establishment of a remediation funding source for that part of the remediation funding source to be established by a grant or loan from the Remediation Fund may be established for the purposes of this subsection by the application for a grant or loan from the remediation fund and satisfactory evidence submitted to the department that the grant or loan will be awarded. However, if the loan or grant is denied or the department finds that the person responsible for establishing the remediation funding source did not take reasonable action to obtain the grant or loan, the department shall require that the full amount of the remediation funding source be established within 14 days of the denial or finding. The remediation funding source shall be evidenced by the establishment and maintenance of (1) a remediation trust fund, (2) a line of credit from a person or institution satisfactory to the department authorizing the person responsible for performing the remediation to borrow money, or (3) a self guarantee, or by any combination thereof. Where it can be demonstrated that a person cannot establish and maintain a remediation funding source for the full cost of the remediation by a method specified in this subsection, that person may establish the remediation funding source for all or a portion of the remediation, by securing a loan from the Hazardous Discharge Site Remediation Fund as provided in section 29 of P.L. , c. (C)(now before the Legislature as this bill).

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

The trust fund agreement shall provide that the remediation trust fund may not be revoked or terminated by the person required to establish the remediation funding source or by the trustee without the written consent of the department. The trustee shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those monies as the department authorizes, in writing, to be released. The person entitled to receive money from the remediation trust fund shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation. Upon a determination by the department that the costs are consistent with the

remediation of the site, the department shall, in writing, authorize a disbursement of moneys from the remediation trust fund in the amount of the documented costs.

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

d. A line of credit shall be established pursuant to the provisions of this subsection. A line of credit shall allow the person establishing it to borrow money up to a limit established in a written agreement in order to pay for the cost of the remediation for which the line of credit was established. An originally signed duplicate of the line of credit agreement shall be delivered to the department by certified mail within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection d. of section 4 of P.L.1983, c.330 is approved, or as specified in an administrative consent order, civil order, or order of the department, as applicable. The line of credit agreement shall conform to a model agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department.

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

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

e. A person may self-guarantee a remediation funding source upon the submittal of documentation to the department demonstrating that the cost of the remediation as estimated in the remedial action workplan, the remediation agreement as provided in subsection d. of section 4 of P.L.1983, c.330, in an

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

f. (1) Where the person required to establish the remediation funding source has failed to perform the remediation as required, the department shall make a written determination of this fact. A copy of the determination by the department shall be delivered to the person required to establish the remediation funding source and, in the case of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), to any transferee of the property. Following this written determination, the department may perform the remediation in place of the person required to establish the remediation funding source. In order to finance the cost of the remediation the department may make disbursements from the remediation trust fund or the line of credit as appropriate, or, if sufficient moneys are not available from those funds, from the remediation guarantee fund created pursuant to section 45 of P.L. , c. (C.)(now before the Legislature as this bill).

(2) The transferee of property subject to a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), may, at any time after the department's determination of nonperformance by the owner or operator required to establish the remediation funding source, petition the department, in writing, with a copy being sent to the owner and operator, for authority to perform the remediation at the industrial

establishment. The department, upon a determination that the transferee is competent to do so, may grant that petition which shall authorize the transferee to perform the remediation as specified in an approved remedial action workplan, or to perform the activities as required in a remediation agreement, and to avail itself of the moneys in the remediation trust fund or line of credit for these purposes. The petition of the transferee shall not be granted by the department if the owner or operator continues or begins to perform its obligations within 14 days of the petition being filed with the department.

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

26. (New section) a. There is established in the New Jersey Economic Development Authority a special, revolving fund to be known as the Hazardous Discharge Site Remediation Fund. Moneys in the remediation fund shall be dedicated for the provision of loans or grants to municipal governmental entities, individuals, corporations, partnerships, and other private business entities, for the purpose of financing remediation activities at sites at which there is, or is suspected of being, a discharge of hazardous substances or hazardous wastes.

b. The remediation fund shall be credited with:

(1) moneys as are appropriated by the Legislature;

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

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

(4) remediation funding source surcharges imposed pursuant to section 33 of P.L. , c. (C.)(now before the Legislature as this bill);

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

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

27. (New section) a. (1) Loans from the remediation fund, made to persons other than municipal governmental entities or to persons who voluntarily undertake a remediation, may only be made to persons who cannot establish a remediation funding source for the full amount of a remediation. Loans may be made only for that amount of the cost of a remediation for which the person cannot establish a remediation funding source.

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

b. Loans may be made from the remediation fund to (1) owners or operators of industrial establishments who are required to perform remediation activities pursuant to P.L.1983, c.330

(C.13:1K-6 et seq.), upon closing operations or prior to the transfer of ownership or operations of an industrial establishment, (2) persons who have discharged a hazardous substance or who are in any way responsible for a hazardous substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), and (3) persons who voluntarily undertake the remediation of a discharge of a hazardous substance or hazardous waste and who have not been ordered or directed to perform the remediation by the department or by a court.

c. Loans and grants may be made from the remediation fund to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste.

d. Grants may be made from the remediation fund to persons other than governmental entities, who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant pursuant to section 28 of P.L. , c. (C.)(now before the Legislature as this bill).

28. (New section) a. Except for moneys deposited in the remediation fund for specific purposes, loans and grants of moneys from the remediation fund shall be made for the following purposes and, on an annual basis, obligated in the percentages as provided in this subsection. Upon a written determination by the Economic Development Authority that it is the public interest, loans and grants dedicated for the purposes and in the percentages set forth in paragraphs (1), (2), or (3) of this subsection, may, for any particular year, be obligated to other purposes set forth in this subsection. The written determination shall be sent to the Senate Environment Committee, and the Assembly Energy and Hazardous Waste Committee, or their successors.

(1) At least 15% of the moneys shall be allocated for loans to persons, other than governmental entities, for remediation of real property located in a qualifying municipality as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

(2) At least 10% of the moneys shall be allocated for loans and grants to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been or on which there is suspected of being a discharge of hazardous substances or hazardous wastes. Grants shall be used for performing preliminary assessments and site investigations on property owned by a municipal governmental entity, or on which the municipality holds a tax sale certificate, in order to determine the existence or extent of any hazardous substance or hazardous waste contamination on those properties. A municipal governmental entity that has performed a preliminary assessment and site investigation on property may obtain a loan for the purpose of continuing the remediation on those properties it owns as necessary to comply with the applicable remediation standards adopted by the department;

(3) At least 15% of the moneys shall be allocated for loans to persons or municipal government entities for remediation

activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area;

(4) At least 10% of the moneys shall be allocated for loans to persons, other than municipal government entities, who voluntarily undertake the remediation of a hazardous substance or hazardous waste discharge, and who have not been ordered to undertake the remediation by the department or by a court,

(5) At least 20% of the moneys shall be allocated for loans to persons, other than municipal government entities, who are required to perform remediation activities at an industrial establishment pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), as a condition of the closure, transfer, or termination of operations at that industrial establishment; and

(6) At least 20% of the moneys shall be allocated for grants to persons, other than municipal government entities, who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant. A person qualifies for an innocent party grant if that person acquired the property prior to December 31, 1983, the hazardous substance or hazardous waste that was discharged at the property was not used by the person at that site, and that person certifies that he did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered. A grant authorized pursuant to this paragraph may be for up to 50% of the remediation costs at the area of concern for which the person qualifies for an innocent party grant, except that no grant awarded pursuant to this paragraph to any person may exceed $1,000,000.

(7) Ten percent of the moneys in the remediation fund shall be allocated for loans or grants for any of the purposes enumerated in paragraphs (1) through (6) of this subsection, except that where moneys in the fund are insufficient to fund all the applications in any calendar year that would otherwise qualify for a loan or grant pursuant this paragraph, the authority shall give priority to loan applications that meet the criteria enumerated in paragraph (3) of this subsection.

b. Loans issued from the remediation fund shall be for a term not to exceed ten years, except that upon the transfer of ownership of any real property for which the loan was made, the unpaid balance of the loan shall become immediately payable in full. Loans shall bear an interest rate of 1% below the prime rate as published in Publication No. H15 entitled "Selected Rates," available from the Federal Reserve System in Washington, except that the rate shall be no lower than 3%. Loans and grants, upon request of the applicant and if qualified, shall be issued for up to 100% of the estimated applicable remediation cost, except that no loan to a person other than a governmental entity may be issued to any applicant in any calendar year, for one or more properties, in an amount that exceeds $1,000,000. Loans and

grants, to any one municipal governmental entity may not exceed $2,000,000 in any calendar year. Repayments of principal and interest on the loans issued from the remediation fund shall be paid to the authority and shall be deposited into the remediation fund.

c. No person, other than a municipal governmental entity, or a person engaging in a voluntary remediation, shall be eligible for a loan from the remediation fund to the extent that person is capable of establishing a remediation funding source for the remediation as required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill).

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

e. Prior to March 1 of each year, the authority shall submit to the Senate Environment Committee and the Assembly Energy and Hazardous Waste Committee, or their successors, a report detailing the amount of money that was available for loans and grants from the remediation fund for the previous calendar year, the amount of money estimated to be available for loans and grants for the current calendar year, the amount of loans and grants issued for the previous calendar year and the category for which each loan and grant was made, and any suggestions for legislative action the authority deems advisable to further the legislative intent to facilitate remediation and promote redevelopment and use of existing industrial sites.

29. (New section) a. A qualified applicant for a loan or grant from the remediation fund shall be awarded a loan or grant by the authority upon the availability of sufficient moneys in the remediation fund for the purpose of the loan or grant. Priority for awarding loans and grants from the remediation fund shall be based upon the date of receipt by the authority of a complete application from the applicant. If an application is determined to be incomplete by the authority, an applicant shall have 30 days from receipt of written notice of incompleteness to file any additional information as may be required by the authority for a completed application. If an applicant fails to file the additional information within those 30 days, the filing date for that application shall be the date that the additional information is received by the authority. An application shall be deemed complete when all the information required by the authority has been received in the required form.

b. Within 90 days, for a private entity, or 180 days for a municipal government entity, of notice of approval of a loan or grant application, an applicant shall submit to the authority an executed contract for the remediation activities for which the loan or grant application was made. The contract shall be consistent with the terms and conditions for which the loan or grant was made. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for the alteration of an applicant's priority ranking for the awarding of a loan or grant.

30. (New section) a. The authority, in consultation with the

Department of Environmental Protection, shall, by rule or regulation:

(1) prescribe forms for, and procedures for the filing of, loan and grant applications;

(2) require a person applying for a loan who is not the owner of the subject property to provide a copy of the contract or lease between the operator and owner;

(3) require, if the applicant is an owner who is not the operator of the subject property, the owner to provide a copy of the contract or lease between the owner and the operator;

(4) prohibit the assignment or encumbrance of a loan or loan payment;

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

(6) provide that moneys from the approved loan or grant shall be released by the authority to the applicant in only those amounts that represent work completed;

(7) require the loan or grant recipient to provide access at reasonable times to the subject property to determine compliance with the terms and conditions of the loan or grant;

(8) require that, during the life of the loan, the applicant will comply with all environmental laws, and pay all required taxes or other governmental assessments due on the subject property for which a loan application is made, or on the loan collateral;

(9) reserve the right to suspend or terminate a loan or grant or declare a loan in default if any term or condition of the loan or grant is violated by a loan or grant recipient, and take any necessary action to secure repayment of the loan or grant;

(10) reserve the right to modify, as necessary and by mutual consent, the terms or conditions of a loan or grant, which modification shall, however, not be inconsistent with regulations of the Department of Environment Protection concerning the performance of remediation of contaminated property;

(11) establish a priority system for making loans or grants for remediations involving an imminent and significant threat to a public water source, human health, or to a sensitive or significant ecological area pursuant to paragraph (7) of subsection a. of section 28 of P.L. , c. (C.)(now before the Legislature as this bill);

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

(13) provide that an applicant for a loan or grant pay a reasonable fee for the application which shall be used by the authority for the administration of the loan and grant program;

(14) provide that where a loan to a person other than a municipal governmental entity, is for a portion of the remediation cost, that the loan money not be disbursed to the applicant until the costs of the remediation for which a

remediation funding source has been established has been expended;

(15) adopt such other requirements as shall be deemed necessary or appropriate in carrying out the purposes for which the Hazardous Discharge Site Remediation Fund was created.

b. An applicant for a loan or grant shall be required to:

(1) provide proof, as determined sufficient by the authority, that the applicant, where applicable, cannot establish a remediation funding source for all or part of the remediation costs, as required by section 25 of P.L. , c. (C.)(now before the Legislature as this bill). The provisions of the paragraph do not apply to grants to innocent persons or to loans or grants to municipal governmental entities;

(2) submit documentation on the nature and scope of the remediation to be performed, costs estimates thereon, and, as available, proofs of the actual cost of all work performed;

(3) submit copies of all court orders, administrative consent orders, memoranda of agreement, or directives issued by the Department of Environmental Protection and, if deemed necessary by the authority, any reports, plans, or results of any preliminary assessment, site investigation, remedial investigation, remedial action workplan, remedial action, or other documentation required to be prepared or submitted to the department; and

(4) demonstrate the ability to repay the amount of the loan and interest, and, if necessary, to provide adequate collateral to secure the loan amount.

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

d. In establishing requirements for loan or grant applications and loan or grant agreements, the authority:

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

(2) may not require loan or grant conditions that interfere with the everyday normal operations of a loan or grant recipient's business activities, except to the extent necessary to prevent intentional actions designed to avoid repayment of the loan, or that significantly affect the value of the loan collateral; and

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

31. (New section) No loan or grant from the remediation fund shall be made to a person who is currently in violation of an administrative or judicial order, judgment, or consent agreement regarding violation or threatened violation of an environmental law regarding the subject property, unless the violation, fee, penalty or assessment is currently being contested by the person in a manner prescribed by law or unless the violation resulted from a lack of sufficient money to perform required remediation activities.

32. (New section) a. The lack of sufficient moneys in the

remediation fund to satisfy all loan or grant applications shall not affect in any way an applicant's legal responsibility to comply with the requirements of P.L.1983, c.330 (C.13:1K-6 et seq.), P.L.1976, c.141 (C.58:10-23.11 et seq.), or any other applicable provision of law.

b. Nothing in sections 23 through 43 of P.L. , c. (C.) (now before the Legislature as this bill) shall be construed to:

(1) impose any obligation on the State for any loan or grant commitments made by the authority, and the authority's obligations shall be limited to the amount of otherwise unobligated moneys available in the fund therefor; or

(2) impose any obligation on the authority for the quality of any work performed pursuant to a remediation undertaken with a loan or grant made pursuant section 28 of P.L. , c. (C.) (now before the Legislature as this bill).

33. (New section) a. There is imposed upon every person who is required to establish a remediation funding source pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) a remediation funding source surcharge. The remediation funding source surcharge shall be in an amount equal to 1% of the required amount of the remediation funding source required by the department to be maintained. No surcharge, however, may be imposed upon (1) that amount of the remediation funding source that is met by a self-guarantee as provided in subsection e. of section 25 of P.L. , c. (C.) (now before the Legislature as this bill), (2) that amount of the remediation funding source that is met by a loan or grant from the remediation fund, (3) any person who voluntarily undertakes a remediation without being so ordered or directed by the department or by a court or pursuant to an administrative consent order, or (4) any person who entered voluntarily into a memorandum of understanding with the department to remediate real property, as long as that person continues the remediation in a reasonable manner, or as required by law, even if subsequent to initiation of the memorandum of understanding, the person received an order by the department or entered into an administrative consent order to perform the remediation. The surcharge shall be based on the cost of remediation work remaining to be completed and shall be paid on an annual basis as long as the remediation continues and until the Department of Environmental Protection issues a no further action letter for the property subject to the remediation. The cleanup remediation funding source surcharge shall be due and payable within 14 days of the time of the department's approval of a remedial action workplan or signing an administrative consent order or as otherwise provided by law. The department shall collect the surcharge and shall remit all moneys collected to the Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund.

b. By February 1 of each year, the department shall issue a report to the Senate Environment Committee and to the Assembly Energy and Hazardous Waste Committee, or their successors, listing, for the prior calendar year, each person who owed the remediation funding source surcharge, the amount of

the surcharge paid, and the total amount collected.

34. (New section) a. There is appropriated from the "Hazardous Discharge Fund of 1986," created pursuant to "Hazardous Discharge Bond Act of 1986," P.L.1986, c.113, the sum of $45,000,000 to the New Jersey Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund, created pursuant to section 26 of P.L. , c. (C.)(now before the Legislature as this bill) for the purposes of issuing loans and grants for the investigation of property suspected of being contaminated by a hazardous substance or hazardous waste or for the remediation of property contaminated by a hazardous substance or hazardous waste.

Of the money appropriated pursuant to this subsection, (1)$15,000,000 shall be dedicated to the issuance of loans or grants to municipal governmental entities in accordance with the purposes of the remediation fund; (2) $10,000,000 shall be dedicated to the issuance of loans to persons other than governmental entities in accordance with the purposes of the remediation fund; and (3) $20,000,000 shall be dedicated to the issuance of grants to innocent parties in accordance with the purposes of the remediation fund.

b. There is appropriated from the "Hazardous Discharge Fund of 1986," created pursuant to "Hazardous Discharge Bond Act of 1986," P.L.1986, c.113, the sum of $5,000,000 to the Department of Environmental Protection for deposit into the Remediation Guarantee Fund, created pursuant to section 45 of P.L. , c. (C.)(now before the Legislature as this bill), for the purposes of that fund.

35. (New section) a. The Department of Environmental Protection shall adopt minimum remediation standards for soil, groundwater, and surface water quality necessary for the remediation of contamination of real property. The remediation standards shall be developed to ensure that the potential for harm to public health and safety and to the environment is minimized to acceptable levels, taking into consideration the location, surroundings, the intended use of the property, the potential exposure to the discharge, and the surrounding ambient conditions, whether naturally occurring or man-made.

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

The department shall not propose or adopt remediation standards protective of the environment pursuant to this section, except standards for groundwater or surface water, until recommendations are made by the Environment Advisory Task Force created pursuant to section 37 of P.L. , c. (C.)(now before the Legislature as this bill). Until the Environment Advisory Task Force issues its recommendations and the department adopts remediation standards protective of the environment as required by this section, the department shall continue to determine the need for and the application of

remediation standards protective of the environment on a case-by-case basis in accordance with the guidance and regulations of the federal Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable.

b. In developing minimum remediation standards the department shall:

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

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

(3) avoid the use of redundant conservative assumptions. The department shall avoid the use of redundant conservative assumptions by the use of parameters that provide an adequate margin of safety and which avoid the use of unrealistic conservative exposure parameters and which are consistent with guidelines for exposure assessment developed by the federal Environmental Protection Agency; and

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

c. (1) The department shall develop residential and nonresidential soil remediation standards that are protective of public health and safety. For contaminants that are mobile and may be transported to groundwater, the residential and nonresidential soil remediation standards shall be protective of groundwater. Residential soil remediation standards shall be set at levels or concentrations of contamination for real property based upon the use of that property for residential or similar uses and which will allow the unrestricted use of that property without exceeding a health risk level greater than that provided in subsection d. of this section. Nonresidential soil remediation standards shall be set at levels or concentrations of contaminants that recognize the lower likelihood of exposure to contamination on property that will not be used for residential or similar uses. Whenever real property is remediated to a nonresidential soil remediation standard, except as otherwise provided in paragraph (3) of subsection g. of this section, the department shall require, pursuant to section 36 of P.L. , c. (C.)(now before the Legislature as this bill), that the use of the property be restricted to nonresidential or other uses compatible with the extent of the contamination of the soil and that access to that site be restricted in a manner compatible with the allowable use of that property.

(2) The department may develop differential remediation standards for surface water or groundwater that take into account the current, planned, or potential use of that water.

d. In developing minimum remediation standards intended to be protective of public health and safety, the department shall identify the hazard posed by a contaminant to determine whether exposure to that contaminant can cause an increase in the

incidence of an adverse health effect and whether the adverse health effect may occur in humans. The department shall set minimum soil remediation standards for both residential and nonresidential uses that:

(1) for carcinogens, will result in an additional cancer risk of one in one million;

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

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

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

f. (1) A person performing a remediation of contaminated real property, in lieu of using the established minimum soil remediation standard for either residential use or nonresidential use adopted by the department pursuant to subsection c. of this section, may submit to the department a request to use an alternative residential use or nonresidential use soil remediation standard. The use of an alternative soil remediation standard shall be based upon site specific factors which may include (1) physical site characteristics which may vary from those used by the department in the development of the soil remediation standards adopted pursuant to this section; or (2) a site specific risk assessment. If a person performing a remediation requests to use an alternative soil remediation standard based upon a site specific risk assessment, that person shall demonstrate to the department that the requested deviation from the risk assessment protocol used by the department in the development of soil remediation standards pursuant to this section is consistent with the guidelines for exposure assessment developed by the federal Environmental Protection Agency. A site specific risk assessment may consider exposure scenarios and assumptions that take into account the form of the contaminant present, natural

biodegradation, fate and transport of the contaminant, and available toxicological data that are based upon generally accepted and peer reviewed scientific evidence or methodologies.

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

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

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

(1) Permanent and nonpermanent remedies shall be allowed except that permanent remedies shall be preferred over nonpermanent remedies for remedial actions;

(2) Contamination may, upon the department's approval, be left onsite at levels or concentrations that exceed the minimum soil remediation standards for residential use or nonresidential use if the requirement of institutional or engineering controls at that site will result in the protection of public health, safety and the environment at the risk level established in subsection d. of this section and where the requirements established in subsections a., b., c. and d. of section 36 of P.L. , c. (C.) (now before the Legislature as this bill) are met.

(3) Real property on which there is soil that has not been remediated to the residential soil remediation standards, or real property on which the soil, groundwater, or surface water has been remediated to meet the required health risk level by the use of engineering or institutional controls, may be developed or used for residential purposes, or for any other similar purpose, if (a) all areas of that real property at which a person may come into contact with soil are remediated to meet the residential soil remediation standards and (b) it is demonstrated that for all areas of the real property, other than those described in subparagraph (a) above, engineering and institutional controls can be implemented and maintained on the real property sufficient to

meet the health risk level as established in subsection d. of this section;

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

(5) Remediation shall not be required by the owner or operator of real property for contamination coming onto the site from another property owned and operated by another person;

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

(7) The effectiveness of each remedial action alternative in protecting public health, safety and the environment;

(8) The implementability of each alternative;

(9) The time it would take to implement each alternative;

(10) The cost of each alternative including capital costs, operation, maintenance and monitoring costs, whether a particular remedial action is cost effective, and whether the cost of performing a specific remedial action is excessive compared to the cost of other alternatives; and

(11) The technological efficacy of any particular remedial action.

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

h. (1) The department shall adopt regulations which establish a procedure for a person to demonstrate that a particular parcel of land contains large quantities of historical fill material. Upon a determination by the department that large quantities of historic fill material exist on that parcel of land, there is a rebuttable presumption that the department shall not require any person to remove or treat the fill material in order to comply with a remediation standard. In these areas the department shall establish by regulation the requirement for engineering or institutional controls that are designed to prevent exposure of these contaminants to humans, that allow for the continued use of the property, that are less costly than removal or treatment, which maintain the health risk levels as established in subsection d. of this section, and, as applicable, are protective of the environment. The department may rebut the presumption only upon a finding by the preponderance of the evidence that the use of engineering or institutional controls would not be effective in protecting human health, safety, and the environment. For the purposes of this paragraph "historic fill material" means generally large volumes of non-indigenous material, used to raise the topographic elevation of a site, which were contaminated

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

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

(3) The department may not, as a condition of allowing the use of a nonresidential use soil remediation standard, or the use of institutional or engineering controls, require the owner of that real property, except as provided in section 36 of P.L. , c. (C.)(now before the Legislature as this bill), to restrict the use of that property through the filing of a deed easement, covenant, or condition.

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

j. Upon the approval by the department of a remedial action workplan, or similar approval that describes the extent of contamination at a site and the remedial action to be implemented to address that contamination, the department may not subsequently require a change to that workplan or similar approval in order to compel a different remediation standard due to the fact that the established remediation standards have changed; however, the department may compel a different remediation standard if the difference between the new remediation standard and the remediation standard approved in the workplan or other approval differs by an order of magnitude. The limitation to the department's authority to change a workplan or similar approval pursuant to this subsection shall only apply where the workplan or similar approval is being implemented in a reasonable timeframe.

k. Notwithstanding any other provisions of this section, all remediation standards and remedial actions that involve real property located in the pinelands area shall be consistent with the provisions of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), any rules and regulations promulgated

pursuant thereto, and with section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. §4711.

l. Upon the adoption of a remediation standard for a particular contaminant in soil, groundwater, or surface water pursuant to this section, the department may amend that remediation standard only upon a finding that a new standard is necessary to maintain the health risk levels established in subsection d. of section 35 of P.L. , c. (C.)(now before the Legislature as this bill) or to protect the environment, as applicable. The department may not amend a public health based soil remediation standard to a level that would result in a health risk level more protective than that provided for in subsection d. of section 35 of P.L. , c. (C.) .

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

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

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

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

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

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

b. If the owner of the real property does not consent to the recording of a notice pursuant to paragraph (2) of subsection a. of this section, the department shall not allow the use of a nonresidential soil remediation standard or the use of engineering

or institutional controls in the remediation of that real property.

c. Where engineering or institutional controls on property as provided in subsection a. of this section are no longer required, or where the engineering or institutional controls are changed because of the performance of subsequent remedial activities, a change in conditions at the site, or the adoption of revised remediation standards, the department shall, require that the owner or operator of that property, record with the office of the county recording officer a notice that the use of the property is no longer restricted or delineating the new restrictions. The department shall also require that the owner or operator notify, in writing, the municipality in which the property is located of the removal or change of the restrictive use conditions.

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

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

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

Nothing in the provisions of this subsection shall limit the

rights of a person, other than the State, or any department or agency thereof, to bring a civil action for damages, contribution, or indemnification as provided by statutory or common law.

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

37. (New section) a. There is established, in but not of the Department of Environmental Protection, an Environment Advisory Task Force. The Task Force shall consist of 15 members as follows: (1) the Commissioner of Environmental Protection, or his designee; (2) one representative from the National Academy of Sciences who shall be selected by the Academy; (3) one representative from the New Jersey Environmental and Occupational Health Sciences Institute who has experience in risk assessment, who shall be selected by the Institute; (4) one representative each from the industrial real estate development industry, the environmental consulting profession, a public interest environmental organization, and the legal community, who shall be appointed by the Governor with the advice and consent of the Senate; (5) four members who shall have at least a master's degree in a relevant science discipline and who shall, to the greatest extent possible, include a plant or animal biologist, a toxicologist, an ornithologist, and a physiologist, who shall be appointed by the Governor with the advice and consent of the Senate; (6) two members who shall have at least a master's degree in a science discipline, have relevant experience, and be employed by an industrial business, who shall be appointed by the President of the Senate; and (7) two members who shall have at least a master's degree in a science discipline, have relevant experience, and be employed by an industrial business, who shall be appointed by the Speaker of the General Assembly.

b. The Environment Advisory Task Force shall meet as soon as practicable after the appointment and qualification of all its members. The Commissioner of Environmental Protection, or the commissioner's designee, shall be the chairperson of the Environment Advisory Task Force. The Environment Advisory Task Force shall meet at the call of its chairperson and in the locations the chairperson shall choose.

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

d. The Environment Advisory Task Force shall:

(1) review the scientific literature to identify existing sources of information and data necessary for the development of

remediation standards protective of the environment and to determine the current state-of-the-science in the identification of adverse impacts of contamination on ecological receptors and the establishment of contaminant concentration levels necessary to protect the environment;

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

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

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

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

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

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

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

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

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

38. (New section) Within 12 months of the effective date of this act, the department shall develop a guidance document for the remediation of contaminated soils. The guidance document shall include a description of remedial actions the department determines are effective in remediating soil contamination to the residential or nonresidential use soil remediation standards and that should be considered by a person performing a soil remediation. The department shall revise the guidance document periodically as it determines necessary. Adoption of the guidance document, or the revisions thereto, shall be published in the New Jersey Register but the adoption of the guidance document, or the revisions thereto, shall not otherwise be subject to the notice, comment, publication, or other requirements of the

"Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

39. (New section) a. Any person who, before the effective date of P.L. , c. (C.)(now before the Legislature as this bill), has discharged a hazardous substance in violation of P.L.1976, c.141, and:

(1) has not been issued a directive to remove or arrange for the removal of the discharge pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f),

(2) has not been assessed a civil penalty, a civil administrative penalty, or is not the subject of an action pursuant to the provisions of section 22 of P.L.1976, c.141 (C.58:10-23.11u),

(3) has not entered in to an administrative consent order to clean up and remove the discharge, or

(4) has not been ordered by a court to clean up and remove the discharge, shall not be subject to a monetary penalty for the failure to report the discharge or for any civil violation of P.L.1976, c.141 (C.58:10-23.11 et seq.) or P.L.1977, c.74 (C.58:10A-1 et seq.) that resulted in the discharge if the person notifies the department of the discharge and enters into an administrative consent order or a memorandum of agreement with the department to remediate the discharge in accordance with the provisions of P.L.1976, c.141 (C.58:10-23.11 et seq.), or any rules or regulations adopted pursuant thereto, within one year of the effective date of P.L. , c. (C.)(now before the Legislature as this bill). Any person who notifies the department of the discharge pursuant to this section shall be liable for all cleanup and removal costs as provided in section 8 of P.L.1976, c.141 (C.58:10-23.11g).

b. Notwithstanding the provisions of subsection a. of this subsection, any person who enters into a memorandum of agreement or administrative consent order pursuant to this section and fails to remediate the discharge in accordance with the memorandum of agreement or administrative consent order, shall be subject to all penalties for violations that occurred before the effective date of P.L. , c. (C.)(now before the Legislature as this bill) as well as any penalties for subsequent violations.

c. The provisions of this section shall not apply to violations of a permit issued pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.).

d. Any documents or information provided to the department pursuant to this section may not be used in a criminal investigation or criminal prosecution against the person providing the information or documents for those violations that occurred before the effective date of this act as long as the person remediates the discharge in conformance with the administrative consent order or memorandum of agreement entered into pursuant to subsection a. of this section.

40. (New section) a. Any person who undertakes the remediation of suspected or actual contamination on real or personal property that is not owned by that person, may enter upon the property to conduct the necessary remediation if there is an agreement, in writing, between the person conducting the remediation and the owner of the property authorizing the entry

onto the property. If, after a good faith effort, the person undertaking the remediation and the property owner fail to reach an agreement concerning access to the property, the person may seek a court order authorizing access which shall be issued pursuant to subsection b. of this section.

b. Any person who undertakes the remediation of suspected or actual contamination on real or personal property that is not owned by the person responsible for the remediation, and fails to reach an agreement with the property owner pursuant to subsection a. of this section may institute an action in the Superior Court for injunctive and other relief, to gain access to the property and the court may proceed in the action in a summary manner.

Such relief may include, singly or in combination:

(1) A temporary or permanent injunction;

(2) Assessment of the person undertaking the remediation for costs associated with any disruption in operations on the property;

(3) Assessment of the person undertaking the remediation for any costs to return the property to its condition before the commencement of the remediation;

(4) A requirement that the person undertaking the remediation indemnify the owner of the property for any damages, penalties or liabilities resulting from the remediation;

(5) A requirement that the person undertaking the remediation indemnify the owner of the property for any liability resulting from the entry of persons onto the property to perform the remediation.

c. The department may not impose or seek to impose any civil or civil administrative penalties upon any person for failure to perform a remediation on property not owned by that person within the time schedule required by regulation on property not owned by that person if (1) the failure to perform the remediation was the result of an inability of that person to enter upon real or personal property owned by another person, and (2) the person took all appropriate action pursuant to this section to obtain access to the property.

41. (New section) a. Any person conducting a remediation of a contaminated site may dispute a decision by the department concerning the remediation in accordance with the guidelines developed pursuant to subsection b. of this section. The disputed decision shall be reviewed, and a determination shall be made, by the next level of the department's management, and the review may continue, upon the request of the person seeking review, until the Commissioner or his designee has issued a decision on the dispute. Each successive level of management review and the resulting determination on the dispute, shall occur within seven days of the department's receipt of the request for review.

b. Within 60 days of the effective date of this act, the department shall develop guidelines that establish a procedure through which a person conducting a remediation of a contaminated site may dispute a department decision concerning the remediation.

42. (New section) The Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the

Department of Environmental Protection, shall prepare, and the department shall distribute, for the cost of reproduction and postage, to any interested person, informational materials that set forth criteria that may be used to evaluate the qualifications of environmental consultants, environmental consulting firms, engineers, geologists or any other consultant, whose expertise or training may be required by a person to comply with the provisions of P.L.1986, c.102, P.L.1983, c.330, P.L.1976, c.141, and P.L. , c. (C.)(now before the Legislature as this bill) relating to the remediation of contaminated real property. The materials may describe the expertise or training necessary to address specific types of environmental cleanups, sites or contamination, the significance and availability of various types of liability insurance, the average cost of services and tests commonly performed by consultants, the significance of available accreditations or certifications, the ethics code applicable to any consultant, the references that may be requested and any other relevant factor that may be used to evaluate the qualifications and expertise of persons performing remediation services.

43. (New section) The owner or operator of an industrial establishment, who has submitted a notice to the department pursuant to subsection a. of section 4 of P.L.1983, c.330 (C.13:1K-9), or any person who has discharged a hazardous substance or is liable for the remediation of that discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), has been directed to or has entered into an agreement with the department to remediate a discharge, may implement an interim response action prior to departmental approval of that action. The interim response action may be implemented when the expeditious temporary or partial remediation of a discharged hazardous substance or hazardous waste is necessary to contain or stabilize a discharge prior to implementation of an approved remedial action workplan in order to prevent, minimize, or mitigate damage to public health or safety or to the environment which may otherwise result from a discharge. The interim response action shall be implemented in compliance with the procedures and standards established by the department. The department may require submission of a notice of intent to implement an interim response action, what those actions will be, and may require, subsequent to completion of the interim response action, a report detailing the actions taken and a certification that the interim response action was implemented in accordance with all applicable laws and regulations. The department shall review these submissions to verify whether the interim response action was implemented in accordance with applicable laws and regulations. The department shall not require that additional remediation be undertaken at an area of concern subject to the interim response action except in instances when further remediation is necessary to bring that area of concern into compliance with the applicable remediation standards.

The department may, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing a fee schedule, as necessary, reflecting the actual costs associated with the review of the

interim response action and any implementation thereof.

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

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

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

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

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

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

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

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

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

(2) In addition to the persons liable pursuant to paragraph (1)

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

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

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

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

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

d. (1) [An] In addition to those defenses provided in this

subsection, an act or omission caused solely by war, sabotage, or God, or a combination thereof, shall be the only defenses which may be raised by any owner or operator of a major facility or vessel responsible for a discharge in any action arising under the provisions of this act.

(2) A person, including an owner or operator of a major facility, who owns real property acquired after the effective date of P.L. , c. (C.)(now before the Legislature as this bill), on which there has been a discharge, shall be considered a person in any way responsible for the discharged hazardous substance pursuant to subsection c. of this section, unless that person can establish by a preponderance of the evidence that all of the following apply:

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

(b) (i) at the time the person acquired the real property, the person did not know and had no reason to know that any hazardous substance had been discharged at the real property, or (ii) the person acquired the real property by devise or succession, except that any other funds or property received by that person from the deceased real property owner who discharged a hazardous substance or was in any way responsible for a hazardous substance, shall be made available to satisfy the requirements of P.L.1976, c.141;

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

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

To establish that a person had no reason to know that any hazardous substance had been discharged for the purposes of this paragraph (2), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property. In order to determine if all appropriate inquiry was undertake, any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the fair market value of the property if not impacted by discharges of hazardous substances, commonly known or reasonably ascertainable information about the property, the obviousness of the discharge at the property, and the ability to detect the discharge of hazardous substances by appropriate inspection shall be taken into account.

Nothing in this paragraph (2) shall be construed to alter liability of any person who acquired real property prior to the effective date of P.L. , c. (C.)(now before the Legislature as this bill).

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

(4) Any federal, State, or local government entity which acquires ownership of real property through bankruptcy, tax delinquency, abandonment, escheat, eminent domain, condemnation or any circumstance in which the government involuntarily acquires title by virtue of its function as sovereign, shall not be liable for the cleanup and removal costs of any discharge which occurred or began prior to that ownership. This paragraph shall not apply to any federal, State or local government entity which has caused or contributed to the discharge of a hazardous substance.

(cf: P.L.1991, c.85, s.4)

45. (New section) a. There is created in the Department of Environmental Protection a special, revolving fund to be known as the Remediation Guarantee Fund. The fund shall be credited with all monies appropriated to it by law, all monies collected in subrogation actions to recover monies expended from the fund, and all moneys earned from the investment of the monies in the fund.

b. The Commissioner of Environmental Protection shall appoint and supervise an administrator of the fund. The administrator shall be the chief executive of the fund, shall approve all disbursements of monies from the fund and, and shall ensure the proper deposit of all monies authorized to be deposited into the fund.

c. Monies in the fund shall be used by the Department of Environmental Protection to remediate, or contract for the remediation of, any real property for which a person was required to establish a remediation funding source pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) and where that person fails to conduct or properly conduct that remediation.

d. Any monies expended by the department from the fund pursuant to this subsection shall constitute a debt of the person required to establish the remediation funding source and against the discharger. The debt shall constitute a lien on all property owned by the person required to establish the remediation funding source and against the discharger to the same extent and in the same manner as provided for liens in subsection f. of section 7 of P.L.1976, c.141 (C.58:10-23.11f).

e. Whenever the department expends monies from the fund for a remediation, it shall have a cause of action to recover from the person required to establish the remediation funding source or from any other person liable for the discharge pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g) triple the amount of monies expended for the remediation.

f. Monies in the fund may be appropriated to pay for the costs to administer the fund except that those appropriations may not exceed the amount of monies deposited into the fund earned from the investment of monies in the fund.

46. This act shall take effect immediately except that section 44 shall remain inoperative until the 90th day following enactment.

Makes various changes to various hazardous discharge site remediation programs; imposes a surcharge on remediations; establishes a loan and grant fund for remediation activities; appropriates bond moneys.

03/15/93et
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Document ID 801
EA 0133/008
SR 0013
TR 0013

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1070

ADOPTED
MAR 15 1993

STATE OF NEW JERSEY

By Senator McNamara and Rice

AN ACT concerning the remediation of contaminated property, amending and supplementing P.L.1983, c.330, amending P.L.1976, c.141, supplementing Title 58 of the Revised Statutes, and making an appropriation from the "Hazardous Discharge Bond Act of 1986."

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

1. Section 1 of P.L. 1983, c. 330 (C. 13:1K-6) is amended to read as follows:

1. This act shall be known and may be cited as the ["Environmental Cleanup Responsibility Act."] "Industrial Site Recovery Act."

(cf: P.L.1983, c.330, s.1)

2. Section 2 of P.L. 1983, c. 330 (C. 13:1K-7) is amended to read as follows:

2. [The Legislature finds and declares that the generation, handling, storage and disposal of hazardous substances and wastes pose an inherent danger of exposing the citizens, property and natural resources of this State to substantial risk of harm or degradation; that the closing of operations and the transfer of real property utilized for the generation, handling, storage and disposal of hazardous substances and wastes should be conducted in a rational and orderly way, so as to mitigate potential risks; and that it is necessary to impose a precondition on any closure or transfer of these operations by requiring the adequate preparation and implementation of acceptable cleanup procedures therefor.]

The Legislature finds that discharges of toxic chemicals dating back to early industrialization has left a legacy of contaminated industrial property in this State; that in 1983, due to the growing public awareness and concern of the risks to the public health and the environment and the potential costs to the State to clean up abandoned contaminated sites, the "Environmental Cleanup and Responsibility Act," was enacted. The Legislature also finds that the act's imposition of a cleanup plan approval before the transfer or upon the closing of an industrial establishment and the requirement to establish a funding source for the cleanup is in the general public interest by ensuring the discovery of contamination, by assuring that funding for cleanup is set aside at the time it is available from a

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

Matter underlined thus is new matter.

transfer or closing, and by assuring that contaminated property is not abandoned to the State for cleanup. The Legislature further finds that at the time of the act's passage, the extent of the State's industrial contamination, and the cost and complexity of remediations, were not well understood; that in the intervening years, there has been a significant advance in the body of knowledge concerning how to remediate contaminated sites effectively and how to manage the remediation efficiently; that the regulated and financial community is now more familiar with the liabilities involving contaminated property and with the necessity to discover and remediate that contamination; and that it is in the interest of the environment and the State's economic health to promote certainty in the regulatory process by incorporating that knowledge to create a more efficient regulatory structure and to allow greater privatization of that process where it is possible to do so without incurring unnecessary risks to the public health or the environment.

The Legislature therefore declares that it is the policy of this State to protect the public health, safety, and the environment, to promote efficient and timely cleanups, and to eliminate any unnecessary financial burden of remediating contaminated sites; that these policies can be achieved by streamlining the regulatory process, by establishing summary administrative procedures for industrial establishments that have previously undergone an environmental review, and by reducing oversight of those industrial establishments where less extensive regulatory review will assure the same degree of protection to human health and the environment; and that the new procedures established pursuant to this act shall be designed to remove redundancy from the regulatory process and to minimize governmental involvement in certain business transactions.

(cf: P.L. 1983, c.330, s.2)

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

3. As used in this act:

[a. "Cleanup plan"] "Remedial action workplan" means a plan for the [cleanup of] remedial action to be undertaken at an industrial [establishments, approved by the department, which may include a description of the locations, types and quantities of hazardous substances and wastes that will remain on the premises; a description of the types and locations of storage vessels, surface impoundments, or secured landfills containing hazardous substances and wastes; recommendations regarding the most practicable method of cleanup; and] establishment, or at any area to which a discharge originating at the industrial establishment is migrating or has migrated; a description of the remedial action to be used to remediate the industrial establishment; a time schedule and cost estimate of the

[cleanup plan.] implementation of the remedial action; and any other information the department deems necessary;

[The department, upon a finding that the evaluation of a site for cleanup purposes necessitates additional information, may require graphic and narrative descriptions of geographic and hydrogeologic characteristics of the industrial establishment and evaluation of all residual soil, groundwater, and surface water contamination;

b. "Closing, terminating or transferring operations" means the cessation of all operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes, or any temporary cessation for a period of not less than two years, or any other transaction or proceeding through which an industrial establishment becomes nonoperational for health or safety reasons or undergoes change in ownership, except for corporate reorganization not substantially affecting the ownership of the industrial establishment, including but not limited to sale of stock in the form of a statutory merger or consolidation, sale of the controlling share of the assets, the conveyance of the real property, dissolution of corporate identity, financial reorganization and initiation of bankruptcy proceedings]

"Closing operations" means:

(1) the cessation of operations resulting in at least a 90 percent reduction in the total value of the product output from the entire industrial establishment within any five year period, or, for industrial establishments for which the product output is undefined, a 90 percent reduction in the number of employees or a 90 percent reduction in area of operations of an industrial establishment within any five year period;

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

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

(4) the initiation of bankruptcy proceedings pursuant to Chapter 7 of the federal Bankruptcy Code, 11 U.S.C. §70100 et seq. or the filing of a plan of reorganization that provides for a liquidation pursuant to Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. §1101 et seq.; or

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

"Transferring ownership or operations" means:

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

(2) the sale or transfer of more than 50% of the assets of an industrial establishment within any five year period;

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

(4) the termination of a lease unless renewed without a disruption in operations of the industrial establishment, or the assignment of a lease; or

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

"Change in ownership" means:

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

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

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

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

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

"Change in ownership" shall not include:

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

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

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

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

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

(6) the execution of a mortgage, the filing of a lien, the granting of a security interest, or the assignment of a lease to secure a loan, or the refinancing of a debt, not including a sale and lease back agreement, by the owner or operator of an industrial establishment;

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

(8) a transfer of an industrial establishment by devise or intestate succession;

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

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

[c.] "Department" means the Department of Environmental Protection;

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

[e.] "Hazardous waste" [means any amount of any waste substances required to be reported to the Department of Environmental Protection on the special waste manifest pursuant to N.J.A.C.7:26-7.4, or as otherwise provided by law] shall have the same meaning as provided in section 1 of P.L. 1976, c. 99 (C. 13:1E-38);

[f.] "Industrial establishment" means any place of business engaged in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or hazardous wastes on-site, above or below ground, having a Standard Industrial Classification number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard Industrial Classifications Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States. Those facilities or parts of facilities subject to operational closure and post-closure maintenance requirements pursuant to the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.) or the "Solid Waste Disposal Act"

(42 U.S.C.§6901 et seq.), or any establishment engaged in the production or distribution of agricultural commodities, shall not be considered industrial establishments for the purposes of this act. The department may, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), exempt certain sub-groups or classes of operations within those sub-groups within the Standard Industrial Classification major group numbers listed in this subsection upon a finding that the operation of the industrial establishment does not pose a risk to public health and safety;

[g.] "Negative declaration" means a written declaration, submitted by the owner or operator of an industrial establishment [and approved by the department] to the department, certifying that there has been no discharge of hazardous substances or hazardous wastes on the site, or that any such discharge on the site or discharge that has migrated or is migrating from the site has been [cleaned up] remediated in accordance with procedures approved by the department [, and there remain no hazardous substances or wastes at the site of the industrial establishment] and in accordance with any applicable remediation regulations;

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

"No further action letter" means a written determination by the department that, based upon an evaluation of the historical use of the industrial establishment and the property, or of an area of concern or areas of concern, as applicable, and any other investigation or action the department deems necessary, there are no discharged hazardous substances or hazardous wastes present at the site of the industrial establishment, at the area of concern or areas of concern, or at any other site to which a discharge originating at the industrial establishment has migrated, and that any discharged hazardous substances or hazardous wastes present at the industrial establishment or that have migrated from the site have been remediated in accordance with applicable remediation regulations;

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

"Direct owner or operator" means any person that directly owns or operates an industrial establishment;

"Area of concern" means any existing or former location where hazardous substances or hazardous wastes are or were known or suspected to have been discharged, generated, manufactured, refined, transported, stored,

handled, treated, or disposed, or where hazardous substances or hazardous wastes have or may have migrated;

"Remediation standards" means the combination of numeric and narrative standards to which hazardous substances or hazardous wastes must be investigated or remediated as established by the department pursuant to section 35 of P.L. , c. (C.)(now before the Legislature as this bill);

"Owner" means any person who owns the real property of an industrial establishment or who owns the industrial establishment;

"Operator" means any person, including users, tenants, occupants, or trespassers, having and exercising direct actual control of the operations of an industrial establishment;

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether hazardous substances or hazardous wastes are or were present at an industrial establishment or have migrated or are migrating from the industrial establishment, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or potential discharge of any hazardous substance or hazardous waste is required;

"Remediation" or "remediate" means all necessary actions to investigate and clean up any known or suspected discharge of hazardous substances or hazardous wastes, including the preliminary assessment, site investigation, remedial investigation, and remedial action;

"Remedial action" means those actions taken at an industrial establishment or offsite of an industrial establishment if hazardous substances or hazardous wastes have migrated or are migrating therefrom, as may be required by the department, including the removal, treatment, containment, transportation, securing, or other engineering or treatment measures, whether of a permanent nature or otherwise, designed to ensure that any discharged hazardous substances or hazardous wastes at the site or that have migrated or are migrating from the site, are remediated in compliance with the applicable remediation standards;

"Remedial investigation" means a process to determine the nature and extent of a discharge of hazardous substances or hazardous wastes at an industrial establishment or a discharge of hazardous substances or hazardous wastes that have migrated or are migrating from the site and the problems presented by a discharge, and may include data collected, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the evaluation of remediated alternatives;

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

(cf: P.L.1983, c.330, s.3)

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

4. [a. The owner or operator of an industrial establishment planning to close operations shall:

(1) Notify the department in writing, no more than five days subsequent to public release, of its decision to close operations;

(2) Upon closing operations, or 60 days subsequent to public release of its decision to close or transfer operations, whichever is later, the owner or operator shall submit a negative declaration or a copy of a cleanup plan to the department for approval and a surety bond or other financial security for approval by the department guaranteeing performance of the cleanup in an amount equal to the cost estimate for the cleanup plan.

b. The owner or operator of an industrial establishment planning to sell or transfer operations shall:

(1) Notify the department in writing within five days of the execution of an agreement of sale or any option to purchase;

(2) Submit within 60 days prior to transfer of title a negative declaration to the department for approval, or within 60 days prior to transfer of title, attach a copy of any cleanup plan to the contract or agreement of sale or any option to purchase which may be entered into with respect to the transfer of operations. In the event that any sale or transfer agreements or options have been executed prior to the submission of the plan to the department, the cleanup plan shall be transmitted, by certified mail, prior to the transfer of operations, to all parties to any transaction concerning the transfer of operations, including purchasers, bankruptcy trustees, mortgagees, sureties, and financers;

(3) Obtain, upon approval of the cleanup plan by the department, a surety bond or other financial security approved by the department guaranteeing performance of the cleanup plan in an amount equal to the cost estimate for the cleanup plan.

c. The cleanup plan and detoxification of the site shall be implemented by the owner or operator, provided that the purchaser, transferee, mortgagee or other party to the transfer may assume that responsibility pursuant to the provisions of this act.]

a. The owner or operator of an industrial establishment planning to close operations or transfer ownership or operations shall notify the department in

writing, no more than five days subsequent to closing operations or of its public release of its decision to close operations, whichever occurs first, or within five days after the execution of an agreement to transfer ownership or operations, as applicable. The notice to the department shall: identify the subject industrial establishment; describe the transaction requiring compliance with P.L. 1983, c. 330; state the date of the closing of operations or the date of the public release of the decision to close operations and a copy of the appropriate public announcement, if applicable; state the date of execution of the agreement to transfer ownership or operations and the names, addresses and telephone numbers of the parties to the transfer, if applicable; state the proposed date for closing operations or transferring ownership or operations; list the name, address, and telephone number of an authorized agent for the owner or operator; and certify that the information submitted is accurate. The notice shall be transmitted to the department in the manner and form required by the department. The department may, by regulation, require the submission of any additional information in order to improve the efficient implementation of P.L. 1983, c. 330.

b. (1) Subsequent to the submittal of the notice required pursuant to subsection a. of this section, the owner or operator of an industrial establishment shall, except as otherwise provided by P.L.1983, c.330 or P.L. , c. (C.) (now before the Legislature as this bill), remediate the industrial establishment. The remediation shall be conducted in accordance with criteria, procedures, and time schedules established by the department.

(2) The owner or operator shall attach a copy of any approved negative declaration, approved remedial action workplan, or remediation agreement approval to the contract or agreement of sale or agreement to transfer or any option to purchase which may be entered into with respect to the transfer of ownership or operations. In the event that any sale or transfer agreements or options have been executed prior to the approval of a negative declaration, remedial action workplan, or remediation agreement, these documents, as relevant, shall be transmitted by the owner or operator, by certified mail, prior to the transfer of ownership or operations, to all parties to any transaction concerning the transfer of ownership or operations, including purchasers, bankruptcy trustees, mortgagees, sureties, and financiers.

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

c. The owner or operator of an industrial establishment shall, subsequent to closing operations, or of its public

release of its decision to close operations, or prior to transferring ownership or operations except as otherwise provided in subsection e. of this section, as applicable, submit to the department for approval a proposed negative declaration or proposed remedial action workplan. Except as otherwise provided in sections 13, 14, 16, 17 and 18 of P.L. , c. (C.) (now before the Legislature as this bill), the owner or operator of an industrial establishment shall not transfer ownership or operations until a negative declaration or a remedial action workplan has been approved by the department or the conditions of subsection e. of this section for remediation agreements have been met and until, in cases where a remedial action workplan is required to be approved or a remediation agreement has been approved, a remediation funding source, as required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill), has been established.

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

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

e. The owner or operator of an industrial establishment who has submitted a notice to the department pursuant to subsection a. of this section, may transfer ownership or operations of the industrial establishment prior to the approval of a negative declaration or remedial action workplan upon application to and approval by the department of a remediation agreement. The owner or operator requesting a remediation agreement shall submit the following documents: (1) an estimation of the cost of the remediation that is approved by the department; (2) a certification of the statutory liability of the owner or operator pursuant to P.L. 1983, c. 330 to perform and to complete a remediation of the industrial establishment in the manner and time limits provided by the department in regulation and consistent with all applicable laws and regulations; however, nothing in this paragraph shall be

construed to be an admission of liability, or to impose liability on the owner or operator, pursuant to P.L. 1976, c. 141 or pursuant to any other statute or common law; (3) evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with the provisions of section 25 of P.L. , c. (C.)(now before the Legislature as this bill); (4) a certification that the owner or operator is subject to the provisions of P.L. 1983, c. 330, including the liability for penalties for violating the act, defenses to liability and limitations thereon, the requirement to perform a remediation as required by the department, allowing the department access to the industrial establishment as provided in section 5 of P.L.1983, c. 330 (C.13:1K-10), and the requirement to prepare and submit any document required by the department relevant to the remediation of the industrial establishment; and (5) evidence of the payment of all applicable fees required by the department.

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

The department shall adopt regulations establishing the manner in which the documents required pursuant to paragraphs (1) through (5), inclusive, of this subsection shall be submitted. The department shall approve the application for the remediation agreement upon the complete and accurate submission of the documents required to be submitted pursuant to this subsection. The regulations shall include a sample form of the certifications. Approval of a remediation agreement shall not affect an owner's or operator' right to avail itself of the provisions of section 6 of P.L.1983, c.330 (C.13:1K-11), of sections 12, 13, 14, 15, 16, 17, or 18 of P.L. , c. (C.)(now before the Legislature as this bill), or of the other provisions of this section.

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

g. (1)The soil remediation standard to be implemented on an industrial establishment shall be selected in conformance with the policies and criteria enumerated in

section 35 of P.L. , c. (C.) (now before the Legislature as this bill).

(2) The owner or operator proposing to implement the nonresidential use soil remediation standards shall review and consider for implementation, at a minimum, each relevant remedial action that is set forth in the guidance document published pursuant to section 38 of P.L. , c. (C.) (now before the Legislature as this bill).

(3) The department may not disapprove the use of the minimum nonresidential soil remediation standards adopted by the department except upon a finding that the use of a nonresidential soil remediation standards at that site would not be protective of public health, safety, or the environment or except as provided in subsection j. of this section.

h. An owner or operator of an industrial establishment may implement a soil remedial action at an industrial establishment without prior department approval of the remedial action workplan for the remediation of soil when the remedial action can reasonably be expected to be completed pursuant to standards, criteria, and time schedules established by the department within five years of the commencement of the implementation of the remedial action and if:

(1) the owner or operator is transferring ownership or operations of the industrial establishment and the soil remediation meets the established minimum residential or nonresidential use soil remediation standards adopted by the department; or

(2) the owner or operator is closing operations of the industrial establishment and the soil remediation meets the established minimum residential use soil remediation standards adopted by the department.

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

i. An owner or operator of an industrial establishment proposing to implement soil remediation of an industrial establishment shall submit a proposed remedial action workplan for the remediation of soil to the department for its prior review and approval if:

(1) the remedial action cannot reasonably be expected to be completed pursuant to standards, criteria, and time schedules established by the department within five years of the commencement of the implementation of the remedial action;

(2) the owner or operator of the industrial establishment is closing operations and the remediation will meet the established minimum nonresidential use soil remediation standards; or

(3) the soil remediation does not meet either the established minimum residential or nonresidential use soil remediation standards adopted by the department.

j. The department shall review and approve or disapprove the proposed remedial action workplan required to be submitted pursuant to subsection i. of this section to determine if the proposed remedial action workplan is in compliance with the rules and regulations regarding remediation and, if applicable, that the use of the nonresidential use soil remediation standards are appropriate for the industrial establishment. The department shall base its decision to approve or disapprove the use of nonresidential use soil remediation standards for the industrial establishment upon the criteria listed below, as applicable.

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

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

(3) The transferee of the industrial establishment agrees to the implementation of the nonresidential use soil remediation standard;

(4) The potential for the hazardous substances or hazardous wastes to affect other property; and

(5) The difference in cost between the use of the residential use soil remediation standards and the nonresidential use soil remediation standards.

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

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

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

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

The department may review and approve or disapprove every remedial action workplan, no matter when submitted, to determine, in accordance with the criteria listed in subsection g. of section 35 of P.L. , c. (C.) (now before the Legislature as this bill) if the remedial action that has occurred or that will occur is appropriate to meet the established remediation standards.

The department may order additional remediation activities at the industrial establishment, or offsite where necessary, or may require the submission of additional information, where (a) the department determines that the remediation activities undertaken were not in compliance with applicable rules or regulations of the department; (b) all documents required to be submitted to the department were not submitted or, if submitted, were inaccurate, or deficient; or (c) if discharged hazardous substances or hazardous wastes remain at the industrial establishment, or have migrated or are migrating offsite, at levels or concentrations in violation of the applicable remediation standards. Upon a finding by the department that the remediation conducted at the industrial establishment was in compliance with all applicable regulations, that no hazardous substances or hazardous wastes remain at the industrial establishment in violation of the applicable remediation standards, and that all hazardous substances or hazardous wastes that migrated from the industrial establishment have been remediated in conformance with the applicable remediation standards, the department shall approve the remediation for that industrial establishment by the issuance of a no further action letter.

(cf: P.L.1983, c.330, s.4)

5. Section 2 of P.L.1991, c.238 (C.13:1K-9.2) is amended to read as follows:

2. The acquiring of title to an industrial establishment by a municipality pursuant to a foreclosure action pertaining to a certificate of tax sale purchased and held by the municipality shall not relieve the previous owner or operator of the industrial establishment of his duty to [implement a cleanup plan if the implementation is deemed necessary by the Department of Environmental Protection] remediate the industrial establishment as required pursuant to P.L.1983, c.330.

(cf: P.L.1991, c.238, s.2)

6. Section 3 of P.L.1991, c.238 (C.13:1K-9.3) is amended to read as follows:

3. If a municipality undertakes [to clean up hazardous substances and wastes on the site of] a remediation of an industrial establishment, the title to which the municipality acquired pursuant to a foreclosure action

pertaining to a certificate of tax sale, all expenditures incurred in the [cleanup] remediation shall be a debt of the immediate past [owners] owner or operator of the industrial establishment. The debt shall constitute a lien on all property owned by the immediate past owner or operator when a notice of lien, incorporating a description of the property subject to the [cleanup and removal] remediation and an identification of the amount of [cleanup, removal] remediation and related costs expended by the municipality is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment or order docket the name and address of the immediate past owner or operator and the amount of the lien as set forth in the notice of lien. Upon entry by the clerk, the lien shall attach to the revenues and all real and personal property of the immediate past owner or operator, whether or not he is insolvent. The notice of lien filed pursuant to this section which affects any property of an immediate past owner or operator shall have priority from the day of the filing of the notice of the lien, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this section.
(cf: P.L.1991, c.238, s.3)

7. Section 5 of P.L.1991, c.238 (C.13:1K-9.5) is amended to read as follows:

5. If a municipality undertakes a [cleanup of hazardous substances and wastes on the site] remediation of an industrial establishment, the municipality shall [make any submissions required by P.L.1983, c.330 (C.13:1K-6 et seq.) and] undertake that remediation and shall obtain [approval of] all approvals required by the Department of Environmental Protection [prior to the initiation of the sampling plan and the cleanup plan].
(cf: P.L.1991, c.238, s.5)

8. (New section) Upon the submission of the complete and accurate results of a phase of the remediation pursuant to section 4 of P.L.1993, c.330 (C.13:1K-7) or of any other document required to be submitted that requires the department's review and approval in order to comply with P.L.1983, c.330, the department shall review and approve, approve with conditions, or disapprove the submission or other documents in accordance with the review schedules established pursuant to section 2 of P.L.1991, c.423 (C.13:1D-106).

9. (New section) The owner or operator of an industrial establishment may, upon submission of a written notice to the department, transfer ownership or operations or close operations without complying with the provisions of section 4 of P.L.1983, c.330 (C.13:1K-9) if the total quantity of hazardous substances and hazardous wastes generated, manufactured, refined, transported, treated, stored, handled, or disposed of at the industrial establishment at any one time during the owner or operator's period of ownership or operations does not

exceed 500 pounds or 55 gallons, or, if a hazardous substance or hazardous waste is mixed with nonhazardous substances, the total quantity of the mixture does not exceed 500 pounds or 55 gallons.

10. Section 5 of P.L.1983, c.330 (C.13:1K-10) is amended to read as follows:

5. a. The department shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing: [minimum standards for soil, groundwater and surface water quality necessary for the detoxification of the site of an industrial establishment. including buildings and equipment, to ensure that the potential for harm to public health and safety is minimized to the maximum extent practicable, taking into consideration the location of the site and surrounding ambient conditions;] (1) criteria and minimum standards necessary for the submission, evaluation and approval of [cleanup plans;] plans or results of preliminary assessments, site investigations, remedial investigations, and remedial action workplans and for the implementation thereof. The documents for the preliminary assessment, site investigation, remedial investigation, and remedial action workplan required to be submitted for a remediation, shall not be based on the same criteria and standards used for similar or identical documents submitted pursuant to federal law except as may be required by federal law. In establishing criteria and minimum standards for these terms the department shall strive to avoid duplicate or unnecessarily costly or time consuming conditions or standards; (2) a fee schedule, as necessary, reflecting the actual costs associated with the review of plans for or results of negative declarations, preliminary assessments, site investigations, remedial investigations, and [cleanup plans] remedial action workplans, and review of the implementation thereof and for any other review or approval required by the department; (3) standards and procedures for remediation agreements authorized pursuant to subsection d. of section 4 of P.L. 1983, c.330 (C.13:1K-9); and (4) any other provisions or procedures necessary to implement this act. [Until the minimum standards described herein are adopted, the department shall review, approve or disapprove negative declarations and cleanup plans on a case by case basis.]

b. [The department shall, within 45 days of submission, approve the negative declaration, or inform the industrial establishment that a cleanup plan shall be submitted.

c. The department shall, in accordance with the schedule contained in an approved cleanup plan, inspect the premises to determine conformance with the minimum standards for soil, groundwater and surface water quality and shall certify that the cleanup plan remedial action workplan has been executed and that the site has been detoxified.] The owner or operator shall allow the

department reasonable access to the industrial establishment and to offsite areas under the owner's or operator's control to inspect the premises, review records, and to take soil, groundwater, or other samples or measurements as deemed necessary by the department to verify the results of any submission made to the department and to verify the owner's or operator's compliance with the requirements of this act.
(cf: P.L.1983, c.330, s.5)

11. Section 6 of P.L.1983, c.330 (C.13:1K-11) is amended to read as follows:

6. a. [The provisions of any law, rule or regulation to the contrary notwithstanding, the transferring of an industrial establishment is contingent on the implementation of the provisions of this act.

b. If the premises of] The owner or operator of an industrial establishment planning to transfer ownership or operations may apply to the department for a deferral of the preparation, approval, and implementation of a remedial action workplan for the industrial establishment. The applicant shall submit to the department:

(1) a certification signed by the purchaser, transferee, mortgagee or other party to the transfer, approved by the department, that the industrial establishment would be subject to substantially the same use by the purchaser, transferee, mortgagee or other party to the transfer[, and upon written certification thereto and approval by the department thereof, the implementation of a cleanup plan and the detoxification of the site] ;

(2) a certification, approved by the department, that the owner or operator has satisfactorily completed a preliminary assessment, site investigation, and remedial investigation, of the industrial establishment;

(3) a cost estimate for the remedial action necessary at the industrial establishment, approved by the department; and

(4) a certification, approved by the department, that the purchaser, transferee, mortgagee or other party to the transfer, has the financial ability to pay for the implementation of the necessary remedial action.

The preparation, approval, and implementation of a remedial action workplan for the industrial establishment may be deferred until the use changes or until the purchaser, transferee, mortgagee or other party to the transfer closes[, terminates or transfers] operations or transfers ownership or operations.

[(1) Within 60 days of receiving notice of the sale or realty transfer and the certification that the industrial establishment would be subject to substantially the same use, the department shall approve, conditionally approve, or deny the certification.

(2) Upon approval of the certification, the implementation of a cleanup plan and detoxification of the site shall be deferred.

(3) Upon denial of the certification, the cleanup plan and detoxification of the site shall be implemented pursuant to the provisions of this act.

c.] b. Upon satisfactory submission of a complete and accurate application, the department shall approve the deferral. Upon approval of the deferral, the preparation, approval, and implementation of remedial action workplan at the industrial establishment shall be deferred. The deferral shall be denied by the department if a complete and accurate application is not submitted to the department or if the department fails to approve any of the components of the application. Upon denial of the deferral, the remediation of the industrial establishment shall be continued pursuant to the provisions of this act.

c. The authority to defer [implementation of the cleanup plan] the preparation, approval, and implementation of a remedial action workplan set forth in subsection [b.] a. of this section shall not be construed to limit, restrict, or prohibit the department from directing site [cleanup] remediation under any other statute, rule, or regulation, but shall be solely applicable to the obligations of the owner or operator of an industrial establishment, pursuant to the provisions of this act, nor shall any other provisions of this act be construed to limit, restrict, or prohibit the department from directing site [cleanup] remediation under any other statute, rule, or regulation.

(cf: P.L.1983, c.330, s.6)

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

8. a. Failure of the transferor to [comply with any of] perform a remediation and obtain department approval thereof as required pursuant to the provisions of this act is grounds for voiding the sale or transfer of an industrial establishment or any real property utilized in connection therewith by the transferee, entitles the transferee to recover damages from the transferor, and renders the owner or operator of the industrial establishment strictly liable, without regard to fault, for all [cleanup and removal] remediation costs and for all direct and indirect damages resulting from the failure to implement the [cleanup plan] remedial action workplan. A transferee may not act to void the sale or transfer of an industrial establishment or any real property except upon providing notice to the transferor of the failure to perform and affording the transferor a reasonable amount of time to comply with the provisions of this act.

b. [Failure to submit a negative declaration, or cleanup plan pursuant to the provisions of section 4 of this act is grounds for voiding the sale by the department.

c.] Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of this act is liable for a penalty of not

more than $25,000.00 for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense. Penalties shall be collected in a civil action by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). Any officer or management official of an industrial establishment who knowingly directs or authorizes the violation of any provisions of this act shall be personally liable for the penalties established in this subsection.

(cf: P.L.1983, c.330, s.8)

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

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

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment, consistent with current regulations established by the department, in order to identify areas of concern that are new or have continued in use since the issuance of a no further action letter, negative declaration approval, or remediation approval as described in paragraph (2) of this subsection, and that based on those remediation activities the owner or operator certifies that there has been no discharge of a hazardous substance or hazardous waste at the industrial establishment subsequent to the approval of the negative declaration, the issuance of the no further action letter, or the equivalent remediation; or, if any discharge has occurred, a certification listing any discharge, describing the action taken to remediate the discharge, a certification that the remediation was performed in accordance with procedures established by the department, a certification that the remediation was approved by the department and a copy of the document evidencing the departmental approval;

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

(5) a copy of the negative declaration, or no further action letter, or other approval as applicable, last approved by the department for the entire industrial establishment; and

(6) a proposed negative declaration.

b. Upon the submission of a complete and accurate application and after an inspection, if necessary, the department shall approve or disapprove the negative declaration. The department shall approve the negative declaration upon a finding that the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the proposed negative declaration by the department pursuant to this section, the owner or operator shall comply with the provisions of section 4 of P.L.1983, c.330.

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

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

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

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

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

(5) a copy of the negative declaration, no further action letter, or other approval, as applicable, last

approved by the department for the industrial establishment; and

(6) a proposed negative declaration, if applicable.

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

(1) approve the negative declaration upon a finding that any discharge of a hazardous substance or hazardous waste, as certified to pursuant to paragraph (3) of subsection a. of this section, has been remediated consistent with the applicable remediation standards as established by the department; or

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

c. The owner or operator of an industrial establishment subject to the provisions of this section shall not close operations or transfer ownership or operations until a remedial action workplan, or a negative declaration, as applicable, has been approved by the department or upon approval of a remediation agreement as provided in subsection d. of section 4 of P.L. 1983, c.330.

15. (New section) a. The owner or operator of an industrial establishment who is required to perform a remediation at an industrial establishment pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9), may apply to the department for an area of concern waiver. Approval of the area of concern waiver shall relieve the owner or operator of the requirement to perform a remediation pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) for any area of concern at that industrial establishment for which a remediation has previously been conducted and approved by the department. An application pursuant to this subsection shall include:

(1) a certification that the department has previously approved a remediation at an area of concern and has issued a no further action letter or an equivalent approval of a remediation for that area of concern,

(2) a copy of the no further action letter or equivalent approval for that area of concern, last approved by the department, and

(3) a certification that the owner or operator has performed remediation activities at that area of concern, consistent with current regulations established by the department, and that based on those remediation activities the owner or operator certifies that subsequent to the issuance of the no further action letter or equivalent approval described in paragraph (1) of this subsection, there has been no discharge of a

hazardous substance or hazardous waste at that area of concern.

b. Upon submission of a complete and accurate application and after an inspection, if necessary, the department shall approve the application for an area of concern waiver upon a finding that the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the application by the department pursuant to this section, the owner or operator shall perform a remediation of the subject area of concern as may be required pursuant to subsection b. of section 4 of P.L.1983, c.330.

16. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement as provided in subsection d. of section 4 of P.L. 1983, c.330 (C.13:1K-9), if the industrial establishment is already in the process of a remediation pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) or a remediation equivalent to that performed pursuant to the provisions of P.L. 1983, c. 330. The application shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330,

(2) a certification that there has been no discharge of any hazardous substance or hazardous waste at the industrial establishment during the applicant's period of operation or ownership or that the remediation of any discharge of a hazardous substance or hazardous waste that occured during the applicant's period of ownership or operation was approved by the department,

(3) a certification by the owner or operator that a remediation funding source for the cost of the remediation or the implementation of the remedial action workplan at the industrial establishment has been established as required pursuant to section 25 of P.L. , c. (C.) (now before the Legislature as this bill), and

(4) a certification, as applicable, that any transferee of the industrial establishment has been notified that the industrial establishment is the subject of a remediation.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, that the applicant may close operations or transfer ownership or operations of the industrial establishment.

17. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a

remediation agreement as provided in subsection d. of section 4 of P.L. 1983, c.330 if the only areas of concern or the only discharges at the industrial establishment are from an underground storage tank regulated pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.). The application shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330,

(2) the submission of a preliminary assessment that shows that the only area of concern at an industrial establishment is an underground storage tank or tanks as defined pursuant to section 2 of P.L.1986, c.102 (C.58:10A-22), or the submission of a site investigation that shows that the only discharged hazardous substances or hazardous wastes at the industrial establishment, or that has migrated offsite, above the applicable remediation standards are from a leak or discharge from that underground storage tank or tanks, and

(3) a certification that the owner or operator of the industrial establishment is in compliance with the provisions of P.L.1986, c.102 for all underground storage tanks covered by that act, at the industrial establishment. The owner or operator of an industrial establishment, at which a discharge of a hazardous substance or hazardous waste from an underground storage tank has occurred, shall be deemed in compliance with the provisions of P.L. 1986, c.102, as it relates to that discharge for the purposes of this paragraph, if the owner or operator has been issued an order by or has entered into an agreement with the department to remediate that discharge and the owner or operator is in compliance with that order or agreement.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, the applicant to close operations or transfer ownership or operations of the industrial establishment.

18. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or without the approval of a remediation agreement as provided in subsection d. of section 4 of P.L. 1983, c.330 if the discharge of hazardous substances or hazardous wastes at the industrial establishment is of minimal environmental concern. Upon the completion of a preliminary assessment, site investigation, and remedial investigation for the industrial establishment, conducted pursuant to subsection b. of section 4 of P.L.1983, c.330, any owner or operator may submit to the department an application for a determination that the discharge at an industrial establishment is of minimal environmental concern, which application shall include:

(1) a certification, supported by the submission of data from the preliminary assessment, site investigation,

and remedial investigation, that there are no more than two areas of concern at the industrial establishment that are contaminated at levels above the applicable remediation standards, and that remedial action at those areas of concern can be completed pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(2) a certification that a remedial action workplan shall be prepared pursuant to standards and criteria established by the department and that in the case of a closure the remediation will meet the residential use soil remediation standards and that in the case of a transfer of ownership or operations the remediation will meet either the nonresidential use or residential use soil remediation standards;

(3) a certification that the remedial action workplan will be prepared and implemented pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(4) evidence that the remediation funding source required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) has been established or if all or part of the remediation funding source is to be established by a grant or loan from the remediation fund pursuant to section 27 and 28 of P.L. , c. (C.)(now before the Legislature as this bill), evidence that an application has been made for that loan or grant and that there is a reasonable expectation that the loan or grant will be awarded;

(5) the payment of all fees or surcharges related to the remediation imposed pursuant to P.L.1983, c.330, P.L. , c. (C.) (now before the Legislature as this bill), and section 33 of P.L. , c. (C.) (now before the Legislature as this bill), and any rules or regulations adopted pursuant thereto; and

(6) documentation establishing that the discharged hazardous substances or hazardous wastes at the industrial establishment do not pose a threat to human health because of the proximity of an area of concern to a drinking water source or because of the location, complexity, or the nature of the discharge.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall approve the application for a determination that the discharge at an industrial establishment is of minimal environmental concern. Prior to making a finding upon the application pursuant to this section, the department may inspect the industrial establishment, as necessary, to verify the information in the application. The decision of the department shall be made within 30 days of the submission of a complete application. In determining the amount of time necessary to complete the remedial action, the department shall not include that time in which it takes the department to

issue a permit for a discharge to surface water pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.).

c. The owner or operator shall, upon the completion of the remedial action at the subject areas of concern, certify to the department that the remedial action workplan has been implemented in accordance with the standards and criteria established by the department and in compliance with the certifications made pursuant to this section. The certification shall include a copy of the remedial action workplan and the results of all sampling analysis and any tests performed as part of the remedial action. Within 45 days of receipt of the certification, the department shall issue a no further action letter to the owner or operator. The department may perform an inspection of the industrial establishment or any area offsite that is under the owner's or operator's control, as relevant, prior to issuing the no further action letter.

The department may refuse to issue the no further action letter pursuant to this section only upon a finding that hazardous substances or hazardous wastes remain at the relevant areas of concern at levels or concentrations in excess of the applicable remediation standards.

d. Upon the failure of an owner or operator to complete the implementation of a remedial action workplan within the six month period as provided in subsection a. of this section, the owner or operator shall so notify the department in writing and the reasons therefor. The owner or operator shall have no more than 120 additional days to complete the implementation of the remedial action. If the implementation of the remedial action is not completed within this additional time, the department may rescind its determination that the industrial establishment is of minimal environmental concern and may require that a new remedial action workplan be submitted and implemented by the owner or operator in a manner and under the terms and conditions provided in its general regulations for remedial action workplan submissions and implementation.

19. (New section) a. The owner of an industrial establishment may transfer a portion of the real property on which an industrial establishment is situated without conducting a remediation of the entire industrial establishment pursuant to the provisions of P.L.1983, c.330, if, upon application by the owner, the department issues a certificate of limited conveyance.

b. An application for a certificate of limited conveyance shall be in the form of a certification by the owner which shall include a description of the real property to be transferred, an appraisal of the real property to be transferred, the sale price or market value of the real property to be transferred, an appraisal of the entire industrial establishment, and an appraisal of the remaining property if the certificate of limited conveyance were issued, as well as any other

information the department deems necessary to make the findings required in subsection c. of this section.

c. The department shall issue a certificate of limited conveyance for a portion of the real property on which an industrial establishment is situated after the submission of a complete and accurate application and upon a finding that the sales price or market value of the real property to be conveyed, together with any additional diminution in value to the remaining property as a result of the conveyance is not more than one third of the total appraised value of the industrial establishment prior to the transfer, and that the remaining real property is an industrial establishment subject to the provisions of P.L.1983, c.330. The appraisals shall be made no more than one year prior to the submission of application for a certificate of limited conveyance. Conveyances made pursuant to this section shall not exceed one third of the value of the industrial establishment during the period of ownership of the applicant.

d. Upon issuance of the certificate of limited conveyance, the owner or operator shall, prior to the conveyance, comply with the provisions of section 4 of P.L.1983, c.330 for that portion of the real property certified for conveyance. The remediation that may be required on the real property subject to the certificate of limited conveyance shall include any hazardous substances or hazardous wastes that are migrating from the remaining portion of the industrial establishment onto the real property being conveyed. The remaining portion of the industrial establishment, upon the subsequent closing, of operations or transferring of ownership or operations shall be subject to the provisions of P.L.1983, c.330 and this act.

e. A certificate of limited conveyance shall be valid for three years from the date of issuance.

20. (New section) a. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, the landlord shall be responsible for providing any information that is requested by the tenant that is not otherwise available through a diligent inquiry by the tenant, and the tenant shall be responsible for providing any information that is requested by the landlord that is not otherwise available through a diligent inquiry by the landlord.

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

c. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, and there has been a failure to comply with the provisions of P.L.1983, c.330, the landlord or the tenant may petition the department, in writing, to first compel that party who is responsible pursuant to the

provisions of the lease, to comply with the requirements of P.L.1983, c.330. The petition shall include a copy of the signed lease between the landlord and the tenant. Upon a determination by the department that the provisions of the lease are unclear as it relates to the responsibility of either party to comply with the provisions of P.L.1983, c.330, or upon the failure by the person responsible pursuant to the provisions of the lease to comply, the department may compel compliance by all persons subject to the requirements of P.L.1983, c.330 for the industrial establishment.

21. (New section). a. Any person who, prior to the effective date of this act, violated the provisions of P.L.1983, c.330 by closing operations or transferring ownership or operations of an industrial establishment without receiving departmental approval of a cleanup plan or a negative declaration pursuant to the provisions of P.L.1983, c.330, or without entering into an administrative consent order that allows the closure of operations or transfer of ownership or operations, shall not be subject to a penalty for that violation if the person notifies the department of the closure of operations or of the transfer of ownership or operations of the industrial establishment, and, within one year of the effective date of this section, enters into an administrative consent order or a memorandum of agreement with the department to complete a remediation of the industrial establishment pursuant to the provisions of P.L.1983, c.330 and any rules or regulations adopted pursuant thereto.

b. Notwithstanding the provisions of subsection a. of this section, any person who enters into a memorandum of agreement or an administrative consent order with the department pursuant to this section and fails to remediate the industrial establishment in accordance with the memorandum of agreement or administrative consent order, shall be subject to penalties for violations that occurred before the effective date of this act as well as any penalties for subsequent violations.

c. Any documents or information provided to the department pursuant to this section may not be used in a criminal investigation or criminal prosecution against the person providing the information or documents for those violations that occurred before the effective date of this act as long as the person remediates the industrial establishment in conformance with the administrative consent order or memorandum of agreement entered into pursuant to subsection a. of this section.

22. (New section) a. Within one year of the effective date of this act, the Department of Environmental Protection shall conduct an audit of the negative declarations and remedial action workplans that have been submitted to the department pursuant to P.L.1983, c.330. On the basis of this audit, and any other information it may have available to it, the department shall adopt regulations identifying, within the Standard Industrial

Classification major group numbers listed in the definition of "industrial establishment," all industries designated by Standard Industrial Classification number subgroups, or classes of operations within those subgroups, that should not pose a risk to public health and safety or to the environment. The audit shall, to the extent practicable, distinguish between hazardous substances or hazardous wastes at an industrial establishment caused by a particular type of industry and hazardous substances or hazardous wastes that exists as a result of activities at an industrial establishment unrelated to the activities of that industry.

b. An industrial establishment for which a remedial action workplan was previously implemented and a no further action letter was received pursuant to P.L.1983, c.330, a negative declaration was previously approved by the department pursuant to P.L.1983, c.330, or for which the department has previously approved a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330, and which industrial establishment is designated by a Standard Industrial Classification subgroup or class of operations that does not pose a risk to public health and safety or to the environment as identified in subsection a. of this section, shall not be considered an industrial establishment for the purposes of P.L.1983, c.330.

23. (New section) As used in sections 23 through 43 of P.L. , c. (C.)(now before the Legislature as this bill):

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

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

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

"Department" means the Department of Environmental Protection;

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

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

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

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

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether contaminants are or were present at a site or have migrated or are migrating from a site, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or potential discharge of any contaminant is required;

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

"Remedial investigation" means a process to determine the nature and extent of a discharge of a contaminant at a site or a discharge of a contaminant that has migrated or is migrating from the site and the problems presented by a discharge, and may include data collected, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the valuation of remediated alternatives;

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

"Site investigation" means the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site or has migrated or is migrating from the site at levels in excess of the applicable remediation standards. A site investigation shall be developed based upon the information collected pursuant to the preliminary assessment.

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

"Remediation fund" means the Hazardous Discharge Site Remediation Fund established pursuant to section 26 of P.L. , c. (C.)(now before the Legislature as this bill);

"Remediation funding source" means the methods of financing the remediation of a discharge required to be established by a person performing the remediation pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill);

"Remediation standards" means the combination of numeric and narrative standards to which contaminants must be remediated for soil, groundwater, or surface water as provided by the department pursuant to section 35 of P.L. , c. (C.)(now before the Legislature as this bill).

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

25. (New section) a. The owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), or a discharger or person in any way responsible for a hazardous substance who has been issued a directive or an order by a State agency, who has entered into an administrative consent order with a State agency, or who has been ordered by a court to clean up and remove a hazardous substance or hazardous

waste discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall, establish and maintain a remediation funding source in the amount necessary to pay the estimated cost of the required remediation. A person who voluntarily undertakes a remediation pursuant to a memorandum of agreement with the department, or without the department's oversight, is not required to establish or maintain a remediation funding source. A person required to establish a remediation funding source pursuant to this section shall provide to the department satisfactory documentation that the requirement has been met.

The remediation funding source shall be established in an amount equal to or greater than the cost estimate of the implementation of the remediation (1) as approved by the department, (2) as provided in an administrative consent order or remediation agreement as required pursuant to subsection d. of section 4 of P.L. 1983, c.330, (3) as stated in a departmental order or directive, or (4) as agreed to by a court, and shall be in effect for a term not less than the actual time necessary to perform the remediation at the site. Whenever the remediation cost estimate increases, the person required to establish the remediation funding source shall cause the amount of the remediation funding source to be increased to an amount at least equal to the new estimate. Whenever the remediation or cost estimate decreases, the person required to obtain the remediation funding source may file a written request to the department to decrease the amount in the remediation funding source. The remediation funding source may be decreased to the amount of the new estimate upon written approval by the department delivered to the person who established the remediation funding source and to the trustee or the person or institution providing the remediation trust or the line of credit, as applicable. The department shall approve the request upon a finding that the remediation cost estimate decreased.

b. The person responsible for performing the remediation and who established the remediation funding source may use the ediation funding source to pay for the actual cost of the ren. liation. The department may not require any other financial assurance by the person responsible for performing the remediation other than that required in this section. In the case of a remediation performed pursuant to P.L.1983, c.330, the remediation funding source shall be established no more than 14 days after the approval by the department of a remedial action workplan or upon approval of a remediation agreement pursuant to subsection d. of section 4 of P.L.1983, c.330 (C.13:1K-9). In the case of a remediation performed pursuant to P.L.1976, c.141, the remediation funding source shall be established as provided in an administrative consent order signed by the parties, as provided by a court, or as directed or ordered by the department. The establishment of a

remediation funding source for that part of the remediation funding source to be established by a grant or loan from the Remediation Fund may be established for the purposes of this subsection by the application for a grant or loan from the remediation fund and satisfactory evidence submitted to the department that the grant or loan will be awarded. However, if the loan or grant is denied or the department finds that the person responsible for establishing the remediation funding source did not take reasonable action to obtain the grant or loan, the department shall require that the full amount of the remediation funding source be established within 14 days of the denial or finding. The remediation funding source shall be evidenced by the establishment and maintenance of (1) a remediation trust fund, (2) a line of credit from a person or institution satisfactory to the department authorizing the person responsible for performing the remediation to borrow money, or (3) a self guarantee, or by any combination thereof. Where it can be demonstrated that a person cannot establish and maintain a remediation funding source for the full cost of the remediation by a method specified in this subsection, that person may establish the remediation funding source for all or a portion of the remediation, by securing a loan from the Hazardous Discharge Site Remediation Fund as provided in section 29 of P.L. , c. (C)(now before the Legislature as this bill).

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

The trust fund agreement shall provide that the remediation trust fund may not be revoked or terminated by the person required to establish the remediation funding source or by the trustee without the written consent of the department. The trustee shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those monies as the department authorizes, in writing, to be released. The person entitled to receive money from the remediation trust fund shall submit documentation to the department detailing the costs incurred or to be incurred as part of

the remediation. Upon a determination by the department that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement of moneys from the remediation trust fund in the amount of the documented costs.

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

d. A line of credit shall be established pursuant to the provisions of this subsection. A line of credit shall allow the person establishing it to borrow money up to a limit established in a written agreement in order to pay for the cost of the remediation for which the line of credit was established. An originally signed duplicate of the line of credit agreement shall be delivered to the department by certified mail within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection d. of section 4 of P.L. 1983, c.330 is approved, or as specified in an administrative consent order, civil order, or order of the department, as applicable. The line of credit agreement shall conform to a model agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department.

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

The department shall return the original line of credit agreement to the person or institution providing the line of credit for termination after the person required to establish the remediation funding source substitutes an alternative remediation funding source as specified in this section, or after the department notifies the person that that person is no longer required to maintain a

remediation funding source for remediation of the contaminated site.

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

f. (1) Where the person required to establish the remediation funding source has failed to perform the remediation as required, the department shall make a written determination of this fact. A copy of the determination by the department shall be delivered to the person required to establish the remediation funding source and, in the case of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), to any transferee of the property. Following this written determination, the department may perform the remediation in place of the person required to establish the remediation funding source. In order to finance the cost of the remediation the department may make disbursements

from the remediation trust fund or the line of credit as appropriate, or, if sufficient moneys are not available from those funds, from the remediation guarantee fund created pursuant to section 45 of P.L. , c. (C.)(now before the Legislature as this bill).

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

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

26. (New section) a. There is established in the New Jersey Economic Development Authority a special, revolving fund to be known as the Hazardous Discharge Site Remediation Fund. Moneys in the remediation fund shall be dedicated for the provision of loans or grants to municipal governmental entities, individuals, corporations, partnerships, and other private business entities, for the purpose of financing remediation activities at sites at which there is, or is suspected of being, a discharge of hazardous substances or hazardous wastes.

b. The remediation fund shall be credited with:

(1) moneys as are appropriated by the Legislature;

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

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

(4) remediation funding source surcharges imposed pursuant to section 33 of P.L. , c. (C.)(now before the Legislature as this bill);

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

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

27. (New section) a. (1) Loans from the remediation fund, made to persons other than municipal governmental entities or to persons who voluntarily undertake a remediation, may only be made to persons who cannot establish a remediation funding source for the full amount of a remediation. Loans may be made only for that amount of the cost of a remediation for which the person cannot establish a remediation funding source.

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

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

c. Loans and grants may be made from the remediation fund to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste.

d. Grants may be made from the remediation fund to persons other than governmental entities, who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant pursuant to section 28 of P.L. , c. (C.)(now before the Legislature as this bill).

28. (New section) a. Except for moneys deposited in the remediation fund for specific purposes, loans and grants of moneys from the remediation fund shall be made for the following purposes and, on an annual basis, obligated in the percentages as provided in this subsection. Upon a written determination by the Economic Development Authority that it is the public interest, loans and grants dedicated for the purposes and in the percentages set forth in paragraphs (1), (2), or (3) of this subsection, may, for any particular year, be obligated to other purposes set forth in this subsection. The written determination shall be sent to the Senate Environment Committee, and the Assembly Energy and Hazardous Waste Committee, or their successors.

(1) At least 15% of the moneys shall be allocated for loans to persons, other than governmental entities, for remediation of real property located in a qualifying municipality as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

(2) At least 10% of the moneys shall be allocated for loans and grants to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been or on which there is suspected of being a discharge of hazardous substances or hazardous wastes. Grants shall be used for performing preliminary assessments and site investigations on property owned by a municipal governmental entity, or on which the municipality holds a tax sale certificate, in order to determine the existence or extent of any hazardous substance or hazardous waste contamination on those properties. A municipal governmental entity that has performed a preliminary assessment and site investigation on property may obtain a loan for the purpose of continuing the remediation on those properties it owns as necessary to comply with the applicable remediation standards adopted by the department;

(3) At least 15% of the moneys shall be allocated for loans to persons or municipal government entities for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area;

(4) At least 10% of the moneys shall be allocated for loans to persons, other than municipal government entities, who voluntarily undertake the remediation of a hazardous substance or hazardous waste discharge, and who have not been ordered to undertake the remediation by the department or by a court,

(5) At least 20% of the moneys shall be allocated for loans to persons, other than municipal government entities, who are required to perform remediation activities at an industrial establishment pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), as a condition of the closure, transfer, or termination of operations at that industrial establishment; and

(6) At least 20% of the moneys shall be allocated for grants to persons, other than municipal government entities, who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant. A person qualifies for an innocent party grant if that person acquired the property prior to December 31, 1983, the hazardous substance or hazardous waste that was discharged at the property was not used by the person at that site, and that person certifies that he did not discharge any hazardous substance or hazardous waste at

an area where a discharge is discovered. A grant authorized pursuant to this paragraph may be for up to 50% of the remediation costs at the area of concern for which the person qualifies for an innocent party grant, except that no grant awarded pursuant to this paragraph to any person may exceed $1,000,000.

(7) Ten percent of the moneys in the remediation fund shall be allocated for loans or grants for any of the purposes enumerated in paragraphs (1) through (6) of this subsection, except that where moneys in the fund are insufficient to fund all the applications in any calendar year that would otherwise qualify for a loan or grant pursuant this paragraph, the authority shall give priority to loan applications that meet the criteria enumerated in paragraph (3) of this subsection.

b. Loans issued from the remediation fund shall be for a term not to exceed ten years, except that upon the transfer of ownership of any real property for which the loan was made, the unpaid balance of the loan shall become immediately payable in full. Loans shall bear an interest rate of 1% below the prime rate as published in Publication No. H15 entitled "Selected Rates," available from the Federal Reserve System in Washington, except that the rate shall be no lower than 3%. Loans and grants, upon request of the applicant and if qualified, shall be issued for up to 100% of the estimated applicable remediation cost, except that no loan to a person other than a governmental entity may be issued to any applicant in any calendar year, for one or more properties, in an amount that exceeds $1,000,000. Loans and grants, to any one municipal governmental entity may not exceed $2,000,000 in any calendar year. Repayments of principal and interest on the loans issued from the remediation fund shall be paid to the authority and shall be deposited into the remediation fund.

c. No person, other than a municipal governmental entity, or a person engaging in a voluntary remediation, shall be eligible for a loan from the remediation fund to the extent that person is capable of establishing a remediation funding source for the remediation as required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill).

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

e. Prior to March 1 of each year, the authority shall submit to the Senate Environment Committee and the Assembly Energy and Hazardous Waste Committee, or their successors, a report detailing the amount of money that was available for loans and grants from the remediation fund for the previous calendar year, the amount of money estimated to be available for loans and grants for the current calendar year, the amount of loans and grants issued for the previous calendar year and the category

for which each loan and grant was made, and any suggestions for legislative action the authority deems advisable to further the legislative intent to facilitate remediation and promote redevelopment and use of existing industrial sites.

29. (New section) a. A qualified applicant for a loan or grant from the remediation fund shall be awarded a loan or grant by the authority upon the availability of sufficient moneys in the remediation fund for the purpose of the loan or grant. Priority for awarding loans and grants from the remediation fund shall be based upon the date of receipt by the authority of a complete application from the applicant. If an application is determined to be incomplete by the authority, an applicant shall have 30 days from receipt of written notice of incompleteness to file any additional information as may be required by the authority for a completed application. If an applicant fails to file the additional information within those 30 days, the filing date for that application shall be the date that the additional information is received by the authority. An application shall be deemed complete when all the information required by the authority has been received in the required form.

b. Within 90 days, for a private entity, or 180 days for a municipal government entity, of notice of approval of a loan or grant application, an applicant shall submit to the authority an executed contract for the remediation activities for which the loan or grant application was made. The contract shall be consistent with the terms and conditions for which the loan or grant was made. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for the alteration of an applicant's priority ranking for the awarding of a loan or grant.

30. (New section) a. The authority, in consultation with the Department of Environmental Protection, shall, by rule or regulation:

(1) prescribe forms for, and procedures for the filing of, loan and grant applications;

(2) require a person applying for a loan who is not the owner of the subject property to provide a copy of the contract or lease between the operator and owner;

(3) require, if the applicant is an owner who is not the operator of the subject property, the owner to provide a copy of the contract or lease between the owner and the operator;

(4) prohibit the assignment or encumbrance of a loan or loan payment;

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

(6) provide that moneys from the approved loan or grant shall be released by the authority to the applicant in only those amounts that represent work completed;

(7) require the loan or grant recipient to provide access at reasonable times to the subject property to determine compliance with the terms and conditions of the loan or grant;

(8) require that, during the life of the loan, the applicant will comply with all environmental laws, and pay all required taxes or other governmental assessments due on the subject property for which a loan application is made, or on the loan collateral;

(9) reserve the right to suspend or terminate a loan or grant or declare a loan in default if any term or condition of the loan or grant is violated by a loan or grant recipient, and take any necessary action to secure repayment of the loan or grant;

(10) reserve the right to modify, as necessary and by mutual consent, the terms or conditions of a loan or grant, which modification shall, however, not be inconsistent with regulations of the Department of Environment Protection concerning the performance of remediation of contaminated property;

(11) establish a priority system for making loans or grants for remediations involving an imminent and significant threat to a public water source, human health, or to a sensitive or significant ecological area pursuant to paragraph (7) of subsection a. of section 28 of P.L. , c. (C.)(now before the Legislature as this bill);

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

(13) provide that an applicant for a loan or grant pay a reasonable fee for the application which shall be used by the authority for the administration of the loan and grant program;

(14) provide that where a loan to a person other than a municipal governmental entity, is for a portion of the remediation cost, that the loan money not be disbursed to the applicant until the costs of the remediation for which a remediation funding source has been established has been expended;

(15) adopt such other requirements as shall be deemed necessary or appropriate in carrying out the purposes for which the Hazardous Discharge Site Remediation Fund was created.

b. An applicant for a loan or grant shall be required to:

(1) provide proof, as determined sufficient by the authority, that the applicant, where applicable, cannot establish a remediation funding source for all or part of the remediation costs, as required by section 25 of

P.L. , c. (C.)(now before the Legislature as this bill). The provisions of the paragraph do not apply to grants to innocent persons or to loans or grants to municipal governmental entities;

(2) submit documentation on the nature and scope of the remediation to be performed, costs estimates thereon, and, as available, proofs of the actual cost of all work performed;

(3) submit copies of all court orders, administrative consent orders, memoranda of agreement, or directives issued by the Department of Environmental Protection and, if deemed necessary by the authority, any reports, plans, or results of any preliminary assessment, site investigation, remedial investigation, remedial action workplan, remedial action, or other documentation required to be prepared or submitted to the department; and

(4) demonstrate the ability to repay the amount of the loan and interest, and, if necessary, to provide adequate collateral to secure the loan amount.

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

d. In establishing requirements for loan or grant applications and loan or grant agreements, the authority:

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

(2) may not require loan or grant conditions that interfere with the everyday normal operations of a loan or grant recipient's business activities, except to the extent necessary to prevent intentional actions designed to avoid repayment of the loan, or that significantly affect the value of the loan collateral; and

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

31. (New section) No loan or grant from the remediation fund shall be made to a person who is currently in violation of an administrative or judicial order, judgment, or consent agreement regarding violation or threatened violation of an environmental law regarding the subject property, unless the violation, fee, penalty or assessment is currently being contested by the person in a manner prescribed by law or unless the violation resulted from a lack of sufficient money to perform required remediation activities.

32. (New section) a. The lack of sufficient moneys in the remediation fund to satisfy all loan or grant applications shall not affect in any way an applicant's legal responsibility to comply with the requirements of P.L.1983, c.330 (C.13:1K-6 et seq.),

(C.58:10-23.11 et seq.), or any other applicable provision of law.

b. Nothing in sections 23 through 43 of P.L. , c. (C.) (now before the Legislature as this bill) shall be construed to:

(1) impose any obligation on the State for any loan or grant commitments made by the authority, and the authority's obligations shall be limited to the amount of otherwise unobligated moneys available in the fund therefor; or

(2) impose any obligation on the authority for the quality of any work performed pursuant to a remediation undertaken with a loan or grant made pursuant section 28 of P.L. , c. (C.) (now before the Legislature as this bill).

33. (New section) a. There is imposed upon every person who is required to establish a remediation funding source pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) a remediation funding source surcharge. The remediation funding source surcharge shall be in an amount equal to 1% of the required amount of the remediation funding source required by the department to be maintained. No surcharge, however, may be imposed upon (1) that amount of the remediation funding source that is met by a self-guarantee as provided in subsection e. of section 25 of P.L. , c. (C.) (now before the Legislature as this bill), (2) that amount of the remediation funding source that is met by a loan or grant from the remediation fund, (3) any person who voluntarily undertakes a remediation without being so ordered or directed by the department or by a court or pursuant to an administrative consent order, or (4) any person who entered voluntarily into a memorandum of understanding with the department to remediate real property, as long as that person continues the remediation in a reasonable manner, or as required by law, even if subsequent to initiation of the memorandum of understanding, the person received an order by the department or entered into an administrative consent order to perform the remediation. The surcharge shall be based on the cost of remediation work remaining to be completed and shall be paid on an annual basis as long as the remediation continues and until the Department of Environmental Protection issues a no further action letter for the property subject to the remediation. The cleanup remediation funding source surcharge shall be due and payable within 14 days of the time of the department's approval of a remedial action workplan or signing an administrative consent order or as otherwise provided by law. The department shall collect the surcharge and shall remit all moneys collected to the Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund.

b. By February 1 of each year, the department shall issue a report to the Senate Environment Committee and to the Assembly Energy and Hazardous Waste Committee, or

their successors, listing, for the prior calendar year, each person who owed the remediation funding source surcharge, the amount of the surcharge paid, and the total amount collected.

34. (New section) a. There is appropriated from the "Hazardous Discharge Fund of 1986," created pursuant to "Hazardous Discharge Bond Act of 1986," P.L.1986, c.113, the sum of $45,000,000 to the New Jersey Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund, created pursuant to section 26 of P.L. , c. (C.)(now before the Legislature as this bill) for the purposes of issuing loans and grants for the investigation of property suspected of being contaminated by a hazardous substance or hazardous waste or for the remediation of property contaminated by a hazardous substance or hazardous waste.

Of the money appropriated pursuant to this subsection, (1)$15,000,000 shall be dedicated to the issuance of loans or grants to municipal governmental entities in accordance with the purposes of the remediation fund; (2) $10,000,000 shall be dedicated to the issuance of loans to persons other than governmental entities in accordance with the purposes of the remediation fund; and (3) $20,000,000 shall be dedicated to the issuance of grants to innocent parties in accordance with the purposes of the remediation fund.

b. There is appropriated from the "Hazardous Discharge Fund of 1986," created pursuant to "Hazardous Discharge Bond Act of 1986," P.L.1986, c.113, the sum of $5,000,000 to the Department of Environmental Protection for deposit into the Remediation Guarantee Fund, created pursuant to section 45 of P.L. , c. (C.)(now before the Legislature as this bill), for the purposes of that fund.

35. (New section) a. The Department of Environmental Protection shall adopt minimum remediation standards for soil, groundwater, and surface water quality necessary for the remediation of contamination of real property. The remediation standards shall be developed to ensure that the potential for harm to public health and safety and to the environment is minimized to acceptable levels, taking into consideration the location, surroundings, the intended use of the property, the potential exposure to the discharge, and the surrounding ambient conditions, whether naturally occurring or man-made.

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

The department shall not propose or adopt remediation standards protective of the environment pursuant to this section, except standards for groundwater or surface water, until recommendations are made by the Environment Advisory Task Force created pursuant to section 37 of P.L. , c. (C.)(now before the Legislature as

this bill). Until the Environment Advisory Task Force issues its recommendations and the department adopts remediation standards protective of the environment as required by this section, the department shall continue to determine the need for and the application of remediation standards protective of the environment on a case-by-case basis in accordance with the guidance and regulations of the federal Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable.

b. In developing minimum remediation standards the department shall:

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

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

(3) avoid the use of redundant conservative assumptions. The department shall avoid the use of redundant conservative assumptions by the use of parameters that provide an adequate margin of safety and which avoid the use of unrealistic conservative exposure parameters and which are consistent with guidelines for exposure assessment developed by the federal Environmental Protection Agency; and

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

c. (1) The department shall develop residential and nonresidential soil remediation standards that are protective of public health and safety. For contaminants that are mobile and may be transported to groundwater, the residential and nonresidential soil remediation standards shall be protective of groundwater. Residential soil remediation standards shall be set at levels or concentrations of contamination for real property based upon the use of that property for residential or similar uses and which will allow the unrestricted use of that property without exceeding a health risk level greater than that provided in subsection d. of this section. Nonresidential soil remediation standards shall be set at levels or concentrations of contaminants that recognize the lower likelihood of exposure to contamination on property that will not be used for residential or similar uses. Whenever real property is remediated to a nonresidential soil remediation standard, except as otherwise provided in paragraph (3) of subsection g. of this section, the department shall require, pursuant to section 36 of P.L. , c. (C.)(now before the Legislature as this bill), that the use of the property be restricted to

nonresidential or other uses compatible with the extent of the contamination of the soil and that access to that site be restricted in a manner compatible with the allowable use of that property.

(2) The department may develop differential remediation standards for surface water or groundwater that take into account the current, planned, or potential use of that water.

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

(1) for carcinogens, will result in an additional cancer risk of one in one million;

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

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

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

f. (1) A person performing a remediation of contaminated real property, in lieu of using the established minimum soil remediation standard for either residential use or nonresidential use adopted by the department pursuant to subsection c. of this section, may submit to the department a request to use an alternative

residential use or nonresidential use soil remediation standard. The use of an alternative soil remediation standard shall be based upon site specific factors which may include (1) physical site characteristics which may vary from those used by the department in the development of the soil remediation standards adopted pursuant to this section; or (2) a site specific risk assessment. If a person performing a remediation requests to use an alternative soil remediation standard based upon a site specific risk assessment, that person shall demonstrate to the department that the requested deviation from the risk assessment protocol used by the department in the development of soil remediation standards pursuant to this section is consistent with the guidelines for exposure assessment developed by the federal Environmental Protection Agency. A site specific risk assessment may consider exposure scenarios and assumptions that take into account the form of the contaminant present, natural biodegradation, fate and transport of the contaminant, and available toxicological data that are based upon generally accepted and peer reviewed scientific evidence or methodologies.

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

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

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

(1) Permanent and nonpermanent remedies shall be allowed except that permanent remedies shall be preferred over nonpermanent remedies for remedial actions;

(2) Contamination may, upon the department's approval, be left onsite at levels or concentrations that exceed the minimum soil remediation standards for residential use or nonresidential use if the requirement of institutional or engineering controls at that site will result in the protection of public health, safety and the environment at the risk level established in subsection d. of this section and where the requirements established in subsections a., b., c. and d. of section 36 of P.L. , c. (C.) (now before the Legislature as this bill) are met.

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

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

(5) Remediation shall not be required by the owner or operator of real property for contamination coming onto the site from another property owned and operated by another person;

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

(7) The effectiveness of each remedial action alternative in protecting public health, safety and the environment;

(8) The implementability of each alternative;

(9) The time it would take to implement each alternative;

(10) The cost of each alternative including capital costs, operation, maintenance and monitoring costs, whether a particular remedial action is cost effective, and whether the cost of performing a specific remedial

action is excessive compared to the cost of other alternatives; and

(11) The technological efficacy of any particular remedial action.

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

h. (1) The department shall adopt regulations which establish a procedure for a person to demonstrate that a particular parcel of land contains large quantities of historical fill material. Upon a determination by the department that large quantities of historic fill material exist on that parcel of land, there is a rebuttable presumption that the department shall not require any person to remove or treat the fill material in order to comply with a remediation standard. In these areas the department shall establish by regulation the requirement for engineering or institutional controls that are designed to prevent exposure of these contaminants to humans, that allow for the continued use of the property, that are less costly than removal or treatment, which maintain the health risk levels as established in subsection d. of this section, and, as applicable, are protective of the environment. The department may rebut the presumption only upon a finding by the preponderance of the evidence that the use of engineering or institutional controls would not be effective in protecting human health, safety, and the environment. For the purposes of this paragraph "historic fill material" means generally large volumes of non-indigenous material, used to raise the topographic elevation of a site, which were contaminated prior to emplacement and are in no way connected with the operations at the location of emplacement and which include, but not limited to, construction debris, dredge spoils, incinerator residue, demolition debris, fly ash, and non hazardous solid waste. Historic fill material shall not include any material which is substantially chromate chemical production waste or any other chemical production waste or waste from mining or processing of metal or mineral ores, residues, slags or tailings.

(2) The department shall develop recommendations for remedial actions in large areas of historic industrial contamination. These recommendations shall be designed to meet the health risk levels established in subsection d. of this section, and be protective of the environment and shall take into account the industrial history of these sites, the extent of the contamination that may exist, the costs of alternative remedial actions, the economic impacts of these policies, and the anticipated uses of these properties. The department, within one year of the enactment of this act, shall issue a report to the Senate Environment Committee and to the Assembly Energy and Hazardous Waste Committee, or their

successors, explaining these recommendations and making any recommendations for legislative or regulatory action.

(3) The department may not, as a condition of allowing the use of a nonresidential use soil remediation standard, or the use of institutional or engineering controls, require the owner of that real property, except as provided in section 36 of P.L. , c. (C.)(now before the Legislature as this bill), to restrict the use of that property through the filing of a deed easement, covenant, or condition.

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

j. Upon the approval by the department of a remedial action workplan, or similar approval that describes the extent of contamination at a site and the remedial action to be implemented to address that contamination, the department may not subsequently require a change to that workplan or similar approval in order to compel a different remediation standard due to the fact that the established remediation standards have changed; however, the department may compel a different remediation standard if the difference between the new remediation standard and the remediation standard approved in the workplan or other approval differs by an order of magnitude. The limitation to the department's authority to change a workplan or similar approval pursuant to this subsection shall only apply where the workplan or similar approval is being implemented in a reasonable timeframe.

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

l. Upon the adoption of a remediation standard for a particular contaminant in soil, groundwater, or surface water pursuant to this section, the department may amend that remediation standard only upon a finding that a new standard is necessary to maintain the health risk levels established in subsection d. of section 35 of P.L. , c. (C.)(now before the Legislature as this bill) or to protect the environment, as applicable. The department may not amend a public health based soil remediation standard to a level that would result in a health risk level more protective than that provided for in subsection d. of section 35 of P.L. , c. (C.).

36. (New section) a. When real property is remediated to a nonresidential soil remediation standard or engineering or institutional controls are used in lieu of

remediating a site to meet an established remediation standard for soil, groundwater, or surface water, the department shall, as a condition of the use of that standard or control measure:

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

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

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

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

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

b. If the owner of the real property does not consent to the recording of a notice pursuant to paragraph (2) of subsection a. of this section, the department shall not allow the use of a nonresidential soil remediation standard or the use of engineering or institutional controls in the remediation of that real property.

c. Where engineering or institutional controls on property as provided in subsection a. of this section are no longer required, or where the engineering or institutional controls are changed because of the performance of subsequent remedial activities, a change in conditions at the site, or the adoption of revised remediation standards, the department shall, require that the owner or operator of that property, record with the office of the county recording officer a notice that the use of the property is no longer restricted or

delineating the new restrictions. The department shall also require that the owner or operator notify, in writing, the municipality in which the property is located of the removal or change of the restrictive use conditions.

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

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

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

Nothing in the provisions of this subsection shall limit the rights of a person, other than the State, or any department or agency thereof, to bring a civil action

for damages, contribution, or indemnification as provided by statutory or common law.

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

37. (New section) a. There is established, in but not of the Department of Environmental Protection, an Environment Advisory Task Force. The Task Force shall consist of 15 members as follows: (1) the Commissioner of Environmental Protection, or his designee; (2) one representative from the National Academy of Sciences who shall be selected by the Academy; (3) one representative from the New Jersey Environmental and Occupational Health Sciences Institute who has experience in risk assessment, who shall be selected by the Institute; (4) one representative each from the industrial real estate development industry, the environmental consulting profession, a public interest environmental organization, and the legal community, who shall be appointed by the Governor with the advice and consent of the Senate; (5) four members who shall have at least a master's degree in a relevant science discipline and who shall, to the greatest extent possible, include a plant or animal biologist, a toxicologist, an ornithologist, and a physiologist, who shall be appointed by the Governor with the advice and consent of the Senate; (6) two members who shall have at least a master's degree in a science discipline, have relevant experience, and be employed by an industrial business, who shall be appointed by the President of the Senate; and (7) two members who shall have at least a master's degree in a science discipline, have relevant experience, and be employed by an industrial business, who shall be appointed by the Speaker of the General Assembly.

b. The Environment Advisory Task Force shall meet as soon as practicable after the appointment and qualification of all its members. The Commissioner of Environmental Protection, or the commissioner's designee, shall be the chairperson of the Environment Advisory Task Force. The Environment Advisory Task Force shall meet at the call of its chairperson and in the locations the chairperson shall choose.

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

d. The Environment Advisory Task Force shall:

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

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

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

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

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

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

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

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

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

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

38. (New section) Within 12 months of the effective date of this act, the department shall develop a guidance document for the remediation of contaminated soils. The guidance document shall include a description of remedial actions the department determines are effective in remediating soil contamination to the residential or

nonresidential use soil remediation standards and that should be considered by a person performing a soil remediation. The department shall revise the guidance document periodically as it determines necessary. Adoption of the guidance document, or the revisions thereto, shall be published in the New Jersey Register but the adoption of the guidance document, or the revisions thereto, shall not otherwise be subject to the notice, comment, publication, or other requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

39. (New section) a. Any person who, before the effective date of P.L. , c. (C.)(now before the Legislature as this bill), has discharged a hazardous substance in violation of P.L.1976, c.141, and:

(1) has not been issued a directive to remove or arrange for the removal of the discharge pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f),

(2) has not been assessed a civil penalty, a civil administrative penalty, or is not the subject of an action pursuant to the provisions of section 22 of P.L.1976, c.141 (C.58:10-23.11u),

(3) has not entered in to an administrative consent order to clean up and remove the discharge, or

(4) has not been ordered by a court to clean up and remove the discharge, shall not be subject to a monetary penalty for the failure to report the discharge or for any civil violation of P.L.1976, c.141 (C.58:10-23.11 et seq.) or P.L.1977, c.74 (C.58:10A-1 et seq.) that resulted in the discharge if the person notifies the department of the discharge and enters into an administrative consent order or a memorandum of agreement with the department to remediate the discharge in accordance with the provisions of P.L.1976, c.141 (C.58:10-23.11 et seq.), or any rules or regulations adopted pursuant thereto, within one year of the effective date of P.L. , c. (C.)(now before the Legislature as this bill). Any person who notifies the department of the discharge pursuant to this section shall be liable for all cleanup and removal costs as provided in section 8 of P.L.1976, c.141 (C.58:10-23.11g).

b. Notwithstanding the provisions of subsection a. of this subsection, any person who enters into a memorandum of agreement or administrative consent order pursuant to this section and fails to remediate the discharge in accordance with the memorandum of agreement or administrative consent order, shall be subject to all penalties for violations that occurred before the effective date of P.L. , c. (C.)(now before the Legislature as this bill) as well as any penalties for subsequent violations.

c. The provisions of this section shall not apply to violations of a permit issued pursuant to P.L. 1977, c.74 (C.58:10A-1 et seq.).

d. Any documents or information provided to the department pursuant to this section may not be used in a

criminal investigation or criminal prosecution against the person providing the information or documents for those violations that occurred before the effective date of this act as long as the person remediates the discharge in conformance with the administrative consent order or memorandum of agreement entered into pursuant to subsection a. of this section.

40. (New section) a. Any person who undertakes the remediation of suspected or actual contamination on real or personal property that is not owned by that person, may enter upon the property to conduct the necessary remediation if there is an agreement, in writing, between the person conducting the remediation and the owner of the property authorizing the entry onto the property. If, after a good faith effort, the person undertaking the remediation and the property owner fail to reach an agreement concerning access to the property, the person may seek a court order authorizing access which shall be issued pursuant to subsection b. of this section.

b. Any person who undertakes the remediation of suspected or actual contamination on real or personal property that is not owned by the person responsible for the remediation, and fails to reach an agreement with the property owner pursuant to subsection a. of this section may institute an action in the Superior Court for injunctive and other relief, to gain access to the property and the court may proceed in the action in a summary manner.

Such relief may include, singly or in combination:

(1) A temporary or permanent injunction;

(2) Assessment of the person undertaking the remediation for costs associated with any disruption in operations on the property;

(3) Assessment of the person undertaking the remediation for any costs to return the property to its condition before the commencement of the remediation;

(4) A requirement that the person undertaking the remediation indemnify the owner of the property for any damages, penalties or liabilities resulting from the remediation;

(5) A requirement that the person undertaking the remediation indemnify the owner of the property for any liability resulting from the entry of persons onto the property to perform the remediation.

c. The department may not impose or seek to impose any civil or civil administrative penalties upon any person for failure to perform a remediation on property not owned by that person within the time schedule required by regulation on property not owned by that person if (1) the failure to perform the remediation was the result of an inability of that person to enter upon real or personal property owned by another person, and (2) the person took all appropriate action pursuant to this section to obtain access to the property.

41. (New section) a. Any person conducting a remediation of a contaminated site may dispute a decision

by the department concerning the remediation in accordance with the guidelines developed pursuant to subsection b. of this section. The disputed decision shall be reviewed, and a determination shall be made, by the next level of the department's management, and the review may continue, upon the request of the person seeking review, until the Commissioner or his designee has issued a decision on the dispute. Each successive level of management review and the resulting determination on the dispute, shall occur within seven days of the department's receipt of the request for review.

b. Within 60 days of the effective date of this act, the department shall develop guidelines that establish a procedure through which a person conducting a remediation of a contaminated site may dispute a department decision concerning the remediation.

42. (New section) The Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Department of Environmental Protection, shall prepare, and the department shall distribute, for the cost of reproduction and postage, to any interested person, informational materials that set forth criteria that may be used to evaluate the qualifications of environmental consultants, environmental consulting firms, engineers, geologists or any other consultant, whose expertise or training may be required by a person to comply with the provisions of P.L.1986, c.102, P.L.1983, c.330, P.L.1976, c.141, and P.L. , c. (C.)(now before the Legislature as this bill) relating to the remediation of contaminated real property. The materials may describe the expertise or training necessary to address specific types of environmental cleanups, sites or contamination, the significance and availability of various types of liability insurance, the average cost of services and tests commonly performed by consultants, the significance of available accreditations or certifications, the ethics code applicable to any consultant, the references that may be requested and any other relevant factor that may be used to evaluate the qualifications and expertise of persons performing remediation services.

43. (New section) The owner or operator of an industrial establishment, who has submitted a notice to the department pursuant to subsection a. of section 4 of P.L.1983, c.330 (C.13:1K-9), or any person who has discharged a hazardous substance or is liable for the remediation of that discharge pursuant to P.L. 1976, c.141 (C.58:10-23.11 et seq.), has been directed to or has entered into an agreement with the department to remediate a discharge, may implement an interim response action prior to departmental approval of that action. The interim response action may be implemented when the expeditious temporary or partial remediation of a discharged hazardous substance or hazardous waste is necessary to contain or stabilize a discharge prior to

implementation of an approved remedial action workplan in order to prevent, minimize, or mitigate damage to public health or safety or to the environment which may otherwise result from a discharge. The interim response action shall be implemented in compliance with the procedures and standards established by the department. The department may require submission of a notice of intent to implement an interim response action, what those actions will be, and may require, subsequent to completion of the interim response action, a report detailing the actions taken and a certification that the interim response action was implemented in accordance with all applicable laws and regulations. The department shall review these submissions to verify whether the interim response action was implemented in accordance with applicable laws and regulations. The department shall not require that additional remediation be undertaken at an area of concern subject to the interim response action except in instances when further remediation is necessary to bring that area of concern into compliance with the applicable remediation standards.

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

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

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

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

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

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

(4) Loss of tax revenue by the State or local governments for a period of one year due to damage to

real or personal property proximately resulting from a discharge;

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

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

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

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

Where a person is liable for cleanup and removal costs as provided in this paragraph, any expenditures made by the administrator for that cleanup and removal shall constitute a debt of that person to the fund. The debt shall constitute a lien on all property owned by that person when a notice of lien identifying the nature of the discharge and the amount of the cleanup, removal and related costs expended from the fund is duly filed with the clerk of the Superior Court. The clerk shall

promptly enter upon the civil judgment or order docket the name and address of the liable person and the amount of the lien as set forth in the notice of lien. Upon entry by the clerk, the lien, to the amount committed by the administrator for cleanup and removal, shall attach to the revenues and all real and personal property of the liable person, whether or not that person is insolvent.

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

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

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

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

(2) A person, including an owner or operator of a major facility, who owns real property acquired after the effective date of P.L. , c. (C.)(now before the Legislature as this bill), on which there has been a discharge, shall be considered a person in any way responsible for the discharged hazardous substance pursuant to subsection c. of this section, unless that person can establish by a preponderance of the evidence that all of the following apply:

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

(b) (i) at the time the person acquired the real property, the person did not know and had no reason to know that any hazardous substance had been discharged at the real property, or (ii) the person acquired the real property by devise or succession, except that any other funds or property received by that person from the deceased real property owner who discharged a hazardous substance or was in any way responsible for a hazardous substance, shall be made available to satisfy the requirements of P.L. 1976, c.141;

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

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

To establish that a person had no reason to know that any hazardous substance had been discharged for the purposes of this paragraph (2), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property. In order to determine if all appropriate inquiry was undertake, any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the fair market value of the property if not impacted by discharges of hazardous substances, commonly known or reasonably ascertainable information about the property, the obviousness of the discharge at the property, and the ability to detect the discharge of hazardous substances by appropriate inspection shall be taken into account.

Nothing in this paragraph (2) shall be construed to alter liability of any person who acquired real property prior to the effective date of P.L. , c. (C.)(now before the Legislature as this bill).

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

(4) Any federal, State, or local government entity which acquires ownership of real property through bankruptcy, tax delinquency, abandonment, escheat, eminent domain, condemnation or any circumstance in which the government involuntarily acquires title by virtue of its function as sovereign, shall not be liable for the cleanup and removal costs of any discharge which occurred or began prior to that ownership. This paragraph shall not apply to any federal, State or local government entity which has caused or contributed to the discharge of a hazardous substance.

(cf: P.L.1991,c.85,s.4)

45. (New section) a. There is created in the Department of Environmental Protection a special, revolving fund to be known as the Remediation Guarantee Fund. The fund shall be credited with all monies appropriated to it by law, all monies collected in subrogation actions to recover monies expended from the fund, and all moneys earned from the investment of the monies in the fund.

b. The Commissioner of Environmental Protection shall appoint and supervise an administrator of the fund. The administrator shall be the chief executive of the fund, shall approve all disbursements of monies from the fund and, and shall ensure the proper deposit of all monies authorized to be deposited into the fund.

c. Monies in the fund shall be used by the Department of Environmental Protection to remediate, or contract for the remediation of, any real property for which a person was required to establish a remediation funding source pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) and where that person fails to conduct or properly conduct that remediation.

d. Any monies expended by the department from the fund pursuant to this subsection shall constitute a debt of the person required to establish the remediation funding source and against the discharger. The debt shall constitute a lien on all property owned by the person required to establish the remediation funding source and against the discharger to the same extent and in the same manner as provided for liens in subsection f. of section 7 of P.L.1976, c.141 (C.58:10-23.11f).

e. Whenever the department expends monies from the fund for a remediation, it shall have a cause of action to recover from the person required to establish the remediation funding source or from any other person liable for the discharge pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g) triple the amount of monies expended for the remediation.

f. Monies in the fund may be appropriated to pay for the costs to administer the fund except that those appropriations may not exceed the amount of monies deposited into the fund earned from the investment of monies in the fund.

46. This act shall take effect immediately except that section 44 shall remain inoperative until the 90th day following enactment.

Makes various changes to various hazardous discharge site remediation programs; imposes a surcharge on remediations; establishes a loan and grant fund for remediation activities; appropriates bond moneys.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1070

STATE OF NEW JERSEY

DATED: MARCH 15, 1993

The Senate Environment Committee favorably reports a Senate Committee Substitute for Senate Bill No. 1070.

I

This bill revises the 1983 "Environmental Cleanup Responsibility Act," (ECRA), creates a loan and grant program to make low interest loans available to persons who are unable to afford the cleanup of contaminated property, to make grants available to persons who own contaminated property and did not cause the contamination, and grants and loans to local governments for the cleanup of contaminated property. The bill also directs the department to adopt remediation standards for contaminated sites.

One year ago, the committee held its first hearing on ECRA reform, and began to hear about the concerns of those persons who engage in the remediation of property that is contaminated by hazardous substance discharges. Several overarching concerns emerged. First, persons required to remediate property as a precondition to a transfer of ownership or operations or upon closing operations of an industrial establishment pursuant to ECRA, were faced with a time-consuming process and a bewildering maze of requirements for the investigation and cleanup of contamination. Second, those involved in remediations argued that the absence of uniform standards to guide remediations resulted in the necessity of calculating standards for each individual site, which is often a time-consuming and expensive process. Finally, because of the State's long industrial history, many property owners were faced with the daunting and expensive task of remediating contamination that occurred before they owned the property. Some people with contamination problems found that the cost of the remediation far exceeded the worth of the property or their ability to borrow enough money to finance a cleanup.

The committee also determined that many problems that were identified as "ECRA problems" were actually problems associated with the ownership of contaminated property. The committee soon realized that ECRA had become the shorthand method of referring to the general dilemmas associated with any site remediation. Thus, this bill addresses some of the issues that were raised that apply to the remediation process in general, not just to those remediations performed pursuant to ECRA.

The committee's intent to reform the site remediation process recognizes that the State's commitment to the environment is consistent with the improvement of the State's economic well-being. The remediation of contaminated property in an

efficient and cost effective manner will advance the economic health of the State. The performance of remediations will allow businesses to avoid the uncertainty of future liability, will result in the early discovery of contamination which is less costly to clean up, and will thus prevent the spread of contamination. The cleanup of contaminated property will also safeguard the public health and the environment, which are vital to the State's future economic prosperity. The bill seeks to further the inseparable goals of encouraging the cleanup of contaminated property, and furthering the development of the State's economy in three ways. The bill streamlines the process for owners or operators of industrial establishments that must clean up their property, eases the financial burden resulting from the requirement to clean up by making loans and grants available for the cleanups and lastly, establishes administrative predictability by codifying summary procedures, and providing detailed legislative direction to the department for the adoption of standards.

The Senate Environment Committee began holding hearings on these issues in March 1992. Over the course of a year, the committee held six public meetings. The committee received comments from dozens of interested groups and individuals who submitted hundred of pages of written comments. Countless hours were spent drafting and revising the provisions in the bill. Amendments were made throughout the process to address many of the concerns raised by many parties. The committee believes that the three major components of the bill work together to solve the problems outlined to the committee in the hearings and comments submitted.

II

Sections 1 through 22 of the committee substitute amend and supplement P.L.1983, c.330. The bill changes the short title of the "Environmental Cleanup Responsibility Act," to the "Industrial Site Recovery Act," (ISRA) to better reflect its purposes. The bill reaffirms many of the basic requirements that were imposed in 1983. Any business within certain Standard Industrial Classification Code numbers that generates, uses, transports, manufactures, refines, treats, stores, handles, or disposes of hazardous substances or hazardous wastes is subject to the requirements of ISRA upon transferring ownership or operations or closing operations.

Section 3 of the bill revises the definitions in ISRA. New terms are used in ISRA to reflect the stages in the remediation process. The new terms used include "preliminary assessment," "site investigation," "remedial investigation," "remedial action" and "remedial action workplan." Although these terms are used in federal remediation law, the bill is clear that the requirements for each phase of a remediation are not to be identical to federal law. The existing definition of "closing, terminating, or transferring operations" has been changed to add more specificity to those terms in order to clarify which transactions trigger the requirements of ISRA. Two new definitions are created, "closing operations" and "transferring ownership or operations," to replace the existing definition. The bill also creates several new exclusions

to the covered transactions, most notably, the transfer of real property pursuant to the "Eminent Domain Act of 1971." Many of the transactions that the bill specifically excludes from the covered transactions were listed as specific exclusions in the Department of Environmental Protection's regulations, and were never covered under the original provisions of the law. The exclusions are now listed, however, to provide certainty to the regulated community. The new definitions are intended to maintain existing coverage while providing more certainty and specificity. The new definition of indirect owner, however, is not intended to require the remediation of an industrial establishment by a bank that holds a mortgage or other security interest in the industrial establishment, by virtue of the bank's merger or consolidation with another entity.

Section 4 of the bill revises the ISRA process. An owner or operator who closes operations or transfers ownership or operations is required to provide notice to the department no more than five days subsequent to closing operations or of its public release of the decision to close operations, whichever occurs first, or within five days of the agreement to transfer ownership or operations. Upon the closing of operations or prior to the transfer of ownership or operations, the approval of a negative declaration, remedial action workplan or remediation agreement and the establishment of a remediation funding source is required.

The owner and operator of the industrial establishment is required to remediate the industrial establishment. For all remediations, the preliminary assessment, site investigation, and remedial investigation may be performed without the prior approval of each phase of the remediation by the department. However, a remedial action workplan that involves the remediation of surface water or groundwater, must be approved by the department prior to its implementation.

The bill authorizes an owner or operator to implement a remedial action workplan for a soil remediation without waiting for the department's approval of the workplan if the remedial action can be completed within five years of the commencement of its implementation and if the owner or operator is transferring ownership or operations and the soil remediation meets the established minimum residential or nonresidential use soil remediation standards, or the owner or operator is closing operations and the soil remediation meets the minimum residential use soil remediation standards. An owner or operator shall not implement a remedial action workplan for the remediation of soil until it is approved by the department when the remedial action cannot be completed within five years of the commencement of its implementation, when the owner or operator is closing operations and the soil remediation will meet the nonresidential use soil remediation standards, or when the soil remediation does not meet the established minimum nonresidential or residential use soil remediation standards. Although the bill authorizes the owner or operator to implement a remedial action workplan for a soil remediation in the above circumstances without waiting for the department's approval, the requirement to obtain the department's approval of a negative declaration, remedial action workplan or a remediation agreement as a precondition of a transfer of ownership

or operations or upon closing operations remains unchanged.

The bill authorizes the department to review the use of the nonresidential soil remediation standard in those instances where prior approval of the remedial action workplan is required and sets forth the criteria upon which the department will base its decisions to approve or disapprove the use of the nonresidential soil remediation standards.

If the results of any phase of a remediation have not been submitted to the department, all documents must be submitted at the completion of the remediation for the department's review and approval. If remediation activities were not in compliance with the applicable rules and regulations, if all necessary documents were not submitted or were deficient, or inaccurate, or if discharged hazardous substances or hazardous wastes remain at the site or have migrated offsite in violation of the applicable cleanup standards, the department may order additional remediation.

Subsection e. of section 4 authorizes an owner or operator to enter into a remediation agreement with the department if the transfer of ownership or operations is to occur prior to the approval or a remedial action workplan or a negative declaration. The 1983 law did not provide for a transaction to proceed while a lengthy remediation occurred. To address such situations, the department used administrative consent orders to allow transfers to proceed if the remedial action workplan could not be developed before the transfer took place. In this bill the remediation agreement replaces the administrative consent order.

Section 8 of the bill requires the department to review and approve, approve with conditions or disapprove a submission of a phase of the remediation within the review schedules established pursuant to section 2 of P.L.1991, c.423 (C.13:1D-106). Section 9 establishes a de minimis quantity exemption to ISRA by authorizing the owner or operator of an industrial establishment, upon written notice to the department, to transfer ownership or operations or close operations without complying with the provisions of ISRA if the total quantity of hazardous substances and hazardous wastes at any one time does not exceed 55 gallons or 500 pounds during the owner or operator's period of ownership or operations.

Section 11 of the bill requires the department to approve a deferral of the preparation, approval and implementation of a remedial action workplan for the industrial establishment if it would be subject to substantially the same use by the transferee. To qualify for a deferral, the transferor would be required to perform the investigatory stages of the remediation, submit a cost estimate, and a certification that the transferee has the financial ability to perform the remediation.

Section 12 of the bill would remove the department's authority to void a transaction. A transferee's authority to void a transaction would be limited to when the transferor fails to perform a remediation. The transferor is given an opportunity to correct the violation prior to a transaction being voided.

Sections 13 through 19 of the bill establish new summary procedures for compliance with ISRA. These sections will greatly privatize and simplify the ISRA process for the applicant where a site, or a part of a site, has previously undergone a remediation.

Section 13 lifts the requirement to obtain approval or a remedial action workplan, a negative declaration, or a remediation agreement upon the closing, or prior to the transfer, of an industrial establishment that has previously undergone a full site remediation upon the certification of the owner or operator that there has been no discharge subsequent to the last remediation, or that any subsequent discharge was remediated in accordance with the department's procedures. Pursuant to the provisions of section 14, if a full site remediation has already been performed but a subsequent discharge has occurred, only the subsequently contaminated portion of the site must be cleaned up. Section 15 authorizes an owner or operator to apply for an area of concern waiver that would relieve him from remediating any portion of his site that has previously been remediated as long as he certifies that there has been no new discharge at that area of concern. Section 16 authorizes an owner or operator to transfer ownership or operations or close operations if the site is undergoing an ISRA review or any other full site remediation if there have been no discharges during his period of ownership, a remediation funding source is established, and the transferee has been notified that the site is the subject of a remediation. Section 17 provides that if the only potentially contaminated area at a site is an underground storage tank, then the owner or operator does not need to further comply with the requirements of ISRA. Section 18 authorizes an owner or operator of an industrial establishment to perform a remediation without departmental oversight as long as there are no more than two areas of concern and the remedial action can be completed within six months.

Section 19 of the bill establishes the procedure for obtaining a certificate of limited conveyance. This section authorizes the transfer of up to one third of the value of an industrial establishment without requiring a remediation of the entire industrial establishment. Only that portion conveyed would be required to be remediated.

Section 20 of the bill would require landlords and tenants to cooperate in the provision of information pertaining to the remediation of a site, would require that copies of submissions be provided to the other party, and would require the department, if there is a failure of the landlord or the tenant to comply with ISRA, to first require compliance with ISRA by the person responsible pursuant to the provisions of the lease, if the lease is clear on allocating this responsibility. If the lease is unclear, or upon the continuing failure of either party to comply, the department may use all available authority to compel compliance by the landlord and the tenant.

Section 21 of the bill provides amnesty from civil penalties to any person who violated the provisions of P.L.1983, c.330, and who, within one year of the effective date of this bill, enters into an administrative consent order or memorandum of agreement with the department to clean up the industrial establishment.

Section 22 of the bill requires the department to perform an audit of the covered industrial establishments and to identify any industries that do not pose a risk to public health and safety or to the environment. All identified industries will be exempt from

ISRA after having gone through one full site remediation.

This bill also codifies a recent State Supreme Court decision, In Re Adoption of N.J.A.C.7:26B, by stating affirmatively that contamination that has migrated or is migrating from an industrial establishment, must be remediated as part of an ISRA remediation.

III

Remediation Funding Provisions

This bill would reduce the costs of remediation by changing the current financial assurance requirements. Current law requires that financial assurance be maintained as a separate fund to assure that in case of default, funds would be available to pay for the cleanup. The financial assurance fund could not be used to pay the cleanup costs. This bill would require that a remediation funding source be established in the amount of the cost of the cleanup, and that the funding source would be used to pay for the cleanup costs.

Specifically, sections 25 through 34 of the bill would (1) impose upon those persons compelled to perform a remediation pursuant to ISRA, or any other State law, the requirement to establish a remediation funding source; (2) impose a 1% annual surcharge upon the declining balance of the cost of remediation; and (3) establish a fund for loans and grants for private parties and local governments to provide financing for the remediation of contaminated property. The loan and grant fund, administered by the New Jersey Economic Development Authority, will be credited with $45 million from the "Hazardous Discharge Bond Act of 1986," P.L.1986, c.116, and the revenues from the 1% surcharge imposed pursuant to section 33 of the bill. Section 45 of the bill creates the Remediation Guarantee Fund in the Department of Environmental Protection, to be credited with $5 million from the "Hazardous Discharge Bond Act of 1986," P.L.1986, c.116. The Remediation Guarantee Fund shall be used by the department to remediate property which a person who is required to establish a remediation funding source has failed to remediate.

This bill requires that a remediation funding source must be established by any person required to perform a remediation pursuant to ISRA, any person who has been issued a directive by the department to perform a remediation, any person who has entered into an administrative consent order with the department to perform a remediation, or any person who has been ordered by a court to perform a remediation. (Persons who perform a remediation voluntarily are not required to maintain a remediation funding source.) The amount of the remediation funding source must be equal to or greater than the cost estimate of the implementation of the remediation. If the cost estimate increases, the remediation funding source amount must be adjusted accordingly. A remediation funding source can be established by creating a remediation trust fund, a line of credit, or a self-guarantee, or any combination thereof.

Section 33 of the bill imposes a 1% annual surcharge on the amount of the remediation funding source that is required to be maintained. The surcharge is not imposed on the amount of a

remediation funding source met by a self-guarantee, the amount of a remediation funding source met by a loan or a grant from the Hazardous Discharge Site Remediation Fund, or any funds provided by any person performing a voluntary remediation.

When a remediation funding source cannot be established for all or a part of the cost of a remediation, a loan from the Hazardous Discharge Site Remediation Fund, created pursuant to section 26 of the bill, may be obtained. Monies in the loan and grant fund, called the Hazardous Discharge Site Remediation Fund, would be allocated as follows:

15% for loans to private parties for remediations in urban aid municipalities;

10% for loans and grants to municipal government entities;

15% for loans to private parties or municipal government entities for the remediation of discharges that pose an imminent threat to a drinking water source, human health, or a significant ecological area;

10% for loans to private parties who voluntarily undertake a remediation;

20% for grants to innocent persons who purchased property before December 31, 1983 and did not cause the discharge;

10% to be allocated in any of the above categories.

Loans and grants may be issued for up to 100% of the costs of a remediation except that no loan to any applicant in a calender year may exceed $1 million and that innocent person grants may be used for 50% of the remediation cost. Loans and grants to any one municipal government entity may not exceed $2 million in any calender year.

The Economic Development Authority is authorized to charge an application fee, and may use up to 2% of the moneys issued as loans and grants from the remediation fund for administrative expenses.

Section 45 of the bill establishes a Remediation Guarantee Fund that shall be used by the Department of Environmental Protection to remediate property on which a person who is required to establish a remediation funding source has failed to conduct a remediation.

IV

Remediation Standards

Section 35 of the bill directs the department to adopt minimum remediation standards for soil, groundwater, and surface water quality necessary for the remediation of real property. Until the remediation standards for the protection of public health and safety are adopted, the department will continue to apply standards on a case-by-case basis. Section 37 of the bill establishes the Environment Advisory Task Force which, within two years, would be required to make recommendations to the department on the feasibility, development, and application of remediation standards protective of the environment. Until the Task Force makes recommendations, the department may apply remediation standards protective of the environment on a case-by-case basis in accordance with the guidelines and regulations adopted pursuant to

the federal "Comprehensive Environmental Response, Compensation and Liability Act of 1980."

The bill requires the department to adopt residential and nonresidential standards for soil remediation, and authorizes the adoption of differential standards for surface water and groundwater that take into account the current, planned, or potential use of the water. Subsection d. of section 35 of the bill requires, for all soil remediation standards developed by the department for residential and nonresidential uses, that the health risk for carcinogens be based on an additional cancer risk of one in one million, and, for noncarcinogens, will limit the Hazard Index for any given effect to a value not exceeding one.

The bill directs the department to adopt differential soil remediation standards. The soil standards adopted must be protective of the groundwater. A set of residential use soil remediation standards would be adopted that are protective of the public health and safety, and that will allow the unrestricted use of the property for residential purposes without exceeding the health risk levels established in the bill. The nonresidential soil remediation standards would be set at levels that take into account the lower exposure to contamination on property that is not used for residential purposes and that meet the health risk level established in the bill. Whenever property is not remediated to the residential standard, the use of the property must be restricted and access to the property must be restricted in a manner compatible with the allowable uses of the property.

Subsection f. of section 35 of the bill authorizes a person performing a remediation to submit to the department a request to use an alternative soil remediation standard. The use of a site-specific soil remediation standard must be based upon site specific factors that include physical site characteristics or a site-specific risk assessment. If the person requesting the use of site-specific remediation standards demonstrates that the alternative standards are protective of the public health and safety and the environment, the department would approve the use of the alternative standard. The department may require the use of an alternative remediation standard for a contaminant for a specific site, if the use of the established remediation standard on that site is not protective of the public health and safety or the environment.

Subsection g. of section 35 sets forth the factors to be used in determining the appropriate remedial action to meet the applicable remediation standard. The factors and policy guidelines that must be weighed when performing a remediation, and that the department would review in approving a remediation, include: permanent remedies are preferred over nonpermanent remedies; contamination may be left on the site at levels that exceed the established remediation standards if the use of engineering and institutional controls is required; property on which there is soil that has not been remediated to the residential standard, or property on which the soil, groundwater or surface water has been remediated to meet the health risk levels by the use of engineering and institutional controls, may be used for residential purposes if all areas of the property at which a person may come into contact with soil are remediated to the residential use soil remediation standards

and it is demonstrated that for all other areas on the property, engineering and institutional controls can be implemented and maintained to meet the established health risk levels; remediation would not be required beyond the regional natural background levels; remediation of contamination coming onto the site from property owned by another person shall not be required; and groundwater that is contaminated is not required to be remediated to a level lower than the level that is migrating onto the property from another person's property. In determining the appropriate remedial action, the person remediating must compare the effectiveness of each alternative in protecting the public health, safety and the environment, the implementability of each alternative, the time to implement each alternative, the cost of each alternative, and the technological efficacy of each alternative.

Because a large number of urban and wetland areas in the State have been filled with contaminated materials, and the removal or treatment of those materials is not feasible or practicable in many circumstances, subsection h. of section 35 of the bill provides that there is a rebuttable presumption that the department shall not require removal and treatment of those materials defined as historic fill in order to comply with the remediation requirements established pursuant to this bill. Subsection h. also requires the department to adopt regulations that establish a procedure through which a person may demonstrate that a particular parcel of land contains historic fill material and that identify engineering or institutional controls to contain or stabilize contamination caused by historic fill materials. Subsection h. also provides an opportunity for filled areas to undergo economic development that would otherwise not be possible if removal or treatment were required to remediate these areas. The department may rebut the presumption by finding that the use of engineering or institutional controls will not be protective of public health, safety or the environment. Historic fill material is defined in the bill as "large volumes of nonindigenous material used to raise the topographic elevation of a site, which were contaminated prior to emplacement, but were not connected to operations at the location of emplacement and include construction debris, dredge spoils, demolition debris, fly ash and nonhazardous solid waste. Historic fill material does not include any material that is substantially chromate chemical production waste or waste from mining, or the processing of mineral ores, residue, slag or tailings."

Nothing in subsection h. is intended to be construed to require or prevent removal or treatment of any material that is specifically excluded from the definition of historic fill material. Further, nothing in subsection h. is intended to be used to support or establish any presumption, inference or argument that any material that is specifically excluded from the definition of historical fill material should be treated or removed to comply with any remediation standard or requirement established in this bill or restrict the rights of any person to employ engineering or institutional controls to address contamination problems related to any material that is specifically excluded from the definition of historic fill material. For sites contaminated by material that does not qualify as historic fill material, remediation standards and

requirements established pursuant to this bill for those sites are not affected in any manner by the provisions of subsection h. of section 35.

The bill also requires the department to develop recommendations for remedial actions in large areas of historic industrial contamination.

The bill provides finality for a person performing a remediation. First, the department may only change a remediation standard if a new standard is necessary to maintain the health risk levels established in subsection d. of section 35 or to protect the environment. After a remedial action workplan has been approved by the department, the department may require a change to that workplan to compel a remediation to a standard that has changed or may compel further remediation, if the change in the standard is by an order of magnitude. (For example, a change from 100 parts per million to 10 parts per million is an order or magnitude change.) The department's change in the standard may be less than an order of magnitude, but the department would have authority to order additional remediation after a remedial action workplan is approved, only if the difference is an order of magnitude. Further, subsection e. of section 36 provides that upon the adoption of a regulation that changes a remediation standard, only a person who is liable to clean up the contamination pursuant to the "Spill Compensation and Control Act," is liable for the additional remediation costs for any necessary additional remediation.

Subsection k. of section 35 of the bill provides that all remediation standards and remedial actions that involve real property in the pinelands area shall be consistent with the provisions of the "Pinelands Protection Act" and all regulations adopted pursuant thereto, and with section 502 of the National Parks and Recreation Act of 1978.

Section 36 of the bill requires that when real property is remediated to the nonresidential soil remediation standard or when engineering or institutional controls are used in lieu of remediating a site to the established remediation standard for soil, groundwater or surface water, that the department shall require: the use of the necessary controls; the maintenance of the controls; a restriction on the use of the property that prevents exposure; and the filing of a deed notice with the county recording officer that informs prospective holders of an interest in the property that contamination exists at the property that may restrict certain uses or access to portions of the property, that describes the controls that exist and must be maintained, and that includes the written consent of the owner of the property. The department shall require that a notice that includes the above information to be transmitted to the governing body of the municipality in which the property is located, that signs where access is limited be posted, and a list of restrictions be kept on the site for inspection by governmental officials. This section also includes a procedure for removing any restrictions that are no longer required. The bill provides penalties for any owner, lessee or other person operating a business on the property for failure to maintain the controls as required by the department.

Section 37 of the bill creates the Environment Advisory Task

Force. The Task Force is charged with the responsibility to make recommendation on the feasibility or manner in which remediation standards protective of the environment may be adopted and implemented. The Environment Advisory Task Force is to consist of 15 members who shall be the Commissioner of Environmental Protection or his designee, a representative of the National Academy of Sciences, selected by the Academy, a representative of the Environment and Occupational Health Sciences Institute, selected by the Institute, one representative each from the industrial development, legal, consulting, and public interest environmental interests to be appointed by the Governor with the advice and consent of the Senate, and eight members who have relevant scientific backgrounds. Four of the eight members with scientific backgrounds shall be employed by industry. The Senate President and the Speaker of the General Assembly each will appoint two of the industry members. The other four members are to be appointed by the Governor with the advice and consent of the Senate. The recommendations of the Task Force are to be made within two years. The department may not adopt soil remediation standards protective of the environment until the recommendations are made.

Section 38 of the bill requires the department to develop a guidance document, to be published in the New Jersey Register, that describes the remedial action alternatives that should be considered by a person performing a soil remediation.

Section 39 of the bill provides amnesty from civil penalties for persons who violated P.L.1976, c.141 and P.L.1977, c.74 if the person is not involved in an enforcement action and, within one year of the effective date, enters into a memorandum of agreement or as administrative consent order to clean up the discharge.

Section 40 of the bill provides a cause of action for persons to obtain access to property not owned by that person to conduct remediation activities on that site. A person seeking access must first attempt to reach an agreement with the property owner concerning access to the property, and if agreement cannot be reached, an action may be brought in Superior Court, and the court may order that access to the property be given to the person who is performing the remediation. The court may require the person performing the remediation to pay costs associated with any disruption in operations or costs to return the property to its original condition. Further, the court may require the person performing the remediation to indemnify the property owner for any damages, penalties or liabilities resulting from his entry onto the property, or resulting from the remediation.

Section 41 of the bill provides a process through which departmental decisions may be disputed. Any person conducting a remediation may request review of a decision by the next highest level of management, until the Commissioner or his designee has issued a decision. Each successive level of review and the decision thereon must be made within seven days of a request for review.

Section 42 of the bill requires the Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Department of Environmental Protection, to prepare informational materials containing criteria that may be used in the

selection of a consultant who is to perform a remediation of contaminated property.

Section 43 of the bill authorizes a person to perform an emergency cleanup to prevent the spread of contamination without having to wait for departmental approval. The department could not require additional remediation unless further remediation is required to bring the area into compliance with the applicable remediation standards.

Section 44 of the bill amends the "Spill Compensation and Control Act" by providing a defense to liability for persons who acquire property after the effective date of this bill, on which there has been a discharge. Those persons who acquire contaminated property after the effective date of the act, shall not be considered in any way responsible for the discharged hazardous substance if that person can establish by a preponderance of the evidence that the person acquired the property after the discharge, that the person did not know and had no reason to know that any hazardous substance had been discharged by undertaking all appropriate inquiry into the previous ownership and uses of the property, or that the person acquired the property by devise or succession. If a person acquires contaminated property by devise or succession, any other funds or property received by that person from the deceased property owner who discharged a hazardous substance or was in any way responsible for a hazardous substance shall be made available to satisfy the requirements of P.L.1976, c.141. In order to use this defense to liability, the person must also establish that they did not discharge the hazardous substance, and is not in any way responsible for a hazardous substance, and that the person gave notice of the discharge to the department upon actual discovery of the discharge.

The bill does not change the existing "Spill Compensation and Control Act" liability of persons who purchased real property before the effective date of this bill. This section would also provide that the defense would not be available to any person who owns real property, or obtains actual knowledge of a discharge and subsequently transfers ownership of that property to another person without disclosing that knowledge. Moreover, such a person would be strictly liable for the discharge. This section would also provide that a government entity which acquires contaminated property by virtue of its function as a sovereign, would not be liable for a discharge that occurred or began prior to the period of ownership as long as the government entity did not cause or contribute to the discharge.

The provisions of this bill are to take effect immediately except that the amendment to the "Spill Compensation and Control Act" would remain inoperative for 90 days so as not to interfere with property transactions that were entered into prior to this bill becoming law.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1070

STATE OF NEW JERSEY

DATED: MARCH 18, 1993

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1070 (SCS).

Senate Bill No. 1070 (SCS) revises the 1983 "Environmental Cleanup Responsibility Act," changes the short title of that act to the "Industrial Site Recovery Act" to better reflect its purposes, and creates a loan and grant program to make low interest loans available to persons who are unable to afford the cleanup of contaminated property, persons who own contaminated property and did not cause the contamination, and local governments for the cleanup of contaminated property. The substitute also directs the Department of Environmental Protection to adopt remediation standards for contaminated sites.

A full discussion of the provisions of the substitute is contained in the March 15, 1993 Senate Environment Committee statement which accompanied the release of the substitute.

FISCAL IMPACT

The provisions of this substitute (1) establish a Hazardous Discharge Site Remediation Fund to provide loans and grants to private parties and local governments for the remediation of contaminated property, (2) establish a Remediation Guarantee Fund to be used by the Department of Environmental Protection to remediate property on which a person has failed to conduct remediation, (3) require persons compelled to perform remediation pursuant to this substitute, or any other State law, to establish a remediation funding source, and (4) impose a 1% annual surcharge upon remediation funding sources.

The Hazardous Discharge Site Remediation Fund, to be administered by the New Jersey Economic Development Authority, will be credited with (1) $45 million from the "Hazardous Discharge Bond Act of 1986," P.L.1986, c.116, (2) the revenues from the annual 1% surcharge imposed by the substitute on remediation funding sources, and (3) $10 million from the environmental cleanup assistance account established by the Economic Development Authority pursuant to the "Economic Recovery Fund Act," P.L.1992, c.16 (C.34:1B-7.10). The fund will receive the $10 million from the environmental cleanup assistance account by an appropriation made in Senate Bill No. 1036 (1R) of 1992.

When a remediation funding source cannot be established for all or a part of the cost of a remediation, a loan from the Hazardous Discharge Site Remediation Fund may be obtained. Monies in the fund would be allocated as follows:

15% for loans to private parties for remediations in urban aid municipalities;

10% for loans and grants to municipal government entities;

15% for loans to private parties or municipal government entities for the remediation of discharges that pose an imminent threat to a drinking water source to human health or a significant ecological area;

10% for loans to private parties who voluntarily undertake a remediation;

20% for grants to persons who purchased property before December 31, 1983 and did not cause the discharge;

10% to be allocated in any of the above categories.

The Economic Development Authority is authorized to charge an application fee for a loan or grant from the fund, and may use up to 2% of the moneys issued as loans and grants from the remediation fund for administrative expenses.

The substitute establishes the Remediation Guarantee Fund in the Department of Environmental Protection and it will be credited with $5 million from the "Hazardous Discharge Bond Act of 1986," P.L.1986, c.116. The Remediation Guarantee Fund is to be used by the department to remediate property on which a person who is required to establish a remediation funding source has failed to conduct remediation.

The substitute imposes a 1% annual surcharge on the amount of the remediation funding source that is required to be maintained by any person required to perform a remediation pursuant to this substitute or any other State law. However, the surcharge is not paid on the amount of a remediation funding source met by a self-guarantee, by a loan or a grant from the Hazardous Discharge Site Remediation Fund, or by any person performing a voluntary remediation. This substitute requires that a remediation funding source be established by any person required to perform a remediation pursuant to this substitute, who has been issued a directive by the department to perform a remediation, who has entered into an administrative consent order with the department to perform a remediation or who has been ordered by a court to perform a remediation. Those persons who perform a remediation voluntarily are not required to maintain a remediation funding source. The amount of the remediation funding source must be equal to or greater than the cost estimate of the implementation of the remediation.

After the funds from the Hazardous Discharge Bond Act of 1986 are transferred to the two new funds credited by this bill, the bond fund will have $150,000,000 remaining.

ASSEMBLY POLICY AND RULES COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1070

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 3, 1993

The Assembly Policy and Rules Committee favorably reports the Senate Committee Substitute for Senate Bill No. 1070 with committee amendments.

The Senate Committee Substitute for Senate Bill No. 1070 revises the "Environmental Cleanup Responsibility Act," P.L. 1983, c.330 (C.13:1K-6 et seq.) (ECRA), provides financial assistance to certain private parties who are unable to afford the cleanup of contaminated property and to local governments for the cleanup of contaminated property. The substitute also directs the Department of Environmental Protection and Energy (DEPE) to adopt remediation standards for contaminated sites.

The primary objective of the substitute, as amended by the committee, is to reform the site remediation process in order to promote faster cleanups of contaminated property while at the same time furthering the State's economic well-being and development by improving the State's business climate. To achieve these objectives, the amended version of the substitute is designed to eliminate, to the greatest extent possible, the unnecessary time-consuming procedures and bewildering maze of regulations that created much uncertainty and unpredictability for the business community under the current ECRA program by (1) streamlining the remediation process and procedures for owners or operators of industrial establishments; (2) easing the financial burden by providing financial assistance to eligible parties; and (3) establishing administrative predictability by codifying summary procedures and providing specific legislative direction to the department.

REMEDIATION AND THE REMEDIATION PROCESS

Sections 1 through 22 of the substitute amend and supplement the "Environmental Cleanup Responsibility Act," P.L. 1983, c.330 (C.13:1K-6 et seq.).

In section 1, the short title of the act is changed from the "Environmental Cleanup Responsibility Act" to the "Industrial Site Recovery Act" (ISRA). Although the title of the act is changed, the basic purpose of the law remains intact: any business within certain Standard Industrial Classification Code numbers that generates, uses, transports, manufactures, refines, treats, stores, handles, or disposes of hazardous substances or hazardous wastes is subject to ISRA requirements upon a closing of operations or a transfer of ownership or operations.

Section 2 amends the Legislative findings and declarations to fully affirm the Legislature's intent to protect the public health, safety and environment of the State, while at the same time eliminating any unnecessary financial burden of remediating contaminated sites; that these objectives can be achieved by streamlining the regulatory process by establishing summary administrative procedures for industrial establishments that have previously undergone an environmental review, and by reducing oversight of those industrial establishments where less extensive regulatory review can assure the same degree of protection to the public health, safety and environment; and that the new procedures established by this substitute are designed to guard against redundancy from the regulatory process and to minimize governmental involvement in certain business transactions.

Section 3 revises the definition section of the law. New terms are incorporated to reflect the stages of the remediation process under ISRA. The new terms include "preliminary assessment," "site investigation," "remedial investigation," "remedial action," and "remedial action workplan." Although these terms are used in federal remediation law, the substitute is clear that the requirements for each phase of an ISRA remediation are not to be identical to federal law. To add more specificity and clarity about the transactions which trigger ISRA requirements, the substitute replaces the existing "closing, terminating, or transferring operations" term with two new ones: "closing operations" and "transferring ownership and operations."

Several new exclusions are set forth in section 3, most notably, the transfer of real property pursuant to the "Eminent Domain Act of 1971," P.L. 1971, c.361 (C.20:3-1 et seq.). Many of the transactions specifically excluded under the substitute were already listed as excluded ones under the DEPE's regulations. They have been incorporated in the substitute to provide clarity and certainty for the regulated community. In line with that objective, it is important to recognize that the new definition of "indirect owner" is not intended to require the remediation of an industrial establishment by a bank that holds a mortgage or other security interest in the industrial establishment, simply because that bank merged or consolidated with another entity.

Substantive committee amendments to Section 3: The committee adopted several clarifying amendments to section 3.

1. "Closing operations" The committee amended the definition of "closing operations" to provide some specificity to the five year time frame to be used for determining whether an establishment had experienced a 90 percent reduction in the value of its total product output by adding "as measured on a constant, annual date-specific basis." The choice of the date is to be up to the owner or operator, but it must be constant throughout the five year period

The committee also amended the definition to authorize the department to approve a waiver from the cessation of operations paragraph if an owner or operator applied for one and evidenced a good faith effort to maintain and expand product output, the number of employees, or operations.

Finally, the committee included the termination of a lease, unless there is no disruption in operations, as an event constituting a closing. As delivered to the committee, the termination of a lease was included under a transferring of ownership or operations.

2. "Change in ownership does not include" The committee amended this definition to clarify and limit lender liability. Under these amendments, a lender is not liable for any execution, delivery, filing or recording of any mortgage, security interest, collateral assignment or other lien on real or personal property, or for any transfer of personal property under a valid security agreement, collateral assignment or lien, including seizure or replevin for the purpose of implementing the secured party's rights if the personal property is collateral.

3. "Negative declaration" The committee amended this definition to include any "other person assuming responsibility for the remediation under paragraph (3) of subsection b. of section 4 of P.L. 1983, c.330 (C.13:1K-9). As delivered to the committee, the substitute provided that only the owner or operator could submit a negative declaration to the department.

4. "Preliminary assessment" The committee substituted "latent" for "potential." In addition, the committee specified that, in general, the historic information subject to evaluation is from 1900 to the present. However, the amendment does permit the department to require additional information relating to ownership and use of a site prior to 1900 if such information is available through diligent inquiry of public records.

Section 4 of the bill revises the ISRA process. An owner or operator who closes operations or transfers ownership or operations is required to provide notice to the department. In the case of a closing, the notice is to be given no more than five days after the closing, or the public release of the decision to close, whichever comes first. In the case of a transfer of ownership or operations, the notice is to be given within five days of the agreement to transfer. Upon the closing or prior to the transfer, as the case may be, the approval of a negative declaration, remedial action workplan or remediation agreement and the establishment of a remediation funding source is required.

The owner or operator of the industrial establishment is required to remediate the site. For all remediations, the preliminary assessment, site investigation, and remedial investigation may be performed without the prior approval of each phase of the remediation by the department. However, a remedial action workplan that involves the remediation of surface water or groundwater must be approved by the department prior to its implementation.

The amended version of the bill authorizes an owner or operator to implement a remedial action workplan for a soil remediation without waiting for the department's approval of that workplan if the remedial action can be completed within five years of its commencement and if the soil remediation meets the established minimum residential or nonresidential use soil remediation standards. In determining whether to use nonresidential use soil remediation standards, the owner or operator is to be guided by six

criteria set forth in subsection i. of section 4 of the substitute. Any owner or operator proposing to implement a remedial action which cannot be completed within five years of its commencement or which does not meet the established minimum residential or nonresidential standards must receive department approval before implementing that remedial action.

If the results of any phase of a remediation have not been submitted to the department, all documents must be submitted at the completion of the remediation for the department's review and approval. If remediation activities were not in compliance with the applicable rules and regulations, if all necessary documents were not submitted or were deficient or inaccurate, or if discharged hazardous substances or hazardous wastes remain at the site or have migrated offsite in violation of the applicable cleanup standards, the department may order additional remediation.

Subsection e. of section 4 authorizes an owner or operator to enter into a remediation agreement with the department if the transfer of ownership or operations is to occur prior to the approval or a remedial action workplan of a negative declaration. The 1983 law did not provide for a transaction to proceed while a lengthy remediation occurred. To address such situations, the department used administrative consent orders to allow transfers to proceed if the remedial action workplan could not be developed before the transfer took place. In the substitute, the remediation agreement replaces the administrative consent order.

Substantive committee amendments to section 4:

1. The committee adopted an amendment to paragraph (2) of subsection b. to authorize owners or operators to transmit certain documents relating to an executed sale, transfer or option by overnight delivery or personal service, in addition to certified mail.

2. The committee adopted amendments to subsections h., i. and j. to clarify the authority of owners and operators to implement certain soil remediation actions without prior departmental approval. An owner or operator's decision to use nonresidential rather than residential standards is to be based upon six criteria. The department is to promulgate regulations within 18 months of the effective date of the substitute's enactment. In the interim, the criteria are to be used by owners or operators in making their determinations. During this interim period, the department is to impose reasonable standards and requirements upon owners and operators deciding to use nonresidential use soil standards. The amendments specify that the department may not impose any requirement under criterion (5) that would require an owner or operator to implement a residential use soil remediation standard unless the cost difference between implementing the residential standard and nonresidential standard is a de minimis amount. For that purpose, the committee determined that de minimis means a cost difference not exceeding 10 percent of the cost of implementing the nonresidential standard. The amendments also specify that at any time after the effective date of the bill, an owner or operator may request the department to provide a determination as to whether a proposed remedial action is consistent with the six criteria. The department is to provide its determination within 30 calendar days.

Section 8 of the substitute requires the department to review and approve, approve with conditions, or disapprove a submission of a phase of the remediation within the review schedules established pursuant to section 2 of P.L. 1991, c.423 (C.13:1D-106).

Section 9 of the substitute establishes a de minimis quantity exemption to ISRA by authorizing the owner or operator of an industrial establishment, upon written notice to the department, to transfer ownership or operations or close operations without complying with the provisions of ISRA. As received by the committee, the substitute provided an owner or operator did not have to comply with the provisions of ISRA if the total quantity of hazardous substances and hazardous wastes did not exceed 55 gallons or 500 pounds at any one time during the owner or operator's period of ownership or operations.

Substantive committee amendments to section 9:

1. The Committee amended section 9 to expand the de minimis quantity exemption by adding a specific reference to hydraulic and lubricating oil. Under the amendment, any owner or operator who did not have, in the aggregate, more than 220 gallons of hydraulic or lubricating oil at any one time during his period of ownership or operation could transfer ownership or operations or close operations without complying with the provisions of ISRA.

Section 11 of the substitute requires the department to approve a deferral of the preparation, approval and implementation of a remedial action workplan for the industrial establishment if it would be subject to substantially the same use by the transferee. To qualify for a deferral, the transferor would be required to perform the investigatory stages of the remediation, submit a cost estimate, and a certification that the transferee has the financial ability to perform the remediation.

Substantive committee amendments to section 11:

1. The committee deleted language from subsection b. which it considered redundant and unnecessary.

2. The committee added language to the section to clarify the phrase "substantially the same use." Under the amendment, any industrial establishment which retains the same three digit Group Number, as designated in the Standard Industrial Classifications Manual prepared by the federal Office of Management and Budget in the Executive Office of the President of the United States, would meet the qualification as one subject to "substantially the same use." The committee amendment also permits applicants to petition the department for a finding that an industrial establishment is subject to "substantially the same use" based upon its retention of the same two digit Major Group Number.

Section 12 would remove the department's authority to void a transaction. A transferee's authority to void a transaction would be limited to when the transferor fails to perform a remediation. The transferor is given an opportunity to correct the violation prior to a transaction being voided.

Sections 13 through 19 establish new summary procedures for compliance. These sections will greatly privatize and simplify the ISRA process for the applicant where a site, or a part of a site, has previously undergone a remediation.

Section 13 lifts the requirement to obtain approval of a remedial action workplan, a negative declaration, or a remediation agreement upon the closing, or prior to the transfer, of an industrial establishment that has previously undergone a full site remediation upon the certification of the owner or operator that there has been no discharge subsequent to the last remediation, or that any subsequent discharge was remediated in accordance with the department's procedures.

Substantive committee amendment to section 13:

1. The committee amended the section to include remediations undertaken pursuant to the federal "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act," 42 U.S.C. §9601 et seq.

Under section 14, if a full site remediation has already been performed, but a subsequent discharge has occurred, only the subsequently contaminated portion of the site must be cleaned up.

Substantive committee amendment to section 14:

1. The committee amended the section to include remediations undertaken pursuant to the federal "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act," 42 U.S.C. §9601 et seq.

Section 15 of the substitute authorizes an owner or operator to apply for an area of concern waiver that would relieve him from remediating any portion of his site that has previously been remediated as long as he certifies that there has been no new discharge at that area.

Section 16 authorizes an owner or operator to transfer ownership or operations or close operations if the site is undergoing an ISRA review or any other full site remediation if there have been no discharges during his period of ownership, a remediation funding source is established, and the transferee has been notified that the site is the subject of a remediation.

Substantive committee amendment to section 16:

1. The committee amended the section to include remediations undertaken pursuant to the federal "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act," 42 U.S.C. §9601 et seq.

Section 17 provides that if the only potentially contaminated area at a site is an underground storage tank, then the owner or operator does not need to further comply with the requirements of ISRA.

Section 18 authorizes an owner or operator of an industrial establishment to perform a remediation without departmental oversight as long as there are not more than two areas of concern and the remedial action can be completed within six months.

Section 19 of the substitute establishes a procedure for obtaining a certificate of limited conveyance. As received by the committee, this section authorizes the transfer of up to one third of the value of an industrial establishment without requiring the remediation of the entire industrial establishment. Only that

portion conveyed would be required to be remediated.

Substantive committee amendments to section 19:

1. The committee amended the section to expand the scope of limited conveyances. Under the amendment, an owner can transfer more than one third of an industrial site without having to remediate the entire site; provided that the amount paid for the additional portions of transferred real property be used exclusively for the purposes of remediating the transferred portion; and further provided, that any amounts unexpended for that remediation be held in trust to provide for the subsequent remediation of the remainder of the industrial establishment. The unexpended amounts are to be held in a remediation trust fund established in accordance with the provisions of subsection c. of section 25 of this substitute.

Section 20 would require landlords and tenants to cooperate in the provision of information pertaining to the remediation of a site, would require that copies of submissions be provided to the other party, and would require the department, if there is a failure of the landlord or the tenant to comply with ISRA, to first require compliance with ISRA by the person responsible pursuant to the provisions of the lease, if the lease is clear on allocating this responsibility. If the lease is unclear, or upon the continuing failure of either party to comply, the department may use all available authority to compel compliance by the landlord and the tenant.

Section 21 provides amnesty from civil penalties to any person who violated the provisions of P.L. 1983, c.330 (C.13:1K-6 et seq.) and who, within one year of the effective date of this substitute, enters into an administrative consent order or memorandum of agreement with the department to clean up the industrial establishment.

Section 22 requires the department to perform an audit of the covered industrial establishments and to identify any industries that do not pose a risk to the public health, safety or the environment. All identified industries will be exempt from ISRA after having gone through one full site remediation.

The substitute also codifies a recent State Supreme Court decision, In Re Adoption of N.J.A.C.7:26B, by stating affirmatively that contamination that has migrated or is migrating from an industrial establishment, must be remediated as part of an ISRA remediation.

REMEDIATION FUNDING PROVISIONS

This substitute would reduce the costs of remediation by changing the current financial assurance requirements. Current law requires that financial assurance be maintained as a separate fund to assure that in case of default, funds would be available to pay for the cleanup. The financial assurance fund could not be used to pay the cleanup costs. The substitute would require that a remediation funding source be established in the amount of the cost of the cleanup, and that the funding source would be used to pay the cleanup costs.

Specifically, sections 25 through 34 would (1) impose upon those

persons compelled to perform a remediation pursuant to ISRA, or any other State law, the requirement to establish a remediation funding source; (2) impose a 1% annual surcharge upon the declining balance of the cost of remediation; and (3) establish a fund for loans and grants for private parties and local governments to provide financing for the remediation of contaminated property. The loan and grant fund, administered by the New Jersey Economic Development Authority, will be credited with $45 million from the "Hazardous Discharge Bond Act of 1986," P.L.1986, c.116, and the revenues from the 1% surcharge imposed pursuant to section 33 of the bill. Section 45 of the bill creates the Remediation Guarantee Fund in the Department of Environmental Protection and Energy, to be credited with $5 million from the "Hazardous Discharge Bond Act of 1986," P.L.1986, c.116. The Remediation Guarantee Fund shall be used by the department to remediate property which a person who is required to establish a remediation funding source has failed to remediate.

Substantive committee amendments to section 25:

1. The committee amended subsection b. to permit the establishment and maintenance of an environmental insurance policy, issued by an entity licensed by the Department of Insurance to transact business in the State of New Jersey, to fund remediation expenses to serve as evidence of a remediation funding source. The committee also incorporated, as new subsection d., the guidelines for the handling and control of such environmental insurance policies.

The substitute requires that a remediation funding source must be established by any person required to perform a remediation pursuant to ISRA, any person who has been issued a directive by the department to perform a remediation, any person who has entered into an administrative consent order with the department to perform a remediation, or any person who has been ordered by a court to perform a remediation. (Persons who perform a remediation voluntarily are not required to maintain a remediation funding source.) The amount of the remediation funding source must be equal to or greater than the cost estimate of the implementation of the remediation. If the cost estimate increases, the remediation funding source amount must be adjusted accordingly. A remediation funding source can be established by creating a remediation trust fund, a line of credit, or a self-guarantee, or any combination thereof.

Section 33 of the bill imposes a 1% annual surcharge on the amount of the remediation funding source that is required to be maintained. The surcharge is not imposed on the amount of a remediation funding source met by a self-guarantee, the amount of a remediation funding source met by a loan or a grant from the Hazardous Discharge Site Remediation Fund, or any funds provided by any person performing a voluntary remediation.

When a remediation funding source cannot be established for all or a part of the cost of a remediation, a loan from the Hazardous Discharge Site Remediation Fund, created pursuant to section 26, may be obtained. Monies in the loan and grant fund, called the Hazardous Discharge Site Remediation Fund, would be allocated as follows:

15% for loans to private parties for remediations in urban aid municipalities;

10% for loans and grants to municipal government entities;

15% for loans to private parties or municipal government entities for the remediation of discharges that pose an imminent threat to a drinking water source, human health, or a significant ecological area;

10% for loans to private parties who voluntarily undertake a remediation;

20% for grants to innocent persons who purchased property before December 31, 1983 and did not cause the discharge;

10% to be allocated in any of the above categories.

Loans and grants may be issued for up to 100% of the costs of a remediation except that no loan to any applicant in a calender year may exceed $1 million and that innocent person grants may be used for 50% of the remediation cost. Loans and grants to any one municipal government entity may not exceed $2 million in any calender year.

The Economic Development Authority is authorized to charge an application fee, and may use up to 2% of the moneys issued as loans and grants from the remediation fund for administrative expenses.

Section 45 establishes a Remediation Guarantee Fund that shall be used by the Department of Environmental Protection and Energy to remediate property on which a person who is required to establish a remediation funding source has failed to conduct a remediation.

Substantive committee amendments to the sections dealing with Remediation Funding:

1. The committee amended a number of these sections to permit, with the approval of the Department of Insurance, the sale and use of environmental insurance. These environmental insurance policies would be used to fund remediations. The amendments provide certain guidelines for these insurance policies.

2. The committee, at the request of the Economic Development Authority, adopted amendments which substituted "financial assistance" for "loans." The authority, which is responsible for overseeing the remediation fund, contended that the change to "financial assistance" would give it greater flexibility and enable it to maximize the effective utilization of the available funds. The committee adopted several other amendments to further those objectives.

REMEDIATION STANDARDS

Section 35 directs the department to adopt minimum remediation standards for soil, groundwater, and surface water quality necessary for the remediation of real property. Until the remediation standards for the protection of public health and safety are adopted, the department will continue to apply standards on a case-by-case basis.

Section 37 of the bill establishes the Environment Advisory Task Force which, within two years, would be required to make recommendations to the department on the feasibility,

development, and application of remediation standards protective of the environment. Until the Task Force makes recommendations, the department may apply remediation standards protective of the environment on a case-by-case basis in accordance with the guidelines and regulations adopted pursuant to the federal "Comprehensive Environmental Response, Compensation and Liability Act of 1980."

The substitute requires the department to adopt residential and nonresidential standards for soil remediation, and authorizes the adoption of differential standards for surface water and groundwater that take into account the current, planned or potential use of the water.

Substantive committee amendment to subsection c. of section 35:

1. The committee adopted an amendment to provide that the differential remediation standards for surface water or groundwater be in accordance with the "Clean Water Act," 33 U.S.C. §1251 et seq. and the "Water Pollution Control Act," P.L. 1977, c.74 (C.58:10A-1 et seq.).

Subsection d. of section 35 requires, for all soil remediation standards developed by the department for residential and nonresidential uses, that the health risk for human carcinogens as categorized by the U.S. Environmental Protection Agency be based on an additional cancer risk of one in one million, and, for noncarcinogens, will limit the Hazard Index for any given effect to a value not exceeding one.

The substitute directs the department to adopt differential soil remediation standards. The soil standards adopted must be protective of the groundwater. A set of residential use soil remediation standards would be adopted that are protective of the public health and safety, and that will allow the unrestricted use of the property for residential purposes without exceeding the health risk levels established in the bill. The nonresidential soil remediation standards would be set at levels that take into account the lower exposure to contamination on property that is not used for residential purposes and that meet the health risk level established in the bill. Whenever property is not remediated to the residential standard, the use of the property must be restricted and access to the property must be restricted in a manner compatible with the allowable uses of the property.

Subsection f. of section 35 authorizes a person performing a remediation to submit to the department a request to use an alternative soil remediation standard. The use of a site-specific soil remediation standard must be based upon site specific factors that include physical site characteristics or a site-specific risk assessment. If the person requesting the use of site-specific remediation standards demonstrates that the alternative standards are protective of the public health and safety and the environment, the department would approve the use of the alternative standard. The department may require the use of an alternative remediation standard for a contaminant for a specific site, if the use of the established remediation standard on that site is not protective of the public health and safety or the environment.

Subsection g. of section 35 sets forth the factors to be used in

determining the appropriate remedial action to meet the applicable remediation standard. The factors and policy guidelines that must be weighed when performing a remediation, and that the department would review in approving a remediation, include: permanent remedies are preferred over nonpermanent remedies; contamination may be left on the site at levels that exceed the established remediation standards if the use of engineering and institutional controls is required; property on which there is soil that has not been remediated to the residential standard, or property on which the soil, groundwater or surface water has been remediated to meet the health risk levels by the use of engineering and institutional controls, may be used for residential purposes if all areas of the property at which a person may come into contact with soil are remediated to the residential use soil remediation standards and it is demonstrated that for all other areas on the property, engineering and institutional controls can be implemented and maintained to meet the established health risk levels; remediation would not be required beyond the surrounding ambient conditions; remediation of contamination coming onto the site from property owned by another person shall not be required; and groundwater that is contaminated is not required to be remediated to a level lower than the level that is migrating onto the property from another person's property. As received by the committee, the substitute would have required the person remediating to compare the effectiveness of each alternative in protecting the public health, safety and the environment; the implementability of each alternative; the time to implement each alternative; the cost of each alternative; and the technological efficacy of each alternative.

Substantive committee amendments to subsection g. of section 35:

1. The committee adopted amendments which would delete the requirements that a person remediating compare the effectiveness of each alternative; the implementability of each alternative; the time to implement each alternative; the cost of each alternative; and the technological efficacy of each alternative. The amendments direct the person performing a remediation to consider: (a) the technical performance, effectiveness and reliability of the proposed remedial action, with the department considering the ability of the owner or operator to implement the proposed remedial action within a reasonable time frame; (b) in the case of a proposed remedial action that will not meet the established minimum residential use soil remediation standards, the reasonableness of the cost of the proposed nonpermanent remedy, based upon department regulations; and (c) a requirement that the department shall not unreasonably disapprove the use of the established nonresidential soil remediation standard.

Since a large number of urban and wetland areas in New Jersey have been filled with various contaminated materials, and the removal and/or treatment of these materials is not feasible or practicable in most circumstances, subsection h. of section 35 provides that there is a rebuttable presumption that the department shall not require removal and treatment of certain materials defined as historic fill material in order to comply with the remediation requirements established pursuant to this substitute.

Subsection h. further requires the department to adopt regulations that establish a procedure through which a person may demonstrate and identify engineering or institutional controls to contain or stabilize contamination caused by historic fill materials. The sole intended purpose of subsection h. of section 35 is to provide an opportunity for filled areas to undergo economic development that would otherwise not be possible if removal or treatment were required to remediate these areas.

Nothing in subsection h. is intended to: (a) be construed to require or prevent removal or treatment of any material that is specifically excluded from the definition of historic fill material; (b) be used to support or establish any presumption, inference or argument that any material that is specifically excluded from the definition of historical fill material should be treated or removed to comply with any remediation or clean up standard or requirement; or (c) in any way restrict the rights of any person to employ engineering or institutional controls to address, in accordance with this act, contamination related to any material that is specifically excluded from the definition of historic fill material. For sites contaminated by materials that do not qualify as historic fill material, remediation standards and requirements for such sites established under this act are not affected in any manner by the provisions of subsection h. of section 35.

The substitute also requires the department to develop recommendations for remedial actions in large areas of historic industrial contamination.

The substitute provides finality for a person performing a remediation. First, the department may only change a remediation standard if a new standard is necessary to maintain the health risk levels established in subsection d. of section 35 or to protect the environment. After a remedial action workplan has been approved by the department, the department may require a change to that workplan to compel a remediation to a standard that has changed or may compel further remediation, if the change in the standard is by an order of magnitude. (For example, a change from 100 parts per million to 10 parts per million is an order or magnitude change.) If the department makes a change in a standard that is less than an order of magnitude, the department would have no authority to order additional remediation after a remedial action workplan is approved. Further, subsection e. of section 36 provides that upon the adoption of a regulation that changes a remediation standard, only a person who is liable to clean up the contamination pursuant to the "Spill Compensation and Control Act," is liable for the additional remediation costs for any necessary additional remediation.

Subsection k. of section 35 provides that all remediation standards and remedial actions that involve real property in the Pinelands area shall be consistent with the provisions of the "Pinelands Protection Act" (P.L. 1979, c.111; C.13:18A-1 et seq.) and all regulations adopted pursuant thereto, and with section 502 of the National Parks and Recreation Act of 1978.

Substantive committee amendments to section 35:

1. The committee added a subsection m. to section 35. This new subsection clarifies that nothing in the bill shall be construed

to restrict or in any way diminish the public participation which is otherwise authorized under the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11).

Section 36 requires that when real property is remediated to the nonresidential soil remediation standard or when engineering or institutional controls are used in lieu of remediating a site to the established remediation standard for soil, groundwater or surface water, that the department shall require: the use of the necessary controls; the maintenance of the controls; a restriction on the use of the property that prevents exposure; and the filing of a deed notice with the county recording officer that informs prospective holders of an interest in the property that contamination exists at the property that may restrict certain uses or access to portions of the property, that describes the controls that exist and must be maintained, and that includes the written consent of the owner of the property. The department shall require that a notice that includes the above information be transmitted to the governing body of the municipality in which the property is located, that signs where access is limited be posted, and a list of restrictions be kept on the site for inspection by governmental officials. This section also includes a procedure for removing any restrictions that are no longer required. The substitute provides penalties for any owner, lessee or other person operating a business on the property for failure to maintain the controls as required by the department.

Substantive committee amendment to section 36:

1. The committee amended subsection a. of section 36 to add a new paragraph. The new paragraph (6) requires that before commencing a remedial action, the person implementing that remedial action must notify the affected municipality municipalities. The notice is to include the date when remediation is to commence; the name, address, and busine telephone number of the person implementing the remedial action or his designated representative; and a brief description of the remedial action.

Section 37 creates the Environment Advisory Task Force. The Task Force is charged with the respons ty to make recommendations on the feasibility or manner in remediation standards protective of the environment may adopted and implemented. The Environment Advisory Task is to consist of 15 members who shall be the Commissioner nvironmental Protection and Energy or his designee, a rep ative of the National Academy of Sciences, selected by Academy, a representative of the Environment and C ational Health Sciences Institute, selected by the Institute, representative each from the industrial development, legal, co g, and public interest environmental interests to be appointed the Governor with the advice and consent of the Senate, and e mbers who have relevant scientific backgrounds. Four of th members with scientific backgrounds shall be employed ry. The Senate President and the Speaker of the General A ach will appoint two of the industry members. The other bers are to be appointed by the Governor with the advice a t of the Senate. The recommendations of the Task For oe made within two years. The department may not adop odiation

standards protective of the environment until the recommendations are made.

Section 38 requires the department to develop a guidance document, to be published in the New Jersey Register, that describes the remedial action alternatives that should be considered by a person performing a soil remediation.

Section 39 provides amnesty from civil penalties for persons who violated P.L.1976, c.141 and P.L.1977, c.74 if the person is not involved in an enforcement action and, within one year of the effective date, enters into a memorandum of agreement or an administrative consent order to clean up the discharge.

Section 40 provides a cause of action for persons to obtain access to property not owned by that person to conduct remediation activities on that site. A person seeking access must first attempt to reach an agreement with the property owner concerning access to the property, and if agreement cannot be reached, an action may be brought in Superior Court, and the court may order that access to the property be given to the person who is performing the remediation. The court may require the person performing the remediation to pay costs associated with any disruption in operations or costs to return the property to its original condition. Further, the court may require the person performing the remediation to indemnify the property owner for any damages, penalties or liabilities resulting from his entry onto the property or resulting from the remediation.

Substantive committee amendments to section 40:

1. The committee adopted extensive clarifying amendments to this section.

Section 41 provides a process through which departmental decisions may be disputed. Any person conducting a remediation may request review of a decision by the next highest level of management, until the commissioner or his designee has issued a decision. Each successive level of review and the decision thereon must be made within seven days of a request for review.

Substantive committee amendments to section 41:

1. The committee adopted an amendment which would require the department to include a expedited review procedure under which the commissioner or his designee would be required to issue a decision within 21 calendar days of the date on which the request for that review was received.

Section 42 requires the Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Department of Environmental Protection and Energy, to prepare informational materials containing criteria that may be used in the selection of a consultant who is to perform a remediation of contaminated property.

Substantive committee amendments to section 42:

1. The committee amended this section to require the Division of Consumer Affairs to include information relating to the availability of remediation liability insurance.

Section 43 authorizes a person to perform an emergency cleanup to prevent the spread of contamination without having to wait for departmental approval. The department could not require additional remediation unless further remediation is required to

bring the area into compliance with the applicable remediation standards.

Section 44 amends the "Spill Compensation and Control Act" by providing a defense to liability for persons who acquire property after the effective date of this bill, on which there has been a discharge. Those persons who acquire contaminated property after the effective date of the act shall not be considered in any way responsible for the discharged hazardous substance if that person can establish by a preponderance of the evidence that the person acquired the property after the discharge, that the person did not know and had no reason to know that any hazardous substance had been discharged by undertaking all appropriate inquiry into the previous ownership and uses of the property, or that the person acquired the property by devise or succession. If a person acquires contaminated property by devise or succession, any other funds or property received by that person from the deceased property owner who discharged a hazardous substance or was in any way responsible for a hazardous substance shall be made available to satisfy the requirements of P.L.1976, c.141. In order to use this defense to liability, the person also must establish that he did not discharge the hazardous substance, and is not in any way responsible for a hazardous substance, and that the person gave notice of the discharge to the department upon actual discovery of the discharge.

The substitute does not change the existing "Spill Compensation and Control Act" liability of persons who purchased real property before the effective date of this bill. This section would also provide that the defense would not be available to any person who owns real property, or obtains actual knowledge of a discharge and subsequently transfers ownership of that property to another person without disclosing that knowledge. Moreover, such a person would be strictly liable for the discharge. This section would also provide that a government entity which acquires contaminated property by virtue of its function as a sovereign, would not be liable for a discharge that occurred or began prior to the period of ownership as long as the government entity did not cause or contribute to the discharge.

The committee also amended the substitute to include four new sections.

The first new section amends section 7 of P.L. 1993, c.112 (C.13:1K-11.1). The provisions of P.L. 1993, c.112 prescribed the limits of lender liability as they relate to the ECRA program. The committee amended that statute to transfer the language describing the types of transactions that are excluded and incorporate them within the operative section of the statute (section 3 of P.L. 1983, c.330; C.13:1K-8) as paragraphs (10) and (11) of the list of transactions which do not constitute a "change in ownership" that would trigger the remediation requirements of the law.

The second new section establishes a special Environmental Risk Assessment and Risk Management Study Commission. This 10 member commission is charged with two responsibilities. The first is to examine and assess the scientific basis for selecting the risk management standard of one in one million for the ISRA program and to consider and assess alternative scientific standards that

could be used. The second is to examine and assess methodologies of risk assessment and their efficacy and applicability for the purposes of establishing remediation standards for the ISRA program. The commission's report, along with any recommendations on risk management standards, is to be submitted to the Governor and Legislature within 6 months. The report, along with any recommendations on risk assessment methodologies, is to be delivered to the Governor and Legislature within a year. The Commissioner of Environmental Protection and Energy, or his designee, is to serve on the commission as a non-voting member. Eight of the members are to have advanced degrees and relevant experience in any of the following disciplines: (1) environmental medicine, health, or epidemiology; (2) environmental toxicology; (3) soil science, geology, or hydrogeology; and (4) environmental engineering with experience in site remediation. The Governor is to appoint one representative from each of those disciplines. The Senate President is to appoint two, but both of those appointees may not be from the same discipline. The Speaker of the General Assembly is also to appoint two. Like the Senate President, both of the Speaker's appointments may not be from the same discipline. A ninth member, who is to be a recognized expert in the field of risk assessment as it applies to contaminated sites or to the remediation of such sites, is to be jointly appointed by the Governor, the Senate President, and the Speaker. The chairman is to be jointly appointed by the Governor, the Senate President, and the Speaker from among the appointed members. To ensure that the commission is aware of, and recognizes, the public's interest in these issues, the bill requires the members to hold at least one public hearing prior to commencing its deliberations and at least one other public hearing after it has made public its findings and recommendations, but before formally submitting them to the Governor and the Legislature.

The third new section directs the Commissioner of Environmental Protection and Energy, in consultation with the Attorney General, to prepare a comprehensive report on the effectiveness and fairness of the imposition of strict, joint and several liability on persons who have discharged, or are in any way responsible for, a hazardous substance discharge pursuant to P.L. 1976, c.141 (C.58:10-23.11 et seq.).

The fourth new section directs the Commissioner of Environmental Protection and Energy to issue a report to the Governor and the Legislature. In the report, the commissioner is to provide an evaluation, recommendations, and a plan of action for developing and implementing a certification program for person engaging in the remediation of contaminated sites. The commissioner is to issue the report within six months of the enactment of the bill.

STATEMENT OF LEGISLATIVE INTENT

The legislative intent of this bill, as amended, is to:

- Streamline the ISRA process by eliminating redundant and unnecessary regulatory requirements; privatizing the process as much as possible where qualified private professionals are available; providing for expedited compliance processes under certain conditions and reducing DEPE involvement in the process to the greatest extent possible.

- Eliminate feasibility studies as defined pursuant to the federal "Comprehensive Environmental Response, Compensation and Liability Act," 42 U.S.C. 9601 et seq.

- Provide for differential standards for residential and nonresidential (also referred to as industrial) remediations and permanent (also referred to as residential) and nonpermanent remedies. The decision to choose the remediation option is left with the property owner in selected situations, based on criteria in Sections 4 and 35.

- Guarantee that the option to defer the preparation, approval and implementation of a remedial action workplan for the industrial establishment is a right enjoyed by the owner or operator, which cannot be denied upon submission of a complete and accurate application pursuant to the requirements of Section 11.

- Require the DEPE to revise its "Technical Standards Manual." proposed for promulgation on July 1, 1993. to more clearly reflect the provisions of this bill and its legislative intent.

- Provide for conveyance of portions of the industrial establishment pursuant to the criteria in Section 19 so long as the proposed property transfer does not trigger a full ISRA process.

- Require the DEPE, until regulations are adopted authorized by this act, to act reasonably in the interim period when reviewing applications and petitions and in all other interactions with the public.

- Allow cleanups that do not remediate property to pristine levels, provided that appropriate and DEPE approved engineering or institutional controls are implemented.

- Require the DEPE to conduct an audit of covered industrial establishments as defined in Section 3 to determine which, if any industries, can be exempted from ISRA.

- Require owners or operators who are subject to a remediation, other than a voluntary clean up, to establish a single funding mechanism that provides both a financial guarantee and funding source for remediation.

- Provide, to the greatest extent possible, finality to compliance with ISRA.

- Ensure that all remediation standards and remedial actions in the Pinelands area are consistent with the "Pinelands Protection Act" and all regulations adopted pursuant thereto and with section 502 of the National Parks and Recreation Act of 1978.

- Clarify that landowner liability and defense provisions provided in Section 44 do not apply to parties provided immunity under P.L. 1993, c.112.

- Provide that under Section 35 subsection b., the DEPE is to utilize the federal Environmental Protection Agency's guidance and regulations pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act" 42 U.S.C. 9601 et seq. in developing minimum remediation standards; but the DEPE may deviate from that guidance if it is scientifically justified, either by the department or by an applicant with approval by the department, and otherwise authorized by this act.

- Provide that remediation approved by the federal Environmental Protection Agency pursuant to the federal "Resource Conservation and Recovery Act," 42 U.S.C. 6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act" 42 U.S.C. 9601 et seq. shall serve as an approved remediation under the ISRA.

- Clarify that the cancer risk management level of one-in-one million is principally a policy decision and the Environmental Risk Assessment and Risk Management Commission shall revisit this decision and make recommendations, by using the scientific evidence available, on an appropriate risk management level and the methodologies to be used in reaching this risk level.

- Indicate that the applicability of strict joint and several liability needs careful review by the DEPE and the Attorney General's Office and requires the timely submission of recommendations on possible modifications that improve the effectiveness and fairness of the current liability system.

- In recognition of this determination, until action is taken to modify strict joint and several liability pursuant to Section 48, the DEPE shall consider the inequity in the system and shall be reasonable in assessing liability when applying joint and several liability.

- Clarify that variances for remediation standards, including engineering and institutional controls such as alternative drinking water supplies or drinking water treatment systems in place of groundwater or surface water remediation, are not specifically identified in this act, because these variances can be developed for groundwater and surface water in accordance with the "Clean Water Act" and the "Water Pollution Control Act."

- Mirror federal law in establishing the "innocent party" defense pursuant to Section 44 and to clearly state the purpose of this section is merely to determine responsibility and that it has nothing to do with criminality.

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ASSEMBLY POLICY AND RULES COMMITTEE

AMENDMENTS

to

Senate, No. 1070 SCS

ADOPTED
JUN 3 - 1993

(Sponsored by Senators McNAMARA and RICE)

REPLACE TITLE TO READ:

AN ACT concerning the remediation of contaminated property, amending and supplementing P.L.1983, c.330, amending P.L.1976, c.141, supplementing Title 58 of the Revised Statutes, 1amending P.L. 1993, c.112,1 and making an appropriation from the "Hazardous Discharge Bond Act of 1986."

REPLACE SECTION 2 TO READ:

2. Section 2 of P.L.1983, c.330 (C.13:1K-7) is amended to read as follows:

2. [The Legislature finds and declares that the generation, handling, storage and disposal of hazardous substances and wastes pose an inherent danger of exposing the citizens, property and natural resources of this State to substantial risk of harm or degradation; that the closing of operations and the transfer of real property utilized for the generation, handling, storage and disposal of hazardous substances and wastes should be conducted in a rational and orderly way, so as to mitigate potential risks; and that it is necessary to impose a precondition on any closure or transfer of these operations by requiring the adequate preparation and implementation of acceptable cleanup procedures therefor.]

The Legislature finds that discharges of toxic chemicals dating back to early industrialization has left a legacy of contaminated industrial property in this State; that in 1983, due to the growing public awareness and concern of the risks to the public health and the environment and the potential costs to the State to clean up abandoned contaminated sites, the "Environmental Cleanup and Responsibility Act 1[,]1" was enacted. The Legislature also finds that the act's imposition of a cleanup plan approval before the transfer or upon the closing of an industrial establishment and the requirement to establish a funding source for the cleanup 1[is] are1 in the general public interest by ensuring the discovery of contamination, by assuring that funding for cleanup is set aside at the time it is available from a transfer or closing, and by assuring that contaminated property is not abandoned to the State for cleanup. The Legislature further finds that at the time of the act's passage, the extent of the State's industrial contamination 1[,]1 and the cost and complexity of remediations 1[,]1 were not well understood; that in the

intervening years, there has been a significant advance in the body of knowledge concerning how to remediate contaminated sites effectively and how to manage the remediation efficiently; that the regulated and financial [1][community is] communities are[1] now more familiar with the liabilities involving contaminated property and with the necessity to discover and remediate that contamination; and that it is in the interest of the environment and the State's economic health to promote certainty in the regulatory process by incorporating that knowledge to create a more efficient regulatory structure and to allow greater privatization of that process where it is possible to do so without incurring unnecessary risks to the public health or the environment.

The Legislature therefore declares that it is the policy of this State to protect the public health, safety, and the environment, to promote efficient and timely cleanups, and to eliminate any unnecessary financial burden of remediating contaminated sites; that these policies can be achieved by streamlining the regulatory process, by establishing summary administrative procedures for industrial establishments that have previously undergone an environmental review, and by reducing oversight of those industrial establishments where less extensive regulatory review will [1][assure] ensure[1] the same degree of protection to [1][human] public[1] health [1], safety,[1] and the environment; and that the new procedures established pursuant to this act shall be designed to [1][remove] guard against[1] redundancy from the regulatory process and to minimize governmental involvement in certain business transactions.

(cf: P.L.1983, c.330, s.2)

REPLACE SECTION 3 TO READ:

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

3. As used in this act:

[a. "Cleanup plan"] "Remedial action workplan" means a plan for the [cleanup of] remedial action to be undertaken at an industrial [establishments, approved by the department, which may include a description of the locations, types and quantities of hazardous substances and wastes that will remain on the premises; a description of the types and locations of storage vessels, surface impoundments, or secured landfills containing hazardous substances and wastes; recommendations regarding the most practicable method of cleanup; and] establishment, or at any area to which a discharge originating at the industrial establishment is migrating or has migrated; a description of the remedial action to be used to remediate the industrial establishment; a time schedule and cost estimate of the [cleanup plan.] implementation of the remedial action; and any other [1]relevant[1] information the department deems necessary;

[The department, upon a finding that the evaluation of a site for cleanup purposes necessitates additional information, may require graphic and narrative

descriptions of geographic and hydrogeologic characteristics of the industrial establishment and evaluation of all residual soil, groundwater, and surface water contamination;

b. "Closing, terminating or transferring operations" means the cessation of all operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes, or any temporary cessation for a period of not less than two years, or any other transaction or proceeding through which an industrial establishment becomes nonoperational for health or safety reasons or undergoes change in ownership, except for corporate reorganization not substantially affecting the ownership of the industrial establishment, including but not limited to sale of stock in the form of a statutory merger or consolidation, sale of the controlling share of the assets, the conveyance of the real property, dissolution of corporate identity, financial reorganization and initiation of bankruptcy proceedings]

"Closing operations" means:

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

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

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

(4) the initiation of bankruptcy proceedings pursuant to Chapter 7 of the federal Bankruptcy Code, 11 U.S.C. §70100 et seq. or the filing of a plan of reorganization that provides for a liquidation pursuant to Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. §1101 et seq.; [1][or][1]

(5) any change in operations of an industrial establishment that changes the industrial establishment's Standard Industrial Classification number to one that is not subject to this act; [1]or

(6) the termination of a lease unless there is no disruption in operations of the industrial establishment, or the assignment of a lease;[1]

"Transferring ownership or operations" means:

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

(2) the sale or transfer of more than 50% of the assets of an industrial establishment within any five year period [1], as measured on a constant, annual date-specific basis[1];

(3) the execution of a lease for a period of 99 years or longer for an industrial establishment; [1]or[1]

(4) [1][the termination of a lease unless renewed without a disruption in operations of the industrial establishment or the assignment of a lease; or

(5)][1] the dissolution of an entity that is an owner or operator or an indirect owner of an industrial establishment, except for any dissolution of an indirect owner of an industrial establishment whose assets would have been unavailable for the remediation of the industrial establishment if the dissolution had not occurred;

"Change in ownership" means:

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

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

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

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

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

"Change in ownership" shall not include:

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

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

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

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

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

(6) 1[the execution of a mortgage, the filing of a lien, the granting of a security interest, or the assignment of a lease to secure a loan, or the refinancing of a debt, not including a sale and lease back agreement, by the owner or operator of an industrial establishment;

(7)]1 a transfer to release a contingent or reversionary interest except for any transfer of a lessor's reversionary interest in leased real property;

1[(8)] (7)1 a transfer of an industrial establishment by devise or intestate succession;

1[(9)] (8)1 the granting or termination of an easement or a license to any portion of an industrial establishment; 1[or

(10)] (9)1 the sale or transfer of real property pursuant to a condemnation proceeding initiated pursuant to the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.) 1;

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

(11) any transfer of personal property pursuant to a valid security agreement, collateral assignment or other lien, including, but not limited to, seizure or replevin of such personal property which transfer is for the purpose of implementing the secured party's rights in the personal property which is the collateral1.

[c.] "Department" means the Department of Environmental Protection 1and Energy1;

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

[e.] "Hazardous waste" [means any amount of any waste substances required to be reported to the Department of Environmental Protection on the special waste manifest pursuant to N.J.A.C.7:26-7.4, or as otherwise provided by law] shall have the same meaning as provided in section 1 of P.L.1976, c.99 (C.13:1E-38);

[f.] "Industrial establishment" means any place of business engaged in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or hazardous wastes on-site, above or below ground, having a Standard Industrial Classification number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard Industrial Classifications

Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States. Those facilities or parts of facilities subject to operational closure and post-closure maintenance requirements pursuant to the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.) or the "Solid Waste Disposal Act" (42 U.S.C.§6901 et seq.), or any establishment engaged in the production or distribution of agricultural commodities, shall not be considered industrial establishments for the purposes of this act. The department may, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), exempt certain sub-groups or classes of operations within those sub-groups within the Standard Industrial Classification major group numbers listed in this subsection upon a finding that the operation of the industrial establishment does not pose a risk to public health and safety;

[g.] "Negative declaration" means a written declaration, submitted by the owner or operator of an industrial establishment [1]or other person assuming responsibility for the remediation under paragraph (3) of subsection b. of section 4 of P.L. 1983, c.330[1] [and approved by the department] to the department, certifying that there has been no discharge of hazardous substances or hazardous wastes on the site, or that any such discharge on the site or discharge that has migrated or is migrating from the site has been [cleaned up] remediated in accordance with procedures approved by the department [, and there remain no hazardous substances or wastes at the site of the industrial establishment] and in accordance with any applicable remediation regulations;

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

"No further action letter" means a written determination by the department that, based upon an evaluation of the historical use of the industrial establishment and the property, or of an area of concern or areas of concern, as applicable, and any other investigation or action the department deems necessary, there are no discharged hazardous substances or hazardous wastes present at the site of the industrial establishment, at the area of concern or areas of concern, or at any other site to which [1][a discharge] discharged hazardous substances or hazardous wastes[1] originating at the industrial establishment [1][has] have[1] migrated, and that any discharged hazardous substances or hazardous wastes present at the industrial establishment or that have migrated from the site have been remediated in accordance with applicable remediation regulations;

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

"Direct owner or operator" means any person that directly owns or operates an industrial establishment;

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

"Remediation standards" means the combination of numeric and narrative standards to which hazardous substances or hazardous wastes must be investigated or remediated as established by the department pursuant to section 35 of P.L. , c. (C.)(now before the Legislature as this bill);

"Owner" means any person who owns the real property of an industrial establishment or who owns the industrial establishment;

"Operator" means any person, including users, tenants, [1]or[1] occupants, [1][or trespassers,][1] having and exercising direct actual control of the operations of an industrial establishment;

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether hazardous substances or hazardous wastes are or were present at an industrial establishment or have migrated or are migrating from the industrial establishment, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or [1][potential] latent[1] discharge of any hazardous substance or hazardous waste is required [1]. The evaluation of historic information shall be conducted from 1900 to the present, except that the department may require the search for and evaluation of additional information relating to ownership and use of the site prior to 1900 if such information is available through diligent inquiry of public records[1];

"Remediation" or "remediate" means all necessary actions to investigate and clean up any known [1][or] ,[1] suspected [1], or threatened[1] discharge of hazardous substances or hazardous wastes, including [1], as necessary,[1] the preliminary assessment, site investigation, remedial investigation, and remedial action;

"Remedial action" means those actions taken at an industrial establishment or offsite of an industrial establishment if hazardous substances or hazardous wastes have migrated or are migrating therefrom, as may be required by the department [1][, including] to protect public health, safety, and the environment. These actions may include[1] the removal, treatment, containment, transportation, securing, or other engineering [1][or treatment][1] measures, whether of a permanent nature or otherwise, designed to ensure that any discharged hazardous substances or hazardous wastes at the site or that have migrated or are migrating from the site, are remediated in compliance with the applicable remediation standards;

"Remedial investigation" means a process to determine the nature and extent of a discharge of hazardous substances or hazardous wastes at an industrial establishment or a discharge of hazardous substances or hazardous wastes that have migrated or are migrating from the site and the problems presented by a discharge, and may include data collected, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the evaluation of [1][remediated alternatives] remedial actions if necessary[1];

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

(cf: P.L.1983, c.330, s.3)

REPLACE SECTION 4 TO READ:

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

4. [a. The owner or operator of an industrial establishment planning to close operations shall:

(1) Notify the department in writing, no more than five days subsequent to public release, of its decision to close operations;

(2) Upon closing operations, or 60 days subsequent to public release of its decision to close or transfer operations, whichever is later, the owner or operator shall submit a negative declaration or a copy of a cleanup plan to the department for approval and a surety bond or other financial security for approval by the department guaranteeing performance of the cleanup in an amount equal to the cost estimate for the cleanup plan.

b. The owner or operator of an industrial establishment planning to sell or transfer operations shall:

(1) Notify the department in writing within five days of the execution of an agreement of sale or any option to purchase;

(2) Submit within 60 days prior to transfer of title a negative declaration to the department for approval, or within 60 days prior to transfer of title, attach a copy of any cleanup plan to the contract or agreement of sale or any option to purchase which may be entered into with respect to the transfer of operations. In the event that any sale or transfer agreements or options have been executed prior to the submission of the plan to the department, the cleanup plan shall be transmitted, by certified mail, prior to the transfer of operations, to all parties to any transaction concerning the transfer of operations, including purchasers, bankruptcy trustees, mortgagees, sureties, and financiers;

(3) Obtain, upon approval of the cleanup plan by the department, a surety bond or other financial security approved by the department guaranteeing performance of the cleanup plan in an amount equal to the cost estimate for the cleanup plan.

c. The cleanup plan and detoxification of the site shall be implemented by the owner or operator, provided that the purchaser, transferee, mortgagee or other party to the transfer may assume that responsibility pursuant to the provisions of this act.]

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

b. (1) Subsequent to the submittal of the notice required pursuant to subsection a. of this section, the owner or operator of an industrial establishment shall, except as otherwise provided by P.L.1983, c.330 or P.L. , c. (C.)(now before the Legislature as this bill), remediate the industrial establishment. The remediation shall be conducted in accordance with criteria, procedures, and time schedules established by the department.

(2) The owner or operator shall attach a copy of any approved negative declaration, approved remedial action workplan, [1]no further action letter,[1] or remediation agreement approval to the contract or agreement of sale or agreement to transfer or any option to purchase which may be entered into with respect to the transfer of ownership or operations. In the event that any sale or transfer agreements or options have been executed prior to the approval of a negative declaration, remedial action workplan, [1]no further action letter,[1] or remediation agreement, these documents, as relevant, shall be transmitted by the owner or operator, by certified mail, [1]overnight delivery, or personal

service,[1] prior to the transfer of ownership or operations, to all parties to any transaction concerning the transfer of ownership or operations, including purchasers, bankruptcy trustees, mortgagees, sureties, and financiers.

(3) The preliminary assessment, site investigation, remedial investigation, [1][remedial action workplan,][1] and remedial action for the industrial establishment shall be performed and implemented by the owner or operator of the industrial establishment, except that any other party may assume that responsibility pursuant to the provisions of P.L.1983, c.330.

c. The owner or operator of an industrial establishment shall, subsequent to closing operations, or of its public release of its decision to close operations, or prior to transferring ownership or operations except as otherwise provided in subsection e. of this section, as applicable, submit to the department for approval a proposed negative declaration or proposed remedial action workplan. Except as otherwise provided in sections [1]11,[1] 13, [1][14,][1] 16, 17 and 18 of P.L. , c. (C.)(now before the Legislature as this bill), the owner or operator of an industrial establishment shall not transfer ownership or operations until a negative declaration or a remedial action workplan has been approved by the department or the conditions of subsection e. of this section for remediation agreements have been met and until, in cases where a remedial action workplan is required to be approved or a remediation agreement has been approved, a remediation funding source, as required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill), has been established.

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

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

e. The owner or operator of an industrial establishment [1],[1] who has submitted a notice to the department pursuant to subsection a. of this section , may transfer ownership or operations of the industrial establishment prior to the approval of a negative

declaration or remedial action workplan upon application to and approval by the department of a remediation agreement. The owner or operator requesting a remediation agreement shall submit the following documents: (1) an 1[estimation] estimate1 of the cost of the remediation that is approved by the department; (2) a certification of the statutory liability of the owner or operator pursuant to P.L.1983, c.330 to perform and to complete a remediation of the industrial establishment in the manner and time limits provided by the department in regulation and consistent with all applicable laws and regulations; however, nothing in this paragraph shall be construed to be an admission of liability, or to impose liability on the owner or operator, pursuant to P.L. 1976, c. 141 1(C.58:10-23.11 et seq.)1 or pursuant to any other statute or common law; (3) evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with the provisions of section 25 of P.L. , c. (C.)(now before the Legislature as this bill); (4) a certification that the owner or operator is subject to the provisions of P.L.1983, c.330, including the liability for penalties for violating the act, defenses to liability and limitations thereon, the requirement to perform a remediation as required by the department, allowing the department access to the industrial establishment as provided in section 5 of P.L.1983, c.330 (C.13:1K-10), and the requirement to prepare and submit any document required by the department relevant to the remediation of the industrial establishment; and (5) evidence of the payment of all applicable fees required by the department.

The department may require in the remediation agreement 1[,]1 that all plans for and results of the preliminary assessment, site investigation, remedial investigation, and 1the implementation of the1 remedial action workplan 1[and the implementation thereof]1 , prepared or initiated subsequent to the transfer of ownership or operations, be submitted to the department, for review purposes only, at the completion of each phase of the remediation.

The department shall adopt regulations establishing the manner in which the documents required pursuant to paragraphs (1) through (5), inclusive, of this subsection shall be submitted. The department shall approve the application for the remediation agreement upon the complete and accurate submission of the documents required to be submitted pursuant to this subsection. The regulations shall include a sample form of the certifications. Approval of a remediation agreement shall not affect an owner's or 1[operator'] operator's1 right to avail itself of the provisions of section 6 of P.L.1983, c.330 (C.13:1K-11), of sections 12, 13, 14, 15, 16, 17, or 18 of P.L. , c. (C.)(now before the Legislature as this bill), or of the other provisions of this section.

f. An owner or operator of an industrial establishment may perform a preliminary assessment, site investigation, or remedial investigation for a soil, surface water, or

groundwater remediation without the prior submission to or approval of the department, except as otherwise provided in a remediation agreement required pursuant to subsection e. of this section. However, the plans for and results of the preliminary assessment, site investigation, and remedial investigation may, at the discretion of the owner or operator, be submitted to the department for its review and approval at the completion of each phase of the remediation.

g. 1[(1)]1 The soil remediation standard to be implemented on an industrial establishment shall be selected in conformance with the policies and criteria enumerated in section 35 of P.L. , c. (C.)(now before the Legislature as this bill).

(2) 1[The owner or operator proposing to implement the nonresidential use soil remediation standards shall review and consider for implementation, at a minimum, each relevant remedial action that is set forth in the guidance document published pursuant to section 38 of P.L. , c. (C.)(now before the Legislature as this bill).

(3)]1 The department may not disapprove the use of the minimum nonresidential soil remediation standards adopted by the department except upon a finding that the use of a nonresidential soil remediation standards at that site would not be protective of public health, safety, or the environment or except as provided in subsection 1[j.] i.1 of this section.

h. An owner or operator of an industrial establishment may implement a soil remedial action at an industrial establishment without prior department approval of the remedial action workplan for the remediation of soil when the remedial action can reasonably be expected to be completed pursuant to standards, criteria, and time schedules established by the department 1[within] , which schedules shall not exceed1 five years 1[of] from1 the commencement of the implementation of the remedial action and if 1[:

(1) the owner or operator is transferring ownership or operations of the industrial establishment and the soil remediation meets the established minimum residential or nonresidential use soil remediation standards adopted by the department; or

(2) the owner or operator is closing operations of the industrial establishment and the soil remediation meets the established minimum residential use soil remediation standards adopted by the department] the owner or operator is implementing a soil remediation which meets the established minimum residential or nonresidential use soil remediation standards adopted by the department1.

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

i. An owner or operator of an industrial establishment 1[proposing to implement soil remediation of an

industrial establishment shall submit a proposed remedial action workplan for the remediation of soil to the department for its prior review and approval if:

(1) the remedial action cannot reasonably be expected to be completed pursuant to standards, criteria, and time schedules established by the department within five years of the commencement of the implementation of the remedial action;

(2) the owner or operator of the industrial establishment is closing operations and the remediation will meet the established minimum nonresidential use soil remediation standards; or

(3) the soil remediation does not meet either the established minimum residential or nonresidential use soil remediation standards adopted by the department] shall base its decision to use the nonresidential use soil remediation standards for the industrial establishment upon the criteria listed below, as applicable:

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

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

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

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

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

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

The department shall, within 18 months of the effective date of this amendatory and supplementary act, promulgate regulations to clearly define how the department will evaluate the application of the criteria enumerated in paragraphs (1) through (6) of this subsection; provided, however, that notwithstanding the preceding requirement, criteria (1) through (4) and (6) shall become immediately operative. Until the department promulgates those regulations, it shall impose reasonable standards and requirements upon any owner or operator deciding to use nonresidential use soil remediation standards pursuant to this subsection. Furthermore, the department shall not impose any requirement or standard with regard to criterion (5) that would require an owner or operator to implement residential use soil remediation standards unless the cost difference between implementing the residential standards and the nonresidential standards is a de minimus amount. For the purposes of the preceding, de minimus shall mean a cost difference not exceeding 10 percent of the cost of implementing the nonresidential standards.

At any time after the effective date of this amendatory and supplementary act, an owner or operator may request

the department to provide a determination as to whether a proposed remedial action is consistent with the criteria set forth above in paragraphs (1) through (6). The department shall provide any such determination within 30 calendar days of the department's receipt of the request[1].

j. [1][The department shall review and approve or disapprove the proposed remedial action workplan required to be submitted pursuant to subsection i. of this section to determine if the proposed remedial action workplan is in compliance with the rules and regulations regarding remediation and, if applicable, that the use of the nonresidential use soil remediation standards are appropriate for the industrial establishment. The department shall base its decision to approve or disapprove the use of nonresidential use soil remediation standards for the industrial establishment upon the criteria listed below, as applicable.

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

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

(3) The transferee of the industrial establishment agrees to the implementation of the nonresidential use soil remediation standard;

(4) The potential for the hazardous substances or hazardous wastes to affect other property; and

(5) The difference in cost between the use of the residential use soil remediation standards and the nonresidential use soil remediation standards] An owner or operator proposing to implement a remedial action other than one which is set forth in subsection h. of this section must receive department approval prior to implementation of the remedial action[1].

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

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

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

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

The department may review and approve or disapprove every remedial action workplan, no matter when submitted, to determine, in accordance with the criteria listed in subsection g. of section 35 of P.L. , c. (C.)(now before the Legislature as this bill) if the remedial action that has occurred or that will occur is appropriate to meet the [1][established] applicable[1] remediation standards.

The department may order additional remediation activities at the industrial establishment, or offsite where necessary, or may require the submission of additional information, where (a) the department determines that the remediation activities undertaken were not in compliance with [1]the[1] applicable rules or regulations of the department; (b) all documents required to be submitted to the department were not submitted or, if submitted, were inaccurate, or deficient; or (c) if discharged hazardous substances or hazardous wastes remain at the industrial establishment, or have migrated or are migrating offsite, at levels or concentrations in violation of the applicable remediation standards. Upon a finding by the department that the remediation conducted at the industrial establishment was in compliance with all applicable regulations, that no hazardous substances or hazardous wastes remain at the industrial establishment in violation of the applicable remediation standards, and that all hazardous substances or hazardous wastes that migrated from the industrial establishment have been remediated in conformance with the applicable remediation standards, the department shall approve the remediation for that industrial establishment by the issuance of a no further action letter.

(cf: P.L.1983, c.330, s.4)

REPLACE SECTION 7 TO READ:

7. Section 5 of P.L.1991, c.238 (C.13:1K-9.5) is amended to read as follows:

5. If a municipality undertakes a [cleanup of hazardous substances and wastes on the site] remediation of an industrial establishment, the municipality shall [make any submissions required by P.L.1983, c.330 (C.13:1K-6 et seq.) and] undertake that remediation and shall obtain [approval of] all approvals required by the Department of Environmental Protection [1]and Energy[1] [prior to the initiation of the sampling plan and the cleanup plan].

(cf: P.L.1991, c.238, s.5)

REPLACE SECTION 8 TO READ:

8. (New section) Upon the submission of the complete and accurate results of a phase of the remediation pursuant to section 4 of P.L.1993, c.330 [1][(C.13:1K-7)] (C.13:1K-9)[1] or of any other document required to be

submitted that requires the department's review and approval in order to comply with P.L.1983, c.330, the department shall review and approve, approve with conditions, or disapprove the submission or other documents in accordance with the review schedules established pursuant to section 2 of P.L.1991, c.423 (C.13:1D-106).

REPLACE SECTION 9 TO READ:

9. (New section) The owner or operator of an industrial establishment may, upon submission of a written notice to the department, transfer ownership or operations or close operations without complying with the provisions of section 4 of P.L.1983, c.330 (C.13:1K-9) if the total quantity of hazardous substances and hazardous wastes generated, manufactured, refined, transported, treated, stored, handled, or disposed of at the industrial establishment at any one time during the 1[owner] owner's1 or operator's period of ownership or operations 1:

(a)1 does not exceed 500 pounds or 55 gallons 1[, or,] ;1

1(b)1 if a hazardous substance or hazardous waste is mixed with nonhazardous substances, the total quantity of the mixture does not exceed 500 pounds or 55 gallons 1; or

(c) if, in the aggregate, hydraulic or lubricating oil, does not exceed 220 gallons1.

REPLACE SECTION 10 TO READ:

10. Section 5 of P.L.1983, c.330 (C.13:1K-10) is amended to read as follows:

5. a. The department shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing: [minimum standards for soil, groundwater and surface water quality necessary for the detoxification of the site of an industrial establishment, including buildings and equipment, to ensure that the potential for harm to public health and safety is minimized to the maximum extent practicable, taking into consideration the location of the site and surrounding ambient conditions;] (1) criteria and minimum standards necessary for the submission, evaluation and approval of [cleanup plans;] plans or results of preliminary assessments, site investigations, remedial investigations, and remedial action workplans and for the implementation thereof. The documents for the preliminary assessment, site investigation, remedial investigation, and remedial action workplan required to be submitted for a remediation 1[,]1 shall not be 1[based on] identical to1 the 1[same]1 criteria and standards used for similar 1[or identical]1 documents submitted pursuant to federal law 1,1 except as may be required by federal law. In establishing criteria and minimum standards for these terms 1,1 the department shall strive to avoid duplicate or unnecessarily costly or time consuming conditions or standards; (2) a fee schedule, as necessary, reflecting the actual costs associated with the review of plans for or results of negative

declarations, preliminary assessments, site investigations, remedial investigations, and [cleanup plans] remedial [1][action workplans] actions[1] , and review of the implementation thereof and for any other review or approval required by the department; (3) standards and procedures for remediation agreements authorized pursuant to subsection d. of section 4 of P.L.1983, c.330 (C.13:1K-9); and (4) any other provisions or procedures necessary to implement this act. [Until the minimum standards described herein are adopted, the department shall review, approve or disapprove negative declarations and cleanup plans on a case by case basis.]

b. [The department shall, within 45 days of submission, approve the negative declaration, or inform the industrial establishment that a cleanup plan shall be submitted.

c. The department shall, in accordance with the schedule contained in an approved cleanup plan, inspect the premises to determine conformance with the minimum standards for soil, groundwater and surface water quality and shall certify that the cleanup plan remedial action workplan has been executed and that the site has been detoxified.] The owner or operator shall allow the department reasonable access to the industrial establishment and to offsite areas under the owner's or operator's control to inspect the premises, review records, and to take soil, groundwater, or other samples or measurements as deemed necessary by the department to verify the results of any submission made to the department and to verify the owner's or operator's compliance with the requirements of this act.
(cf: P.L.1983, c.330, s.5)

REPLACE SECTION 11 TO READ:

11. Section 6 of P.L.1983, c.330 (C.13:1K-11) is amended to read as follows:

6. a. [The provisions of any law, rule or regulation to the contrary notwithstanding, the transferring of an industrial establishment is contingent on the implementation of the provisions of this act.

b. If the premises of] The owner or operator of an industrial establishment planning to transfer ownership or operations may apply to the department for a deferral of the preparation, approval, and implementation of a remedial action workplan for the industrial establishment. The applicant shall submit to the department:

(1) a certification signed by the purchaser, transferee, mortgagee or other party to the transfer, approved by the department, that the industrial establishment would be subject to substantially the same use by the purchaser, transferee, mortgagee or other party to the transfer[, and upon written certification thereto and approval by the department thereof, the implementation of a cleanup plan and the detoxification of the site] ;

(2) a certification, approved by the department, that the owner or operator has satisfactorily completed a preliminary assessment, site investigation, and remedial investigation [1[,]1] of the industrial establishment;

(3) a cost estimate for the remedial action necessary at the industrial establishment, approved by the department [1]based upon the information collected in the preliminary assessment, site investigation, and remedial investigation and developed in accordance with department regulations[1]; and

(4) a certification, approved by the department, that the purchaser, transferee, mortgagee or other party to the transfer [1][,][1] has the financial ability to pay for the implementation of the necessary remedial action.

The preparation, approval, and implementation of a remedial action workplan for the industrial establishment may be deferred until the use changes or until the purchaser, transferee, mortgagee or other party to the transfer closes[, terminates or transfers] operations [1][or transfers ownership or operations][1].

[(1) Within 60 days of receiving notice of the sale or realty transfer and the certification that the industrial establishment would be subject to substantially the same use, the department shall approve, conditionally approve, or deny the certification.

(2) Upon approval of the certification, the implementation of a cleanup plan and detoxification of the site shall be deferred.

(3) Upon denial of the certification, the cleanup plan and detoxification of the site shall be implemented pursuant to the provisions of this act.

c.] b. Upon [1][satisfactory][1] submission of a complete and accurate application, the department shall approve the deferral. Upon approval of the deferral, the preparation, approval, and implementation of remedial action workplan at the industrial establishment shall be deferred. [1][The deferral shall be denied by the department if a complete and accurate application is not submitted to the department or if the department fails to approve any of the components of the application. Upon denial of the deferral, the remediation of the industrial establishment shall be continued pursuant to the provisions of this act.][1]

c. The authority to defer [implementation of the cleanup plan] the preparation, approval, and implementation of a remedial action workplan set forth in subsection [b.] a. of this section shall not be construed to limit, restrict, or prohibit the department from directing site [cleanup] remediation under any other statute, rule, or regulation, but shall be solely applicable to the obligations of the owner or operator of an industrial establishment, pursuant to the provisions of this act, nor shall any other provisions of this act be construed to limit, restrict, or prohibit the department from directing site [cleanup] remediation under any other statute, rule, or regulation.

[1]For the purposes of this section, substantially the same use means that the industrial establishment shall retain the same three digit Industry Group Number, as designated in the Standard Industrial Classifications Manual prepared by the federal Office of Management and Budget in the Executive Office of the President of the United States. In a manner and form, and in accordance

with the specific criteria prescribed by the department, an applicant may petition for a finding by the department that the affected industrial establishment be deemed subject to substantially the same use based upon its retention of the same two digit Major Group Number, as designated in the Standard Industrial Classifications Manual.[1]
(cf: P.L.1983, c.330, s.6)

REPLACE SECTION 13 TO READ:

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

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

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department [1]or the federal Environmental Protection Agency, pursuant to the federal "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act," 42 U.S.C. §9601 et seq.,[1] has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment [1][,] that are[1] consistent with current regulations established by the department [1][,][1] in order to identify areas of concern that are new or have continued in use since the issuance of a no further action letter, negative declaration approval, or remediation approval as described in paragraph (2) of this subsection, and [1][that] ,[1] based on those remediation activities [1][the owner or operator certifies] ,[1] that there has been no discharge of a hazardous substance or hazardous waste at the industrial establishment subsequent to the approval of the negative declaration, the issuance of the no further action letter, or the equivalent remediation; or, if any discharge has occurred, a certification listing any discharge, describing the action taken to remediate the discharge, a certification that the remediation was performed in accordance with procedures established by the department, a certification that the remediation was approved by the department and a copy of the document evidencing the departmental approval;

(4) a certification that for any underground storage tank covered by the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), an approved method of secondary

containment or a monitoring system as required by P.L.1986, c.102, has been installed;

(5) a copy of the [1]most recent[1] negative declaration, or no further action letter, or other approval [1],[1] as applicable, [1][last][1] approved by the department for the entire industrial establishment; and

(6) a proposed negative declaration.

b. Upon the submission of a complete and accurate application and after an inspection, if necessary, the department shall approve or disapprove the negative declaration. The department shall approve the negative declaration upon a finding that the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the proposed negative declaration by the department pursuant to this section, the owner or operator shall comply with the provisions of section 4 of P.L.1983, c.330.

REPLACE SECTION 14 TO READ:

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

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

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department [1]or the federal Environmental Protection Agency, pursuant to the federal "resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act," 42 U.S.C. §9601 et seq.,[1] has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment [1][,] that are[1] consistent with current regulations established by the department [1][,][1] in order to identify areas of concern and [1][that] ,[1] based on those remediation activities [1][the owner or operator certifies] ,[1] that subsequent to the issuance of the negative declaration, no further action letter or remediation approval described in paragraph (2) of this subsection, a discharge has occurred at the industrial establishment that was not remediated in accordance with the procedures established by the department or that any remediation performed has not been approved by the department and that no other discharge of a hazardous substance or hazardous waste has occurred at the industrial establishment;

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

(5) a copy of the 1most recent1 negative declaration, no further action letter, or other approval, as applicable, 1[last]1 approved by the department for the industrial establishment; and

(6) a proposed negative declaration, if applicable.

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

(1) approve the negative declaration upon a finding that any discharge of a hazardous substance or hazardous waste, as certified to pursuant to paragraph (3) of subsection a. of this section, has been remediated consistent with the applicable remediation standards as established by the department; or

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

c. The owner or operator of an industrial establishment subject to the provisions of this section shall not close operations or transfer ownership or operations until a remedial action workplan, or a negative declaration, as applicable, has been approved by the department or upon approval of a remediation agreement as provided in subsection 1[d.] e.1 of section 4 of P.L.1983, c.330.

REPLACE SECTION 15 TO READ:

15. (New section) a. The owner or operator of an industrial establishment who is required to perform a remediation at an industrial establishment pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) 1[,]1 may apply to the department for an area of concern waiver. Approval of the area of concern waiver shall relieve the owner or operator of the requirement to perform a remediation pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) for any area of concern at that industrial establishment for which a remediation has previously been conducted and approved by the department. An application pursuant to this subsection shall include:

(1) a certification that the department 1or the federal Environmental Protection Agency, pursuant to the federal "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act," 42 U.S.C. §9601 et seq.,1 has previously approved a remediation at an area of concern and has issued a no further action letter or an equivalent approval of a remediation for that area of concern 1[,] ;1

(2) a copy of the 1most recent1 no further action letter or equivalent approval for that area of concern, 1[last]1 approved by the department 1[,] ;1 and

(3) a certification that the owner or operator has performed remediation activities at that area of concern 1[,] that are1 consistent with current regulations established by the department, and 1[that]1 based on those remediation activities 1[the owner or operator certifies] ,1 that subsequent to the issuance of the no further action letter or equivalent approval described in paragraph (1) of this subsection, there has been no discharge of a hazardous substance or hazardous waste at that area of concern.

b. Upon submission of a complete and accurate application and after an inspection, if necessary, the department shall approve the application for an area of concern waiver upon a finding that the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the application by the department pursuant to this section, the owner or operator shall perform a remediation of the subject area of concern as may be required pursuant to subsection b. of section 4 of P.L.1983, c.330.

REPLACE SECTION 16 TO READ:

16. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement as provided in subsection 1[d.] e.1 of section 4 of P.L.1983, c.330 (C.13:1K-9), if the industrial establishment is already in the process of a remediation pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) or a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330 1, including a cleanup being performed under the federal "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act," 42 U.S.C. §9601 et seq.1. The application shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330 1[,] ;1

(2) a certification that there has been no discharge of any hazardous substance or hazardous waste at the industrial establishment during the applicant's period of operation or ownership or that the remediation of any discharge of a hazardous substance or hazardous waste that 1[occured] occurred1 during the applicant's period of ownership or operation was approved by the department 1[,] ;1

(3) a certification by the owner or operator that a remediation funding source for the cost of the remediation or the implementation of the remedial action workplan at the industrial establishment has been established as required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) 1[,] ;1 and

(4) a certification, as applicable, that any transferee of the industrial establishment has been notified that the industrial establishment is the subject of a remediation.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, that the applicant may close operations or transfer ownership or operations of the industrial establishment.

REPLACE SECTION 17 TO READ:

17. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 if the only areas of concern or the only discharges at the industrial establishment are from an underground storage tank [1]or tanks[1] regulated pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.). The application shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330 [1][,] ;[1]

(2) the submission of a preliminary assessment that shows that the only area of concern at an industrial establishment is an underground storage tank or tanks as defined pursuant to section 2 of P.L.1986, c.102 (C.58:10A-22), or the submission of a site investigation that shows that the only discharged hazardous substances or hazardous wastes at the industrial establishment, or that has migrated offsite, above the applicable remediation standards are from a leak or discharge from that underground storage tank or tanks [1][,] ;1 and

(3) a certification that the owner or operator of the industrial establishment is in compliance with the provisions of P.L.1986, c.102 for all underground storage tanks [1]at the industrial establishment that are[1] covered by that act [1][, at the industrial establishment]1. The owner or operator of an industrial establishment, at which a discharge of a hazardous substance or hazardous waste from an underground storage tank has occurred, shall be deemed in compliance with the provisions of P.L.1986, c.102, as it relates to that discharge for the purposes of this paragraph, if the owner or operator has been issued an order by or has entered into an agreement with the department to remediate that discharge and the owner or operator is in compliance with that order or agreement.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, the applicant to close operations or transfer ownership or operations of the industrial establishment.

REPLACE SECTION 18 TO READ:

18. (New section) a. The owner or operator of an industrial establishment may apply to the department to

close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or without the approval of a remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 if the discharge of hazardous substances or hazardous wastes at the industrial establishment is of minimal environmental concern. Upon the completion of a preliminary assessment, site investigation, and remedial investigation for the industrial establishment, conducted pursuant to subsection b. of section 4 of P.L.1983, c.330, any owner or operator may submit to the department an application for a determination that the discharge at an industrial establishment is of minimal environmental concern, which application shall include:

(1) a certification, supported by the submission of data from the preliminary assessment, site investigation, and remedial investigation, that there are no more than two areas of concern at the industrial establishment that are contaminated at levels above the applicable remediation standards, and that remedial action at those areas of concern can be completed pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(2) a certification that a remedial action workplan shall be prepared pursuant to standards and criteria established by the department and that in the case of a closure the remediation will meet the residential use soil remediation standards and that in the case of a transfer of ownership or operations the remediation will meet either the nonresidential use or residential use soil remediation standards;

(3) a certification that the remedial action workplan will be prepared and implemented pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(4) evidence that the remediation funding source required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) has been established [1][or if all or part of the remediation funding source is to be established by a grant or loan from the remediation fund pursuant to section 27 and 28 of P.L. , c. (C.)(now before the Legislature as this bill), evidence that an application has been made for that loan or grant and that there is a reasonable expectation that the loan or grant will be awarded][1] ;

(5) the payment of all fees or surcharges related to the remediation imposed pursuant to P.L.1983, .c.330, P.L. , c. (C.)(now before the Legislature as this bill), and section 33 of P.L. , c. (C.) (now before the Legislature as this bill), and any rules or regulations adopted pursuant thereto; and

(6) documentation establishing that the discharged hazardous substances or hazardous wastes at the industrial establishment do not pose a threat to human health because of the proximity of an area of concern to a drinking water source or because of the location, complexity, or the nature of the discharge.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall approve the application for a determination that the discharge at an industrial establishment is of minimal environmental concern. Prior to making a finding upon the application pursuant to this section, the department may inspect the industrial establishment, as necessary, to verify the information in the application. The decision of the department shall be made within 30 days of the submission of a complete application. In determining the amount of time necessary to complete the remedial action, the department shall not include that time in which it takes the department to issue a permit for a discharge to surface water pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.).

c. The owner or operator shall, upon the completion of the remedial action at the subject areas of concern, certify to the department that the remedial action workplan has been implemented in accordance with the standards and criteria established by the department and in compliance with the certifications made pursuant to this section. The certification shall include a copy of the remedial action workplan and the results of all sampling analysis and any tests performed as part of the remedial action. Within 45 days of receipt of the certification, the department shall issue a no further action letter to the owner or operator. The department may perform an inspection of the industrial establishment or any area offsite that is under the owner's or operator's control, as relevant, prior to issuing the no further action letter.

The department may refuse to issue the no further action letter pursuant to this section only upon a finding that hazardous substances or hazardous wastes remain at the relevant areas of concern at levels or concentrations in excess of the applicable remediation standards.

d. Upon the failure of an owner or operator to complete the implementation of a remedial action workplan within the six month period as provided in subsection a. of this section, the owner or operator shall so notify the department in writing and [1]provide[1] the reasons therefor. The owner or operator shall have no more than 120 additional days to complete the implementation of the remedial action. If the implementation of the remedial action is not completed within this additional time, the department may rescind its determination that the industrial establishment is of minimal environmental concern and may require that a new remedial action workplan be submitted and implemented by the owner or operator in a manner and under the terms and conditions provided in its general regulations for remedial action workplan submissions and implementation.

REPLACE SECTION 19 TO READ:

19. (New section) a. The owner of an industrial establishment may transfer a portion of the real property on which an industrial establishment is situated without conducting a remediation of the entire industrial

establishment pursuant to the provisions of P.L.1983, c.330, if, upon application by the owner, the department issues a certificate of limited conveyance [1]pursuant to subsections b. through e. of this section, or if the owner transfers the portion of real property in accordance with the provisions of subsection f. of this section[1].

b. An application for a certificate of limited conveyance shall be in the form of a certification by the owner which shall include a description of the real property to be transferred, an appraisal of the real property to be transferred, the sale price or market value of the real property to be transferred, an appraisal of the entire industrial establishment, and an appraisal of the remaining property if the certificate of limited conveyance were issued, as well as any other information the department deems necessary to make the findings required in subsection c. of this section.

c. The department shall issue a certificate of limited conveyance for a portion of the real property on which an industrial establishment is situated after the submission of a complete and accurate application and upon a finding that the sales price or market value of the real property to be conveyed, together with any additional diminution in value to the remaining property as a result of the conveyance is not more than one third of the total appraised value of the industrial establishment prior to the transfer, and that the remaining real property is an industrial establishment subject to the provisions of P.L.1983, c.330. The appraisals shall be made no more than one year prior to the submission of application for a certificate of limited conveyance. Conveyances made pursuant to this section shall not exceed one third of the value of the industrial establishment during the period of ownership of the applicant.

d. Upon issuance of the certificate of limited conveyance, the owner or operator shall, prior to the conveyance, comply with the provisions of section 4 of P.L.1983, c.330 for that portion of the real property certified for conveyance. The remediation that may be required on the real property subject to the certificate of limited conveyance shall include any hazardous substances or hazardous wastes that are migrating from the remaining portion of the industrial establishment onto the real property being conveyed. The remaining portion of the industrial establishment, upon the subsequent closing [1][,][1] of operations or transferring of ownership or operations [1],[1] shall be subject to the provisions of P.L.1983, c.330 and this act.

e. A certificate of limited conveyance shall be valid for three years from the date of issuance.

[1]f. An owner, either as part of or subsequent to a conveyance made in accordance with subsections b. through e. of this section, may transfer additional portions of the real property of the industrial establishment in excess of the conveyance limitation set forth in subsection c. of this section; provided, however, that the additional portions proposed for transfer do not

constitute a closing of operations or transferring of ownership or operations, subject to section 4 of P.L. 1983, c.330.

The amount paid for the additional portion of real property, or any part thereof, which exceeds the permissible conveyance limitation under subsection c. of this section shall be used exclusively for the purposes of remediating that parcel of real property in accordance with the provisions of subsection d. of this section; provided, however, if any portion of that amount shall remain unexpended for the remediation of the parcel, that unexpended amount shall be deposited in a remediation trust fund as provided in subsection g. of this section.

g. To provide for the subsequent remediation of that portion of the real property of an industrial establishment which was not transferred pursuant to subsection f. of this section, the owner shall establish a remediation trust fund in accordance with subsection c. of section 25 of P.L. , c. (C.)(now pending before the Legislature as this bill) and to deposit any unexpended amounts, as provided in subsection f. of this section, into that fund.[1]

REPLACE SECTION 21 TO READ:

21. (New section). a. Any person who, prior to the effective date of [1][this act] P.L. , c. (now before the Legislature as this bill)[1], violated the provisions of P.L.1983, c.330 by closing operations or transferring ownership or operations of an industrial establishment without receiving departmental approval of a cleanup plan or a negative declaration pursuant to the provisions of P.L.1983, c.330, or without entering into an administrative consent order that allows the closure of operations or transfer of ownership or operations, shall not be subject to a penalty for that violation if the person notifies the department of the closure of operations or of the transfer of ownership or operations of the industrial establishment, and, within one year of the effective date of [1][this section] P.L. , c. (now before the Legislature as this bill)[1], enters into an administrative consent order or a memorandum of agreement with the department to complete a remediation of the industrial establishment pursuant to the provisions of P.L.1983, c.330 and any rules or regulations adopted pursuant thereto.

b. Notwithstanding the provisions of subsection a. of this section, any person who enters into a memorandum of agreement or an administrative consent order with the department pursuant to this section and fails to remediate the industrial establishment in accordance with the memorandum of agreement or administrative consent order [1][,][1] shall be subject to penalties for violations that occurred before the effective date of [1][this act] P.L. , c.)(now before the Legislature as this bill)[1] as well as any penalties for subsequent violations.

c. Any documents or information provided to the department pursuant to this section may not be used in a criminal investigation or criminal prosecution against the person providing the information or documents for

those violations that occurred before the effective date of [1][this act] P.L. , c. (now before the Legislature as this bill)[1] as long as the person remediates the industrial establishment in conformance with the administrative consent order or memorandum of agreement entered into pursuant to subsection a. of this section.

REPLACE SECTION 22 TO READ:

22. (New section) a. Within one year of the effective date of [1][this act] P.L. , c. (now before the Legislature as this bill)[1], the Department of Environmental Protection [1]and Energy[1] shall conduct an audit of the negative declarations and remedial action workplans that have been submitted to the department pursuant to P.L.1983, c.330 [1](C.13:1K-6 et seq.)[1]. On the basis of this audit, and any other information it may have available to it, the department shall adopt regulations identifying, within the Standard Industrial Classification major group numbers listed in the definition of "industrial establishment," all industries designated by Standard Industrial Classification number subgroups, or classes of operations within those subgroups, that should not pose a risk to public health and safety or to the environment. The audit shall, to the extent practicable, distinguish between hazardous substances or hazardous wastes at an industrial establishment caused by a particular type of industry and hazardous substances or hazardous wastes that exists as a result of activities at an industrial establishment unrelated to the activities of that industry.

b. An industrial establishment for which a remedial action workplan was previously implemented and a no further action letter was received pursuant to P.L.1983, c.330, a negative declaration was previously approved by the department pursuant to P.L.1983, c.330, or for which the department has previously approved a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330, and [1][which industrial establishment] that[1] is designated by a Standard Industrial Classification subgroup or class of operations that does not pose a risk to public health and safety or to the environment as identified in subsection a. of this section, shall not be considered an industrial establishment for the purposes of P.L.1983, c.330.

REPLACE SECTION 23 TO READ:

23. (New section) As used in sections 23 through 43 of P.L. , c. (C.)(now before the Legislature as this bill):

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

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

those violations that occurred before the effective date of [1][this act] P.L. , c. (now before the Legislature as this bill)[1] as long as the person remediates the industrial establishment in conformance with the administrative consent order or memorandum of agreement entered into pursuant to subsection a. of this section.

REPLACE SECTION 22 TO READ:

22. (New section) a. Within one year of the effective date of [1][this act] P.L. , c. (now before the Legislature as this bill)[1], the Department of Environmental Protection [1]and Energy[1] shall conduct an audit of the negative declarations and remedial action workplans that have been submitted to the department pursuant to P.L.1983, c.330 [1](C.13:1K-6 et seq.)[1]. On the basis of this audit, and any other information it may have available to it, the department shall adopt regulations identifying, within the Standard Industrial Classification major group numbers listed in the definition of "industrial establishment," all industries designated by Standard Industrial Classification number subgroups, or classes of operations within those subgroups, that should not pose a risk to public health and safety or to the environment. The audit shall, to the extent practicable, distinguish between hazardous substances or hazardous wastes at an industrial establishment caused by a particular type of industry and hazardous substances or hazardous wastes that exists as a result of activities at an industrial establishment unrelated to the activities of that industry.

b. An industrial establishment for which a remedial action workplan was previously implemented and a no further action letter was received pursuant to P.L.1983, c.330, a negative declaration was previously approved by the department pursuant to P.L.1983, c.330, or for which the department has previously approved a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330, and [1][which industrial establishment] that[1] is designated by a Standard Industrial Classification subgroup or class of operations that does not pose a risk to public health and safety or to the environment as identified in subsection a. of this section, shall not be considered an industrial establishment for the purposes of P.L.1983, c.330.

REPLACE SECTION 23 TO READ:

23. (New section) As used in sections 23 through 43 of P.L. , c. (C.)(now before the Legislature as this bill):

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

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

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

"Department" means the Department of Environmental Protection [1]and Energy[1];

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

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

[1]"Financial assistance" means loans, loan guarantees, bonds and such other funding mechanisms as may be established by the authority;[1]

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

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

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether contaminants are or were present at a site or have migrated or are migrating from a site, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or [1][potential] latent[1] discharge of any contaminant is required [1]. The evaluation of historic information shall be conducted from 1900 to the present, except that the department may require the search for and evaluation of additional information relating to ownership and use of the site prior to 1900 if such information is available through diligent inquiry of the public records[1];

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

"Remedial investigation" means a process to determine the nature and extent of a discharge of a contaminant at a site or a discharge of a contaminant that has migrated or is migrating from the site and the problems presented by a discharge, and may include data collected, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the 1[valuation] evaluation1 of 1[remediated alternatives] remedial actions if necessary1;

"Remediation" or "remediate" means all necessary actions to investigate and clean up any known 1[or] ,1 suspected 1, or threatened1 discharge of contaminants, including 1, as necessary,1 the preliminary assessment, site investigation, remedial investigation, and remedial action;

"Site investigation" means the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site or has migrated or is migrating from the site at levels in excess of the applicable remediation standards. A site investigation shall be developed based upon the information collected pursuant to the preliminary assessment.

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

"Remediation fund" means the Hazardous Discharge Site Remediation Fund established pursuant to section 26 of P.L. , c. (C.)(now before the Legislature as this bill);

"Remediation funding source" means the methods of financing the remediation of a discharge required to be established by a person performing the remediation pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill);

"Remediation standards" means the combination of numeric and narrative standards to which contaminants must be remediated for soil, groundwater, or surface water as provided by the department pursuant to section 35 of P.L. , c. (C.)(now before the Legislature as this bill).

REPLACE SECTION 24 TO READ:

24. (New section) The department shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations

establishing criteria and minimum standards necessary for the submission, evaluation and approval of plans or results of preliminary assessments, site investigations, remedial investigations, and remedial action workplans and for the implementation thereof. The documents for the preliminary assessment, site investigation, remedial investigation, and remedial action workplan required to be submitted for a remediation, shall not be 1[based on] identical to1 the 1[same]1 criteria and standards used for similar 1[or identical]1 documents submitted pursuant to federal law 1,1 except as may be required by federal law. In establishing criteria and minimum standards for these terms the department shall strive to avoid duplicate or unnecessarily costly or time consuming conditions or standards.

REPLACE SECTION 25 TO READ:

25. (New section) a. The owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), or a discharger or person in any way responsible for a hazardous substance who has been issued a directive or an order by a State agency, who has entered into an administrative consent order with a State agency, or who has been ordered by a court to clean up and remove a hazardous substance or hazardous waste discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall 1[,]1 establish and maintain a remediation funding source in the amount necessary to pay the estimated cost of the required remediation. A person who voluntarily undertakes a remediation pursuant to a memorandum of agreement with the department, or without the department's oversight, is not required to establish or maintain a remediation funding source. A person required to establish a remediation funding source pursuant to this section shall provide to the department satisfactory documentation that the requirement has been met.

The remediation funding source shall be established in an amount equal to or greater than the cost estimate of the implementation of the remediation (1)as approved by the department, (2) as provided in an administrative consent order or remediation agreement as required pursuant to subsection 1[d.] e.1 of section 4 of P.L.1983, c.330, (3) as stated in a departmental order or directive, or (4) as agreed to by a court, and shall be in effect for a term not less than the actual time necessary to perform the remediation at the site. Whenever the remediation cost estimate increases, the person required to establish the remediation funding source shall cause the amount of the remediation funding source to be increased to an amount at least equal to the new estimate. Whenever the remediation or cost estimate decreases, the person required to obtain the remediation funding source may file a written request to the department to decrease the amount in the remediation funding source. The remediation funding source may be decreased to the amount of the new estimate upon written

approval by the department delivered to the person who established the remediation funding source and to the trustee or the person or institution providing the remediation trust or the line of credit, as applicable. The department shall approve the request upon a finding that the remediation cost estimate decreased [1]by the requested amount[1].

b. The person responsible for performing the remediation and who established the remediation funding source may use the remediation funding source to pay for the actual cost of the remediation. The department may not require any other financial assurance by the person responsible for performing the remediation other than that required in this section. In the case of a remediation performed pursuant to P.L.1983, c.330, the remediation funding source shall be established no more than 14 days after the approval by the department of a remedial action workplan or upon approval of a remediation agreement pursuant to subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 (C.13:1K-9) [1], unless the department approves an extension[1]. In the case of a remediation performed pursuant to P.L.1976, c.141, the remediation funding source shall be established as provided in an administrative consent order signed by the parties, as provided by a court, or as directed or ordered by the department. The establishment of a remediation funding source for that part of the remediation funding source to be established by a grant or [1][loan] financial assistance[1] from the Remediation Fund may be established for the purposes of this subsection by the application for a grant or [1][loan] financial assistance[1] from the remediation fund and satisfactory evidence submitted to the department that the grant or [1][loan] financial assistance[1] will be awarded. However, if the [1][loan] financial assistance[1] or grant is denied or the department finds that the person responsible for establishing the remediation funding source did not take reasonable action to obtain the grant or [1][loan] financial assistance[1], the department shall require that the full amount of the remediation funding source be established within 14 days of the denial or finding. The remediation funding source shall be evidenced by the establishment and maintenance of (1) a remediation trust fund, (2) [1]an environmental insurance policy, issued by an entity licensed by the Department of Insurance to transact business in the State of New Jersey, to fund the remediation, (3)[1] a line of credit from a person or institution satisfactory to the department authorizing the person responsible for performing the remediation to borrow money, or [1][(3) a self guarantee] (4) a self-guarantee[1], or by any combination thereof. Where it can be demonstrated that a person cannot establish and maintain a remediation funding source for the full cost of the remediation by a method specified in this subsection, that person may establish the remediation funding source for all or a portion of the remediation, by securing a [1][loan] financial assistance[1] from the Hazardous Discharge Site Remediation Fund as provided in section 29 of P.L. , c. (C)(now before the Legislature as this bill).

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

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

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

[1]d. An environmental insurance policy shall be established pursuant to the provisions of this subsection. An originally signed duplicate of the insurance policy shall be delivered to the department by certified mail within 30 days of receipt of notice from the department that the remedial action workplan or remediation agreement, as provided in subsection e. of section 4 of P.L. 1983, c.330, is approved or as specified in an administrative consent order, civil order, or order of the department, as applicable.

The environmental insurance policy may not be revoked or terminated without the written consent of the department. The insurance company shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those monies as the department authorizes, in writing, to be released. The

person entitled to receive money from the environmental insurance policy shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation.[1]

[1][d.] e.[1] A line of credit shall be established pursuant to the provisions of this subsection. A line of credit shall allow the person establishing it to borrow money up to a limit established in a written agreement in order to pay for the cost of the remediation for which the line of credit was established. An originally signed duplicate of the line of credit agreement shall be delivered to the department by certified mail within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 is approved, or as specified in an administrative consent order, civil order, or order of the department, as applicable. The line of credit agreement shall conform to a model agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department.

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

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

[1][e.] f.[1] A person may self-guarantee a remediation funding source upon the submittal of documentation to the department demonstrating that the cost of the remediation as estimated in the remedial action workplan, [1]in[1] the remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330, in an administrative consent order, or as provided in a departmental or court order, would not exceed one-third [1]of[1] the tangible net worth of the person required to establish remediation funding source, and that the person has a cash flow

sufficient to assure the availability of sufficient moneys for the remediation during the time necessary for the remediation. Satisfactory documentation of a person's capacity to self-guarantee a remediation funding source shall consist only of a statement of income and expenses or similar statement of that person and the balance sheet or similar statement of assets and liabilities as used by that person for the fiscal year of the person making the application that ended closest in time to the date of the self-guarantee application. The self-guarantee application shall be certified as true to the best of the applicant's information, knowledge, and belief, by the chief financial, [1]or[1] similar officer or employee, or general partner, or principal of the person making the self-guarantee application. [1][Persons] A person[1] shall be deemed by the department to possess the required cash flow pursuant to this section if that person's gross receipts exceed its gross payments in that fiscal year in an amount at least equal to the estimated costs of completing the remedial action workplan schedule to be performed in the 12 month period following the date on which the application for self-guarantee is made. In the event that a [1][self guarantee] self-guarantee[1] is required for a period of more than one year, applications for a self-guarantee shall be renewed annually pursuant to this subsection for each successive year. The department may establish requirements and reporting obligations to ensure that the person proposing to [1][self guarantee] self-guarantee[1] a remediation funding source meets the criteria for [1][self guaranteeing] self-guaranteeing[1] prior to the initiation of remedial action and until completion of the remediation.

[1][f.] g.[1] (1) [1][Where] If[1] the person required to establish the remediation funding source [1][has failed] fails[1] to perform the remediation as required, the department shall make a written determination of this fact. A copy of the determination by the department shall be delivered to the person required to establish the remediation funding source and, in the case of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), to any transferee of the property. Following this written determination, the department may perform the remediation in place of the person required to establish the remediation funding source. In order to finance the cost of the remediation the department may make disbursements from the remediation trust fund or the line of credit as appropriate, or, if sufficient moneys are not available from those funds, from the remediation guarantee fund created pursuant to section 45 of P.L. , c. (C.)(now before the Legislature as this bill).

(2) The transferee of property subject to a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), may, at any time after the department's determination of nonperformance by the owner or operator required to establish the remediation funding source, petition the department, in writing, with a copy being sent to the owner and operator, for authority to perform the remediation at the industrial establishment. The department, upon a determination that the transferee

is competent to do so, may grant that petition which shall authorize the transferee to perform the remediation as specified in an approved remedial action workplan, or to perform the activities as required in a remediation agreement, and to avail itself of the moneys in the remediation trust fund or line of credit for these purposes. The petition of the transferee shall not be granted by the department if the owner or operator continues or begins to perform its obligations within 14 days of the petition being filed with the department.

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

REPLACE SECTION 26 TO READ:

26. (New section) a. There is established in the New Jersey Economic Development Authority a special, revolving fund to be known as the Hazardous Discharge Site Remediation Fund. Moneys in the remediation fund shall be dedicated for the provision of 1[loans] financial assistance1 or grants to municipal governmental entities, individuals, corporations, partnerships, and other private business entities, for the purpose of financing remediation activities at sites at which there is, or is suspected of being, a discharge of hazardous substances or hazardous wastes.

b. The remediation fund shall be credited with:

(1) moneys as are appropriated by the Legislature;

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

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

(4) remediation funding source surcharges imposed pursuant to section 33 of P.L. , c. (C.)(now before the Legislature as this bill);

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

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

REPLACE SECTION 27 TO READ:

27. (New section) a. (1) 1[Loans] Financial assistance1 from the remediation fund, made to persons other than municipal governmental entities or to persons who voluntarily undertake a remediation, may only be 1[made] rendered1 to persons who cannot establish a remediation funding source for the full amount of a remediation. 1[Loans] Financial assistance pursuant to this act1 may be 1[made] rendered1 only for that amount

of the cost of a remediation for which the person cannot establish a remediation funding source.

(2) [1][Loans made] Financial assistance rendered[1] to persons who voluntarily undertake a remediation may only be made for that amount of the cost of the remediation that the person cannot otherwise fund by any of the authorized methods to establish a remediation funding source.

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

c. [1][Loans] Financial assistance[1] and grants may be made from the remediation fund to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste.

d. Grants may be made from the remediation fund to persons other than governmental entities who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant pursuant to section 28 of P.L. , c. (C.)(now before the Legislature as this bill).

REPLACE SECTION 28 TO READ:

28. (New section) a. Except for moneys deposited in the remediation fund for specific purposes, [1][loans] financial assistance[1] and grants [1][of moneys]1 from the remediation fund shall be [1][made] rendered[1] for the following purposes and, on an annual basis, obligated in the percentages as provided in this subsection. Upon a written [1]joint[1] determination by the [1][Economic Development Authority] authority and the department[1] that it is [1]in[1] the public interest, [1][loans] financial assistance[1] and grants dedicated for the purposes and in the percentages set forth in paragraphs (1), (2), or (3) of this subsection, may, for any particular year, be obligated to other purposes set forth in this subsection. The written determination shall be sent to the Senate Environment Committee, and the Assembly Energy and Hazardous Waste Committee, or their successors.

(1) At least 15% of the moneys shall be allocated for [1][loans] financial assistance[1] to persons, other than governmental entities, for remediation of real property located in a qualifying municipality as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

(2) At least 10% of the moneys shall be allocated for [1][loans] financial assistance[1] and grants to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been or on which there is suspected of being a discharge of hazardous substances or hazardous wastes. Grants shall be used for performing preliminary assessments and site investigations on property owned by a municipal governmental entity, or on which the municipality holds a tax sale certificate, in order to determine the existence or extent of any hazardous substance or hazardous waste contamination on those properties. A municipal governmental entity that has performed a preliminary assessment and site investigation on property may obtain a loan for the purpose of continuing the remediation on those properties it owns as necessary to comply with the applicable remediation standards adopted by the department;

(3) At least 15% of the moneys shall be allocated for [1][loans] financial assistance[1] to persons or municipal government entities for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area;

(4) At least 10% of the moneys shall be allocated for [1][loans] financial assistance[1] to persons, other than municipal government entities, who voluntarily undertake the remediation of a hazardous substance or hazardous waste discharge, and who have not been ordered to undertake the remediation by the department or by a court [1][,] ;[1]

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

(6) At least 20% of the moneys shall be allocated for grants to persons, other than municipal government entities, who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant. A person qualifies for an innocent party grant if that person acquired the property prior to December 31, 1983, the hazardous substance or hazardous waste that was discharged at the property was not used by the person at that site, and that person certifies that he did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered. A grant authorized pursuant to this paragraph may be for up to 50% of the remediation costs at the area of concern for

which the person qualifies for an innocent party grant, except that no grant awarded pursuant to this paragraph to any person may exceed $1,000,000.

(7) Ten percent of the moneys in the remediation fund shall be allocated for [1][loans] financial assistance[1] or grants for any of the purposes enumerated in paragraphs (1) through (6) of this subsection [1][, except that where moneys in the fund are insufficient to fund all the applications in any calendar year that would otherwise qualify for a loan or grant pursuant this paragraph, the authority shall give priority to loan applications that meet the criteria enumerated in paragraph (3) of this subsection][1].

b. Loans issued from the remediation fund shall be for a term not to exceed ten years, except that upon the transfer of ownership of any real property for which the loan was made, the unpaid balance of the loan shall become immediately payable in full. Loans shall bear an interest rate [1][of 1% below the prime rate as published in Publication No. H15 entitled "Selected Rates," available from the Federal Reserve System in Washington, except that the rate shall be no lower than 3%] equal to the lower of the Federal Discount Rate at the time of approval or at the time of the loan closing, with a minimum of five percent[1]. [1][Loans and grants, upon request of the applicant and if qualified, shall] Financial assistance and grants may[1] be issued for up to 100% of the estimated applicable remediation cost, except that [1][no loan] the cumulative maximum amount of financial assistance which may be issued[1] to a person other than a governmental entity [1][may be issued to any applicant][1] in any calendar year, for one or more properties, [1][in an amount that exceeds] shall be[1] $1,000,000. [1][Loans] Financial assistance[1] and grants [1][,][1] to any one municipal governmental entity may not exceed $2,000,000 in any calendar year. Repayments of principal and interest on the loans issued from the remediation fund shall be paid to the authority and shall be deposited into the remediation fund.

c. No person, other than a municipal governmental entity, or a person engaging in a voluntary remediation, shall be eligible for [1][a loan] financial assistance[1] from the remediation fund to the extent that person is capable of establishing a remediation funding source for the remediation as required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill).

d. The authority may use a sum that represents up to 2% of the moneys issued as [1][loans] financial assistance[1] or grants from the remediation fund each year for administrative expenses incurred in connection with the operation of the fund and the issuance of [1][loans] financial assistance[1] and grants.

e. Prior to March 1 of each year, the authority shall submit to the Senate Environment Committee and the Assembly Energy and Hazardous Waste Committee, or their successors, a report detailing the amount of money that was available for [1][loans] financial assistance[1] and grants from the remediation fund for the previous

calendar year, the amount of money estimated to be available for [1][loans] financial assistance[1] and grants for the current calendar year, the amount of [1][loans] financial assistance[1] and grants issued for the previous calendar year and the category for which each [1][loan] financial assistance[1] and grant was [1][made] rendered[1], and any suggestions for legislative action the authority deems advisable to further the legislative intent to facilitate remediation and promote [1]the[1] redevelopment and use of existing industrial sites.

REPLACE SECTION 29 TO READ:

29. (New section) a. [1][A qualified applicant for a loan or grant from the remediation fund shall be awarded a loan or grant by the authority upon the availability of sufficient moneys in the remediation fund for the purpose of the loan or grant.][1] Priority for awarding [1][loans] financial assistance[1] and grants from the remediation fund shall be based upon the date of receipt by the authority of a complete application from the applicant. If an application is determined to be incomplete by the authority, an applicant shall have 30 days from receipt of written notice of incompleteness to file any additional information as may be required by the authority for a completed application. If an applicant fails to file the additional information within those 30 days, the filing date for that application shall be the date that the additional information is received by the authority. An application shall be deemed complete when all the information required by the authority has been received in the required form.

b. Within 90 days, for a private entity, or 180 days for a municipal government entity, of notice of approval of a loan or grant application, an applicant shall submit to the authority an executed contract for the remediation activities for which the loan or grant application was made. The contract shall be consistent with the terms and conditions for which the [1][loan] financial assistance[1] or grant was [1][made] rendered[1]. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for the alteration of an applicant's priority ranking for the awarding of a loan or grant.

[1]c. Information submitted as part of a financial assistance application or agreement shall be deemed a public record subject to the provisions of P.L. 1963, c.73 (C.47:1A-1 et seq.).[1]

REPLACE SECTION 30 TO READ:

30. (New section) a. The authority [1][, in consultation with the Department of Environmental Protection,][1] shall, by rule or regulation:

(1) [1][prescribe forms for, and procedures for the filing of, loan and grant applications;

(2) require a person applying for a loan who is not the owner of the subject property to provide a copy of the contract or lease between the operator and owner;

(3) require, if the applicant is an owner who is not the operator of the subject property, the owner to provide a copy of the contract or lease between the owner and the operator;

(4) prohibit the assignment or encumbrance of a loan or loan payment;

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

(6) provide that moneys from the approved loan or grant shall be released by the authority to the applicant in only those amounts that represent work completed;

(7) require the loan or grant recipient to provide access at reasonable times to the subject property to determine compliance with the terms and conditions of the loan or grant;

(8) require that, during the life of the loan, the applicant will comply with all environmental laws, and pay all required taxes or other governmental assessments due on the subject property for which a loan application is made, or on the loan collateral;

(9) reserve the right to suspend or terminate a loan or grant or declare a loan in default if any term or condition of the loan or grant is violated by a loan or grant recipient, and take any necessary action to secure repayment of the loan or grant;

(10) reserve the right to modify, as necessary and by mutual consent, the terms or conditions of a loan or grant, which modification shall, however, not be inconsistent with regulations of the Department of Environment Protection concerning the performance of remediation of contaminated property;

(11)]1 establish a priority system for 1[making loans] rendering financial assistance1 or grants for remediations 1identified by the department as1 involving an imminent and significant threat to a public water source, human health, or to a sensitive or significant ecological area pursuant to paragraph (7) of subsection a. of section 28 of P.L. , c. (C.)(now before the Legislature as this bill);

1[(12)] (2)1 provide that payment of a grant shall be conditioned upon the subrogation to the department of all rights of the recipient to recover remediation costs from the discharger or other responsible party. All monies collected in a cost recovery subrogation action shall be deposited into the remediation fund;

1[(13)] (3)1 provide that an applicant for 1[a loan] financial assistance1 or 1a1 grant pay a reasonable fee for the application which shall be used by the authority for the administration of the loan and grant program;

1[(14)] (4)1 provide that where 1[a loan] financial assistance1 to a person other than a municipal governmental entity , is for a portion of the remediation cost, that the 1[loan money] proceeds thereof1 not be disbursed to the applicant until the costs of the remediation for which a remediation funding source has been established has been expended;

[1][(15)] (5)[1] adopt such other requirements as [1]the authority[1] shall [1][be deemed] deem[1] necessary or appropriate in carrying out the purposes for which the Hazardous Discharge Site Remediation Fund was created.

b. An applicant for [1][a loan] financial assistance[1] or [1]a[1] grant shall be required to:

(1) provide proof, as determined sufficient by the authority, that the applicant, where applicable, cannot establish a remediation funding source for all or part of the remediation costs, as required by section 25 of P.L. , c. (C.)(now before the Legislature as this bill). The provisions of the paragraph do not apply to grants to innocent persons or to [1][loans] financial assistance[1] or grants to municipal governmental entities; [1]and[1]

(2) [1][submit documentation on the nature and scope of the remediation to be performed, costs estimates thereon, and, as available, proofs of the actual cost of all work performed;

(3) submit copies of all court orders, administrative consent orders, memoranda of agreement, or directives issued by the Department of Environmental Protection [1]and Energy[1] and, if deemed necessary by the authority, any reports, plans, or results of any preliminary assessment, site investigation, remedial investigation, remedial action workplan, remedial action, or other documentation required to be prepared or submitted to the department; and

(4)][1] demonstrate the ability to repay the amount of the [1][loan] financial assistance[1] and interest, and, if necessary, to provide adequate collateral to secure the [1][loan] financial assistance[1] amount.

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

d. In establishing requirements for [1][loan] financial assistance[1] or grant applications and [1][loan] financial assistance[1] or grant agreements, the authority:

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

(2) may not require [1][loan] financial assistance[1] or grant conditions that interfere with the everyday normal operations of [1][a loan or grant] the[1] recipient's business activities, except to the extent necessary to [1][prevent intentional actions designed to avoid repayment of the loan, or that significantly affect] ensure the recipient's ability to repay the financial assistance and to preserve[1] the value of the loan collateral; and

(3) shall expeditiously process all [1][loan] financial assistance[1] or grant applications in accordance with a schedule established by the authority for the review and the taking of final action on the application, which schedule shall reflect the degree of complexity of a [1][loan] financial assistance[1] or grant application.

REPLACE SECTION 31 TO READ:

[1]31. (New section) No [1][loan] financial assistance[1] or grant from the remediation fund shall be [1][made]

rendered[1] to a person who is currently in violation of an administrative or judicial order, judgment, or consent agreement regarding violation or threatened violation of an environmental law regarding the subject property, unless the violation, fee, penalty or assessment is currently being contested by the person in a manner prescribed by law or unless the violation resulted from a lack of sufficient money to perform required remediation activities.

REPLACE SECTION 32 TO READ:

32. (New section) a. The lack of sufficient moneys in the remediation fund to satisfy all [1][loan] financial assistance[1] or grant applications shall not affect in any way an applicant's legal responsibility to comply with the requirements of P.L.1983, c.330 (C.13:1K-6 et seq.), P.L.1976, c.141 (C.58:10-23.11 et seq.), or any other applicable provision of law.

b. Nothing in sections 23 through 43 of P.L. , c. (C.) (now before the Legislature as this bill) shall be construed to:

(1) impose any obligation on the State for any [1][loan] financial assistance[1] or grant commitments [1][made] rendered[1] by the authority, and the authority's obligations shall be limited to the amount of otherwise unobligated moneys available in the fund therefor; or

(2) impose any obligation on the authority for the quality of any work performed pursuant to a remediation undertaken with [1][a loan] financial assistance[1] or grant [1][made] rendered[1] pursuant section 28 of P.L. , c. (C.)(now before the Legislature as this bill).

REPLACE SECTION 33 TO READ:

33. (New section) a. There is imposed upon every person who is required to establish a remediation funding source pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) a remediation funding source surcharge. The remediation funding source surcharge shall be in an amount equal to 1% of the required amount of the remediation funding source required by the department to be maintained. No surcharge, however, may be imposed upon (1) that amount of the remediation funding source that is met by a self-guarantee as provided in subsection [1][e.] f.[1] of section 25 of P.L. , c. (C.)(now before the Legislature as this bill), (2) that amount of the remediation funding source that is met by [1][a loan] financial assistance[1] or grant from the remediation fund, (3) any person who voluntarily undertakes a remediation without being so ordered or directed by the department or by a court or pursuant to an administrative consent order, or (4) any person who entered voluntarily into a memorandum of understanding with the department to remediate real property, as long as that person continues the remediation in a reasonable manner, or as required by law, even if subsequent to initiation of the memorandum of understanding, the person received an order by the department or entered into an administrative consent order to perform the remediation. The surcharge shall be

based on the cost of remediation work remaining to be completed and shall be paid on an annual basis as long as the remediation continues and until the Department of Environmental Protection issues a no further action letter for the property subject to the remediation. The cleanup remediation funding source surcharge shall be due and payable within 14 days of the time of the department's approval of a remedial action workplan or signing an administrative consent order or as otherwise provided by law. The department shall collect the surcharge and shall remit all moneys collected to the Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund.

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

REPLACE SECTION 34 TO READ:

34. (New section) a. There is appropriated from the "Hazardous Discharge Fund of 1986," created pursuant to "Hazardous Discharge Bond Act of 1986," P.L.1986, c.113, the sum of $45,000,000 to the New Jersey Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund, created pursuant to section 26 of P.L. , c. (C.)(now before the Legislature as this bill) for the purposes of issuing 1[loans] financial assistance1 and grants for the investigation of property suspected of being contaminated by a hazardous substance or hazardous waste or for the remediation of property contaminated by a hazardous substance or hazardous waste.

1[Of the money appropriated pursuant to this subsection, (1)$15,000,000 shall be dedicated to the issuance of loans or grants to municipal governmental entities in accordance with the purposes of the remediation fund; (2) $10,000,000 shall be dedicated to the issuance of loans to persons other than governmental entities in accordance with the purposes of the remediation fund; and (3) $20,000,000 shall be dedicated to the issuance of grants to innocent parties in accordance with the purposes of the remediation fund.]1

b. There is appropriated from the "Hazardous Discharge Fund of 1986," created pursuant to "Hazardous Discharge Bond Act of 1986," P.L.1986, c.113, the sum of $5,000,000 to the Department of Environmental Protection for deposit into the Remediation Guarantee Fund, created pursuant to section 45 of P.L. , c. (C.)(now before the Legislature as this bill), for the purposes of that fund.

REPLACE SECTION 35 TO READ:

35. (New section) a. The Department of Environmental Protection 1and Energy1 shall adopt minimum remediation standards for soil, groundwater, and surface water quality necessary for the remediation of contamination of real property. The remediation standards shall be

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

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

The department shall not propose or adopt remediation standards protective of the environment pursuant to this section, except standards for groundwater or surface water, until recommendations are made by the Environment Advisory Task Force created pursuant to section 37 of P.L. , c. (C.)(now before the Legislature as this bill). Until the Environment Advisory Task Force issues its recommendations and the department adopts remediation standards protective of the environment as required by this section, the department shall continue to determine the need for and the application of remediation standards protective of the environment on a case-by-case basis in accordance with the guidance and regulations of the federal Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable.

b. In developing minimum remediation standards the department shall:

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

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

(3) avoid the use of redundant conservative assumptions. The department shall avoid the use of redundant conservative assumptions by the use of parameters that provide an adequate margin of safety and which avoid the use of unrealistic conservative exposure parameters and which [1][are consistent with][1] guidelines [1]make use of the guidance and regulations[1] for exposure assessment developed by the federal Environmental Protection Agency [1]pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable[1]; and

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

c. (1) The department shall develop residential and nonresidential soil remediation standards that are protective of public health and safety. For contaminants

that are mobile and [1][may be transported] transportable[1] to groundwater, the residential and nonresidential soil remediation standards shall be protective of groundwater [1]and surface water[1]. Residential soil remediation standards shall be set at levels or concentrations of contamination for real property based upon the use of that property for residential or similar uses and which will allow the unrestricted use of that property without exceeding a health risk level greater than that provided in subsection d. of this section. Nonresidential soil remediation standards shall be set at levels or concentrations of contaminants that recognize the lower likelihood of exposure to contamination on property that will not be used for residential or similar uses. Whenever real property is remediated to a nonresidential soil remediation standard, except as otherwise provided in paragraph (3) of subsection g. of this section, the department shall require [1][, pursuant to section 36 of P.L. , c. (C.)(now before the Legislature as this bill),][1] that the use of the property be restricted to nonresidential or other uses compatible with the extent of the contamination of the soil and that access to that site be restricted in a manner compatible with the allowable use of that property.

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

d. In developing minimum remediation standards intended to be protective of public health and safety, the department shall identify the [1][hazard] hazards[1] posed by a contaminant to determine whether exposure to that contaminant can cause an increase in the incidence of an adverse health effect and whether the adverse health effect may occur in humans. The department shall set minimum soil remediation standards for both residential and nonresidential uses that:

(1) for [1]human[1] carcinogens, [1]as categorized by the federal Environmental Protection Agency,[1] will result in an additional cancer risk of one in one million;

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

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

e. Remediation standards and other requirements established pursuant to this section shall apply to remediation activities required pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21 et seq.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et seq.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the "Comprehensive Regulated Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous Waste Facilities Siting Act,"

P.L.1981, c.279 (C.13:1E-49 et seq.), the "Sanitary Landfill Facility Closure and Contingency Fund Act," P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333 (C.13:1E-177 et seq.), [1]P.L. 1986, c.102 (C.58:10A-21 et seq.)[1] or any other law or regulation by which the State may compel a person to perform remediation activities on contaminated property. However, nothing in this subsection shall be construed to limit the authority of the department to establish discharge limits for pollutants or to prescribe penalties for violations of those limits pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), or to require the complete removal of [1][nonhazardous][1] solid waste pursuant to law.

f. (1) A person performing a remediation of contaminated real property, in lieu of using the established minimum soil remediation standard for either residential use or nonresidential use adopted by the department pursuant to subsection c. of this section, may submit to the department a request to use an alternative residential use or nonresidential use soil remediation standard. The use of an alternative soil remediation standard shall be based upon site specific factors which may include (1) physical site characteristics which may vary from those used by the department in the development of the soil remediation standards adopted pursuant to this section; or (2) a site specific risk assessment. If a person performing a remediation requests to use an alternative soil remediation standard based upon a site specific risk assessment, that person shall demonstrate to the department that the requested deviation from the risk assessment protocol used by the department in the development of soil remediation standards pursuant to this section is consistent with the [1][guidelines] guidance and regulations[1] for exposure assessment developed by the federal Environmental Protection Agency [1]pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable[1]. A site specific risk assessment may consider exposure scenarios and assumptions that take into account the form of the contaminant present, natural biodegradation, fate and transport of the contaminant, and available toxicological data that are based upon generally accepted and peer reviewed scientific evidence or methodologies.

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

(2) The department may, upon its own initiative [1],[1] require an alternative remediation standard for a particular contaminant for a specific real property site, in lieu of using the established minimum residential use or nonresidential use soil remediation standard adopted by the department for a particular contaminant pursuant to this section. The department may require an

alternative remediation standard pursuant to this paragraph upon a determination by the department, based on the weight of the scientific evidence, that due to specific physical site characteristics of the subject real property, the use of the adopted residential use or nonresidential use soil remediation standards would not be protective of public health or safety or of the environment, as appropriate.

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

(1) Permanent and nonpermanent remedies shall be allowed except that permanent remedies shall be preferred over nonpermanent remedies for remedial actions;

(2) Contamination may, upon the department's approval, be left onsite at levels or concentrations that exceed the minimum soil remediation standards for residential use or nonresidential use if the 1[requirement] implementation1 of institutional or engineering controls at that site will result in the protection of public health, safety and the environment at the risk level established in subsection d. of this section and 1[where] if1 the requirements established in subsections a., b., c. and d. of section 36 of P.L. , c. (C.)(now before the Legislature as this bill) are met.

(3) Real property on which there is soil that has not been remediated to the residential soil remediation standards, or real property on which the soil, groundwater, or surface water has been remediated to meet the required health risk level by the use of engineering or institutional controls, may be developed or used for residential purposes, or for any other similar purpose, if (a) all areas of that real property at which a person may come into contact with soil are remediated to meet the residential soil remediation standards and (b) it is 1clearly1 demonstrated that for all areas of the real property, other than those described in subparagraph (a) above, engineering and institutional controls can be implemented and maintained on the real property sufficient to meet the health risk level as established in subsection d. of this section;

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

(5) Remediation shall not be required 1[by] of1 the owner or operator of real property for contamination coming onto the site from another property owned and

operated by another person [1],unless said owner or operator is in any way responsible for the discharge[1];

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

(7) [1][The effectiveness of each remedial action alternative in protecting public health, safety and the environment] The technical performance, effectiveness and reliability of the proposed remedial action in attaining and maintaining compliance with applicable remediation standards and required health risk levels. In reviewing a proposed remedial action, the department shall also consider the ability of the owner or operator to implement the proposed remedial action within a reasonable time frame without jeopardizing public health, safety or the environment[1];

(8) [1][The implementability of each alternative] In the case of a proposed remedial action that will not meet the established minimum residential use soil remediation standards, the cost of all available permanent remedies are unreasonable, as determined by department rules designed to provide a cost-based preference for the use of permanent remedies. The department shall adopt regulations, no later than 18 months after the effective date of this act, establishing criteria and procedures for allowing a person to demonstrate that the cost of a proposed remedial action using a nonpermanent remedy is reasonable. Until the department promulgates those regulations, it shall not require a person performing a remedial action to implement a permanent remedy, unless the cost of implementing a nonpermanent remedy is 50 percent or more then the cost of implementing a permanent remedy; provided, however, that the preceding provision shall not apply to any owner or operator of an industrial establishment who is implementing a remedial action pursuant to subsection i. of section 4 of P.L. 1983.[1];

(9) [1][The time it would take to implement each alternative;

(10) The cost of each alternative including capital costs, operation, maintenance and monitoring costs, whether a particular remedial action is cost effective, and whether the cost of performing a specific remedial action is excessive compared to the cost of other alternatives; and

(11) The technological efficacy of any particular remedial action] The use of the established nonresidential soil remediation standard shall not be unreasonably disapproved by the department[1].

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

h. (1) The department shall adopt regulations which establish a procedure for a person to demonstrate that a particular parcel of land contains large quantities of historical fill material. Upon a determination by the department that large quantities of historic fill

material exist on that parcel of land, there is a rebuttable presumption that the department shall not require any person to remove or treat the fill material in order to comply with a remediation standard. In these areas the department shall establish by regulation the requirement for engineering or institutional controls that are designed to prevent exposure of these contaminants to humans, that allow for the continued use of the property, that are less costly than removal or treatment, which maintain the health risk levels as established in subsection d. of this section, and, as applicable, are protective of the environment. The department may rebut the presumption only upon a finding by the preponderance of the evidence that the use of engineering or institutional controls would not be effective in protecting 1[human] public1 health, safety, and the environment. For the purposes of this paragraph "historic fill material" means generally large volumes of non-indigenous material, used to raise the topographic elevation of a site, which were contaminated prior to emplacement and are in no way connected with the operations at the location of emplacement and which include, but 1are1 not limited to, construction debris, dredge spoils, incinerator residue, demolition debris, fly ash, and 1[non hazardous] non-hazardous1 solid waste. Historic fill material shall not include any material which is substantially chromate chemical production waste or any other chemical production waste or waste from 1[mining or]1 processing of metal or mineral ores, residues, slags or tailings.

(2) The department shall develop recommendations for remedial actions in large areas of historic industrial contamination. These recommendations shall be designed to meet the health risk levels established in subsection d. of this section, and 1to1 be protective of the environment and shall take into account the industrial history of these sites, the extent of the contamination that may exist, the costs of 1[alternative]1 remedial actions, the economic impacts of these policies, and the anticipated uses of these properties. The department, within one year of the enactment of this act, shall issue a report to the Senate Environment Committee and to the Assembly Energy and Hazardous Waste Committee, or their successors, explaining these recommendations and making any recommendations for legislative or regulatory action.

(3) The department may not, as a condition of allowing the use of a nonresidential use soil remediation standard, or the use of institutional or engineering controls, require the owner of that real property, except as provided in section 36 of P.L. , c. (C.)(now before the Legislature as this bill), to restrict the use of that property through the filing of a deed easement, covenant, or condition.

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

j. Upon the approval by the department of a remedial action workplan, or similar [1][approval] plan[1] that describes the extent of contamination at a site and the remedial action to be implemented to address that contamination, the department may not subsequently require a change to that workplan or similar [1][approval] plan[1] in order to compel a different remediation standard due to the fact that the established remediation standards have changed; however, the department may compel a different remediation standard if the difference between the new remediation standard and the remediation standard approved in the workplan or other [1][approval] plan[1] differs by an order of magnitude. The limitation to the department's authority to change a workplan or similar [1][approval] plan[1] pursuant to this subsection shall only apply [1][where] if[1] the workplan or similar [1][approval] plan[1] is being implemented in a reasonable timeframe [1], as may be indicated in the approved remedial action workplan or similar plan[1].

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

l. Upon the adoption of a remediation standard for a particular contaminant in soil, groundwater, or surface water pursuant to this section, the department may amend that remediation standard only upon a finding that a new standard is necessary to maintain the health risk levels established in subsection d. of section 35 of P.L. , c. (C.)(now before the Legislature as this bill) or to protect the environment, as applicable. The department may not amend a public health based soil remediation standard to a level that would result in a health risk level more protective than that provided for in subsection d. of section 35 of P.L. , c. (C.).

[1]m. Nothing in this amendatory and supplementary act, P.L. , c. (now before the Legislature as this bill), shall be construed to restrict or in any way diminish the public participation which is otherwise provided under the provisions of the "Spill Compensation and Control Act," P.L. 1976, c.141 (C.58:10-23.11 et seq.).[1]

REPLACE SECTION 36 TO READ:

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

(1) require the establishment of any engineering or institutional controls the department determines are

reasonably necessary to prevent exposure to the contaminants, 1[to]1 require maintenance, as necessary, of those controls, and 1[to]1 require the restriction of the use of the property in a manner that prevents exposure;

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

(3) require a notice to the governing body of each municipality in which the property is located that contaminants will exist at the property above residential use soil remediation standards or 1[of]1 any other remediation standards and specifying the restrictions on the use of or access to all or part of that property and of the specific engineering or institutional controls at the property that exist and that shall be maintained;

(4) require, when determined necessary by the department, that signs be posted at any location at the site where access is restricted or in those areas that must be maintained in a prescribed manner, to inform persons on the property that there are restrictions on the use of that property or restrictions on access to any part of the site; 1[and]1

(5) require that a list of the restrictions be kept on site for inspection by governmental enforcement officials 1; and

(6) require a person, prior to commencing a remedial action, to notify the governing body of each municipality wherein the property being remediated is located. The notice shall include, but not be limited to, the commencement date for the remedial action; the name, mailing address and business telephone number of the person implementing the remedial action, or his designated representative; and a brief description of the remedial action1.

b. If the owner of the real property does not consent to the recording of a notice pursuant to paragraph (2) of subsection a. of this section, the department shall 1[not allow] require1 the use of a 1[nonresidential] residential1 soil remediation standard 1[or the use of engineering or institutional controls]1 in the remediation of that real property.

c. 1[Where] Whenever1 engineering or institutional controls on property as provided in subsection a. of this section are no longer required, or 1[where] whenever1 the engineering or institutional controls are changed because of the performance of subsequent remedial activities, a change in conditions at the site, or the adoption of revised remediation standards, the department shall 1[,]1

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

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

e. Notwithstanding the provisions of any other law, or any rule, regulation, or order adopted pursuant thereto to the contrary, whenever contamination at a property is remediated in compliance with any soil, groundwater, or surface water remediation standards that were in effect at the completion of the remediation, the owner or operator of the property or person performing the remediation, except as otherwise provided in this section, shall not be liable for the cost of any additional remediation that may be required by a subsequent adoption by the department of a more stringent remediation standard for a particular contaminant. Upon the adoption of a regulation that amends a remediation standard, only a person who is liable to clean up [1]and remove[1] that contamination pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g) shall be liable for any additional remediation costs necessary to bring the site into compliance with the new remediation standards except that no person shall be so liable unless the difference between the new remediation standard and the level or concentration of a contaminant at the property differs by an order of magnitude.

Nothing in the provisions of this subsection shall be construed to affect the authority of the department, pursuant to subsection f. of this section, to require additional remediation on real property where engineering or institutional controls were implemented [1][of this section][1].

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

f. [1][Where] Whenever[1] the department approves or has approved the use of engineering or institutional controls for the remediation of soil, groundwater, or surface water, to protect public health, safety or the environment in lieu of remediating a site to a condition that meets an established [1]residential[1] remediation standard, the department shall not require additional remediation of that site unless the engineering or institutional controls no longer are protective of public health, safety, or the environment.

REPLACE SECTION 37 TO READ:

37. (New section) a. There is established, in but not of the Department of Environmental Protection [1]and Energy[1], an Environment Advisory Task Force. The Task Force shall consist of 15 members as follows: (1) the Commissioner of Environmental Protection [1]and Energy[1], or his designee; (2) one representative from the National Academy of Sciences who shall be selected by the Academy; (3) one representative from the New Jersey Environmental and Occupational Health Sciences Institute who has experience in risk assessment, who shall be selected by the Institute; (4) one representative each from the industrial real estate development industry, the environmental consulting profession, a public interest environmental organization, and the legal community, who shall be appointed by the Governor with the advice and consent of the Senate; (5) four members who shall have at least a master's degree in a relevant science discipline and who shall, to the greatest extent possible, include a plant or animal biologist, a toxicologist, an ornithologist, and a physiologist, who shall be appointed by the Governor with the advice and consent of the Senate; (6) two members who shall have at least a master's degree in a science discipline, have relevant experience, and be employed by an industrial business, who shall be appointed by the President of the Senate; and (7) two members who shall have at least a master's degree in a science discipline, have relevant experience, and be employed by an industrial business, who shall be appointed by the Speaker of the General Assembly.

b. The Environment Advisory Task Force shall meet as soon as practicable after the appointment and qualification of all its members. The Commissioner of Environmental Protection, or the commissioner's designee, shall be the chairperson of the Environment Advisory Task Force. The Environment Advisory Task Force shall meet at the call of its chairperson and in the locations the chairperson shall choose.

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

d. The Environment Advisory Task Force shall:

f. [1][Where] Whenever[1] the department approves or has approved the use of engineering or institutional controls for the remediation of soil, groundwater, or surface water, to protect public health, safety or the environment in lieu of remediating a site to a condition that meets an established [1]residential[1] remediation standard, the department shall not require additional remediation of that site unless the engineering or institutional controls no longer are protective of public health, safety, or the environment.

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b. The Environment Advisory Task Force shall meet as soon as practicable after the appointment and qualification of all its members. The Commissioner of Environmental Protection, or the commissioner's designee, shall be the chairperson of the Environment Advisory Task Force. The Environment Advisory Task Force shall meet at the call of its chairperson and in the locations the chairperson shall choose.

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

d. The Environment Advisory Task Force shall:

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

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

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

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

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

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

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

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

(9) review and make recommendations on any other aspect of the adoption of these remediation standards the [1][department] task force[1] determines is necessary for a complete evaluation of these issues.

e. Prior to the submittal of its recommendations to the department, the Environment Advisory Task Force shall release a proposed recommendation to the public. The Environment Advisory Task Force shall hold at least one public meeting at least 14 days after public release of its proposed recommendations. Members of the public shall be allowed to present written and oral comments on the proposed recommendations at the public meeting. The [1][Task Force] task force[1] is not required to record, consider, or comment upon the public comments. Upon submittal of its final recommendations to the department concerning the adoption of remediation standards protective of the environment, the Environment Advisory Task Force shall expire.

REPLACE SECTION 39 TO READ:

39. (New section) a. Any person who, before the effective date of P.L. , c. (C.)(now before the Legislature as this bill), has discharged a hazardous substance in violation of P.L.1976, c.141, and:

(1) has not been issued a directive to remove or arrange for the removal of the discharge pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f) [1][,] ;1

(2) has not been assessed a civil penalty, a civil administrative penalty, or is not the subject of an action pursuant to the provisions of section 22 of P.L.1976, c.141 (C.58:10-23.11u) 1[,] ;1

(3) has not entered in to an administrative consent order to clean up and remove the discharge 1[, or] ; and1

(4) has not been ordered by a court to clean up and remove the discharge, shall not be subject to a monetary penalty for the failure to report the discharge or for any civil violation of P.L.1976, c.141 (C.58:10-23.11 et seq.) or P.L.1977, c.74 (C.58:10A-1 et seq.) that resulted in the discharge if the person notifies the department of the discharge and enters into an administrative consent order or a memorandum of agreement with the department to remediate the discharge in accordance with the provisions of P.L.1976, c.141 (C.58:10-23.11 et seq.), or any rules or regulations adopted pursuant thereto, within one year of the effective date of P.L. , c. (C.)(now before the Legislature as this bill). Any person who notifies the department of the discharge pursuant to this section shall be liable for all cleanup and removal costs as provided in section 8 of P.L.1976, c.141 (C.58:10-23.11g).

b. Notwithstanding the provisions of subsection a. of this subsection, any person who enters into a memorandum of agreement or administrative consent order pursuant to this section and fails to remediate the discharge in accordance with the memorandum of agreement or administrative consent order, shall be subject to all penalties for violations that occurred before the effective date of P.L. , c. (C.)(now before the Legislature as this bill) as well as any penalties for subsequent violations.

c. The provisions of this section shall not apply to violations of a permit issued pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.).

d. Any documents or information provided to the department pursuant to this section may not be used in a criminal investigation or criminal prosecution against the person providing the information or documents for those violations that occurred before the effective date of this act as long as the person remediates the discharge in conformance with the administrative consent order or memorandum of agreement entered into pursuant to subsection a. of this section.

REPLACE SECTION 40 TO READ:

40. (New section) a. 1[Any person who undertakes the remediation of suspected or actual contamination on real or personal property that is not owned by that person, may enter upon the property to conduct the necessary remediation if there is an agreement, in writing, between the person conducting the remediation and the owner of the property authorizing the entry onto the property.

If, after a good faith effort, the person undertaking the remediation and the property owner fail to reach an agreement concerning access to the property, the person may seek a court order authorizing access which shall be issued pursuant to subsection b. of this section.

b. Any person who undertakes the remediation of suspected or actual contamination on real or personal property that is not owned by the person responsible for the remediation, and fails to reach an agreement with the property owner pursuant to subsection a. of this section may institute an action in the Superior Court for injunctive and other relief, to gain access to the property and the court may proceed in the action in a summary manner.] (1) Any person who undertakes the remediation of suspected or actual contamination and who requires access to conduct such remediation on real or personal property that is not owned by that person, may enter upon the property to conduct the necessary remediation if there is an agreement, in writing, between the person conducting the remediation and the owner of the property authorizing the entry onto the property. If, after good faith efforts, the person undertaking the remediation and the property owner fail to reach an agreement concerning access to the property, the person undertaking the remediation shall seek an order from the Superior Court directing the property owner to grant reasonable access to the property and the court may proceed in the action in a summary manner.

(2)[1] Such relief may include, singly or in combination:

[1][(1)] (a)[1] A temporary or permanent injunction;

[1][(2)] (b)[1] Assessment of the person undertaking the remediation for costs associated with any disruption in operations on the property;

[1][(3)] (c)[1] Assessment of the person undertaking the remediation for any costs to return the property to its condition before the commencement of the remediation;

[1][(4)] (d)[1] A requirement that the person undertaking the remediation indemnify the owner of the property for any damages, penalties or liabilities resulting from the remediation;

[1][(5)] (e)[1] A requirement that the person undertaking the remediation indemnify the owner of the property for any liability resulting from the entry of persons onto the property to perform the remediation.

[1]b. The court shall promptly issue any access order sought pursuant to this section upon a showing that (1) a reasonable possibility exists that contamination from another site has migrated onto the owner's property, or (2) access to the property is reasonable and necessary to remediate contamination. The presence of an applicable department oversight document or a remediation obligation pursuant to law involving the property for which access is sought shall constitute prima facie evidence sufficient to support the issuance of an order.

Unless the court otherwise orders for notice and for good cause shown, an action for an access order shall not be joined with non-germane issues against the owner of the property for which access is sought or other person who may be liable for the contamination. Non-germane issues shall include, but not be limited to, issues concerning contribution, treble damages, or other damages involving either the contamination or the remediation.

The court may impose reasonable conditions as part of the access order, including without limitation, that the

person undertaking the remediation take all reasonable measures to minimize the disruption to the property and the activities conducted there and return the property to its condition prior to the commencement of remediation.[1]

c. The department may not impose or seek to impose any civil or civil administrative penalties upon any person for failure to perform a remediation on property not owned by that person within the time schedule required by regulation on property not owned by that person if (1) the failure to perform the remediation was the result of an inability of that person to enter upon real or personal property owned by another person, and (2) the person took all appropriate action pursuant to this section to obtain access to the property.

[1]d. Nothing herein shall be construed as limiting the rights of the owner of the property against which the access order is issued to initiate a civil action to seek any damages available under law.

e. Nothing herein shall be construed as limiting the rights of the person conducting the remediation from initiating any subsequent civil action against the owner of the property.[1]

REPLACE SECTION 41 TO READ:

41. (New section) a. Any person conducting a remediation of a contaminated site may dispute a decision by the department concerning the remediation in accordance with the guidelines developed pursuant to subsection b. of this section. The disputed decision shall be reviewed, and a determination shall be made, by the next level of the department's management, and the review may continue, upon the request of the person seeking review, until the Commissioner or his designee has issued a decision on the dispute. Each successive level of management review and the resulting determination on the dispute, shall occur within seven days of the department's receipt of the request for review.

b. Within 60 days of the effective date of [1][this act] P.L. , c. (now pending before the Legislature as this bill)[1], the department shall develop guidelines that establish a procedure through which a person conducting a remediation of a contaminated site may dispute a department decision concerning the remediation. [1]Those guidelines shall include provisions for an expedited review procedure under which the Commissioner, or his designee, shall issue a decision of the dispute within 21 calendar days of the date on which the request for that review was received.[1]

REPLACE SECTION 42 TO READ:

42. (New section) The Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Department of Environmental Protection [1]and Energy[1], shall prepare, and the department shall distribute, for the cost of reproduction and postage, to any interested person, informational materials that set forth criteria that may be used to evaluate the qualifications of environmental consultants,

environmental consulting firms, engineers, geologists or any other consultant, whose expertise or training may be required by a person to comply with the provisions of P.L.1986, c.102 [1](C.58:10A-21 et seq.)[1], P.L.1983, c.330 [1](C.13:1K-6 et seq.)[1], P.L.1976, c.141 [1](C.58:10-23.11 et seq.)[1], and P.L. , c. (C.)(now before the Legislature as this bill) relating to the remediation of contaminated real property. The materials may describe the expertise or training necessary to address specific types of environmental cleanups, sites or contamination, the significance and availability of various types of [1]professional[1] liability insurance [1], issued by an entity licensed by the Department of Insurance to transact business in the State of New Jersey[1], the average cost of services and tests commonly performed by consultants, the significance of available accreditations or certifications, the ethics code applicable to any consultant, the references that may be requested and any other relevant factor that may be used to evaluate the qualifications and expertise of persons performing remediation services.

REPLACE SECTION 43 TO READ:

43. (New section) The owner or operator of an industrial establishment [1][.][1] who has submitted a notice to the department pursuant to subsection a. of section 4 of P.L.1983, c.330 (C.13:1K-9), or any person who has discharged a hazardous substance or is liable for the remediation of that discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), [1]or any person who[1] has been directed to or has entered into an agreement with the department to remediate a discharge, may implement an interim response action prior to departmental approval of that action. The interim response action may be implemented when the expeditious temporary or partial remediation of a discharged hazardous substance or hazardous waste is necessary to contain or stabilize a discharge prior to implementation of an approved remedial action workplan in order to prevent, minimize, or mitigate damage to public health or safety or to the environment which may otherwise result from a discharge. The interim response action shall be implemented in compliance with the procedures and standards established by the department. The department may require submission of a notice of intent to implement an interim response action, what those actions will be, and may require, subsequent to completion of the interim response action, a report detailing the actions taken and a certification that the interim response action was implemented in accordance with all applicable laws and regulations. The department shall review these submissions to verify whether the interim response action was implemented in accordance with applicable laws and regulations. The department shall not require that additional remediation be undertaken at an area of concern subject to the interim response action except in instances when further remediation is necessary to bring that area of concern into compliance with the applicable remediation standards.

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

INSERT NEW SECTION 46 TO READ:

[1]46. Section 7 of P.L. 1993, c.112 (C.13:1K-11.1) is amended to read as follows:

7. [a. The following transactions shall be excluded from the provisions of the "Environmental Cleanup Responsibility Act," P.L.1983, c.330 (C.13:1K-6 et al.):

(1) Execution, delivery and filing or recording of any mortgage, security interest, collateral assignment or other lien on real or personal property; and

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

b.] In the event of the closing, termination or transfer of an industrial establishment, which industrial establishment is all or part of a trust, receivership estate, guardianship estate or estate of a deceased person, only the assets of the trust or estate, or assets of any discharger other than the fiduciary of such trust or estate shall be subject to the obligation to remove the discharge as set forth in P.L.1983, c.330 (C.13:1K-6 et al.).[1]

(cf: P.L. 1993, c.112, s.7)

INSERT NEW SECTION 47 AS FOLLOWS:

[1]47. (New section) a. There is created a special Environmental Risk Assessment and Risk Management Study Commission. The commission shall consist of 10 members and shall include the Commissioner of Environmental Protection and Energy, or his designee, as a non-voting member, and eight members who shall have advanced degrees and relevant experience in any of the following disciplines: (1) environmental medicine, health, or epidemiology; (2) environmental toxicology; (3) soil science, geology, or hydrogeology, and (4) environmental engineering with experience in site remediation. The Governor shall appoint one representative from each of those disciplines; the Senate President shall appoint two representatives, provided, however, both of those appointees shall not be from the same discipline; and the Speaker of the General Assembly shall appoint two representatives, provided, however, both of those appointees shall not be from the same discipline. A ninth member, who shall be a recognized expert in the field of risk assessment as it applies to contaminated sites or to the remediation of such sites, shall be jointly appointed by the Governor, Senate President, and the Speaker. The chairman of the commission shall be jointly appointed by the Governor, Senate President, and Speaker from among the appointed members. All members

shall serve without compensation. Vacancies in the membership shall be filled in the same manner as the original appointments were made.

b. It shall be the duty of the commission:

(1) To examine and assess the scientific basis for selecting the risk management standard of one in one million for the purposes of P.L. , c. (C.)(now pending before the Legislature as this bill) and to consider and assess alternative scientific standards and criteria for that purpose; and

(2) To examine and assess methodologies of risk assessment and their efficacy and applicability for the purposes of establishing remediation standards.

c. The commission shall organize as soon after the appointment of its members as is practicable.

d. The commission shall be entitled to call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes, and to employ such stenographic and clerical assistants and incur such traveling and other miscellaneous expenses as it may deem necessary, in order to perform its duties, and as may be within the limits of funds appropriated or otherwise made available to it.

e. The commission may meet and hold hearings at such place or places as it shall designate. The commission shall hold at least one public hearing to accept written and oral testimony from the public prior to commencing its deliberations. The commission shall hold at least one other public hearing prior to formally submitting its findings and recommendations to the Governor and the Legislature. This public hearing, or hearings, as the case may be, shall be held at least 14 days after the commission has made public its proposed findings and recommendations. The public shall be permitted to present written and oral comments on the proposed findings and recommendations at that public hearing, or hearings, as the case may be. Thereafter, the commission shall report its findings and recommendations to the Governor and Legislature, along with any recommendations for Legislative action, as follows:

(1) The report and recommendations concerning the scientific basis for selecting risk management standards shall be delivered no later than six months after the effective date of P.L. , c. (now pending before the Legislature and this bill); and

(2) The report and recommendations concerning risk assessment methodologies and their efficacy and applicability for establishing remediation standards shall be delivered no later than one year after the effective date of P.L. , c. (now before the Legislature as this bill).

f. The commission shall expire upon the issuance of its final report.[1]

INSERT NEW SECTION 48 AS FOLLOWS:

[1]48. (New section) Within nine months of the enactment of P.L. , c. (now before the Legislature

as this bill), the Commissioner of the Department of Environmental Protection and Energy, in consultation with the Attorney General, shall issue a report to the Governor and the Legislature concerning the effectiveness and fairness of the imposition of strict, joint and several liability on persons who have discharged, or are in any way responsible for, a hazardous substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.). The report shall:

a. analyze methods to expedite the securing of funding for the remediation of hazardous discharge sites;

b. analyze methods to lower the public and private legal costs associated with the determinations of liability for discharges of hazardous substances;

c. examine the historical and legal basis for the imposition of strict, joint and several liability for the discharge of a hazardous substance;

d. discuss the effect on the Department of Environmental Protection and Energy's site remediation program of modifying the existing statutory scheme of strict, joint and several liability and replacing it with another standard of liability; and

e. review and discuss methods to enhance the fairness of the imposition of liability for hazardous substance discharges including the possible use of mixed public and private funding for site remediations and the use of de minimis settlements for potentially responsible parties.

In preparing its report, the department shall review the provisions of the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," as amended by the "Superfund Amendments and Reauthorization Act of 1986," the regulations and policies of the federal Environmental Protection Agency in implementing that act, proposed changes being considered by Congress in the reauthorization of that act, and the discharge liability laws of other states as may be relevant. The report shall contain recommendations for regulatory or legislative actions.[1]

INSERT NEW SECTION 49 TO READ:

[1]49. (New section) Within six months of the enactment of P.L. c. (now before the Legislature as this bill), the Commissioner of Environmental Protection and Energy shall issue a report to the Governor and the Legislature providing an evaluation, recommendations, and a plan of action for developing and implementing a certification program for persons engaging in the remediation of contaminated sites. In preparing his report, the commissioner shall review the certification programs for persons engaging in the remediation of contaminated sites which other states have implemented and which may be relevant.[1]

RENUMBER SECTION 46 AS SECTION 50

[FIRST REPRINT]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1070

STATE OF NEW JERSEY

ADOPTED MARCH 15, 1993

Sponsored by Senators McNAMARA and RICE

AN ACT concerning the remediation of contaminated property, amending and supplementing P.L.1983, c.330, amending P.L.1976, c.141, supplementing Title 58 of the Revised Statutes, [1]amending P.L. 1993, c.112,[1] and making an appropriation from the "Hazardous Discharge Bond Act of 1986."

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

1. Section 1 of P.L.1983, c.330 (C.13:1K-6) is amended to read as follows:

1. This act shall be known and may be cited as the ["Environmental Cleanup Responsibility Act."] "Industrial Site Recovery Act."

(cf: P.L.1983, c.330, s.1)

2. Section 2 of P.L.1983, c.330 (C.13:1K-7) is amended to read as follows:

2. [The Legislature finds and declares that the generation, handling, storage and disposal of hazardous substances and wastes pose an inherent danger of exposing the citizens, property and natural resources of this State to substantial risk of harm or degradation; that the closing of operations and the transfer of real property utilized for the generation, handling, storage and disposal of hazardous substances and wastes should be conducted in a rational and orderly way, so as to mitigate potential risks; and that it is necessary to impose a precondition on any closure or transfer of these operations by requiring the adequate preparation and implementation of acceptable cleanup procedures therefor.]

The Legislature finds that discharges of toxic chemicals dating back to early industrialization has left a legacy of contaminated industrial property in this State; that in 1983, due to the growing public awareness and concern of the risks to the public health and the environment and the potential costs to the State to clean up abandoned contaminated sites, the "Environmental Cleanup and Responsibility Act [1][,][1]" was enacted. The Legislature also finds that the act's imposition of a cleanup plan approval before the transfer or upon the closing of an industrial establishment and the requirement to establish a funding source for the cleanup [1][is] are[1] in the general public interest by ensuring the discovery of contamination, by assuring that funding for cleanup is set aside at the time it is available from a transfer or closing, and by assuring

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

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1] Assembly APR committee amendments adopted June 3, 1993.

that contaminated property is not abandoned to the State for cleanup. The Legislature further finds that at the time of the act's passage, the extent of the State's industrial contamination [1][,][1] and the cost and complexity of remediations [1][,][1] were not well understood; that in the intervening years, there has been a significant advance in the body of knowledge concerning how to remediate contaminated sites effectively and how to manage the remediation efficiently; that the regulated and financial [1][community is] communities are[1] now more familiar with the liabilities involving contaminated property and with the necessity to discover and remediate that contamination; and that it is in the interest of the environment and the State's economic health to promote certainty in the regulatory process by incorporating that knowledge to create a more efficient regulatory structure and to allow greater privatization of that process where it is possible to do so without incurring unnecessary risks to the public health or the environment.

The Legislature therefore declares that it is the policy of this State to protect the public health, safety, and the environment, to promote efficient and timely cleanups, and to eliminate any unnecessary financial burden of remediating contaminated sites; that these policies can be achieved by streamlining the regulatory process, by establishing summary administrative procedures for industrial establishments that have previously undergone an environmental review, and by reducing oversight of those industrial establishments where less extensive regulatory review will [1][assure] ensure[1] the same degree of protection to [1][human] public[1] health [1], safety,[1] and the environment; and that the new procedures established pursuant to this act shall be designed to [1][remove] guard against[1] redundancy from the regulatory process and to minimize governmental involvement in certain business transactions.

(cf: P.L.1983, c.330, s.2)

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

3. As used in this act:

[a. "Cleanup plan"] "Remedial action workplan" means a plan for the [cleanup of] remedial action to be undertaken at an industrial [establishments, approved by the department, which may include a description of the locations, types and quantities of hazardous substances and wastes that will remain on the premises; a description of the types and locations of storage vessels, surface impoundments, or secured landfills containing hazardous substances and wastes; recommendations regarding the most practicable method of cleanup; and] establishment, or at any area to which a discharge originating at the industrial establishment is migrating or has migrated; a description of the remedial action to be used to remediate the industrial establishment; a time schedule and cost estimate of the [cleanup plan.] implementation of the remedial action; and any other [1]relevant[1] information the department deems necessary;

[The department, upon a finding that the evaluation of a site for cleanup purposes necessitates additional information, may require graphic and narrative descriptions of geographic and

hydrogeologic characteristics of the industrial establishment and evaluation of all residual soil, groundwater, and surface water contamination;

b. "Closing, terminating or transferring operations" means the cessation of all operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes, or any temporary cessation for a period of not less than two years, or any other transaction or proceeding through which an industrial establishment becomes nonoperational for health or safety reasons or undergoes change in ownership, except for corporate reorganization not substantially affecting the ownership of the industrial establishment, including but not limited to sale of stock in the form of a statutory merger or consolidation, sale of the controlling share of the assets, the conveyance of the real property, dissolution of corporate identity, financial reorganization and initiation of bankruptcy proceedings]

"Closing operations" means:

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

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

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

(4) the initiation of bankruptcy proceedings pursuant to Chapter 7 of the federal Bankruptcy Code, 11 U.S.C. §70100 et seq. or the filing of a plan of reorganization that provides for a liquidation pursuant to Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. §1101 et seq.; [1][or][1]

(5) any change in operations of an industrial establishment that changes the industrial establishment's Standard Industrial Classification number to one that is not subject to this act; [1]or

(6) the termination of a lease unless there is no disruption in operations of the industrial establishment, or the assignment of a lease;[1]

"Transferring ownership or operations" means:

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

(2) the sale or transfer of more than 50% of the assets of an industrial establishment within any five year period [1], as measured on a constant, annual date-specific basis[1];

(3) the execution of a lease for a period of 99 years or longer

or an industrial establishment; [1]or[1]

(4) [1][the termination of a lease unless renewed without a disruption in operations of the industrial establishment, or the assignment of a lease; or

(5)][1] the dissolution of an entity that is an owner or operator or an indirect owner of an industrial establishment, except for any dissolution of an indirect owner of an industrial establishment whose assets would have been unavailable for the remediation of the industrial establishment if the dissolution had not occurred;

"Change in ownership" means:

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

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

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

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

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

"Change in ownership" shall not include:

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

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

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

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

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

(6) [1][the execution of a mortgage, the filing of a lien, the granting of a security interest, or the assignment of a lease to secure a loan, or the refinancing of a debt, not including a sale and lease back agreement, by the owner or operator of an industrial establishment;

(7)]1 a transfer to release a contingent or reversionary interest except for any transfer of a lessor's reversionary interest in leased real property;

1[(8)] (7)1 a transfer of an industrial establishment by devise or intestate succession;

1[(9)] (8)1 the granting or termination of an easement or a license to any portion of an industrial establishment; 1[or

(10)] (9)1 the sale or transfer of real property pursuant to a condemnation proceeding initiated pursuant to the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.) 1;

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

(11) any transfer of personal property pursuant to a valid security agreement, collateral assignment or other lien, including, but not limited to, seizure or replevin of such personal property which transfer is for the purpose of implementing the secured party's rights in the personal property which is the collateral1.

[c.] "Department" means the Department of Environmental Protection 1and Energy1;

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

[e.] "Hazardous waste" [means any amount of any waste substances required to be reported to the Department of Environmental Protection on the special waste manifest pursuant to N.J.A.C.7:26-7.4, or as otherwise provided by law] shall have the same meaning as provided in section 1 of P.L.1976, c.99 (C.13:1E-38);

[f.] "Industrial establishment" means any place of business engaged in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or hazardous wastes on-site, above or below ground, having a Standard Industrial Classification number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard Industrial Classifications Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States. Those facilities or parts of facilities subject to operational closure and post-closure maintenance requirements pursuant to the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.) or the "Solid Waste Disposal Act" (42 U.S.C.§6901 et seq.), or any establishment engaged in the

production or distribution of agricultural commodities, shall not be considered industrial establishments for the purposes of this act. The department may, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), exempt certain sub-groups or classes of operations within those sub-groups within the Standard Industrial Classification major group numbers listed in this subsection upon a finding that the operation of the industrial establishment does not pose a risk to public health and safety;

[g.] "Negative declaration" means a written declaration, submitted by the owner or operator of an industrial establishment [1]or other person assuming responsibility for the remediation under paragraph (3) of subsection b. of section 4 of P.L. 1983, c.330[1] [and approved by the department] to the department, certifying that there has been no discharge of hazardous substances or hazardous wastes on the site, or that any such discharge on the site or discharge that has migrated or is migrating from the site has been [cleaned up] remediated in accordance with procedures approved by the department [, and there remain no hazardous substances or wastes at the site of the industrial establishment] and in accordance with any applicable remediation regulations;

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

"No further action letter" means a written determination by the department that, based upon an evaluation of the historical use of the industrial establishment and the property, or of an area of concern or areas of concern, as applicable, and any other investigation or action the department deems necessary, there are no discharged hazardous substances or hazardous wastes present at the site of the industrial establishment, at the area of concern or areas of concern, or at any other site to which [1][a discharge] discharged hazardous substances or hazardous wastes[1] originating at the industrial establishment [1][has] have[1] migrated, and that any discharged hazardous substances or hazardous wastes present at the industrial establishment or that have migrated from the site have been remediated in accordance with applicable remediation regulations;

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

"Direct owner or operator" means any person that directly owns or operates an industrial establishment;

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

"Remediation standards" means the combination of numeric

and narrative standards to which hazardous substances or hazardous wastes must be investigated or remediated as established by the department pursuant to section 35 of P.L. , c. (C.)(now before the Legislature as this bill);

"Owner" means any person who owns the real property of an industrial establishment or who owns the industrial establishment;

"Operator" means any person, including users, tenants, [1]or[1] occupants, [1][or trespassers,][1] having and exercising direct actual control of the operations of an industrial establishment;

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether hazardous substances or hazardous wastes are or were present at an industrial establishment or have migrated or are migrating from the industrial establishment, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or [1][potential] latent[1] discharge of any hazardous substance or hazardous waste is required [1]. The evaluation of historic information shall be conducted from 1900 to the present, except that the department may require the search for and evaluation of additional information relating to ownership and use of the site prior to 1900 if such information is available through diligent inquiry of public records[1];

"Remediation" or "remediate" means all necessary actions to investigate and clean up any known [1][or] ,[1] suspected [1], or threatened[1] discharge of hazardous substances or hazardous wastes, including [1], as necessary,[1] the preliminary assessment, site investigation, remedial investigation, and remedial action;

"Remedial action" means those actions taken at an industrial establishment or offsite of an industrial establishment if hazardous substances or hazardous wastes have migrated or are migrating therefrom, as may be required by the department [1][, including] to protect public health, safety, and the environment. These actions may include[1] the removal, treatment, containment, transportation, securing, or other engineering [1][or treatment][1] measures, whether of a permanent nature or otherwise, designed to ensure that any discharged hazardous substances or hazardous wastes at the site or that have migrated or are migrating from the site, are remediated in compliance with the applicable remediation standards;

"Remedial investigation" means a process to determine the nature and extent of a discharge of hazardous substances or hazardous wastes at an industrial establishment or a discharge of hazardous substances or hazardous wastes that have migrated or are migrating from the site and the problems presented by a discharge, and may include data collected, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the evaluation of [1][remediated alternatives] remedial actions if necessary[1];

"Site investigation" means the collection and evaluation of data adequate to determine whether or not discharged hazardous substances or hazardous wastes exist at the industrial

establishment or have migrated or are migrating from the site at levels in excess of the applicable remediation standards. A site investigation shall be developed based upon the information collected pursuant to the preliminary assessment.

(cf: P.L.1983, c.330, s.3)

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

4. [a. The owner or operator of an industrial establishment planning to close operations shall:

(1) Notify the department in writing, no more than five days subsequent to public release, of its decision to close operations;

(2) Upon closing operations, or 60 days subsequent to public release of its decision to close or transfer operations, whichever is later, the owner or operator shall submit a negative declaration or a copy of a cleanup plan to the department for approval and a surety bond or other financial security for approval by the department guaranteeing performance of the cleanup in an amount equal to the cost estimate for the cleanup plan.

b. The owner or operator of an industrial establishment planning to sell or transfer operations shall:

(1) Notify the department in writing within five days of the execution of an agreement of sale or any option to purchase;

(2) Submit within 60 days prior to transfer of title a negative declaration to the department for approval, or within 60 days prior to transfer of title, attach a copy of any cleanup plan to the contract or agreement of sale or any option to purchase which may be entered into with respect to the transfer of operations. In the event that any sale or transfer agreements or options have been executed prior to the submission of the plan to the department, the cleanup plan shall be transmitted, by certified mail, prior to the transfer of operations, to all parties to any transaction concerning the transfer of operations, including purchasers, bankruptcy trustees, mortgagees, sureties, and financiers;

(3) Obtain, upon approval of the cleanup plan by the department, a surety bond or other financial security approved by the department guaranteeing performance of the cleanup plan in an amount equal to the cost estimate for the cleanup plan.

c. The cleanup plan and detoxification of the site shall be implemented by the owner or operator, provided that the purchaser, transferee, mortgagee or other party to the transfer may assume that responsibility pursuant to the provisions of this act.]

a. The owner or operator of an industrial establishment planning to close operations or transfer ownership or operations shall notify the department in writing, no more than five days subsequent to closing operations or of its public release of its decision to close operations, whichever occurs first, or within five days after the execution of an agreement to transfer ownership or operations, as applicable. The notice to the department shall: identify the subject industrial establishment; describe the transaction requiring compliance with P.L.1983, c.330 [1](C.13:1K-6 et seq.)[1]; state the date of the closing of operations or the date of the public release of the decision to

close operations and a copy of the appropriate public announcement, if applicable; state the date of execution of the agreement to transfer ownership or operations and the names, addresses and telephone numbers of the parties to the transfer, if applicable; state the proposed date for closing operations or transferring ownership or operations; list the name, address, and telephone number of an authorized agent for the owner or operator; and certify that the information submitted is accurate. The notice shall be transmitted to the department in the manner and form required by the department. The department may, by regulation, require the submission of any additional information in order to improve the efficient implementation of P.L.1983, c.330.

b. (1) Subsequent to the submittal of the notice required pursuant to subsection a. of this section, the owner or operator of an industrial establishment shall, except as otherwise provided by P.L.1983, c.330 or P.L. , c. (C.)(now before the Legislature as this bill), remediate the industrial establishment. The remediation shall be conducted in accordance with criteria, procedures, and time schedules established by the department.

(2) The owner or operator shall attach a copy of any approved negative declaration, approved remedial action workplan, [1]no further action letter,[1] or remediation agreement approval to the contract or agreement of sale or agreement to transfer or any option to purchase which may be entered into with respect to the transfer of ownership or operations. In the event that any sale or transfer agreements or options have been executed prior to the approval of a negative declaration, remedial action workplan, [1]no further action letter,[1] or remediation agreement, these documents, as relevant, shall be transmitted by the owner or operator, by certified mail, [1]overnight delivery, or personal service,[1] prior to the transfer of ownership or operations, to all parties to any transaction concerning the transfer of ownership or operations, including purchasers, bankruptcy trustees, mortgagees, sureties, and financiers.

(3) The preliminary assessment, site investigation, remedial investigation, [1][remedial action workplan,][1] and remedial action for the industrial establishment shall be performed and implemented by the owner or operator of the industrial establishment, except that any other party may assume that responsibility pursuant to the provisions of P.L.1983, c.330.

c. The owner or operator of an industrial establishment shall, subsequent to closing operations, or of its public release of its decision to close operations, or prior to transferring ownership or operations except as otherwise provided in subsection e. of this section, as applicable, submit to the department for approval a proposed negative declaration or proposed remedial action workplan. Except as otherwise provided in sections [1]11,[1] 13, [1][14,][1] 16, 17 and 18 of P.L. , c. (C.)(now before the Legislature as this bill), the owner or operator of an industrial establishment shall not transfer ownership or operations until a negative declaration or a remedial action workplan has been approved by the department or the conditions of subsection e. of this section for remediation agreements have been met and until,

in cases where a remedial action workplan is required to be approved or a remediation agreement has been approved, a remediation funding source, as required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill), has been established.

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

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

e. The owner or operator of an industrial establishment [1],[1] who has submitted a notice to the department pursuant to subsection a. of this section , may transfer ownership or operations of the industrial establishment prior to the approval of a negative declaration or remedial action workplan upon application to and approval by the department of a remediation agreement. The owner or operator requesting a remediation agreement shall submit the following documents: (1) an [1][estimation] estimate[1] of the cost of the remediation that is approved by the department; (2) a certification of the statutory liability of the owner or operator pursuant to P.L.1983, c.330 to perform and to complete a remediation of the industrial establishment in the manner and time limits provided by the department in regulation and consistent with all applicable laws and regulations; however, nothing in this paragraph shall be construed to be an admission of liability, or to impose liability on the owner or operator, pursuant to P.L. 1976, c. 141 [1](C.58:10-23.11 et seq.)[1] or pursuant to any other statute or common law; (3) evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with the provisions of section 25 of P.L. , c. (C.)(now before the Legislature as this bill); (4) a certification that the owner or operator is subject to the provisions of P.L.1983, c.330, including the liability for penalties for violating the act, defenses to liability and limitations thereon, the requirement to perform a remediation as required by the department, allowing the department access to the industrial establishment as provided in section 5 of P.L.1983, c.330 (C.13:1K-10), and the requirement to prepare and submit any document required by the department relevant to the remediation

of the industrial establishment; and (5) evidence of the payment of all applicable fees required by the department.

The department may require in the remediation agreement [1][,][1] that all plans for and results of the preliminary assessment, site investigation, remedial investigation, and [1]the implementation of the[1] remedial action workplan [1][and the implementation thereof][1] , prepared or initiated subsequent to the transfer of ownership or operations, be submitted to the department, for review purposes only, at the completion of each phase of the remediation.

The department shall adopt regulations establishing the manner in which the documents required pursuant to paragraphs (1) through (5), inclusive, of this subsection shall be submitted. The department shall approve the application for the remediation agreement upon the complete and accurate submission of the documents required to be submitted pursuant to this subsection. The regulations shall include a sample form of the certifications. Approval of a remediation agreement shall not affect an owner's or [1][operator'] operator's[1] right to avail itself of the provisions of section 6 of P.L.1983, c.330 (C.13:1K-11), of sections 12, 13, 14, 15, 16, 17, or 18 of P.L. , c. (C.)(now before the Legislature as this bill), or of the other provisions of this section.

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

g. [1][(1)][1] The soil remediation standard to be implemented on an industrial establishment shall be selected in conformance with the policies and criteria enumerated in section 35 of P.L. , c. (C.)(now before the Legislature as this bill).

(2) [1][The owner or operator proposing to implement the nonresidential use soil remediation standards shall review and consider for implementation, at a minimum, each relevant remedial action that is set forth in the guidance document published pursuant to section 38 of P.L. , c. (C.)(now before the Legislature as this bill).

(3)][1] The department may not disapprove the use of the minimum nonresidential soil remediation standards adopted by the department except upon a finding that the use of a nonresidential soil remediation standards at that site would not be protective of public health, safety, or the environment or except as provided in subsection [1][j.] i.[1] of this section.

h. An owner or operator of an industrial establishment may implement a soil remedial action at an industrial establishment without prior department approval of the remedial action workplan for the remediation of soil when the remedial action can reasonably be expected to be completed pursuant to

standards, criteria, and time schedules established by the department [1][within] , which schedules shall not exceed[1] five years [1][of] from[1] the commencement of the implementation of the remedial action and if [1][:

(1) the owner or operator is transferring ownership or operations of the industrial establishment and the soil remediation meets the established minimum residential or nonresidential use soil remediation standards adopted by the department; or

(2) the owner or operator is closing operations of the industrial establishment and the soil remediation meets the established minimum residential use soil remediation standards adopted by the department] the owner or operator is implementing a soil remediation which meets the established minimum residential or nonresidential use soil remediation standards adopted by the department[1].

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

i. An owner or operator of an industrial establishment [1][proposing to implement soil remediation of an industrial establishment shall submit a proposed remedial action workplan for the remediation of soil to the department for its prior review and approval if:

(1) the remedial action cannot reasonably be expected to be completed pursuant to standards, criteria, and time schedules established by the department within five years of the commencement of the implementation of the remedial action;

(2) the owner or operator of the industrial establishment is closing operations and the remediation will meet the established minimum nonresidential use soil remediation standards; or

(3) the soil remediation does not meet either the established minimum residential or nonresidential use soil remediation standards adopted by the departnent] shall base its decision to use the nonresidential use soil remediation standards for the industrial establishment upon the criteria listed below, as applicable:

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

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

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

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

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

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

The department shall, within 18 months of the effective date of this amendatory and supplementary act, promulgate regulations to clearly define how the department will evaluate the application of the criteria enumerated in paragraphs (1) through (6) of this subsection; provided, however, that notwithstanding the preceding requirement, criteria (1) through (4) and (6) shall become immediately operative. Until the department promulgates those regulations, it shall impose reasonable standards and requirements upon any owner or operator deciding to use nonresidential use soil remediation standards pursuant to this subsection. Furthermore, the department shall not impose any requirement or standard with regard to criterion (5) that would require an owner or operator to implement residential use soil remediation standards unless the cost difference between implementing the residential standards and the nonresidential standards is a de minimus amount. For the purposes of the preceding, de minimus shall mean a cost difference not exceeding 10 percent of the cost of implementing the nonresidential standards.

At any time after the effective date of this amendatory and supplementary act, an owner or operator may request the department to provide a determination as to whether a proposed remedial action is consistent with the criteria set forth above in paragraphs (1) through (6). The department shall provide any such determination within 30 calendar days of the department's receipt of the request[1].

j. [1][The department shall review and approve or disapprove the proposed remedial action workplan required to be submitted pursuant to subsection i. of this section to determine if the proposed remedial action workplan is in compliance with the rules and regulations regarding remediation and, if applicable, that the use of the nonresidential use soil remediation standards are appropriate for the industrial establishment. The department shall base its decision to approve or disapprove the use of nonresidential use soil remediation standards for the industrial establishment upon the criteria listed below, as applicable.

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

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

(3) The transferee of the industrial establishment agrees to the implementation of the nonresidential use soil remediation standard;

(4) The potential for the hazardous substances or hazardous wastes to affect other property; and

(5) The difference in cost between the use of the residential use soil remediation standards and the nonresidential use soil remediation standards] An owner or operator proposing to implement a remedial action other than one which is set forth in subsection h. of this section must receive department approval prior to implementation of the remedial action[1].

k. An owner or operator of an industrial establishment shall not implement a remedial action involving the remediation of

groundwater or surface water without the prior review and approval by the department of a remedial action workplan.

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

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

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

The department may review and approve or disapprove every remedial action workplan, no matter when submitted, to determine, in accordance with the criteria listed in subsection g. of section 35 of P.L. , c. (C.)(now before the Legislature as this bill) if the remedial action that has occurred or that will occur is appropriate to meet the [1][established] applicable[1] remediation standards.

The department may order additional remediation activities at the industrial establishment, or offsite where necessary, or may require the submission of additional information, where (a) the department determines that the remediation activities undertaken were not in compliance with [1]the[1] applicable rules or regulations of the department; (b) all documents required to be submitted to the department were not submitted or, if submitted, were inaccurate, or deficient; or (c) if discharged hazardous substances or hazardous wastes remain at the industrial establishment, or have migrated or are migrating offsite, at levels or concentrations in violation of the applicable remediation standards. Upon a finding by the department that the remediation conducted at the industrial establishment was in compliance with all applicable regulations, that no hazardous substances or hazardous wastes remain at the industrial establishment in violation of the applicable remediation standards, and that all hazardous substances or hazardous wastes that migrated from the industrial establishment have been remediated in conformance with the applicable remediation standards, the department shall approve the remediation for that industrial establishment by the issuance of a no further action letter.

(cf: P.L.1983, c.330, s.4)

5. Section 2 of P.L.1991, c.238 (C.13:1K-9.2) is amended to read as follows:

2. The acquiring of title to an industrial establishment by a municipality pursuant to a foreclosure action pertaining to a certificate of tax sale purchased and held by the municipality shall not relieve the previous owner or operator of the industrial establishment of his duty to [implement a cleanup plan if the implementation is deemed necessary by the Department of Environmental Protection] remediate the industrial establishment as required pursuant to P.L.1983, c.330.

(cf: P.L.1991, c.238, s.2)

6. Section 3 of P.L.1991, c.238 (C.13:1K-9.3) is amended to read as follows:

3. If a municipality undertakes [to clean up hazardous substances and wastes on the site of] a remediation of an industrial establishment, the title to which the municipality acquired pursuant to a foreclosure action pertaining to a certificate of tax sale, all expenditures incurred in the [cleanup] remediation shall be a debt of the immediate past [owners] owner or operator of the industrial establishment. The debt shall constitute a lien on all property owned by the immediate past owner or operator when a notice of lien, incorporating a description of the property subject to the [cleanup and removal] remediation and an identification of the amount of [cleanup, removal] remediation and related costs expended by the municipality is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment or order docket the name and address of the immediate past owner or operator and the amount of the lien as set forth in the notice of lien. Upon entry by the clerk, the lien shall attach to the revenues and all real and personal property of the immediate past owner or operator, whether or not he is insolvent. The notice of lien filed pursuant to this section which affects any property of an immediate past owner or operator shall have priority from the day of the filing of the notice of the lien, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this section.

(cf: P.L.1991, c.238, s.3)

7. Section 5 of P.L.1991, c.238 (C.13:1K-9.5) is amended to read as follows:

5. If a municipality undertakes a [cleanup of hazardous substances and wastes on the site] remediation of an industrial establishment, the municipality shall [make any submissions required by P.L.1983, c.330 (C.13:1K-6 et seq.) and] undertake that remediation and shall obtain [approval of] all approvals required by the Department of Environmental Protection [1]and Energy[1] [prior to the initiation of the sampling plan and the cleanup plan].

(cf: P.L.1991, c.238, s.5)

8. (New section) Upon the submission of the complete and accurate results of a phase of the remediation pursuant to section 4 of P.L.1993, c.330 [1][(C.13:1K-7)] (C.13:1K-9)[1] or of any other document required to be submitted that requires the

department's review and approval in order to comply with P.L.1983, c.330, the department shall review and approve, approve with conditions, or disapprove the submission or other documents in accordance with the review schedules established pursuant to section 2 of P.L.1991, c.423 (C.13:1D-106).

9. (New section) The owner or operator of an industrial establishment may, upon submission of a written notice to the department, transfer ownership or operations or close operations without complying with the provisions of section 4 of P.L.1983, c.330 (C.13:1K-9) if the total quantity of hazardous substances and hazardous wastes generated, manufactured, refined, transported, treated, stored, handled, or disposed of at the industrial establishment at any one time during the [1][owner] owner's[1] or operator's period of ownership or operations [1]:

(a)[1] does not exceed 500 pounds or 55 gallons [1][, or,] ;[1]

[1](b)[1] if a hazardous substance or hazardous waste is mixed with nonhazardous substances, the total quantity of the mixture does not exceed 500 pounds or 55 gallons [1]; or

(c) if, in the aggregate, hydraulic or lubricating oil, does not exceed 220 gallons[1].

10. Section 5 of P.L.1983, c.330 (C.13:1K-10) is amended to read as follows:

5. a. The department shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing: [minimum standards for soil, groundwater and surface water quality necessary for the detoxification of the site of an industrial establishment, including buildings and equipment, to ensure that the potential for harm to public health and safety is minimized to the maximum extent practicable, taking into consideration the location of the site and surrounding ambient conditions;] (1) criteria and minimum standards necessary for the submission, evaluation and approval of [cleanup plans;] plans or results of preliminary assessments, site investigations, remedial investigations, and remedial action workplans and for the implementation thereof. The documents for the preliminary assessment, site investigation, remedial investigation, and remedial action workplan required to be submitted for a remediation [1][,]1 shall not be [1][based on] identical to[1] the [1][same][1] criteria and standards used for similar [1][or identical][1] documents submitted pursuant to federal law [1],1 except as may be required by federal law. In establishing criteria and minimum standards for these terms [1],1 the department shall strive to avoid duplicate or unnecessarily costly or time consuming conditions or standards; (2) a fee schedule, as necessary, reflecting the actual costs associated with the review of plans for or results of negative declarations, preliminary assessments, site investigations, remedial investigations, and [cleanup plans] remedial [1][action workplans] actions[1], and review of the implementation thereof and for any other review or approval required by the department; (3) standards and procedures for remediation agreements authorized pursuant to subsection d. of section 4 of P.L.1983, c.330 (C.13:1K-9); and (4) any other provisions or procedures necessary to implement this act. [Until the minimum standards described herein are adopted,

the department shall review, approve or disapprove negative declarations and cleanup plans on a case by case basis.]

b. [The department shall, within 45 days of submission, approve the negative declaration, or inform the industrial establishment that a cleanup plan shall be submitted.

c. The department shall, in accordance with the schedule contained in an approved cleanup plan, inspect the premises to determine conformance with the minimum standards for soil, groundwater and surface water quality and shall certify that the cleanup plan remedial action workplan has been executed and that the site has been detoxified.] The owner or operator shall allow the department reasonable access to the industrial establishment and to offsite areas under the owner's or operator's control to inspect the premises, review records, and to take soil, groundwater, or other samples or measurements as deemed necessary by the department to verify the results of any submission made to the department and to verify the owner's or operator's compliance with the requirements of this act.

(cf: P.L.1983, c.330, s.5)

11. Section 6 of P.L.1983, c.330 (C.13:1K-11) is amended to read as follows:

6. a. [The provisions of any law, rule or regulation to the contrary notwithstanding, the transferring of an industrial establishment is contingent on the implementation of the provisions of this act.

b. If the premises of] The owner or operator of an industrial establishment planning to transfer ownership or operations may apply to the department for a deferral of the preparation, approval, and implementation of a remedial action workplan for the industrial establishment. The applicant shall submit to the department:

(1) a certification signed by the purchaser, transferee, mortgagee or other party to the transfer, approved by the department, that the industrial establishment would be subject to substantially the same use by the purchaser, transferee, mortgagee or other party to the transfer[, and upon written certification thereto and approval by the department thereof, the implementation of a cleanup plan and the detoxification of the site] ;

(2) a certification, approved by the department, that the owner or operator has satisfactorily completed a preliminary assessment, site investigation, and remedial investigation [1][,][1] of the industrial establishment;

(3) a cost estimate for the remedial action necessary at the industrial establishment, approved by the department [1]based upon the information collected in the preliminary assessment, site investigation, and remedial investigation and developed in accordance with department regulations[1]; and

(4) a certification, approved by the department, that the purchaser, transferee, mortgagee or other party to the transfer [1][,][1] has the financial ability to pay for the implementation of the necessary remedial action.

The preparation, approval, and implementation of a remedial action workplan for the industrial establishment may be deferred

until the use changes or until the purchaser, transferee, mortgagee or other party to the transfer closes[, terminates or transfers] operations [1][or transfers ownership or operations][1].

[(1) Within 60 days of receiving notice of the sale or realty transfer and the certification that the industrial establishment would be subject to substantially the same use, the department shall approve, conditionally approve, or deny the certification.

(2) Upon approval of the certification, the implementation of a cleanup plan and detoxification of the site shall be deferred.

(3) Upon denial of the certification, the cleanup plan and detoxification of the site shall be implemented pursuant to the provisions of this act.

c.] b. Upon [1][satisfactory][1] submission of a complete and accurate application, the department shall approve the deferral. Upon approval of the deferral, the preparation, approval, and implementation of remedial action workplan at the industrial establishment shall be deferred. [1][The deferral shall be denied by the department if a complete and accurate application is not submitted to the department or if the department fails to approve any of the components of the application. Upon denial of the deferral, the remediation of the industrial establishment shall be continued pursuant to the provisions of this act.][1]

c. The authority to defer [implementation of the cleanup plan] the preparation, approval, and implementation of a remedial action workplan set forth in subsection [b.] a. of this section shall not be construed to limit, restrict, or prohibit the department from directing site [cleanup] remediation under any other statute, rule, or regulation, but shall be solely applicable to the obligations of the owner or operator of an industrial establishment, pursuant to the provisions of this act, nor shall any other provisions of this act be construed to limit, restrict, or prohibit the department from directing site [cleanup] remediation under any other statute, rule, or regulation.

[1]For the purposes of this section, substantially the same use means that the industrial establishment shall retain the same three digit Industry Group Number, as designated in the Standard Industrial Classifications Manual prepared by the federal Office of Management and Budget in the Executive Office of the President of the United States. In a manner and form, and in accordance with the specific criteria prescribed by the department, an applicant may petition for a finding by the department that the affected industrial establishment be deemed subject to substantially the same use based upon its retention of the same two digit Major Group Number, as designated in the Standard Industrial Classifications Manual.[1]

(cf: P.L.1983, c.330, s.6)

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

8. a. Failure of the transferor to [comply with any of] perform a remediation and obtain department approval thereof as required pursuant to the provisions of this act is grounds for voiding the sale or transfer of an industrial establishment or any real property utilized in connection therewith by the transferee, entitles the transferee to recover damages from the transferor,

and renders the owner or operator of the industrial establishment strictly liable, without regard to fault, for all [cleanup and removal] remediation costs and for all direct and indirect damages resulting from the failure to implement the [cleanup plan] remedial action workplan. A transferee may not act to void the sale or transfer of an industrial establishment or any real property except upon providing notice to the transferor of the failure to perform and affording the transferor a reasonable amount of time to comply with the provisions of this act.

b. [Failure to submit a negative declaration, or cleanup plan pursuant to the provisions of section 4 of this act is grounds for voiding the sale by the department.

c.] Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of this act is liable for a penalty of not more than $25,000.00 for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense. Penalties shall be collected in a civil action by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). Any officer or management official of an industrial establishment who knowingly directs or authorizes the violation of any provisions of this act shall be personally liable for the penalties established in this subsection.

(cf: P.L.1983, c.330, s.8)

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

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

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department [1]or the federal Environmental Protection Agency, pursuant to the federal "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act," 42 U.S.C. §9601 et seq.,[1] has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment [1][,] that are[1] consistent with current regulations established by the department [1][,][1] in order to identify areas of concern that are new or have continued in use since the issuance of a no further action letter, negative declaration approval, or remediation approval as described in paragraph (2) of this subsection, and [1][that] ,[1] based on those remediation activities [1][the owner or operator certifies] ,[1] that there has been no discharge of a

hazardous substance or hazardous waste at the industrial establishment subsequent to the approval of the negative declaration, the issuance of the no further action letter, or the equivalent remediation; or, if any discharge has occurred, a certification listing any discharge, describing the action taken to remediate the discharge, a certification that the remediation was performed in accordance with procedures established by the department, a certification that the remediation was approved by the department and a copy of the document evidencing the departmental approval;

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

(5) a copy of the [1]most recent[1] negative declaration, or no further action letter, or other approval [1],[1] as applicable, [1][last][1] approved by the department for the entire industrial establishment; and

(6) a proposed negative declaration.

b. Upon the submission of a complete and accurate application and after an inspection, if necessary, the department shall approve or disapprove the negative declaration. The department shall approve the negative declaration upon a finding that the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the proposed negative declaration by the department pursuant to this section, the owner or operator shall comply with the provisions of section 4 of P.L.1983, c.330.

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

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

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department [1]or the federal Environmental Protection Agency, pursuant to the federal "resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act," 42 U.S.C. §9601 et seq.,[1] has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment [1][,] that are[1] consistent with current regulations established by the department [1][,][1] in order to identify areas of concern and [1][that]

,[1] based on those remediation activities [1][the owner or operator certifies] ,[1] that subsequent to the issuance of the negative declaration, no further action letter or remediation approval described in paragraph (2) of this subsection, a discharge has occurred at the industrial establishment that was not remediated in accordance with the procedures established by the department or that any remediation performed has not been approved by the department and that no other discharge of a hazardous substance or hazardous waste has occurred at the industrial establishment;

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

(5) a copy of the [1]most recent[1] negative declaration, no further action letter, or other approval, as applicable, [1][last][1] approved by the department for the industrial establishment; and

(6) a proposed negative declaration, if applicable.

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

(1) approve the negative declaration upon a finding that any discharge of a hazardous substance or hazardous waste, as certified to pursuant to paragraph (3) of subsection a. of this section, has been remediated consistent with the applicable remediation standards as established by the department; or

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

c. The owner or operator of an industrial establishment subject to the provisions of this section shall not close operations or transfer ownership or operations until a remedial action workplan, or a negative declaration, as applicable, has been approved by the department or upon approval of a remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330.

15. (New section) a. The owner or operator of an industrial establishment who is required to perform a remediation at an industrial establishment pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) [1][,][1] may apply to the department for an area of concern waiver. Approval of the area of concern waiver shall relieve the owner or operator of the requirement to perform a remediation pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) for any area of concern at that industrial establishment for which a remediation has previously been conducted and approved by the department. An application pursuant to this subsection shall include:

(1) a certification that the department [1]or the federal Environmental Protection Agency, pursuant to the federal "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response,

Compensation, and Liability Act," 42 U.S.C. §9601 et seq.,[1] has previously approved a remediation at an area of concern and has issued a no further action letter or an equivalent approval of a remediation for that area of concern [1][,] ;[1]

(2) a copy of the [1]most recent[1] no further action letter or equivalent approval for that area of concern, [1][last][1] approved by the department [1][,] ;1 and

(3) a certification that the owner or operator has performed remediation activities at that area of concern [1][,] that are[1] consistent with current regulations established by the department, and [1][that][1] based on those remediation activities [1][the owner or operator certifies] ,[1] that subsequent to the issuance of the no further action letter or equivalent approval described in paragraph (1) of this subsection, there has been no discharge of a hazardous substance or hazardous waste at that area of concern.

b. Upon submission of a complete and accurate application and after an inspection, if necessary, the department shall approve the application for an area of concern waiver upon a finding that the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the application by the department pursuant to this section, the owner or operator shall perform a remediation of the subject area of concern as may be required pursuant to subsection b. of section 4 of P.L.1983, c.330.

16. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 (C.13:1K-9), if the industrial establishment is already in the process of a remediation pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) or a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330 [1], including a cleanup being performed under the federal "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act," 42 U.S.C. §9601 et seq.[1]. The application shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330 [1][,] ;[1]

(2) a certification that there has been no discharge of any hazardous substance or hazardous waste at the industrial establishment during the applicant's period of operation or ownership or that the remediation of any discharge of a hazardous substance or hazardous waste that [1][occured] occurred[1] during the applicant's period of ownership or operation was approved by the department [1][,] ;[1]

(3) a certification by the owner or operator that a remediation funding source for the cost of the remediation or the implementation of the remedial action workplan at the industrial establishment has been established as required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as

this bill) [1][,] ;[1] and

(4) a certification, as applicable, that any transferee of the industrial establishment has been notified that the industrial establishment is the subject of a remediation.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, that the applicant may close operations or transfer ownership or operations of the industrial establishment.

17. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 if the only areas of concern or the only discharges at the industrial establishment are from an underground storage tank [1]or tanks[1] regulated pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.). The application shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330 [1][,] ;[1]

(2) the submission of a preliminary assessment that shows that the only area of concern at an industrial establishment is an underground storage tank or tanks as defined pursuant to section 2 of P.L.1986, c.102 (C.58:10A-22), or the submission of a site investigation that shows that the only discharged hazardous substances or hazardous wastes at the industrial establishment, or that has migrated offsite, above the applicable remediation standards are from a leak or discharge from that underground storage tank or tanks [1][,] ;[1] and

(3) a certification that the owner or operator of the industrial establishment is in compliance with the provisions of P.L.1986, c.102 for all underground storage tanks [1]at the industrial establishment that are[1] covered by that act [1][, at the industrial establishment][1]. The owner or operator of an industrial establishment, at which a discharge of a hazardous substance or hazardous waste from an underground storage tank has occurred, shall be deemed in compliance with the provisions of P.L.1986, c.102, as it relates to that discharge for the purposes of this paragraph, if the owner or operator has been issued an order by or has entered into an agreement with the department to remediate that discharge and the owner or operator is in compliance with that order or agreement.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, the applicant to close operations or transfer ownership or operations of the industrial establishment.

18. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or without the approval of a remediation agreement as

provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 if the discharge of hazardous substances or hazardous wastes at the industrial establishment is of minimal environmental concern. Upon the completion of a preliminary assessment, site investigation, and remedial investigation for the industrial establishment, conducted pursuant to subsection b. of section 4 of P.L.1983, c.330, any owner or operator may submit to the department an application for a determination that the discharge at an industrial establishment is of minimal environmental concern, which application shall include:

(1) a certification, supported by the submission of data from the preliminary assessment, site investigation, and remedial investigation, that there are no more than two areas of concern at the industrial establishment that are contaminated at levels above the applicable remediation standards, and that remedial action at those areas of concern can be completed pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(2) a certification that a remedial action workplan shall be prepared pursuant to standards and criteria established by the department and that in the case of a closure the remediation will meet the residential use soil remediation standards and that in the case of a transfer of ownership or operations the remediation will meet either the nonresidential use or residential use soil remediation standards;

(3) a certification that the remedial action workplan will be prepared and implemented pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(4) evidence that the remediation funding source required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) has been established [1][or if all or part of the remediation funding source is to be established by a grant or loan from the remediation fund pursuant to section 27 and 28 of P.L. , c. (C.)(now before the Legislature as this bill), evidence that an application has been made for that loan or grant and that there is a reasonable expectation that the loan or grant will be awarded][1] ;

(5) the payment of all fees or surcharges related to the remediation imposed pursuant to P.L.1983, c.330, P.L. , c. (C.)(now before the Legislature as this bill), and section 33 of P.L. , c. (C.) (now before the Legislature as this bill), and any rules or regulations adopted pursuant thereto; and

(6) documentation establishing that the discharged hazardous substances or hazardous wastes at the industrial establishment do not pose a threat to human health because of the proximity of an area of concern to a drinking water source or because of the location, complexity, or the nature of the discharge.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall approve the application for a determination that the discharge at an industrial establishment is of minimal

environmental concern. Prior to making a finding upon the application pursuant to this section, the department may inspect the industrial establishment, as necessary, to verify the information in the application. The decision of the department shall be made within 30 days of the submission of a complete application. In determining the amount of time necessary to complete the remedial action, the department shall not include that time in which it takes the department to issue a permit for a discharge to surface water pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.).

c. The owner or operator shall, upon the completion of the remedial action at the subject areas of concern, certify to the department that the remedial action workplan has been implemented in accordance with the standards and criteria established by the department and in compliance with the certifications made pursuant to this section. The certification shall include a copy of the remedial action workplan and the results of all sampling analysis and any tests performed as part of the remedial action. Within 45 days of receipt of the certification, the department shall issue a no further action letter to the owner or operator. The department may perform an inspection of the industrial establishment or any area offsite that is under the owner's or operator's control, as relevant, prior to issuing the no further action letter.

The department may refuse to issue the no further action letter pursuant to this section only upon a finding that hazardous substances or hazardous wastes remain at the relevant areas of concern at levels or concentrations in excess of the applicable remediation standards.

d. Upon the failure of an owner or operator to complete the implementation of a remedial action workplan within the six month period as provided in subsection a. of this section, the owner or operator shall so notify the department in writing and [1]provide[1] the reasons therefor. The owner or operator shall have no more than 120 additional days to complete the implementation of the remedial action. If the implementation of the remedial action is not completed within this additional time, the department may rescind its determination that the industrial establishment is of minimal environmental concern and may require that a new remedial action workplan be submitted and implemented by the owner or operator in a manner and under the terms and conditions provided in its general regulations for remedial action workplan submissions and implementation.

19. (New section) a. The owner of an industrial establishment may transfer a portion of the real property on which an industrial establishment is situated without conducting a remediation of the entire industrial establishment pursuant to the provisions of P.L.1983, c.330, if, upon application by the owner, the department issues a certificate of limited conveyance [1]pursuant to subsections b. through e. of this section, or if the owner transfers the portion of real property in accordance with the provisions of subsection f. of this section[1].

b. An application for a certificate of limited conveyance shall be in the form of a certification by the owner which shall include

a description of the real property to be transferred, an appraisal of the real property to be transferred, the sale price or market value of the real property to be transferred, an appraisal of the entire industrial establishment, and an appraisal of the remaining property if the certificate of limited conveyance were issued, as well as any other information the department deems necessary to make the findings required in subsection c. of this section.

c. The department shall issue a certificate of limited conveyance for a portion of the real property on which an industrial establishment is situated after the submission of a complete and accurate application and upon a finding that the sales price or market value of the real property to be conveyed, together with any additional diminution in value to the remaining property as a result of the conveyance is not more than one third of the total appraised value of the industrial establishment prior to the transfer, and that the remaining real property is an industrial establishment subject to the provisions of P.L.1983, c.330. The appraisals shall be made no more than one year prior to the submission of application for a certificate of limited conveyance. Conveyances made pursuant to this section shall not exceed one third of the value of the industrial establishment during the period of ownership of the applicant.

d. Upon issuance of the certificate of limited conveyance, the owner or operator shall, prior to the conveyance, comply with the provisions of section 4 of P.L.1983, c.330 for that portion of the real property certified for conveyance. The remediation that may be required on the real property subject to the certificate of limited conveyance shall include any hazardous substances or hazardous wastes that are migrating from the remaining portion of the industrial establishment onto the real property being conveyed. The remaining portion of the industrial establishment, upon the subsequent closing [1][,][1] of operations or transferring of ownership or operations [1],[1] shall be subject to the provisions of P.L.1983, c.330 and this act.

e. A certificate of limited conveyance shall be valid for three years from the date of issuance.

[1]f. An owner, either as part of or subsequent to a conveyance made in accordance with subsections b. through e. of this section, may transfer additional portions of the real property of the industrial establishment in excess of the conveyance limitation set forth in subsection c. of this section; provided, however, that the additional portions proposed for transfer do not constitute a closing of operations or transferring of ownership or operations, subject to section 4 of P.L. 1983, c.330.

The amount paid for the additional portion of real property, or any part thereof, which exceeds the permissible conveyance limitation under subsection c. of this section shall be used exclusively for the purposes of remediating that parcel of real property in accordance with the provisions of subsection d. of this section; provided, however, if any portion of that amount shall remain unexpended for the remediation of the parcel, that unexpended amount shall be deposited in a remediation trust fund as provided in subsection g. of this section.

g. To provide for the subsequent remediation of that portion of

the real property of an industrial establishment which was not transferred pursuant to subsection f. of this section, the owner shall establish a remediation trust fund in accordance with subsection c. of section 25 of P.L. , c. (C.)(now pending before the Legislature as this bill) and to deposit any unexpended amounts, as provided in subsection f. of this section, into that fund.[1]

20. (New section) a. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, the landlord shall be responsible for providing any information that is requested by the tenant that is not otherwise available through a diligent inquiry by the tenant, and the tenant shall be responsible for providing any information that is requested by the landlord that is not otherwise available through a diligent inquiry by the landlord.

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

c. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, and there has been a failure to comply with the provisions of P.L.1983, c.330, the landlord or the tenant may petition the department, in writing, to first compel that party who is responsible pursuant to the provisions of the lease, to comply with the requirements of P.L.1983, c.330. The petition shall include a copy of the signed lease between the landlord and the tenant. Upon a determination by the department that the provisions of the lease are unclear as it relates to the responsibility of either party to comply with the provisions of P.L.1983, c.330, or upon the failure by the person responsible pursuant to the provisions of the lease to comply, the department may compel compliance by all persons subject to the requirements of P.L.1983, c.330 for the industrial establishment.

21. (New section). a. Any person who, prior to the effective date of [1][this act] P.L. , c. (now before the Legislature as this bill)[1], violated the provisions of P.L.1983, c.330 by closing operations or transferring ownership or operations of an industrial establishment without receiving departmental approval of a cleanup plan or a negative declaration pursuant to the provisions of P.L.1983, c.330, or without entering into an administrative consent order that allows the closure of operations or transfer of ownership or operations, shall not be subject to a penalty for that violation if the person notifies the department of the closure of operations or of the transfer of ownership or operations of the industrial establishment, and, within one year of the effective date of [1][this section] P.L. , c. (now before the Legislature as this bill)[1], enters into an administrative consent order or a memorandum of agreement with the department to complete a remediation of the industrial establishment pursuant to the provisions of P.L.1983, c.330 and any rules or regulations adopted pursuant thereto.

b. Notwithstanding the provisions of subsection a. of this

section, any person who enters into a memorandum of agreement or an administrative consent order with the department pursuant to this section and fails to remediate the industrial establishment in accordance with the memorandum of agreement or administrative consent order [1][,][1] shall be subject to penalties for violations that occurred before the effective date of [1][this act] P.L. , c.)(now before the Legislature as this bill)[1] as well as any penalties for subsequent violations.

c. Any documents or information provided to the department pursuant to this section may not be used in a criminal investigation or criminal prosecution against the person providing the information or documents for those violations that occurred before the effective date of [1][this act] P.L. , c. (now before the Legislature as this bill)[1] as long as the person remediates the industrial establishment in conformance with the administrative consent order or memorandum of agreement entered into pursuant to subsection a. of this section.

22. (New section) a. Within one year of the effective date of [1][this act] P.L. , c. (now before the Legislature as this bill)[1], the Department of Environmental Protection [1]and Energy[1] shall conduct an audit of the negative declarations and remedial action workplans that have been submitted to the department pursuant to P.L.1983, c.330 [1](C.13:1K-6 et seq.)[1]. On the basis of this audit, and any other information it may have available to it, the department shall adopt regulations identifying, within the Standard Industrial Classification major group numbers listed in the definition of "industrial establishment," all industries designated by Standard Industrial Classification number subgroups, or classes of operations within those subgroups, that should not pose a risk to public health and safety or to the environment. The audit shall, to the extent practicable, distinguish between hazardous substances or hazardous wastes at an industrial establishment caused by a particular type of industry and hazardous substances or hazardous wastes that exists as a result of activities at an industrial establishment unrelated to the activities of that industry.

b. An industrial establishment for which a remedial action workplan was previously implemented and a no further action letter was received pursuant to P.L.1983, c.330, a negative declaration was previously approved by the department pursuant to P.L.1983, c.330, or for which the department has previously approved a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330, and [1][which industrial establishment] that[1] is designated by a Standard Industrial Classification subgroup or class of operations that does not pose a risk to public health and safety or to the environment as identified in subsection a. of this section, shall not be considered an industrial establishment for the purposes of P.L.1983, c.330.

23. (New section) As used in sections 23 through 43 of P.L. , c. (C.)(now before the Legislature as this bill):

"Area of concern" means any existing or former location where contaminants are or were known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, or disposed, or where contaminants have

or may have migrated;

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

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

"Department" means the Department of Environmental Protection [1]and Energy[1];

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

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

[1]"Financial assistance" means loans, loan guarantees, bonds and such other funding mechanisms as may be established by the authority;[1]

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

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

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether contaminants are or were present at a site or have migrated or are migrating from a site, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or [1][potential] latent[1] discharge of any contaminant is required [1]. The evaluation of historic information shall be conducted from 1900 to the present, except that the department may require the search for and evaluation of additional information relating to ownership and use of the site

prior to 1900 if such information is available through diligent inquiry of the public records[1];

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

"Remedial investigation" means a process to determine the nature and extent of a discharge of a contaminant at a site or a discharge of a contaminant that has migrated or is migrating from the site and the problems presented by a discharge, and may include data collected, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the [1][valuation] evaluation[1] of [1][remediated alternatives] remedial actions if necessary[1];

"Remediation" or "remediate" means all necessary actions to investigate and clean up any known [1][or] ,[1] suspected [1], or threatened[1] discharge of contaminants, including [1], as necessary,[1] the preliminary assessment, site investigation, remedial investigation, and remedial action;

"Site investigation" means the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site or has migrated or is migrating from the site at levels in excess of the applicable remediation standards. A site investigation shall be developed based upon the information collected pursuant to the preliminary assessment.

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

"Remediation fund" means the Hazardous Discharge Site Remediation Fund established pursuant to section 26 of P.L. , c. (C.)(now before the Legislature as this bill);

"Remediation funding source" means the methods of financing the remediation of a discharge required to be established by a person performing the remediation pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill);

"Remediation standards" means the combination of numeric and narrative standards to which contaminants must be remediated for soil, groundwater, or surface water as provided by the department pursuant to section 35 of P.L. , c. (C.)(now before the Legislature as this bill).

24. (New section) The department shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing criteria and minimum standards necessary for the submission, evaluation and

approval of plans or results of preliminary assessments, site investigations, remedial investigations, and remedial action workplans and for the implementation thereof. The documents for the preliminary assessment, site investigation, remedial investigation, and remedial action workplan required to be submitted for a remediation, shall not be [1][based on] identical to[1] the [1][same][1] criteria and standards used for similar [1][or identical][1] documents submitted pursuant to federal law [1],[1] except as may be required by federal law. In establishing criteria and minimum standards for these terms the department shall strive to avoid duplicate or unnecessarily costly or time consuming conditions or standards.

25. (New section) a. The owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), or a discharger or person in any way responsible for a hazardous substance who has been issued a directive or an order by a State agency, who has entered into an administrative consent order with a State agency, or who has been ordered by a court to clean up and remove a hazardous substance or hazardous waste discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall [1][,][1] establish and maintain a remediation funding source in the amount necessary to pay the estimated cost of the required remediation. A person who voluntarily undertakes a remediation pursuant to a memorandum of agreement with the department, or without the department's oversight, is not required to establish or maintain a remediation funding source. A person required to establish a remediation funding source pursuant to this section shall provide to the department satisfactory documentation that the requirement has been met.

The remediation funding source shall be established in an amount equal to or greater than the cost estimate of the implementation of the remediation (1)as approved by the department, (2) as provided in an administrative consent order or remediation agreement as required pursuant to subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330, (3) as stated in a departmental order or directive, or (4) as agreed to by a court, and shall be in effect for a term not less than the actual time necessary to perform the remediation at the site. Whenever the remediation cost estimate increases, the person required to establish the remediation funding source shall cause the amount of the remediation funding source to be increased to an amount at least equal to the new estimate. Whenever the remediation or cost estimate decreases, the person required to obtain the remediation funding source may file a written request to the department to decrease the amount in the remediation funding source. The remediation funding source may be decreased to the amount of the new estimate upon written approval by the department delivered to the person who established the remediation funding source and to the trustee or the person or institution providing the remediation trust or the line of credit, as applicable. The department shall approve the request upon a finding that the remediation cost estimate decreased [1]by the requested amount[1].

b. The person responsible for performing the remediation and who established the remediation funding source may use the remediation funding source to pay for the actual cost of the remediation. The department may not require any other financial assurance by the person responsible for performing the remediation other than that required in this section. In the case of a remediation performed pursuant to P.L.1983, c.330, the remediation funding source shall be established no more than 14 days after the approval by the department of a remedial action workplan or upon approval of a remediation agreement pursuant to subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 (C.13:1K-9) [1], unless the department approves an extension[1]. In the case of a remediation performed pursuant to P.L.1976, c.141, the remediation funding source shall be established as provided in an administrative consent order signed by the parties, as provided by a court, or as directed or ordered by the department. The establishment of a remediation funding source for that part of the remediation funding source to be established by a grant or [1][loan] financial assistance[1] from the Remediation Fund may be established for the purposes of this subsection by the application for a grant or [1][loan] financial assistance[1] from the remediation fund and satisfactory evidence submitted to the department that the grant or [1][loan] financial assistance[1] will be awarded. However, if the [1][loan] financial assistance[1] or grant is denied or the department finds that the person responsible for establishing the remediation funding source did not take reasonable action to obtain the grant or [1][loan] financial assistance[1], the department shall require that the full amount of the remediation funding source be established within 14 days of the denial or finding. The remediation funding source shall be evidenced by the establishment and maintenance of (1) a remediation trust fund, (2) [1]an environmental insurance policy, issued by an entity licensed by the Department of Insurance to transact business in the State of New Jersey, to fund the remediation, (3)[1] a line of credit from a person or institution satisfactory to the department authorizing the person responsible for performing the remediation to borrow money, or [1][(3) a self guarantee] (4) a self-guarantee[1], or by any combination thereof. Where it can be demonstrated that a person cannot establish and maintain a remediation funding source for the full cost of the remediation by a method specified in this subsection, that person may establish the remediation funding source for all or a portion of the remediation, by securing a [1][loan] financial assistance[1] from the Hazardous Discharge Site Remediation Fund as provided in section 29 of P.L. , c. (C)(now before the Legislature as this bill).

c. A [1]remediation[1] trust fund shall be established pursuant to the provisions of this subsection. An originally signed duplicate of the trust agreement shall be delivered to the department by certified mail within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 is approved or as specified in an administrative consent order, civil order, or order of the department, as applicable. The remediation trust fund agreement shall conform

to a model trust fund agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or New Jersey agency.

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

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

[1]d. An environmental insurance policy shall be established pursuant to the provisions of this subsection. An originally signed duplicate of the insurance policy shall be delivered to the department by certified mail within 30 days of receipt of notice from the department that the remedial action workplan or remediation agreement, as provided in subsection e. of section 4 of P.L.1983, c.330, is approved or as specified in an administrative consent order, civil order, or order of the department, as applicable.

The environmental insurance policy may not be revoked or terminated without the written consent of the department. The insurance company shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those monies as the department authorizes, in writing, to be released. The person entitled to receive money from the environmental insurance policy shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation.[1]

[1][d.] e.[1] A line of credit shall be established pursuant to the provisions of this subsection. A line of credit shall allow the person establishing it to borrow money up to a limit established in a written agreement in order to pay for the cost of the remediation for which the line of credit was established. An originally signed duplicate of the line of credit agreement shall be delivered to the department by certified mail within 14 days of receipt of notice from the department that the remedial

action workplan or remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 is approved, or as specified in an administrative consent order, civil order, or order of the department, as applicable. The line of credit agreement shall conform to a model agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department.

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

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

[1][e.] f.[1] A person may self-guarantee a remediation funding source upon the submittal of documentation to the department demonstrating that the cost of the remediation as estimated in the remedial action workplan, [1]in[1] the remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330, in an administrative consent order, or as provided in a departmental or court order, would not exceed one-third [1]of[1] the tangible net worth of the person required to establish remediation funding source, and that the person has a cash flow sufficient to assure the availability of sufficient moneys for the remediation during the time necessary for the remediation. Satisfactory documentation of a person's capacity to self-guarantee a remediation funding source shall consist only of a statement of income and expenses or similar statement of that person and the balance sheet or similar statement of assets and liabilities as used by that person for the fiscal year of the person making the application that ended closest in time to the date of the self-guarantee application. The self-guarantee application shall be certified as true to the best of the applicant's information, knowledge, and belief, by the chief financial, [1]or[1] similar officer or employee, or general partner, or principal of the person making the self-guarantee application. [1][Persons] A person[1] shall be deemed by the department to possess the required cash

flow pursuant to this section if that person's gross receipts exceed its gross payments in that fiscal year in an amount at least equal to the estimated costs of completing the remedial action workplan schedule to be performed in the 12 month period following the date on which the application for self-guarantee is made. In the event that a [1][self guarantee] self-guarantee[1] is required for a period of more than one year, applications for a self-guarantee shall be renewed annually pursuant to this subsection for each successive year. The department may establish requirements and reporting obligations to ensure that the person proposing to [1][self guarantee] self-guarantee[1] a remediation funding source meets the criteria for [1][self guaranteeing] self-guaranteeing[1] prior to the initiation of remedial action and until completion of the remediation.

[1][f.] g.[1] (1) [1][Where] If[1] the person required to establish the remediation funding source [1][has failed] fails[1] to perform the remediation as required, the department shall make a written determination of this fact. A copy of the determination by the department shall be delivered to the person required to establish the remediation funding source and, in the case of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), to any transferee of the property. Following this written determination, the department may perform the remediation in place of the person required to establish the remediation funding source. In order to finance the cost of the remediation the department may make disbursements from the remediation trust fund or the line of credit as appropriate, or, if sufficient moneys are not available from those funds, from the remediation guarantee fund created pursuant to section 45 of P.L. , c. (C.)(now before the Legislature as this bill).

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

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

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

26. (New section) a. There is established in the New Jersey Economic Development Authority a special, revolving fund to be known as the Hazardous Discharge Site Remediation Fund. Moneys in the remediation fund shall be dedicated for the provision of [1][loans] financial assistance[1] or grants to municipal governmental entities, individuals, corporations, partnerships, and other private business entities, for the purpose of financing remediation activities at sites at which there is, or is suspected of being, a discharge of hazardous substances or hazardous wastes.

b. The remediation fund shall be credited with:

(1) moneys as are appropriated by the Legislature;

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

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

(4) remediation funding source surcharges imposed pursuant to section 33 of P.L. , c. (C.)(now before the Legislature as this bill);

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

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

27. (New section) a. (1) [1][Loans] Financial assistance[1] from the remediation fund, made to persons other than municipal governmental entities or to persons who voluntarily undertake a remediation, may only be [1][made] rendered[1] to persons who cannot establish a remediation funding source for the full amount of a remediation. [1][Loans] Financial assistance pursuant to this act[1] may be [1][made] rendered[1] only for that amount of the cost of a remediation for which the person cannot establish a remediation funding source.

(2) [1][Loans made] Financial assistance rendered[1] to persons who voluntarily undertake a remediation may only be made for that amount of the cost of the remediation that the person cannot otherwise fund by any of the authorized methods to establish a remediation funding source.

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

c. [1][Loans] Financial assistance[1] and grants may be made from the remediation fund to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste.

d. Grants may be made from the remediation fund to persons other than governmental entities who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant pursuant to section 28 of P.L. , c. (C.)(now before the Legislature as this bill).

28. (New section) a. Except for moneys deposited in the remediation fund for specific purposes, [1][loans] financial assistance[1] and grants [1][of moneys][1] from the remediation fund shall be [1][made] rendered[1] for the following purposes and, on an annual basis, obligated in the percentages as provided in this subsection. Upon a written [1]joint[1] determination by the [1][Economic Development Authority] authority and the department[1] that it is [1]in[1] the public interest, [1][loans] financial assistance[1] and grants dedicated for the purposes and in the percentages set forth in paragraphs (1), (2), or (3) of this subsection, may, for any particular year, be obligated to other purposes set forth in this subsection. The written determination shall be sent to the Senate Environment Committee, and the Assembly Energy and Hazardous Waste Committee, or their successors.

(1) At least 15% of the moneys shall be allocated for [1][loans] financial assistance[1] to persons, other than governmental entities, for remediation of real property located in a qualifying municipality as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

(2) At least 10% of the moneys shall be allocated for [1][loans] financial assistance[1] and grants to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been or on which there is suspected of being a discharge of hazardous substances or hazardous wastes. Grants shall be used for performing preliminary assessments and site investigations on property owned by a municipal governmental entity, or on which the municipality holds a tax sale certificate, in order to determine the existence or extent of any hazardous substance or hazardous waste contamination on those properties. A municipal governmental entity that has performed a preliminary assessment and site investigation on property may obtain a loan for the purpose of continuing the remediation on those properties it owns as necessary to comply with the applicable remediation standards adopted by the department;

(3) At least 15% of the moneys shall be allocated for [1][loans] financial assistance[1] to persons or municipal government entities for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area;

(4) At least 10% of the moneys shall be allocated for [1][loans] financial assistance[1] to persons, other than municipal government entities, who voluntarily undertake the remediation of a hazardous substance or hazardous waste discharge, and who have

not been ordered to undertake the remediation by the department or by a court [1][,][1];[1]

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

(6) At least 20% of the moneys shall be allocated for grants to persons, other than municipal government entities, who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant. A person qualifies for an innocent party grant if that person acquired the property prior to December 31, 1983, the hazardous substance or hazardous waste that was discharged at the property was not used by the person at that site, and that person certifies that he did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered. A grant authorized pursuant to this paragraph may be for up to 50% of the remediation costs at the area of concern for which the person qualifies for an innocent party grant, except that no grant awarded pursuant to this paragraph to any person may exceed $1,000,000.

(7) Ten percent of the moneys in the remediation fund shall be allocated for [1][loans] financial assistance[1] or grants for any of the purposes enumerated in paragraphs (1) through (6) of this subsection [1][, except that where moneys in the fund are insufficient to fund all the applications in any calendar year that would otherwise qualify for a loan or grant pursuant this paragraph, the authority shall give priority to loan applications that meet the criteria enumerated in paragraph (3) of this subsection][1].

b. Loans issued from the remediation fund shall be for a term not to exceed ten years, except that upon the transfer of ownership of any real property for which the loan was made, the unpaid balance of the loan shall become immediately payable in full. Loans shall bear an interest rate [1][of 1% below the prime rate as published in Publication No. H15 entitled "Selected Rates," available from the Federal Reserve System in Washington, except that the rate shall be no lower than 3%] equal to the lower of the Federal Discount Rate at the time of approval or at the time of the loan closing, with a minimum of five percent[1]. [1][Loans and grants, upon request of the applicant and if qualified, shall] Financial assistance and grants may[1] be issued for up to 100% of the estimated applicable remediation cost, except that [1][no loan] the cumulative maximum amount of financial assistance which may be issued[1] to a person other than a governmental entity [1][may be issued to any applicant][1] in any calendar year, for one or more properties, [1][in an amount that exceeds] shall be[1] $1,000,000. [1][Loans] Financial assistance[1] and grants [1][,][1] to any one municipal governmental entity may not exceed $2,000,000 in any calendar year. Repayments of principal and interest on the loans issued from the remediation fund shall be paid to the authority and shall be deposited into the

remediation fund.

c. No person, other than a municipal governmental entity, or a person engaging in a voluntary remediation, shall be eligible for [1][a loan] financial assistance[1] from the remediation fund to the extent that person is capable of establishing a remediation funding source for the remediation as required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill).

d. The authority may use a sum that represents up to 2% of the moneys issued as [1][loans] financial assistance[1] or grants from the remediation fund each year for administrative expenses incurred in connection with the operation of the fund and the issuance of [1][loans] financial assistance[1] and grants.

e. Prior to March 1 of each year, the authority shall submit to the Senate Environment Committee and the Assembly Energy and Hazardous Waste Committee, or their successors, a report detailing the amount of money that was available for [1][loans] financial assistance[1] and grants from the remediation fund for the previous calendar year, the amount of money estimated to be available for [1][loans] financial assistance[1] and grants for the current calendar year, the amount of [1][loans] financial assistance[1] and grants issued for the previous calendar year and the category for which each [1][loan] financial assistance[1] and grant was [1][made] rendered[1], and any suggestions for legislative action the authority deems advisable to further the legislative intent to facilitate remediation and promote [1]the[1] redevelopment and use of existing industrial sites.

29. (New section) a. [1][A qualified applicant for a loan or grant from the remediation fund shall be awarded a loan or grant by the authority upon the availability of sufficient moneys in the remediation fund for the purpose of the loan or grant.][1] Priority for awarding [1][loans] financial assistance[1] and grants from the remediation fund shall be based upon the date of receipt by the authority of a complete application from the applicant. If an application is determined to be incomplete by the authority, an applicant shall have 30 days from receipt of written notice of incompleteness to file any additional information as may be required by the authority for a completed application. If an applicant fails to file the additional information within those 30 days, the filing date for that application shall be the date that the additional information is received by the authority. An application shall be deemed complete when all the information required by the authority has been received in the required form.

b. Within 90 days, for a private entity, or 180 days for a municipal government entity, of notice of approval of a loan or grant application, an applicant shall submit to the authority an executed contract for the remediation activities for which the loan or grant application was made. The contract shall be consistent with the terms and conditions for which the [1][loan] financial assistance[1] or grant was [1][made] rendered[1]. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for the alteration of an applicant's priority ranking for the awarding of a loan or grant.

[1]c. Information submitted as part of a financial assistance

application or agreement shall be deemed a public record subject to the provisions of P.L. 1963, c.73 (C.47:1A-1 et seq.).[1]

30. (New section) a. The authority [1][, in consultation with the Department of Environmental Protection,][1] shall, by rule or regulation:

(1) [1][prescribe forms for, and procedures for the filing of, loan and grant applications;

(2) require a person applying for a loan who is not the owner of the subject property to provide a copy of the contract or lease between the operator and owner;

(3) require, if the applicant is an owner who is not the operator of the subject property, the owner to provide a copy of the contract or lease between the owner and the operator;

(4) prohibit the assignment or encumbrance of a loan or loan payment;

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

(6) provide that moneys from the approved loan or grant shall be released by the authority to the applicant in only those amounts that represent work completed;

(7) require the loan or grant recipient to provide access at reasonable times to the subject property to determine compliance with the terms and conditions of the loan or grant;

(8) require that, during the life of the loan, the applicant will comply with all environmental laws, and pay all required taxes or other governmental assessments due on the subject property for which a loan application is made, or on the loan collateral;

(9) reserve the right to suspend or terminate a loan or grant or declare a loan in default if any term or condition of the loan or grant is violated by a loan or grant recipient, and take any necessary action to secure repayment of the loan or grant;

(10) reserve the right to modify, as necessary and by mutual consent, the terms or conditions of a loan or grant, which modification shall, however, not be inconsistent with regulations of the Department of Environment Protection concerning the performance of remediation of contaminated property;

(11)][1] establish a priority system for [1][making loans] rendering financial assistance[1] or grants for remediations [1]identified by the department as[1] involving an imminent and significant threat to a public water source, human health, or to a sensitive or significant ecological area pursuant to paragraph (7) of subsection a. of section 28 of P.L. , c. (C.)(now before the Legislature as this bill);

[1][(12)] (2)[1] provide that payment of a grant shall be conditioned upon the subrogation to the department of all rights of the recipient to recover remediation costs from the discharger or other responsible party. All monies collected in a cost recovery subrogation action shall be deposited into the remediation fund;

[1][(13)] (3)[1] provide that an applicant for [1][a loan] financial assistance[1] or [1]a[1] grant pay a reasonable fee for the application

which shall be used by the authority for the administration of the loan and grant program;

[1][(14)] (4)[1] provide that where [1][a loan] financial assistance[1] to a person other than a municipal governmental entity , is for a portion of the remediation cost, that the [1][loan money] proceeds thereof[1] not be disbursed to the applicant until the costs of the remediation for which a remediation funding source has been established has been expended;

[1][(15)] (5)[1] adopt such other requirements as [1]the authority[1] shall [1][be deemed] deem[1] necessary or appropriate in carrying out the purposes for which the Hazardous Discharge Site Remediation Fund was created.

b. An applicant for [1][a loan] financial assistance[1] or [1]a[1] grant shall be required to:

(1) provide proof, as determined sufficient by the authority, that the applicant, where applicable, cannot establish a remediation funding source for all or part of the remediation costs, as required by section 25 of P.L. , c. (C.)(now before the Legislature as this bill). The provisions of the paragraph do not apply to grants to innocent persons or to [1][loans] financial assistance[1] or grants to municipal governmental entities; [1]and[1]

(2) [1][submit documentation on the nature and scope of the remediation to be performed, costs estimates thereon, and, as available, proofs of the actual cost of all work performed;

(3) submit copies of all court orders, administrative consent orders, memoranda of agreement, or directives issued by the Department of Environmental Protection [1]and Energy[1] and, if deemed necessary by the authority, any reports, plans, or results of any preliminary assessment, site investigation, remedial investigation, remedial action workplan, remedial action, or other documentation required to be prepared or submitted to the department; and

(4)][1] demonstrate the ability to repay the amount of the [1][loan] financial assistance[1] and interest, and, if necessary, to provide adequate collateral to secure the [1][loan] financial assistance[1] amount.

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

d. In establishing requirements for [1][loan] financial assistance[1] or grant applications and [1][loan] financial assistance[1] or grant agreements, the authority:

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

(2) may not require [1][loan] financial assistance[1] or grant conditions that interfere with the everyday normal operations of [1][a loan or grant] the[1] recipient's business activities, except to the extent necessary to [1][prevent intentional actions designed to avoid repayment of the loan, or that significantly affect] ensure the recipient's ability to repay the financial assistance and to preserve[1] the value of the loan collateral; and

(3) shall expeditiously process all [1][loan] financial assistance[1] or grant applications in accordance with a schedule established by the authority for the review and the taking of final action on the

application, which schedule shall reflect the degree of complexity of a [1][loan] financial assistance[1] or grant application.

31. (New section) No [1][loan] financial assistance[1] or grant from the remediation fund shall be [1][made] rendered[1] to a person who is currently in violation of an administrative or judicial order, judgment, or consent agreement regarding violation or threatened violation of an environmental law regarding the subject property, unless the violation, fee, penalty or assessment is currently being contested by the person in a manner prescribed by law or unless the violation resulted from a lack of sufficient money to perform required remediation activities.

32. (New section) a. The lack of sufficient moneys in the remediation fund to satisfy all [1][loan] financial assistance[1] or grant applications shall not affect in any way an applicant's legal responsibility to comply with the requirements of P.L.1983, c.330 (C.13:1K-6 et seq.), P.L.1976, c.141 (C.58:10-23.11 et seq.), or any other applicable provision of law.

b. Nothing in sections 23 through 43 of P.L. , c. (C.) (now before the Legislature as this bill) shall be construed to:

(1) impose any obligation on the State for any [1][loan] financial assistance[1] or grant commitments [1][made] rendered[1] by the authority, and the authority's obligations shall be limited to the amount of otherwise unobligated moneys available in the fund therefor; or

(2) impose any obligation on the authority for the quality of any work performed pursuant to a remediation undertaken with [1][a loan] financial assistance[1] or grant [1][made] rendered[1] pursuant section 28 of P.L. , c. (C.)(now before the Legislature as this bill).

33. (New section) a. There is imposed upon every person who is required to establish a remediation funding source pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) a remediation funding source surcharge. The remediation funding source surcharge shall be in an amount equal to 1% of the required amount of the remediation funding source required by the department to be maintained. No surcharge, however, may be imposed upon (1) that amount of the remediation funding source that is met by a self-guarantee as provided in subsection [1]e.] f.[1] of section 25 of P.L. , c. (C.)(now before the Legislature as this bill), (2) that amount of the remediation funding source that is met by [1][a loan] financial assistance[1] or grant from the remediation fund, (3) any person who voluntarily undertakes a remediation without being so ordered or directed by the department or by a court or pursuant to an administrative consent order, or (4) any person who entered voluntarily into a memorandum of understanding with the department to remediate real property, as long as that person continues the remediation in a reasonable manner, or as required by law, even if subsequent to initiation of the memorandum of understanding, the person received an order by the department or entered into an administrative consent order to perform the remediation. The surcharge shall be based on the cost of remediation work remaining to be completed and shall be paid on an annual basis as long as the remediation continues and until the

Department of Environmental Protection issues a no further action letter for the property subject to the remediation. The cleanup remediation funding source surcharge shall be due and payable within 14 days of the time of the department's approval of a remedial action workplan or signing an administrative consent order or as otherwise provided by law. The department shall collect the surcharge and shall remit all moneys collected to the Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund.

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

34. (New section) a. There is appropriated from the "Hazardous Discharge Fund of 1986," created pursuant to "Hazardous Discharge Bond Act of 1986," P.L.1986, c.113, the sum of $45,000,000 to the New Jersey Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund, created pursuant to section 26 of P.L. , c. (C.)(now before the Legislature as this bill) for the purposes of issuing [1][loans] financial assistance[1] and grants for the investigation of property suspected of being contaminated by a hazardous substance or hazardous waste or for the remediation of property contaminated by a hazardous substance or hazardous waste.

[1][Of the money appropriated pursuant to this subsection, (1)$15,000,000 shall be dedicated to the issuance of loans or grants to municipal governmental entities in accordance with the purposes of the remediation fund; (2) $10,000,000 shall be dedicated to the issuance of loans to persons other than governmental entities in accordance with the purposes of the remediation fund; and (3) $20,000,000 shall be dedicated to the issuance of grants to innocent parties in accordance with the purposes of the remediation fund.][1]

b. There is appropriated from the "Hazardous Discharge Fund of 1986," created pursuant to "Hazardous Discharge Bond Act of 1986," P.L.1986, c.113, the sum of $5,000,000 to the Department of Environmental Protection for deposit into the Remediation Guarantee Fund, created pursuant to section 45 of P.L. , c. (C.)(now before the Legislature as this bill), for the purposes of that fund.

35. (New section) a. The Department of Environmental Protection [1]and Energy[1] shall adopt minimum remediation standards for soil, groundwater, and surface water quality necessary for the remediation of contamination of real property. The remediation standards shall be developed to ensure that the potential for harm to public health and safety and to the environment is minimized to acceptable levels, taking into consideration the location, [1]the[1] surroundings, the intended use of the property, the potential exposure to the discharge, and the surrounding ambient conditions, whether naturally occurring or man-made.

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

The department shall not propose or adopt remediation standards protective of the environment pursuant to this section, except standards for groundwater or surface water, until recommendations are made by the Environment Advisory Task Force created pursuant to section 37 of P.L. , c. (C.)(now before the Legislature as this bill). Until the Environment Advisory Task Force issues its recommendations and the department adopts remediation standards protective of the environment as required by this section, the department shall continue to determine the need for and the application of remediation standards protective of the environment on a case-by-case basis in accordance with the guidance and regulations of the federal Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable.

b. In developing minimum remediation standards the department shall:

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

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

(3) avoid the use of redundant conservative assumptions. The department shall avoid the use of redundant conservative assumptions by the use of parameters that provide an adequate margin of safety and which avoid the use of unrealistic conservative exposure parameters and which [1][are consistent with][1] guidelines [1]make use of the guidance and regulations[1] for exposure assessment developed by the federal Environmental Protection Agency [1]pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable[1]; and

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

c. (1) The department shall develop residential and nonresidential soil remediation standards that are protective of public health and safety. For contaminants that are mobile and [1][may be transported] transportable[1] to groundwater, the residential and nonresidential soil remediation standards shall be protective of groundwater [1]and surface water[1]. Residential soil remediation standards shall be set at levels or concentrations of contamination for real property based upon the use of that property for residential or similar uses and which will allow the unrestricted use of that property without exceeding a health risk

level greater than that provided in subsection d. of this section. Nonresidential soil remediation standards shall be set at levels or concentrations of contaminants that recognize the lower likelihood of exposure to contamination on property that will not be used for residential or similar uses. Whenever real property is remediated to a nonresidential soil remediation standard, except as otherwise provided in paragraph (3) of subsection g. of this section, the department shall require [1][, pursuant to section 36 of P.L. , c. (C.)(now before the Legislature as this bill),]1 that the use of the property be restricted to nonresidential or other uses compatible with the extent of the contamination of the soil and that access to that site be restricted in a manner compatible with the allowable use of that property.

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

d. In developing minimum remediation standards intended to be protective of public health and safety, the department shall identify the [1][hazard] hazards[1] posed by a contaminant to determine whether exposure to that contaminant can cause an increase in the incidence of an adverse health effect and whether the adverse health effect may occur in humans. The department shall set minimum soil remediation standards for both residential and nonresidential uses that:

(1) for [1]human[1] carcinogens, [1]as categorized by the federal Environmental Protection Agency,[1] will result in an additional cancer risk of one in one million;

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

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

e. Remediation standards and other requirements established pursuant to this section shall apply to remediation activities required pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21 et seq.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et seq.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the "Ccmprehensive Regulated Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the "Sanitary Landfill Facility Closure and Contingency Fund Act," P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333 (C.13:1E-177 et seq.), [1]P.L. 1986, c.102 (C.58:10A-21 et seq.)[1] or any other law or regulation by which the State may compel a person to perform remediation activities on contaminated property. However, nothing in this subsection shall be construed to limit the authority of the department to

establish discharge limits for pollutants or to prescribe penalties for violations of those limits pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), or to require the complete removal of [1][nonhazardous][1] solid waste pursuant to law.

f. (1) A person performing a remediation of contaminated real property, in lieu of using the established minimum soil remediation standard for either residential use or nonresidential use adopted by the department pursuant to subsection c. of this section, may submit to the department a request to use an alternative residential use or nonresidential use soil remediation standard. The use of an alternative soil remediation standard shall be based upon site specific factors which may include (1) physical site characteristics which may vary from those used by the department in the development of the soil remediation standards adopted pursuant to this section; or (2) a site specific risk assessment. If a person performing a remediation requests to use an alternative soil remediation standard based upon a site specific risk assessment, that person shall demonstrate to the department that the requested deviation from the risk assessment protocol used by the department in the development of soil remediation standards pursuant to this section is consistent with the [1][guidelines] guidance and regulations[1] for exposure assessment developed by the federal Environmental Protection Agency [1]pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable[1]. A site specific risk assessment may consider exposure scenarios and assumptions that take into account the form of the contaminant present, natural biodegradation, fate and transport of the contaminant, and available toxicological data that are based upon generally accepted and peer reviewed scientific evidence or methodologies.

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

(2) The department may, upon its own initiative [1],[1] require an alternative remediation standard for a particular contaminant for a specific real property site, in lieu of using the established minimum residential use or nonresidential use soil remediation standard adopted by the department for a particular contaminant pursuant to this section. The department may require an alternative remediation standard pursuant to this paragraph upon a determination by the department, based on the weight of the scientific evidence, that due to specific physical site characteristics of the subject real property, the use of the adopted residential use or nonresidential use soil remediation standards would not be protective of public health or safety or of the environment, as appropriate.

g. The development, selection, and implementation of any remediation standard or remedial action shall ensure that it is protective of public health, safety, and the environment, as

applicable, as provided in this section. In determining the appropriate remedial action that shall occur at a site in order to meet the established remediation standards, the department, or any person performing the remediation, shall base its decision on the following factors:

(1) Permanent and nonpermanent remedies shall be allowed except that permanent remedies shall be preferred over nonpermanent remedies for remedial actions;

(2) Contamination may, upon the department's approval, be left onsite at levels or concentrations that exceed the minimum soil remediation standards for residential use or nonresidential use if the [1][requirement] implementation[1] of institutional or engineering controls at that site will result in the protection of public health, safety and the environment at the risk level established in subsection d. of this section and [1][where] if[1] the requirements established in subsections a., b., c. and d. of section 36 of P.L. , c. (C.)(now before the Legislature as this bill) are met.

(3) Real property on which there is soil that has not been remediated to the residential soil remediation standards, or real property on which the soil, groundwater, or surface water has been remediated to meet the required health risk level by the use of engineering or institutional controls, may be developed or used for residential purposes, or for any other similar purpose, if (a) all areas of that real property at which a person may come into contact with soil are remediated to meet the residential soil remediation standards and (b) it is [1]clearly[1] demonstrated that for all areas of the real property, other than those described in subparagraph (a) above, engineering and institutional controls can be implemented and maintained on the real property sufficient to meet the health risk level as established in subsection d. of this section;

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

(5) Remediation shall not be required [1][by] of[1] the owner or operator of real property for contamination coming onto the site from another property owned and operated by another person [1],unless said owner or operator is in any way responsible for the discharge[1];

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

(7) [1][The effectiveness of each remedial action alternative in protecting public health, safety and the environment] The technical performance, effectiveness and reliability of the proposed remedial action in attaining and maintaining compliance

with applicable remediation standards and required health risk levels. In reviewing a proposed remedial action, the department shall also consider the ability of the owner or operator to implement the proposed remedial action within a reasonable time frame without jeopardizing public health, safety or the environment[1];

(8) [1][The implementability of each alternative] In the case of a proposed remedial action that will not meet the established minimum residential use soil remediation standards, the cost of all available permanent remedies are unreasonable, as determined by department rules designed to provide a cost-based preference for the use of permanent remedies. The department shall adopt regulations, no later than 18 months after the effective date of this act, establishing criteria and procedures for allowing a person to demonstrate that the cost of a proposed remedial action using a nonpermanent remedy is reasonable. Until the department promulgates those regulations, it shall not require a person performing a remedial action to implement a permanent remedy, unless the cost of implementing a nonpermanent remedy is 50 percent or more then the cost of implementing a permanent remedy; provided, however, that the preceding provision shall not apply to any owner or operator of an industrial establishment who is implementing a remedial action pursuant to subsection i. of section 4 of P.L. 1983.[1];

(9) [1][The time it would take to implement each alternative;

(10) The cost of each alternative including capital costs, operation, maintenance and monitoring costs, whether a particular remedial action is cost effective, and whether the cost of performing a specific remedial action is excessive compared to the cost of other alternatives; and

(11) The technological efficacy of any particular remedial action] The use of the established nonresidential soil remediation standard shall not be unreasonably disapproved by the department[1].

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

h. (1) The department shall adopt regulations which establish a procedure for a person to demonstrate that a particular parcel of land contains large quantities of historical fill material. Upon a determination by the department that large quantities of historic fill material exist on that parcel of land, there is a rebuttable presumption that the department shall not require any person to remove or treat the fill material in order to comply with a remediation standard. In these areas the department shall establish by regulation the requirement for engineering or institutional controls that are designed to prevent exposure of these contaminants to humans, that allow for the continued use of the property, that are less costly than removal or treatment, which maintain the health risk levels as established in subsection d. of this section, and, as applicable, are protective of the environment. The department may rebut the presumption only upon a finding by the preponderance of the evidence that the use

of engineering or institutional controls would not be effective in protecting [1][human] public[1] health, safety, and the environment. For the purposes of this paragraph "historic fill material" means generally large volumes of non-indigenous material, used to raise the topographic elevation of a site, which were contaminated prior to emplacement and are in no way connected with the operations at the location of emplacement and which include, but [1]are[1] not limited to, construction debris, dredge spoils, incinerator residue, demolition debris, fly ash, and [1][non hazardous] non-hazardous[1] solid waste. Historic fill material shall not include any material which is substantially chromate chemical production waste or any other chemical production waste or waste from [1][mining or][1] processing of metal or mineral ores, residues, slags or tailings.

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

(3) The department may not, as a condition of allowing the use of a nonresidential use soil remediation standard, or the use of institutional or engineering controls, require the owner of that real property, except as provided in section 36 of P.L. , c. (C.)(now before the Legislature as this bill), to restrict the use of that property through the filing of a deed easement, covenant, or condition.

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

j. Upon the approval by the department of a remedial action workplan, or similar [1][approval] plan[1] that describes the extent of contamination at a site and the remedial action to be implemented to address that contamination, the department may not subsequently require a change to that workplan or similar [1][approval] plan[1] in order to compel a different remediation standard due to the fact that the established remediation standards have changed; however, the department may compel a different remediation standard if the difference between the new remediation standard and the remediation standard approved in the workplan or other [1][approval] plan[1] differs by an order of magnitude. The limitation to the department's authority to change a workplan or similar [1][approval] plan[1] pursuant to this subsection shall only apply [1][where] if[1] the workplan or similar

[1][approval] plan[1] is being implemented in a reasonable timeframe [1], as may be indicated in the approved remedial action workplan or similar plan[1].

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

l. Upon the adoption of a remediation standard for a particular contaminant in soil, groundwater, or surface water pursuant to this section, the department may amend that remediation standard only upon a finding that a new standard is necessary to maintain the health risk levels established in subsection d. of section 35 of P.L. , c. (C.)(now before the Legislature as this bill) or to protect the environment, as applicable. The department may not amend a public health based soil remediation standard to a level that would result in a health risk level more protective than that provided for in subsection d. of section 35 of P.L. , c. (C.).

[1]m. Nothing in this amendatory and supplementary act, P.L. , c. (now before the Legislature as this bill), shall be construed to restrict or in any way diminish the public participation which is otherwise provided under the provisions of the "Spill Compensation and Control Act," P.L. 1976, c.141 (C.58:10-23.11 et seq.).[1]

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

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

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

(3) require a notice to the governing body of each municipality in which the property is located that contaminants will exist at the property above residential use soil remediation standards or [1][of][1] any other remediation standards and specifying the

restrictions on the use of or access to all or part of that property and of the specific engineering or institutional controls at the property that exist and that shall be maintained;

(4) require, when determined necessary by the department, that signs be posted at any location at the site where access is restricted or in those areas that must be maintained in a prescribed manner, to inform persons on the property that there are restrictions on the use of that property or restrictions on access to any part of the site; [1][and][1]

(5) require that a list of the restrictions be kept on site for inspection by governmental enforcement officials [1]; and

(6) require a person, prior to commencing a remedial action, to notify the governing body of each municipality wherein the property being remediated is located. The notice shall include, but not be limited to, the commencement date for the remedial action; the name, mailing address and business telephone number of the person implementing the remedial action, or his designated representative; and a brief description of the remedial action[1].

b. If the owner of the real property does not consent to the recording of a notice pursuant to paragraph (2) of subsection a. of this section, the department shall [1][not allow] require[1] the use of a [1][nonresidential] residential[1] soil remediation standard [1][or the use of engineering or institutional controls][1] in the remediation of that real property.

c. [1][Where] Whenever[1] engineering or institutional controls on property as provided in subsection a. of this section are no longer required, or [1][where] whenever[1] the engineering or institutional controls are changed because of the performance of subsequent remedial activities, a change in conditions at the site, or the adoption of revised remediation standards, the department shall [1][,][1] require that the owner or operator of that property [1][,][1] record with the office of the county recording officer a notice that the use of the property is no longer restricted or delineating the new restrictions. The department shall also require that the owner or operator notify, in writing, the municipality in which the property is located of the removal or change of the restrictive use conditions.

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

e. Notwithstanding the provisions of any other law, or any

rule, regulation, or order adopted pursuant thereto to the contrary, whenever contamination at a property is remediated in compliance with any soil, groundwater, or surface water remediation standards that were in effect at the completion of the remediation, the owner or operator of the property or person performing the remediation, except as otherwise provided in this section, shall not be liable for the cost of any additional remediation that may be required by a subsequent adoption by the department of a more stringent remediation standard for a particular contaminant. Upon the adoption of a regulation that amends a remediation standard, only a person who is liable to clean up [1]and remove[1] that contamination pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g) shall be liable for any additional remediation costs necessary to bring the site into compliance with the new remediation standards except that no person shall be so liable unless the difference between the new remediation standard and the level or concentration of a contaminant at the property differs by an order of magnitude.

Nothing in the provisions of this subsection shall be construed to affect the authority of the department, pursuant to subsection f. of this section, to require additional remediation on real property where engineering or institutional controls were implemented [1][of this section][1].

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

f. [1][Where] Whenever[1] the department approves or has approved the use of engineering or institutional controls for the remediation of soil, groundwater, or surface water, to protect public health, safety or the environment in lieu of remediating a site to a condition that meets an established [1]residential[1] remediation standard, the department shall not require additional remediation of that site unless the engineering or institutional controls no longer are protective of public health, safety, or the environment.

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

advice and consent of the Senate; (6) two members who shall have at least a master's degree in a science discipline, have relevant experience, and be employed by an industrial business, who shall be appointed by the President of the Senate; and (7) two members who shall have at least a master's degree in a science discipline, have relevant experience, and be employed by an industrial business, who shall be appointed by the Speaker of the General Assembly.

b. The Environment Advisory Task Force shall meet as soon as practicable after the appointment and qualification of all its members. The Commissioner of Environmental Protection, or the commissioner's designee, shall be the chairperson of the Environment Advisory Task Force. The Environment Advisory Task Force shall meet at the call of its chairperson and in the locations the chairperson shall choose.

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

d. The Environment Advisory Task Force shall:

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

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

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

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

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

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

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

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

(9) review and make recommendations on any other aspect of the adoption of these remediation standards the [1][department] task force[1] determines is necessary for a complete evaluation of these issues.

e. Prior to the submittal of its recommendations to the department, the Environment Advisory Task Force shall release a proposed recommendation to the public. The Environment Advisory Task Force shall hold at least one public meeting at least 14 days after public release of its proposed recommendations. Members of the public shall be allowed to present written and oral comments on the proposed recommendations at the public meeting. The [1][Task Force] task force[1] is not required to record, consider, or comment upon the public comments. Upon submittal of its final recommendations to the department concerning the adoption of remediation standards protective of the environment, the Environment Advisory Task Force shall expire.

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

39. (New section) a. Any person who, before the effective date of P.L. , c. (C.)(now before the Legislature as this bill), has discharged a hazardous substance in violation of P.L.1976, c.141, and:

(1) has not been issued a directive to remove or arrange for the removal of the discharge pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f) [1][,] ;1

(2) has not been assessed a civil penalty, a civil administrative penalty, or is not the subject of an action pursuant to the provisions of section 22 of P.L.1976, c.141 (C.58:10-23.11u) [1][,] ;1

(3) has not entered in to an administrative consent order to clean up and remove the discharge [1][, or] ; and[1]

(4) has not been ordered by a court to clean up and remove the discharge, shall not be subject to a monetary penalty for the failure to report the discharge or for any civil violation of P.L.1976, c.141 (C.58:10-23.11 et seq.) or P.L.1977, c.74 (C.58:10A-1 et seq.) that resulted in the discharge if the person notifies the department of the discharge and enters into an administrative consent order or a memorandum of agreement with the department to remediate the discharge in accordance with the provisions of P.L.1976, c.141 (C.58:10-23.11 et seq.), or any rules or regulations adopted pursuant thereto, within one year of the effective date of P.L. , c. (C.)(now before the Legislature as this bill). Any person who notifies the department of the discharge pursuant to this section shall be liable for all cleanup and removal costs as provided in section 8 of P.L.1976,

c.141 (C.58:10-23.11g).

b. Notwithstanding the provisions of subsection a. of this subsection, any person who enters into a memorandum of agreement or administrative consent order pursuant to this section and fails to remediate the discharge in accordance with the memorandum of agreement or administrative consent order, shall be subject to all penalties for violations that occurred before the effective date of P.L. , c. (C.)(now before the Legislature as this bill) as well as any penalties for subsequent violations.

c. The provisions of this section shall not apply to violations of a permit issued pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.).

d. Any documents or information provided to the department pursuant to this section may not be used in a criminal investigation or criminal prosecution against the person providing the information or documents for those violations that occurred before the effective date of this act as long as the person remediates the discharge in conformance with the administrative consent order or memorandum of agreement entered into pursuant to subsection a. of this section.

40. (New section) a. [1][Any person who undertakes the remediation of suspected or actual contamination on real or personal property that is not owned by that person, may enter upon the property to conduct the necessary remediation if there is an agreement, in writing, between the person conducting the remediation and the owner of the property authorizing the entry onto the property.

If, after a good faith effort, the person undertaking the remediation and the property owner fail to reach an agreement concerning access to the property, the person may seek a court order authorizing access which shall be issued pursuant to subsection b. of this section.

b. Any person who undertakes the remediation of suspected or actual contamination on real or personal property that is not owned by the person responsible for the remediation, and fails to reach an agreement with the property owner pursuant to subsection a. of this section may institute an action in the Superior Court for injunctive and other relief, to gain access to the property and the court may proceed in the action in a summary manner.] (1) Any person who undertakes the remediation of suspected or actual contamination and who requires access to conduct such remediation on real or personal property that is not owned by that person, may enter upon the property to conduct the necessary remediation if there is an agreement, in writing, between the person conducting the remediation and the owner of the property authorizing the entry onto the property. If, after good faith efforts, the person undertaking the remediation and the property owner fail to reach an agreement concerning access to the property, the person undertaking the remediation shall seek an order from the Superior Court directing the property owner to grant reasonable access to the property and the court may proceed in the action in a summary manner.

(2)[1] Such relief may include, singly or in combination:

[1][(1)] (a)[1] A temporary or permanent injunction;

[1][(2)] (b)[1] Assessment of the person undertaking the remediation for costs associated with any disruption in operations on the property;

[1][(3)] (c)[1] Assessment of the person undertaking the remediation for any costs to return the property to its condition before the commencement of the remediation;

[1][(4)] (d)[1] A requirement that the person undertaking the remediation indemnify the owner of the property for any damages, penalties or liabilities resulting from the remediation;

[1][(5)] (e)[1] A requirement that the person undertaking the remediation indemnify the owner of the property for any liability resulting from the entry of persons onto the property to perform the remediation.

[1]b. The court shall promptly issue any access order sought pursuant to this section upon a showing that (1) a reasonable possibility exists that contamination from another site has migrated onto the owner's property, or (2) access to the property is reasonable and necessary to remediate contamination. The presence of an applicable department oversight document or a remediation obligation pursuant to law involving the property for which access is sought shall constitute prima facie evidence sufficient to support the issuance of an order.

Unless the court otherwise orders for notice and for good cause shown, an action for an access order shall not be joined with non-germane issues against the owner of the property for which access is sought or other person who may be liable for the contamination. Non-germane issues shall include, but not be limited to, issues concerning contribution, treble damages, or other damages involving either the contamination or the remediation.

The court may impose reasonable conditions as part of the access order, including without limitation, that the person undertaking the remediation take all reasonable measures to minimize the disruption to the property and the activities conducted there and return the property to its condition prior to the commencement of remediation.[1]

c. The department may not impose or seek to impose any civil or civil administrative penalties upon any person for failure to perform a remediation on property not owned by that person within the time schedule required by regulation on property not owned by that person if (1) the failure to perform the remediation was the result of an inability of that person to enter upon real or personal property owned by another person, and (2) the person took all appropriate action pursuant to this section to obtain access to the property.

[1]d. Nothing herein shall be construed as limiting the rights of the owner of the property against which the access order is issued to initiate a civil action to seek any damages available under law.

e. Nothing herein shall be construed as limiting the rights of the person conducting the remediation from initiating any subsequent civil action against the owner of the property.[1]

41. (New section) a. Any person conducting a remediation of a contaminated site may dispute a decision by the department

concerning the remediation in accordance with the guidelines developed pursuant to subsection b. of this section. The disputed decision shall be reviewed, and a determination shall be made, by the next level of the department's management, and the review may continue, upon the request of the person seeking review, until the Commissioner or his designee has issued a decision on the dispute. Each successive level of management review and the resulting determination on the dispute, shall occur within seven days of the department's receipt of the request for review.

b. Within 60 days of the effective date of [1][this act] P.L. , c. (now pending before the Legislature as this bill)[1], the department shall develop guidelines that establish a procedure through which a person conducting a remediation of a contaminated site may dispute a department decision concerning the remediation. [1]Those guidelines shall include provisions for an expedited review procedure under which the Commissioner, or his designee, shall issue a decision of the dispute within 21 calendar days of the date on which the request for that review was received.[1]

42. (New section) The Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Department of Environmental Protection [1]and Energy[1], shall prepare, and the department shall distribute, for the cost of reproduction and postage, to any interested person, informational materials that set forth criteria that may be used to evaluate the qualifications of environmental consultants, environmental consulting firms, engineers, geologists or any other consultant, whose expertise or training may be required by a person to comply with the provisions of P.L.1986, c.102 [1](C.58:10A-21 et seq.)[1], P.L.1983, c.330 [1](C.13:1K-6 et seq.)[1], P.L.1976, c.141 [1](C.58:10-23.11 et seq.)[1], and P.L. , c. (C.)(now before the Legislature as this bill) relating to the remediation of contaminated real property. The materials may describe the expertise or training necessary to address specific types of environmental cleanups, sites or contamination, the significance and availability of various types of [1]professional[1] liability insurance [1], issued by an entity licensed by the Department of Insurance to transact business in the State of New Jersey[1], the average cost of services and tests commonly performed by consultants, the significance of available accreditations or certifications, the ethics code applicable to any consultant, the references that may be requested and any other relevant factor that may be used to evaluate the qualifications and expertise of persons performing remediation services.

43. (New section) The owner or operator of an industrial establishment [1][,][1] who has submitted a notice to the department pursuant to subsection a. of section 4 of P.L.1983, c.330 (C.13:1K-9), or any person who has discharged a hazardous substance or is liable for the remediation of that discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), [1]or any person who[1] has been directed to or has entered into an agreement with the department to remediate a discharge, may implement an interim response action prior to departmental approval of that action. The interim response action may be

implemented when the expeditious temporary or partial remediation of a discharged hazardous substance or hazardous waste is necessary to contain or stabilize a discharge prior to implementation of an approved remedial action workplan in order to prevent, minimize, or mitigate damage to public health or safety or to the environment which may otherwise result from a discharge. The interim response action shall be implemented in compliance with the procedures and standards established by the department. The department may require submission of a notice of intent to implement an interim response action, what those actions will be, and may require, subsequent to completion of the interim response action, a report detailing the actions taken and a certification that the interim response action was implemented in accordance with all applicable laws and regulations. The department shall review these submissions to verify whether the interim response action was implemented in accordance with applicable laws and regulations. The department shall not require that additional remediation be undertaken at an area of concern subject to the interim response action except in instances when further remediation is necessary to bring that area of concern into compliance with the applicable remediation standards.

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

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

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

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

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

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

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

(5) Interest on loans obtained or other obligations incurred by a claimant for the purpose of ameliorating the adverse effects of a

discharge pending the payment of a claim in full as provided by this act.

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

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

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

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

For the purpose of determining priority of this lien over all other claims or liens which are or have been filed against the

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

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

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

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

(2) A person, including an owner or operator of a major facility, who owns real property acquired after the effective date of P.L. , c. (C.)(now before the Legislature as this bill), on which there has been a discharge, shall be considered a person in any way responsible for the discharged hazardous substance pursuant to subsection c. of this section, unless that person can establish by a preponderance of the evidence that all of the following apply:

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

(b) (i) at the time the person acquired the real property, the person did not know and had no reason to know that any hazardous substance had been discharged at the real property, or (ii) the person acquired the real property by devise or succession, except that any other funds or property received by that person from the deceased real property owner who discharged a hazardous substance or was in any way responsible for a hazardous substance, shall be made available to satisfy the requirements of P.L.1976, c.141;

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

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

To establish that a person had no reason to know that any

hazardous substance had been discharged for the purposes of this paragraph (2), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property. In order to determine if all appropriate inquiry was undertake, any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the fair market value of the property if not impacted by discharges of hazardous substances, commonly known or reasonably ascertainable information about the property, the obviousness of the discharge at the property, and the ability to detect the discharge of hazardous substances by appropriate inspection shall be taken into account.

Nothing in this paragraph (2) shall be construed to alter liability of any person who acquired real property prior to the effective date of P.L. , c. (C.)(now before the Legislature as this bill).

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

(4) Any federal, State, or local government entity which acquires ownership of real property through bankruptcy, tax delinquency, abandonment, escheat, eminent domain, condemnation or any circumstance in which the government involuntarily acquires title by virtue of its function as sovereign, shall not be liable for the cleanup and removal costs of any discharge which occurred or began prior to that ownership. This paragraph shall not apply to any federal, State or local government entity which has caused or contributed to the discharge of a hazardous substance.

(cf: P.L.1991, c.85, s.4)

45. (New section) a. There is created in the Department of Environmental Protection a special, revolving fund to be known as the Remediation Guarantee Fund. The fund shall be credited with all monies appropriated to it by law, all monies collected in subrogation actions to recover monies expended from the fund, and all moneys earned from the investment of the monies in the fund.

b. The Commissioner of Environmental Protection shall appoint and supervise an administrator of the fund. The administrator shall be the chief executive of the fund, shall approve all disbursements of monies from the fund and, and shall ensure the proper deposit of all monies authorized to be deposited into the fund.

c. Monies in the fund shall be used by the Department of Environmental Protection to remediate, or contract for the remediation of, any real property for which a person was required to establish a remediation funding source pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) and

where that person fails to conduct or properly conduct that remediation.

d. Any monies expended by the department from the fund pursuant to this subsection shall constitute a debt of the person required to establish the remediation funding source and against the discharger. The debt shall constitute a lien on all property owned by the person required to establish the remediation funding source and against the discharger to the same extent and in the same manner as provided for liens in subsection f. of section 7 of P.L.1976, c.141 (C.58:10-23.11f).

e. Whenever the department expends monies from the fund for a remediation, it shall have a cause of action to recover from the person required to establish the remediation funding source or from any other person liable for the discharge pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g) triple the amount of monies expended for the remediation.

f. Monies in the fund may be appropriated to pay for the costs to administer the fund except that those appropriations may not exceed the amount of monies deposited into the fund earned from the investment of monies in the fund.

[1]46. Section 7 of P.L.1993, c.112 (C.13:1K-11.1) is amended to read as follows:

7. [a. The following transactions shall be excluded from the provisions of the "Environmental Cleanup Responsibility Act," P.L.1983, c.330 (C.13:1K-6 et al.):

(1) Execution, delivery and filing or recording of any mortgage, security interest, collateral assignment or other lien on real or personal property; and

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

b.] In the event of the closing, termination or transfer of an industrial establishment, which industrial establishment is all or part of a trust, receivership estate, guardianship estate or estate of a deceased person, only the assets of the trust or estate, or assets of any discharger other than the fiduciary of such trust or estate shall be subject to the obligation to remove the discharge as set forth in P.L.1983, c.330 (C.13:1K-6 et al.).[1]

(cf: P.L.1993, c.112, s.7)

[1]47. (New section) a. There is created a special Environmental Risk Assessment and Risk Management Study Commission. The commission shall consist of 10 members and shall include the Commissioner of Environmental Protection and Energy, or his designee, as a non-voting member, and eight members who shall have advanced degrees and relevant experience in any of the following disciplines: (1) environmental medicine, health, or epidemiology; (2) environmental toxicology; (3) soil science, geology, or hydrogeology, and (4) environmental engineering with experience in site remediation. The Governor shall appoint one representative from each of those disciplines; the Senate President shall appoint two representatives, provided,

however, both of those appointees shall not be from the same discipline; and the Speaker of the General Assembly shall appoint two representatives, provided, however, both of those appointees shall not be from the same discipline. A ninth member, who shall be a recognized expert in the field of risk assessment as it applies to contaminated sites or to the remediation of such sites, shall be jointly appointed by the Governor, Senate President, and the Speaker. The chairman of the commission shall be jointly appointed by the Governor, Senate President, and Speaker from among the appointed members. All members shall serve without compensation. Vacancies in the membership shall be filled in the same manner as the original appointments were made.

b. It shall be the duty of the commission:

(1) To examine and assess the scientific basis for selecting the risk management standard of one in one million for the purposes of P.L. , c. (C.)(now pending before the Legislature as this bill) and to consider and assess alternative scientific standards and criteria for that purpose; and

(2) To examine and assess methodologies of risk assessment and their efficacy and applicability for the purposes of establishing remediation standards.

c. The commission shall organize as soon after the appointment of its members as is practicable.

d. The commission shall be entitled to call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes, and to employ such stenographic and clerical assistants and incur such traveling and other miscellaneous expenses as it may deem necessary, in order to perform its duties, and as may be within the limits of funds appropriated or otherwise made available to it.

e. The commission may meet and hold hearings at such place or places as it shall designate. The commission shall hold at least one public hearing to accept written and oral testimony from the public prior to commencing its deliberations. The commission shall hold at least one other public hearing prior to formally submitting its findings and recommendations to the Governor and the Legislature. This public hearing, or hearings, as the case may be, shall be held at least 14 days after the commission has made public its proposed findings and recommendations. The public shall be permitted to present written and oral comments on the proposed findings and recommendations at that public hearing, or hearings, as the case may be. Thereafter, the commission shall report its findings and recommendations to the Governor and Legislature, along with any recommendations for Legislative action, as follows:

(1) The report and recommendations concerning the scientific basis for selecting risk management standards shall be delivered no later than six months after the effective date of P.L. , c. (now pending before the Legislature and this bill); and

(2) The report and recommendations concerning risk assessment methodologies and their efficacy and applicability for establishing remediation standards shall be delivered no later

than one year after the effective date of P.L. , c. (now before the Legislature as this bill).

f. The commission shall expire upon the issuance of its final report.[1]

[1]48. (New section) Within nine months of the enactment of P.L. , c. (now before the Legislature as this bill), the Commissioner of the Department of Environmental Protection and Energy, in consultation with the Attorney General, shall issue a report to the Governor and the Legislature concerning the effectiveness and fairness of the imposition of strict, joint and several liability on persons who have discharged, or are in any way responsible for, a hazardous substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.). The report shall:

a. analyze methods to expedite the securing of funding for the remediation of hazardous discharge sites;

b. analyze methods to lower the public and private legal costs associated with the determinations of liability for discharges of hazardous substances;

c. examine the historical and legal basis for the imposition of strict, joint and several liability for the discharge of a hazardous substance;

d. discuss the effect on the Department of Environmental Protection and Energy's site remediation program of modifying the existing statutory scheme of strict, joint and several liability and replacing it with another standard of liability; and

e. review and discuss methods to enhance the fairness of the imposition of liability for hazardous substance discharges including the possible use of mixed public and private funding for site remediations and the use of de minimis settlements for potentially responsible parties.

In preparing its report, the department shall review the provisions of the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," as amended by the "Superfund Amendments and Reauthorization Act of 1986," the regulations and policies of the federal Environmental Protection Agency in implementing that act, proposed changes being considered by Congress in the reauthorization of that act, and the discharge liability laws of other states as may be relevant. The report shall contain recommendations for regulatory or legislative actions.[1]

[1]49. (New section) Within six months of the enactment of P.L. , c. (now before the Legislature as this bill), the Commissioner of Environmental Protection and Energy shall issue a report to the Governor and the Legislature providing an evaluation, recommendations, and a plan of action for developing and implementing a certification program for persons engaging in the remediation of contaminated sites. In preparing his report, the commissioner shall review the certification programs for persons engaging in the remediation of contaminated sites which other states have implemented and which may be relevant.[1]

[1][46.] 50.[1] This act shall take effect immediately except that section 44 shall remain inoperative until the 90th day following enactment.

Makes various changes to various hazardous discharge site remediation programs; imposes a surcharge on remediations; establishes a loan and grant fund for remediation activities; appropriates bond moneys.

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TR 0

Speaker
Clerk (3)
Majority Leader
Minority Leader
Sponsor of Aa
Sponsor of Bill

ASSEMBLY Amendments
(Proposed by Assemblyman DiGaetano)

to

SENATE, No. 1070 (SCS)(1R)

(Sponsored by Senators McNAMARA and RICE
and Assemblymen ALBOHN, DiGAETANO,
Assemblywoman CRECCO, and Assemblyman PASCRELL)

REPLACE SECTION 3 TO READ:

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

3. As used in this act:

[a. "Cleanup plan"] "Remedial action workplan" means a plan for the [cleanup of] remedial action to be undertaken at an industrial [establishments, approved by the department, which may include a description of the locations, types and quantities of hazardous substances and wastes that will remain on the premises; a description of the types and locations of storage vessels, surface impoundments, or secured landfills containing hazardous substances and wastes; recommendations regarding the most practicable method of cleanup; and] establishment, or at any area to which a discharge originating at the industrial establishment is migrating or has migrated; a description of the remedial action to be used to remediate the industrial establishment; a time schedule and cost estimate of the [cleanup plan.] implementation of the remedial action; and any other [1]relevant[1] information the department deems necessary;

[The department, upon a finding that the evaluation of a site for cleanup purposes necessitates additional information, may require graphic and narrative descriptions of geographic and hydrogeologic characteristics of the industrial establishment and evaluation of all residual soil, groundwater, and surface water contamination;

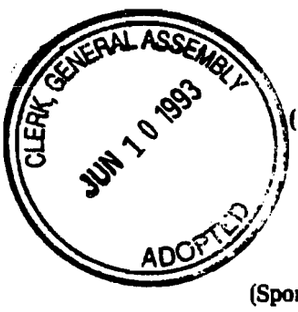
b. "Closing, terminating or transferring operations" means the cessation of all operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes, or any temporary cessation for a period of not less than two years, or any other transaction or proceeding through which an industrial establishment becomes nonoperational for health or safety reasons or undergoes change in ownership, except for corporate reorganization not substantially affecting the ownership of the industrial establishment, including but not limited to sale of stock in the form of a statutory merger or consolidation, sale of the controlling share of the assets, the conveyance of the real property, dissolution of corporate identity, financial reorganization and initiation of bankruptcy proceedings]

"Closing operations" means:

06/09/93 et
001529

Document ID 15/2
EA 0008/01
SR 0133
TR 0

Speaker
Clerk (3)
Majority Leader
Minority Leader
Sponsor of Aa
Sponsor of Bill



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[The department, upon a finding that the evaluation of a site for cleanup purposes necessitates additional information, may require graphic and narrative descriptions of geographic and hydrogeologic characteristics of the industrial establishment and evaluation of all residual soil, groundwater, and surface water contamination;

b. "Closing, terminating or transferring operations" means the cessation of all operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes, or any temporary cessation for a period of not less than two years, or any other transaction or proceeding through which an industrial establishment becomes nonoperational for health or safety reasons or undergoes change in ownership, except for corporate reorganization not substantially affecting the ownership of the industrial establishment, including but not limited to sale of stock in the form of a statutory merger or consolidation, sale of the controlling share of the assets, the conveyance of the real property, dissolution of corporate identity, financial reorganization and initiation of bankruptcy proceedings]

"Closing operations" means:

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

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

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

(4) the initiation of bankruptcy proceedings pursuant to Chapter 7 of the federal Bankruptcy Code, 11 U.S.C. [2][§70100] §701[2] et seq. or the filing of a plan of reorganization that provides for a liquidation pursuant to Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. §1101 et seq.; [1][or][1]

(5) any change in operations of an industrial establishment that changes the industrial establishment's Standard Industrial Classification number to one that is not subject to this act; [1]or

(6) the termination of a lease unless there is no disruption in operations of the industrial establishment, or the assignment of a lease;[1]

"Transferring ownership or operations" means:

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

(2) the sale or transfer of more than 50% of the assets of an industrial establishment within any five year period [1], as measured on a constant, annual date-specific basis[1];

(3) the execution of a lease for a period of 99 years or longer for an industrial establishment; [1]or[1]

(4) [1][the termination of a lease unless renewed without a disruption in operations of the industrial establishment, or the assignment of a lease; or

(5)][1] the dissolution of an entity that is an owner or operator or an indirect owner of an industrial establishment, except for any dissolution of an indirect owner of an industrial establishment whose assets would have been unavailable for the remediation of the industrial establishment if the dissolution had not occurred;

"Change in ownership" means:

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

(2) the sale or transfer of stock in a corporation resulting in a merger or consolidation involving the

direct owner or operator or indirect owner of the industrial establishment;

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

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

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

"Change in ownership" shall not include:

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

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

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

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

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

(6) [1][the execution of a mortgage, the filing of a lien, the granting of a security interest, or the assignment of a lease to secure a loan, or the refinancing of a debt, not including a sale and lease back agreement, by the owner or operator of an industrial establishment;

(7)][1] a transfer to release a contingent or reversionary interest except for any transfer of a lessor's reversionary interest in leased real property;

[1][(8)] (7)[1] a transfer of an industrial establishment by devise or intestate succession;

[1][(9)] (8)[1] the granting or termination of an easement or a license to any portion of an industrial establishment; [1][or

(10)] (9)[1] the sale or transfer of real property pursuant to a condemnation proceeding initiated pursuant to the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.) [1];

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

(11) any transfer of personal property pursuant to a valid security agreement, collateral assignment or other lien, including, but not limited to, seizure or replevin of such personal property which transfer is for the purpose of implementing the secured party's rights in the personal property which is the collateral[1].

[c.] "Department" means the Department of Environmental Protection [1]and Energy[1];

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

[e.] "Hazardous waste" [means any amount of any waste substances required to be reported to the Department of Environmental Protection on the special waste manifest pursuant to N.J.A.C.7:26-7.4, or as otherwise provided by law] shall have the same meaning as provided in section 1 of P.L.1976, c.99 (C.13:1E-38);

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

[g.] "Negative declaration" means a written declaration, submitted by the owner or operator of an industrial establishment [1]or other person assuming responsibility for the remediation under paragraph (3) of subsection b. of section 4 of P.L. 1983, c.330[1] [and approved by the department] to the department, certifying that there has been no discharge of hazardous substances or hazardous wastes on the site, or that any such discharge on the site or discharge that has migrated or is migrating from the site has been [cleaned up] remediated in accordance with procedures approved by the department [, and there remain no hazardous substances or wastes at the site of the industrial establishment] and in accordance with any applicable remediation regulations;

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

"No further action letter" means a written determination by the department that, based upon an evaluation of the historical use of the industrial establishment and the property, or of an area of concern or areas of concern, as applicable, and any other investigation or action the department deems necessary, there are no discharged hazardous substances or hazardous wastes present at the site of the industrial establishment, at the area of concern or areas of concern, or at any other site to which [1][a discharge] discharged hazardous substances or hazardous wastes[1] originating at the industrial establishment [1][has] have[1] migrated, and that any discharged hazardous substances or hazardous wastes present at the industrial establishment or that have migrated from the site have been remediated in accordance with applicable remediation regulations;

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

"Direct owner or operator" means any person that directly owns or operates an industrial establishment [2]. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be a direct owner or operator of the industrial establishment unless or until it loses its exemption under P.L. 1993, c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process[2] ;

"Area of concern" means any [2][existing or former][2] location where hazardous substances or hazardous wastes are or were known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, or disposed, or where hazardous substances or hazardous wastes have or may have migrated;

"Remediation standards" means the combination of numeric and narrative standards to which hazardous

substances or hazardous wastes must be investigated or remediated as established by the department pursuant to section 35 of P.L. , c. (C.)(now before the Legislature as this bill);

"Owner" means any person who owns the real property of an industrial establishment or who owns the industrial establishment [2]. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be an owner of the industrial establishment unless or until it loses its exemption under P.L. 1993, c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process[2];

"Operator" means any person, including users, tenants, [1]or[1] occupants, [1][or trespassers,][1] having and exercising direct actual control of the operations of an industrial establishment [2]. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be an operator of the industrial establishment unless or until it loses its exemption under P.L. 1993, c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process[2];

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether hazardous substances or hazardous wastes are or were present at an industrial establishment or have migrated or are migrating from the industrial establishment, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or [1][potential] latent[1] discharge of any hazardous substance or hazardous waste is required [1]. The evaluation of historic information shall be conducted from [2][1900] 1932[2] to the present, except that the department may require the search for and evaluation of additional information relating to ownership and use of the site prior to [2][1900] 1932[2] if such information is available through diligent inquiry of public records[1];

"Remediation" or "remediate" means all necessary actions to investigate and clean up any known [1][or] ,[1] suspected [1], or threatened[1] discharge of hazardous substances or hazardous wastes, including [1], as necessary,[1] the preliminary assessment, site investigation, remedial investigation, and remedial action;

"Remedial action" means those actions taken at an industrial establishment or offsite of an industrial establishment if hazardous substances or hazardous wastes have migrated or are migrating therefrom, as may be required by the department [1][, including] to protect public health, safety, and the environment. These actions may include[1] the removal, treatment, containment, transportation, securing, or other engineering [1][or treatment][1] measures, whether of a permanent nature or

otherwise, designed to ensure that any discharged hazardous substances or hazardous wastes at the site or that have migrated or are migrating from the site, are remediated in compliance with the applicable remediation standards;

"Remedial investigation" means a process to determine the nature and extent of a discharge of hazardous substances or hazardous wastes at an industrial establishment or a discharge of hazardous substances or hazardous wastes that have migrated or are migrating from the site and the problems presented by a discharge, and may include data [2][collected] collection[2], site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the evaluation of [1][remediated alternatives] remedial actions if necessary[1];

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

(cf: P.L.1983, c.330, s.3)

REPLACE SECTION 4 TO READ:

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

4. [a. The owner or operator of an industrial establishment planning to close operations shall:

(1) Notify the department in writing, no more than five days subsequent to public release, of its decision to close operations;

(2) Upon closing operations, or 60 days subsequent to public release of its decision to close or transfer operations, whichever is later, the owner or operator shall submit a negative declaration or a copy of a cleanup plan to the department for approval and a surety bond or other financial security for approval by the department guaranteeing performance of the cleanup in an amount equal to the cost estimate for the cleanup plan.

b. The owner or operator of an industrial establishment planning to sell or transfer operations shall:

(1) Notify the department in writing within five days of the execution of an agreement of sale or any option to purchase;

(2) Submit within 60 days prior to transfer of title a negative declaration to the department for approval, or within 60 days prior to transfer of title, attach a copy of any cleanup plan to the contract or agreement of sale or any option to purchase which may be entered into with respect to the transfer of operations. In the event that any sale or transfer agreements or options have been executed prior to the submission of the plan to the department, the cleanup plan shall be transmitted, by certified mail, prior to the transfer of operations, to

all parties to any transaction concerning the transfer of operations, including purchasers, bankruptcy trustees, mortgagees, sureties, and financiers;

(3) Obtain, upon approval of the cleanup plan by the department, a surety bond or other financial security approved by the department guaranteeing performance of the cleanup plan in an amount equal to the cost estimate for the cleanup plan.

c. The cleanup plan and detoxification of the site shall be implemented by the owner or operator, provided that the purchaser, transferee, mortgagee or other party to the transfer may assume that responsibility pursuant to the provisions of this act.]

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

b. (1) Subsequent to the submittal of the notice required pursuant to subsection a. of this section, the owner or operator of an industrial establishment shall, except as otherwise provided by P.L.1983, c.330 or P.L. , c. (C.)(now before the Legislature as this bill), remediate the industrial establishment. The remediation shall be conducted in accordance with criteria, procedures, and time schedules established by the department.

(2) The owner or operator shall attach a copy of any approved negative declaration, approved remedial action workplan, [1]no further action letter,[1] or remediation agreement approval to the contract or agreement of sale or agreement to transfer or any option to purchase which may be entered into with respect to the transfer of ownership or operations. In the event that any sale or transfer agreements or options have been executed prior to the approval of a negative declaration, remedial action workplan, [1]no further action letter,[1] or

remediation agreement, these documents, as relevant, shall be transmitted by the owner or operator, by certified mail, [1]overnight delivery, or personal service,[1] prior to the transfer of ownership or operations, to all parties to any transaction concerning the transfer of ownership or operations, including purchasers, bankruptcy trustees, mortgagees, sureties, and financiers.

(3) The preliminary assessment, site investigation, remedial investigation, [1][remedial action workplan,][1] and remedial action for the industrial establishment shall be performed and implemented by the owner or operator of the industrial establishment, except that any other party may assume that responsibility pursuant to the provisions of P.L.1983, c.330.

c. The owner or operator of an industrial establishment shall, subsequent to closing operations, or of its public release of its decision to close operations, or prior to transferring ownership or operations except as otherwise provided in subsection e. of this section, as applicable, submit to the department for approval a proposed negative declaration or proposed remedial action workplan. Except as otherwise provided in [2]section 6 of P.L. 1983, c. 330 (C.13:1K-11), and[2] sections [2][1]11[1][2], 13, [1][14,][1] 16, 17 and 18 of P.L. , c. (C.)(now before the Legislature as this bill), the owner or operator of an industrial establishment shall not transfer ownership or operations until a negative declaration or a remedial action workplan has been approved by the department or the conditions of subsection e. of this section for remediation agreements have been met and until, in cases where a remedial action workplan is required to be approved or a remediation agreement has been approved, a remediation funding source, as required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill), has been established.

d. (1) Upon the submission of the results of either the preliminary assessment, site investigation, [2][or][2] remedial investigation, [2]or remedial action, where applicable,[2] which demonstrate that there are no discharged hazardous substances or hazardous wastes at the industrial establishment, or that have migrated from or are migrating from the industrial establishment, in violation of the applicable remediation standards, the owner or operator may submit to the department for approval a proposed negative declaration as provided in subsection c. of this section.

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

e. The owner or operator of an industrial establishment [1],[1] who has submitted a notice to the department pursuant to subsection a. of this section , may transfer ownership or operations of the industrial establishment prior to the approval of a negative declaration or remedial action workplan upon application to and approval by the department of a remediation agreement. The owner or operator requesting a remediation agreement shall submit the following documents: (1) an [1][estimation] estimate[1] of the cost of the remediation that is approved by the department; (2) a certification of the statutory liability of the owner or operator pursuant to P.L.1983, c.330 to perform and to complete a remediation of the industrial establishment in the manner and time limits provided by the department in regulation and consistent with all applicable laws and regulations; however, nothing in this paragraph shall be construed to be an admission of liability, or to impose liability on the owner or operator, pursuant to P.L. 1976, c. 141 [1](C.58:10-23.11 et seq.)[1] or pursuant to any other statute or common law; (3) evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with the provisions of section 25 of P.L. , c. (C.)(now before the Legislature as this bill); (4) a certification that the owner or operator is subject to the provisions of P.L.1983, c.330, including the liability for penalties for violating the act, defenses to liability and limitations thereon, the requirement to perform a remediation as required by the department, allowing the department access to the industrial establishment as provided in section 5 of P.L.1983, c.330 (C.13:1K-10), and the requirement to prepare and submit any document required by the department relevant to the remediation of the industrial establishment; and (5) evidence of the payment of all applicable fees required by the department.

The department may require in the remediation agreement [1][,][1] that all plans for and results of the preliminary assessment, site investigation, remedial investigation, and [1]the implementation of the[1] remedial action workplan [1][and the implementation thereof][1] , prepared or initiated subsequent to the transfer of ownership or operations, be submitted to the department, for review purposes only, at the completion of each phase of the remediation.

The department shall adopt regulations establishing the manner in which the documents required pursuant to paragraphs (1) through (5), inclusive, of this subsection shall be submitted. The department shall approve the application for the remediation agreement upon the complete and accurate submission of the documents required to be submitted pursuant to this subsection. The regulations shall include a sample form of the certifications. Approval of a remediation agreement shall not affect an owner's or [1][operator] operator's[1] right to avail itself of the provisions of section 6 of P.L.1983, c.330 (C.13:1K-11), of sections 12, 13, 14, 15, 16, 17, or 18 of P.L. , c. (C.)(now before the

Legislature as this bill), or of the other provisions of this section.

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

g. 1[(1)]1 2(1)2 The soil remediation standard to be implemented on an industrial establishment shall be selected in conformance with the policies and criteria enumerated in section 35 of P.L. , c. (C.)(now before the Legislature as this bill).

(2) 1[The owner or operator proposing to implement the nonresidential use soil remediation standards shall review and consider for implementation, at a minimum, each relevant remedial action that is set forth in the guidance document published pursuant to section 38 of P.L. , c. (C.)(now before the Legislature as this bill).

(3)]1 The department may not disapprove the use of the minimum nonresidential soil remediation standards adopted by the department except upon a finding that the use of 2[a] the2 nonresidential soil remediation standards at that site would not be protective of public health, safety, or the environment or except as provided in subsection 1[j.] i.1 of this section.

h. An owner or operator of an industrial establishment may implement a soil remedial action at an industrial establishment without prior department approval of the remedial action workplan for the remediation of soil when the remedial action can reasonably be expected to be completed pursuant to standards, criteria, and time schedules established by the department 1[within] , which schedules shall not exceed1 five years 1[of] from1 the commencement of the implementation of the remedial action and if 1[:

(1) the owner or operator is transferring ownership or operations of the industrial establishment and the soil remediation meets the established minimum residential or nonresidential use soil remediation standards adopted by the department; or

(2) the owner or operator is closing operations of the industrial establishment and the soil remediation meets the established minimum residential use soil remediation standards adopted by the department] the owner or operator is implementing a soil remediation which meets the established minimum residential or nonresidential use soil remediation standards adopted by the department1.

Nothing in this subsection shall be construed to authorize the closing of operations or the transfer of ownership or operations of an industrial establishment without the department's approval of a negative

declaration, a remedial action workplan or a remediation agreement.

i. An owner or operator of an industrial establishment [1][proposing to implement soil remediation of an industrial establishment shall submit a proposed remedial action workplan for the remediation of soil to the department for its prior review and approval if:

(1) the remedial action cannot reasonably be expected to be completed pursuant to standards, criteria, and time schedules established by the department within five years of the commencement of the implementation of the remediation action;

(2) the owner or operator of the industrial establishment is closing operations and the remediation will meet the established minimum nonresidential use soil remediation standards; or

(3) the soil remediation does not meet either the established minimum residential or nonresidential use soil remediation standards adopted by the department] shall base [2][its] his[2] decision to use the nonresidential use soil remediation standards for the industrial establishment upon the criteria listed below, as applicable:

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

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

(3) The transferee of the industrial establishment has agreed to the implementation of the nonresidential use soil remediation [2][standard] standards[2] ;

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

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

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

The department shall, within 18 months of the effective date of [2][this amendatory and supplementary act,] P.L. , c. (C.)(now before the Legislature as this bill),[2] promulgate regulations to clearly define how the department will evaluate the application of the criteria enumerated in paragraphs (1) through (6) of this subsection; provided, however, that notwithstanding the preceding requirement, [2]the[2] criteria [2]enumerated in paragraphs[2] (1) through (4) and [2]in paragraph[2] (6) shall become immediately operative. Until the department promulgates those regulations, it shall impose reasonable standards and requirements upon any owner or operator deciding to use nonresidential use soil remediation standards pursuant to this subsection. Furthermore, the department shall not impose any requirement or standard with regard to [2]the[2] criterion [2]enumerated in paragraph[2] (5) that would require an owner or operator to implement residential use soil remediation standards unless the cost difference between implementing the residential standards and the nonresidential standards is a de

2[minimus] minimis2 amount. For the purposes of the preceding, de 2[minimus] minimis2 shall mean a cost difference not exceeding 10 percent of the cost of implementing the nonresidential standards.

At any time after the effective date of 2[this amendatory and supplementary act] P.L. , c. (now before the Legislature as this bill)2, an owner or operator may request the department to provide a determination as to whether a proposed remedial action is consistent with the criteria set forth above in paragraphs (1) through (6). The department shall provide any such determination within 30 calendar days of the department's receipt of the request1.

j. 1[The department shall review and approve or disapprove the proposed remedial action workplan required to be submitted pursuant to subsection i. of this section to determine if the proposed remedial action workplan is in compliance with the rules and regulations regarding remediation and, if applicable, that the use of the nonresidential use soil remediation standards are appropriate for the industrial establishment. The department shall base its decision to approve or disapprove the use of nonresidential use soil remediation standards for the industrial establishment upon the criteria listed below, as applicable.

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

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

(3) The transferee of the industrial establishment agrees to the implementation of the nonresidential use soil remediation standard;

(4) The potential for the hazardous substances or hazardous wastes to affect other property; and

(5) The difference in cost between the use of the residential use soil remediation standards and the nonresidential use soil remediation standards] An owner or operator proposing to implement a 2soil2 remedial action other than one which is set forth in subsection h. of this section must receive department approval prior to implementation of the remedial action1.

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

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

Upon receipt of a complete and accurate submission, the department shall review and approve or disapprove the submission in accordance with the review schedules established pursuant to section 2 of P.L.1991, c.423 (C.13:1D-106). The owner or operator shall not be required to wait for a response by the department before

continuing remediation activities, except as otherwise provided in this section. Upon completion of the remediation, the plans for and results of the preliminary assessment, site investigation, remedial investigation, remedial action workplan, and remedial action and any other information required to be submitted as provided in section 35 of P.L. c. (C.)(now before the Legislature as this bill), that has not previously been submitted to the department, shall be submitted to the department for its review and approval.

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

The department may review and approve or disapprove every remedial action workplan, no matter when submitted, to determine, in accordance with the criteria listed in subsection g. of section 35 of P.L. , c. (C.)(now before the Legislature as this bill) if the remedial action that has occurred or that will occur is appropriate to meet the [1][established] applicable[1] remediation standards.

The department may order additional remediation activities at the industrial establishment, or offsite where necessary, or may require the submission of additional information, where (a) the department determines that the remediation activities undertaken were not in compliance with [1]the[1] applicable rules or regulations of the department; (b) all documents required to be submitted to the department were not submitted or, if submitted, were inaccurate, or deficient; or (c) [2][if][2] discharged hazardous substances or hazardous wastes remain at the industrial establishment, or have migrated or are migrating offsite, at levels or concentrations in violation of the applicable remediation standards. Upon a finding by the department that the remediation conducted at the industrial establishment was in compliance with all applicable regulations, that no hazardous substances or hazardous wastes remain at the industrial establishment in violation of the applicable remediation standards, and that all hazardous substances or hazardous wastes that migrated from the industrial establishment have been remediated in conformance with the applicable remediation standards, the department shall approve the remediation for that industrial establishment by the issuance of a no further action letter.

(cf: P.L.1983, c.330, s.4)

REPLACE SECTION 8 TO READ:

8. (New section) Upon the submission of the complete and accurate results of a phase of the remediation pursuant to section 4 of P.L. [2][1993] 1983[2] , c.330 [1][(C.13:1K-7)] (C.13:1K-9)[1] or of any other document required to be submitted that requires the department's review and approval in order to comply with P.L.1983, c.330, the department shall review and approve, approve with conditions, or disapprove the submission or other

documents in accordance with the review schedules established pursuant to section 2 of P.L.1991, c.423 (C.13:1D-106).

REPLACE SECTION 9 TO READ:

9. (New section) The owner or operator of an industrial establishment may, upon submission of a written notice to the department, transfer ownership or operations or close operations without complying with the provisions of section 4 of P.L.1983, c.330 (C.13:1K-9) if the total quantity of hazardous substances and hazardous wastes generated, manufactured, refined, transported, treated, stored, handled, or disposed of at the industrial establishment at any one time during the 1[owner] owner's1 or operator's period of ownership or operations 1:

(a)1 does not exceed 500 pounds or 55 gallons 1[, or,] ;1

1(b)1 if a hazardous substance or hazardous waste is mixed with nonhazardous substances, the total quantity 2[of] in2 the mixture does not exceed 500 pounds or 55 gallons 1; or

(c) if, in the aggregate, hydraulic or lubricating oil, does not exceed 220 gallons1.

REPLACE SECTION 10 TO READ:

10. Section 5 of P.L.1983, c.330 (C.13:1K-10) is amended to read as follows:

5. a. The department shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing: [minimum standards for soil, groundwater and surface water quality necessary for the detoxification of the site of an industrial establishment, including buildings and equipment, to ensure that the potential for harm to public health and safety is minimized to the maximum extent practicable, taking into consideration the location of the site and surrounding ambient conditions;] (1) criteria and minimum standards necessary for the submission, evaluation and approval of [cleanup plans;] plans or results of preliminary assessments, site investigations, remedial investigations, and remedial action workplans and for the implementation thereof. The documents for the preliminary assessment, site investigation, remedial investigation, and remedial action workplan required to be submitted for a remediation 1[,]1 shall not be 1[based on] identical to1 the 1[same]1 criteria and standards used for similar 1[or identical]1 documents submitted pursuant to federal law 1,1 except as may be required by federal law. In establishing criteria and minimum standards for these terms 1,1 the department shall strive to avoid duplicate or unnecessarily costly or time consuming conditions or standards; (2) a fee schedule, as necessary, reflecting the actual costs associated with the review of plans for or results of negative declarations, preliminary assessments, site investigations, remedial investigations, and [cleanup plans] remedial 1[action workplans] actions1 , and review

of the implementation thereof and for any other review or approval required by the department; (3) standards and procedures for remediation agreements authorized pursuant to subsection 2[d.] e.2 of section 4 of P.L.1983, c.330 (C.13:1K-9); and (4) any other provisions or procedures necessary to implement this act. [Until the minimum standards described herein are adopted, the department shall review, approve or disapprove negative declarations and cleanup plans on a case by case basis.]

b. [The department shall, within 45 days of submission, approve the negative declaration, or inform the industrial establishment that a cleanup plan shall be submitted.

c. The department shall, in accordance with the schedule contained in an approved cleanup plan, inspect the premises to determine conformance with the minimum standards for soil, groundwater and surface water quality and shall certify that the cleanup plan remedial action workplan has been executed and that the site has been detoxified.] The owner or operator shall allow the department reasonable access to the industrial establishment and to offsite areas under the owner's or operator's control to inspect the premises, review records, and to take soil, groundwater, or other samples or measurements as deemed necessary by the department to verify the results of any submission made to the department and to verify the owner's or operator's compliance with the requirements of this act.
(cf: P.L.1983, c.330, s.5)

REPLACE SECTION 11 TO READ:

11. Section 6 of P.L.1983, c.330 (C.13:1K-11) is amended to read as follows:

6. a. [The provisions of any law, rule or regulation to the contrary notwithstanding, the transferring of an industrial establishment is contingent on the implementation of the provisions of this act.

b. If the premises of] The owner or operator of an industrial establishment planning to transfer ownership or operations may apply to the department for a deferral of the preparation, approval, and implementation of a remedial action workplan for the industrial establishment. The applicant shall submit to the department:

(1) a certification signed by the purchaser, transferee, mortgagee or other party to the transfer, approved by the department, that the industrial establishment would be subject to substantially the same use by the purchaser, transferee, mortgagee or other party to the transfer[, and upon written certification thereto and approval by the department thereof, the implementation of a cleanup plan and the detoxification of the site] ;

(2) a certification, approved by the department, that the owner or operator has satisfactorily completed a preliminary assessment, site investigation, and remedial investigation 1[,]1 of the industrial establishment;

(3) a cost estimate for the remedial action necessary at the industrial establishment, approved by the

department [1]based upon the information collected in the preliminary assessment, site investigation, and remedial investigation and developed in accordance with department regulations[1]; and

(4) a certification, approved by the department, that the purchaser, transferee, mortgagee or other party to the transfer [1][,][1] has the financial ability to pay for the implementation of the necessary remedial action.

The preparation, approval, and implementation of a remedial action workplan for the industrial establishment may be deferred [2]for that transfer[2] until the use changes or until the purchaser, transferee, mortgagee or other party to the transfer closes[, terminates or transfers] operations [1][or transfers ownership or operations][1].

[(1) Within 60 days of receiving notice of the sale or realty transfer and the certification that the industrial establishment would be subject to substantially the same use, the department shall approve, conditionally approve, or deny the certification.

(2) Upon approval of the certification, the implementation of a cleanup plan and detoxification of the site shall be deferred.

(3) Upon denial of the certification, the cleanup plan and detoxification of the site shall be implemented pursuant to the provisions of this act.

c.] b. Upon [1][satisfactory][1] submission of a complete and accurate application, the department shall approve the deferral. Upon approval of the deferral, the preparation, approval, and implementation of remedial action workplan at the industrial establishment shall be deferred. [1][The deferral shall be denied by the department if a complete and accurate application is not submitted to the department or if the department fails to approve any of the components of the application. Upon denial of the deferral, the remediation of the industrial establishment shall be continued pursuant to the provisions of this act.][1]

c. The authority to defer [implementation of the cleanup plan] the preparation, approval, and implementation of a remedial action workplan set forth in [2][subsection [b.] a. of][2] this section shall not be construed to limit, restrict, or prohibit the department from directing site [cleanup] remediation under any other statute, rule, or regulation, but shall be solely applicable to the obligations of the owner or operator of an industrial establishment, pursuant to the provisions of this act, nor shall any other provisions of this act be construed to limit, restrict, or prohibit the department from directing site [cleanup] remediation under any other statute, rule, or regulation.

[1]For the purposes of this section, substantially the same use means that the industrial establishment shall retain the same three digit Industry Group Number, as designated in the Standard Industrial Classifications Manual prepared by the federal Office of Management and Budget in the Executive Office of the President of the United States. In a manner and form, and in accordance with the specific criteria prescribed by the department, an applicant may petition for a finding by the department

that the affected industrial establishment be deemed subject to substantially the same use based upon its retention of the same two digit Major Group Number, as designated in the Standard Industrial Classifications Manual.[1]
(cf: P.L.1983, c.330, s.6)

REPLACE SECTION 13 TO READ:

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

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

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department [1]or the [2][federal] United States[2] Environmental Protection Agency, pursuant to the [2][federal][2] "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act [2]of 1980[2]," 42 U.S.C. §9601 et seq.,[1] [2]or any other law,[2] has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment [1][,] that are[1] consistent with current regulations established by the department [1][,][1] in order to identify areas of concern that are new or have continued in use since the issuance of a no further action letter, negative declaration approval, or remediation approval as described in paragraph (2) of this subsection, and [1][that] ,[1] based on those remediation activities [1][the owner or operator certifies] ,[1] that there has been no discharge of a hazardous substance or hazardous waste at the industrial establishment subsequent to the approval of the negative declaration, the issuance of the no further action letter, or the equivalent remediation; or, if any discharge has occurred, a certification listing any discharge, describing the action taken to remediate the discharge, a certification that the remediation was performed in accordance with procedures established by the department, a certification that the remediation was approved by the department and a copy of the document evidencing the departmental approval;

(4) a certification that for any underground storage tank covered by the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), an approved method of secondary

containment or a monitoring system as required by P.L.1986, c.102, has been installed;

(5) a copy of the [1]most recent[1] negative declaration, or no further action letter, or other approval [1],[1] as applicable, [1][last][1] approved by the department for the entire industrial establishment; and

(6) a proposed negative declaration.

b. Upon the submission of a complete and accurate application and after an inspection, if necessary, the department shall approve or disapprove the negative declaration. The department shall approve the negative declaration upon a finding that the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the proposed negative declaration by the department pursuant to this section, the owner or operator shall comply with the provisions of section 4 of P.L.1983, c.330.

REPLACE SECTION 14 TO READ:

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

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

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department [1]or the [2][federal] United States[2] Environmental Protection Agency, pursuant to the [2][federal "resource] "Resource[2] Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act [2]of 1980[2]," 42 U.S.C. §9601 et seq.,[1] [2]or any other law,[2] has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment [1][,] that are[1] consistent with current regulations established by the department [1][,][1] in order to identify areas of concern and [1][that] [1] based on those remediation activities [1][the owner or operator certifies] [1] that subsequent to the issuance of the negative declaration, no further action letter or remediation approval described in paragraph (2) of this subsection, a discharge has occurred at the industrial establishment that was not remediated in accordance with the procedures established by the department or that any remediation performed has not been approved by the department and that no other discharge of a hazardous

substance or hazardous waste has occurred at the industrial establishment;

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

(5) a copy of the [1]most recent[1] negative declaration, no further action letter, or other approval, as applicable, [1][last][1] approved by the department for the industrial establishment; and

(6) a proposed negative declaration, if applicable.

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

(1) approve the negative declaration upon a finding that any discharge of a hazardous substance or hazardous waste, as certified to pursuant to paragraph (3) of subsection a. of this section, has been remediated consistent with the applicable remediation standards as established by the department; or

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

c. The owner or operator of an industrial establishment subject to the provisions of this section shall not close operations or transfer ownership or operations until a remedial action workplan, or a negative declaration, as applicable, has been approved by the department or upon approval of a remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330.

REPLACE SECTION 15 TO READ:

15. (New section) a. The owner or operator of an industrial establishment who is required to perform a remediation at an industrial establishment pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) [1][,][1] may apply to the department for an area of concern waiver. Approval of the area of concern waiver shall relieve the owner or operator of the requirement to perform a remediation pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) for any area of concern at that industrial establishment for which a remediation has previously been conducted and approved by the department. An application pursuant to this subsection shall include:

(1) a certification that the department [1]or the [2][federal] United States[2] Environmental Protection Agency, pursuant to the [2][federal][2] "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act [2]of 1980[2]," 42 U.S.C. §9601 et seq.,[1] [2]or any other law,[2] has previously approved a remediation at an area of concern and has

issued a no further action letter or an equivalent approval of a remediation for that area of concern [1][,] ;[1]

(2) a copy of the [1]most recent[1] no further action letter or equivalent approval for that area of concern, [1][last][1] approved by the department [1][,] ;1 and

(3) a certification that the owner or operator has performed remediation activities at that area of concern [1][,] that are[1] consistent with current regulations established by the department, and [1][that][1] based on those remediation activities [1][the owner or operator certifies] ,[1] that subsequent to the issuance of the no further action letter or equivalent approval described in paragraph (1) of this subsection, there has been no discharge of a hazardous substance or hazardcus waste at that area of concern.

b. Upon submission of a complete and accurate application and after an inspection, if necessary, the department shall approve the application for an area of concern waiver upon a finding that the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the application by the department pursuant to this section, the owner or operator shall perform a remediation of the subject area of concern as may be required pursuant to subsection b. of section 4 of P.L.1983, c.330.

REPLACE SECTION 16 TO READ:

16. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 (C.13:1K-9), if the industrial establishment is already in the process of a remediation pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) or a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330 [1], including a cleanup being performed under the [2][federal][2] "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act [2]of 1980[2]," 42 U.S.C. §9601 et seq.[1]. The application shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330 [1][,] ;[1]

(2) a certification that there has been no discharge of any hazardous substance or hazardous waste at the industrial establishment during the applicant's period of operation or ownership or that the remediation of any discharge of a hazardous substance or hazardous waste that [1][occured] occurred[1] during the applicant's period of ownership or operation was approved by the department [1][,] ;[1]

(3) a certification by the owner or operator that a remediation funding source for the cost of the remediation or the implementation of the remediation of the remedial action workplan at the industrial establishment has been established as required pursuant to section 25 of P.L.

, c. (C.)(now before the Legislature as this bill) 1[,] ;1 and

(4) a certification, as applicable, that any transferee of the industrial establishment has been notified that the industrial establishment is the subject of a remediation.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, that the applicant may close operations or transfer ownership or operations of the industrial establishment.

REPLACE SECTION 18 TO READ:

18. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or without the approval of a remediation agreement as provided in subsection 1[d.] e.1 of section 4 of P.L.1983, c.330 if the discharge of hazardous substances or hazardous wastes at the industrial establishment is of minimal environmental concern. Upon the completion of a preliminary assessment, site investigation, and remedial investigation for the industrial establishment, conducted pursuant to subsection b. of section 4 of P.L.1983, c.330, any owner or operator may submit to the department an application for a determination that the discharge at an industrial establishment is of minimal environmental concern, which application shall include:

(1) a certification, supported by the submission of data from the preliminary assessment, site investigation, and remedial investigation, that there are no more than two areas of concern at the industrial establishment that are contaminated at levels above the applicable remediation standards, and that remedial action at those areas of concern can be completed pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(2) a certification that a remedial action workplan shall be prepared pursuant to standards and criteria established by the department and that 2[in the case of a closure the remediation will meet the residential use soil remediation standards and that in the case of a transfer of ownership or operations]2 the remediation will meet either the nonresidential use or residential use soil remediation standards 2and the applicable surface water and groundwater remediation standards2;

(3) a certification that the remediation workplan will be prepared and implemented pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(4) evidence that the remediation funding source required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) has been established 1[or if all or part of the remediation funding source is to be established by a grant or loan

from the remediation fund pursuant to section 27 and 28 of P.L. , c. (C.)(now before the Legislature as this bill), evidence that an application has been made for that loan or grant and that there is a reasonable expectation that the loan or grant will be awarded][1] ;

(5) the payment of all fees or surcharges related to the remediation imposed pursuant to P.L.1983, c.330, P.L. , c. (C.)(now before the Legislature as this bill), and section 33 of P.L. , c. (C.) (now before the Legislature as this bill), and any rules or regulations adopted pursuant thereto; and

(6) documentation establishing that the discharged hazardous substances or hazardous wastes at the industrial establishment do not pose a threat to human health because of the proximity of an area of concern to a drinking water source or because of the location, complexity, or the nature of the discharge.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall approve the application for a determination that the discharge at an industrial establishment is of minimal environmental concern. Prior to making a finding upon the application pursuant to this section, the department may inspect the industrial establishment, as necessary, to verify the information in the application. The decision of the department shall be made within 30 days of the submission of a complete application. In determining the amount of time necessary to complete the remedial action, the department shall not include that time in which it takes the department to issue a permit for a discharge to surface water pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.).

c. The owner or operator shall, upon the completion of the remedial action at the subject areas of concern, certify to the department that the remedial action workplan has been implemented in accordance with the standards and criteria established by the department and in compliance with the certifications made pursuant to this section. The certification shall include a copy of the remedial action workplan and the results of all sampling analysis and any tests performed as part of the remedial action. Within 45 days of receipt of the certification, the department shall issue a no further action letter to the owner or operator. The department may perform an inspection of the industrial establishment or any area offsite that is under the owner's or operator's control, as relevant, prior to issuing the no further action letter.

The department may refuse to issue the no further action letter pursuant to this section only upon a finding that hazardous substances or hazardous wastes remain at the relevant areas of concern at levels or concentrations in excess of the applicable remediation standards.

d. Upon the failure of an owner or operator to complete the implementation of a remedial action workplan within the six month period as provided in subsection a. of this section, the owner or operator shall so notify the department in writing and [1]provide[1] the reasons

therefor. The owner or operator shall have no more than 120 additional days to complete the implementation of the remedial action. If the implementation of the remedial action is not completed within this additional time, the department may rescind its determination that the industrial establishment is of minimal environmental concern and may require that a new remedial action workplan be submitted and implemented by the owner or operator in a manner and under the terms and conditions provided in its general regulations for remedial action workplan submissions and implementation.

REPLACE SECTION 19 TO READ:

19. (New section) a. The owner of an industrial establishment may transfer a portion of the real property on which an industrial establishment is situated without conducting a remediation of the entire industrial establishment pursuant to the provisions of P.L.1983, c.330, if, upon application by the owner, the department issues a certificate of limited conveyance [1]pursuant to subsections b. through e. of this section, or if the owner transfers the portion of real property in accordance with the provisions of subsection f. of this section[1].

b. An application for a certificate of limited conveyance shall be in the form of a certification by the owner which shall include a description of the real property to be transferred, an appraisal of the real property to be transferred, the sale price or market value of the real property to be transferred, an appraisal of the entire industrial establishment, and an appraisal of the remaining property if the certificate of limited conveyance were issued, as well as any other information the department deems necessary to make the findings required in subsection c. of this section.

c. The department shall issue a certificate of limited conveyance for a portion of the real property on which an industrial establishment is situated after the submission of a complete and accurate application and upon a finding that the sales price or market value of the real property to be conveyed, together with any additional diminution in value to the remaining property as a result of the conveyance is not more than one third of the total appraised value of the industrial establishment prior to the transfer, and that the remaining real property is an industrial establishment subject to the provisions of P.L.1983, c.330. The appraisals shall be made no more than one year prior to the submission of application for a certificate of limited conveyance. Conveyances made pursuant to this section shall not exceed one third of the value of the industrial establishment during the period of ownership of the applicant.

d. Upon issuance of the certificate of limited conveyance, the owner or operator shall, prior to the conveyance, comply with the provisions of section 4 of P.L.1983, c.330 for that portion of the real property certified for conveyance. The remediation that may be required on the real property subject to the certificate of limited conveyance shall include any hazardous

substances or hazardous wastes that are migrating from the remaining portion of the industrial establishment onto the real property being conveyed. The remaining portion of the industrial establishment, upon the subsequent closing [1[,]1] of operations or transferring of ownership or operations [1,1] shall be subject to the provisions of P.L.1983, c.330 and [2[this act] P.L. , c. (C.)(now before the Legislature as this bill)2] .

e. A certificate of limited conveyance shall be valid for three years from the date of issuance.

[1f. An owner, either as part of or subsequent to a conveyance made in accordance with subsections b. through e. of this section, may transfer additional portions of the real property of the industrial establishment in excess of the conveyance limitation set forth in subsection c. of this section; provided, however, that the additional portions proposed for transfer do not constitute a closing of operations or transferring of ownership or operations, subject to section 4 of P.L. 1983, c.330.

The amount paid for the additional portion of real property, or any part thereof, which exceeds the permissible conveyance limitation under subsection c. of this section shall be used exclusively for the purposes of remediating that parcel of real property in accordance with the provisions of subsection d. of this section; provided, however, if any portion of that amount shall remain unexpended for the remediation of the parcel, that unexpended amount shall be deposited in a remediation trust fund as provided in subsection g. of this section.

g. To provide for the subsequent remediation of that portion of the real property of an industrial establishment which was not transferred pursuant to subsection f. of this section, the owner shall establish a remediation trust fund in accordance with subsection c. of section 25 of P.L. , c. (C.)(now pending before the Legislature as this bill) and [2[to] shall2] deposit any unexpended amounts, as provided in subsection f. of this section, into that fund.1]

REPLACE SECTION 23 TO READ:

23. (New section) As used in sections 23 through 43 of P.L. , c. (C.)(now before the Legislature as this bill):

"Area of concern" means any [2[existing or former]2] location where contaminants are or were known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, or disposed, or where contaminants have or may have migrated;

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

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

"Department" means the Department of Environmental Protection [1]and Energy[1];

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

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

[1]"Financial assistance" means loans [2][,] or[2] loan guarantees [2][, bonds and such other funding mechanisms as may be established by the authority][2] ;[1]

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

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

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether contaminants are or were present at a site or have migrated or are migrating from a site, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or [1][potential] latent[1] discharge of any contaminant is required [1]. The evaluation of historic information shall be conducted from [2][1900] 1932[2] to the present, except that the department may require the search for and evaluation of additional information relating to ownership and use of the site prior to [2][1900] 1932[2] if such information is available through diligent inquiry of the public records[1];

"Remedial action" means those actions taken at a site or offsite if a contaminant has migrated or is migrating therefrom, as may be required by the department, including the removal, treatment, containment, transportation securing, or other engineering or treatment measures, whether of a permanent nature or

otherwise, designed to ensure that any discharged contaminant at the site or that have migrated or are migrating from the site, is remediated in compliance with the applicable remediation standards;

"Remedial investigation" means a process to determine the nature and extent of a discharge of a contaminant at a site or a discharge of a contaminant that has migrated or is migrating from the site and the problems presented by a discharge, and may include data collected, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the 1[valuation] evaluation1 of 1[remediated alternatives] remedial actions if necessary1;

"Remediation" or "remediate" means all necessary actions to investigate and clean up any known 1[or] ,1 suspected 1, or threatened1 discharge of contaminants, including 1, as necessary,1 the preliminary assessment, site investigation, remedial investigation, and remedial action;

"Site investigation" means the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site or has migrated or is migrating from the site at levels in excess of the applicable remediation standards. A site investigation shall be developed based upon the information collected pursuant to the preliminary assessment.

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

"Remediation fund" means the Hazardous Discharge Site Remediation Fund established pursuant to section 26 of P.L. , c. (C.)(now before the Legislature as this bill);

"Remediation funding source" means the methods of financing the remediation of a discharge required to be established by a person performing the remediation pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill).

"Remediation standards" means the combination of numeric and narrative standards to which contaminants must be remediated for soil, groundwater, or surface water as provided by the department pursuant to section 35 of P.L. , c. (C.)(now before the Legislature as this bill).

REPLACE SECTION 25 TO READ:

25. (New section) a. The owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), or a discharger or person in any way responsible for a hazardous substance who has been issued a directive or an order by a State agency, who has entered into an administrative consent order

with a State agency, or who has been ordered by a court to clean up and remove a hazardous substance or hazardous waste discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall [1][,][1] establish and maintain a remediation funding source in the amount necessary to pay the estimated cost of the required remediation. A person who voluntarily undertakes a remediation pursuant to a memorandum of agreement with the department, or without the department's oversight, is not required to establish or maintain a remediation funding source. A person required to establish a remediation funding source pursuant to this section shall provide to the department satisfactory documentation that the requirement has been met.

The remediation funding source shall be established in an amount equal to or greater than the cost estimate of the implementation of the remediation (1) as approved by the department, (2) as provided in an administrative consent order or remediation agreement as required pursuant to subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330, (3) as stated in a departmental order or directive, or (4) as agreed to by a court, and shall be in effect for a term not less than the actual time necessary to perform the remediation at the site. Whenever the remediation cost estimate increases, the person required to establish the remediation funding source shall cause the amount of the remediation funding source to be increased to an amount at least equal to the new estimate. Whenever the remediation or cost estimate decreases, the person required to obtain the remediation funding source may file a written request to the department to decrease the amount in the remediation funding source. The remediation funding source may be decreased to the amount of the new estimate upon written approval by the department delivered to the person who established the remediation funding source and to the trustee or the person or institution providing the remediation trust [2], the environmental insurance policy,[2] or the line of credit, as applicable. The department shall approve the request upon a finding that the remediation cost estimate decreased [1]by the requested amount[1].

b. The person responsible for performing the remediation and who established the remediation funding source may use the remediation funding source to pay for the actual cost of the remediation. The department may not require any other financial assurance by the person responsible for performing the remediation other than that required in this section. In the case of a remediation performed pursuant to P.L.1983, c.330, the remediation funding source shall be established no more than 14 days after the approval by the department of a remedial action workplan or upon approval of a remediation agreement pursuant to subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 (C.13:1K-9) [1], unless the department approves an extension[1]. In the case of a remediation performed pursuant to P.L.1976, c.141, the remediation funding source shall be established as provided in an administrative consent order signed by the

parties, as provided by a court, or as directed or ordered by the department. The establishment of a remediation funding source for that part of the remediation funding source to be established by a grant or [1][loan] financial assistance[1] from the [2][Remediation Fund] remediation fund[2] may be established for the purposes of this subsection by the application for a grant or [1][loan] financial assistance[1] from the remediation fund and satisfactory evidence submitted to the department that the grant or [1][loan] financial assistance[1] will be awarded. However, if the [1][loan] financial assistance[1] or grant is denied or the department finds that the person responsible for establishing the remediation funding source did not take reasonable action to obtain the grant or [1][loan] financial assistance[1], the department shall require that the full amount of the remediation funding source be established within 14 days of the denial or finding. The remediation funding source shall be evidenced by the establishment and maintenance of (1) a remediation trust fund, (2) [1]an environmental insurance policy, issued by an entity licensed by the Department of Insurance to transact business in the State of New Jersey, to fund the remediation, (3)[1] a line of credit from a person or institution satisfactory to the department authorizing the person responsible for performing the remediation to borrow money, or [1][(3) a self guarantee] (4) a self-guarantee[1], or by any combination thereof. Where it can be demonstrated that a person cannot establish and maintain a remediation funding source for the full cost of the remediation by a method specified in this subsection, that person may establish the remediation funding source for all or a portion of the remediation, by securing [2][a][2] [1][loan] financial assistance[1] from the Hazardous Discharge Site Remediation Fund as provided in section 29 of P.L. , c. (C)(now before the Legislature as this bill).

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

The trust fund agreement shall provide that the remediation trust fund may not be revoked or terminated by the person required to establish the remediation funding source or by the trustee without the written consent of the department. The trustee shall release to

the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those monies as the department authorizes, in writing, to be released. The person entitled to receive money from the remediation trust fund shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation. Upon a determination by the department that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement of moneys from the remediation trust fund in the amount of the documented costs.

The department shall return the original remediation trust fund agreement to the trustee for termination after the person required to establish the remediation funding source substitutes an alternative remediation funding source as specified in this section or the department notifies the person that [2]that[2] person is no longer required to maintain a remediation funding source for remediation of the contaminated site.

[1]d. An environmental insurance policy shall be established pursuant to the provisions of this subsection. An originally signed duplicate of the insurance policy shall be delivered to the department by certified mail [2],overnight delivery, or personal service[2] within 30 days of receipt of notice from the department that the remedial action workplan or remediation agreement, as provided in subsection e. of section 4 of P.L. 1983, c.330, is approved or as specified in an administrative consent order, civil order, or order of the department, as applicable.

The environmental insurance policy may not be revoked or terminated without the written consent of the department. The insurance company shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those monies as the department authorizes, in writing, to be released. The person entitled to receive money from the environmental insurance policy shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation.[1]

[1][d.] e.[1] A line of credit shall be established pursuant to the provisions of this subsection. A line of credit shall allow the person establishing it to borrow money up to a limit established in a written agreement in order to pay for the cost of the remediation for which the line of credit was established. An originally signed duplicate of the line of credit agreement shall be delivered to the department by certified mail [2], overnight delivery, or personal service[2] within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 is approved, or as specified in an administrative consent order, civil order, or order of the department, as applicable. The line of credit agreement shall conform to a model agreement as established by the department and shall be accompanied by

a certification of acknowledgment that conforms to a model established by the department.

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

The department shall return the original line of credit agreement to the person or institution providing the line of credit for termination after the person required to establish the remediation funding source substitutes an alternative remediation funding source as specified in this section, or after the department notifies the person that [2]that[2] person is no longer required to maintain a remediation funding source for remediation of the contaminated site.

[1][e.] f.[1] A person may self-guarantee a remediation funding source upon the submittal of documentation to the department demonstrating that the cost of the remediation as estimated in the remedial action workplan, [1]in[1] the remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330, in an administrative consent order, or as provided in a departmental or court order, would not exceed one-third [1]of[1] the tangible net worth of the person required to establish [2]the[2] remediation funding source, and that the person has a cash flow sufficient to assure the availability of sufficient moneys for the remediation during the time necessary for the remediation. Satisfactory documentation of a person's capacity to self-guarantee a remediation funding source shall consist only of a statement of income and expenses or similar statement of that person and the balance sheet or similar statement of assets and liabilities as used by that person for the fiscal year of the person making the application that ended closest in time to the date of the self-guarantee application. The self-guarantee application shall be certified as true to the best of the applicant's information, knowledge, and belief, by the chief financial, [1]or[1] similar officer or employee, or general partner, or principal of the person making the self-guarantee application. [1][Persons] A person[1] shall be deemed by the department to possess the required cash flow pursuant to this section if that person's gross receipts exceed its gross payments in that fiscal year in an amount at least equal to the estimated costs of

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

[1][f.] g.[1] (1) [1][Where] If[1] the person required to establish the remediation funding source [1][has failed] fails[1] to perform the remediation as required, the department shall make a written determination of this fact. A copy of the determination by the department shall be delivered to the person required to establish the remediation funding source and, in the case of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), to any transferee of the property. Following this written determination, the department may perform the remediation in place of the person required to establish the remediation funding source. In order to finance the cost of the remediation the department may make disbursements from the remediation trust fund or the line of credit [2]or claims upon the environmental insurance policy,[2] as appropriate, or, if sufficient moneys are not available from those funds, from the remediation guarantee fund created pursuant to section 45 of P.L. , c. (C.)(now before the Legislature as this bill).

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

(3) After the department has begun to perform the remediation in the place of the person required to establish the remediation funding source or has granted the petition of the transferee to perform the remediation, the person required to establish the remediation funding source shall not be permitted by the

department to continue its performance obligations except upon the agreement of the department or the transferee, as applicable, or except upon a determination by the department that the transferee is not adequately performing the remediation.

REPLACE SECTION 28 TO READ:

28. (New section) a. Except for moneys deposited in the remediation fund for specific purposes, [1][loans] financial assistance[1] and grants [1][of moneys][1] from the remediation fund shall be [1][made] rendered[1] for the following purposes and, on an annual basis, obligated in the percentages as provided in this subsection. Upon a written [1]joint[1] determination by the [1][Economic Development Authority] authority and the department[1] that it is [1]in[1] the public interest, [1][loans] financial assistance[1] and grants dedicated for the purposes and in the percentages set forth in paragraphs (1), (2), or (3) of this subsection, may, for any particular year, be obligated to other purposes set forth in this subsection. The written determination shall be sent to the Senate Environment Committee, and the Assembly Energy and Hazardous Waste Committee, or their successors.

(1) At least 15% of the moneys shall be allocated for [1][loans] financial assistance[1] to persons, other than governmental entities, for remediation of real property located in a qualifying municipality as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

(2) At least 10% of the moneys shall be allocated for [1][loans] financial assistance[1] and grants to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been or on which there is suspected of being a discharge of hazardous substances or hazardous wastes. Grants shall be used for performing preliminary assessments and site investigations on property owned by a municipal governmental entity, or on which the municipality holds a tax sale certificate, in order to determine the existence or extent of any hazardous substance or hazardous waste contamination on those properties. A municipal governmental entity that has performed a preliminary assessment and site investigation on property may obtain a loan for the purpose of continuing the remediation on those properties it owns as necessary to comply with the applicable remediation standards adopted by the department;

(3) At least 15% of the moneys shall be allocated for [1][loans] financial assistance[1] to persons or municipal government entities for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area;

(4) At least 10% of the moneys shall be allocated for [1][loans] financial assistance[1] to persons, other than

municipal government entities, who voluntarily undertake the remediation of a hazardous substance or hazardous waste discharge, and who have not been ordered to undertake the remediation by the department or by a court [1][,] ;[1]

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

(6) At least 20% of the moneys shall be allocated for grants to persons, other than municipal government entities, who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant. A person qualifies for an innocent party grant if that person acquired the property prior to December 31, 1983, the hazardous substance or hazardous waste that was discharged at the property was not used by the person at that site, and that person certifies that he did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered. A grant authorized pursuant to this paragraph may be for up to 50% of the remediation costs at the area of concern for which the person qualifies for an innocent party grant, except that no grant awarded pursuant to this paragraph to any person may exceed $1,000,000.

(7) Ten percent of the moneys in the remediation fund shall be allocated for [1][loans] financial assistance[1] or grants for any of the purposes enumerated in paragraphs (1) through (6) of this subsection [1][. except that where moneys in the fund are insufficient to fund all the applications in any calendar year that would otherwise qualify for a loan or grant pursuant this paragraph. the authority shall give priority to loan applications that meet the criteria enumerated in paragraph (3) of this subsection][1] [2].except that where moneys in the fund are insufficient to fund all the applications in any calendar year that would otherwise qualify for financial assistance or a grant pursuant this paragraph. the authority shall give priority to financial assistance applications that meet the criteria enumerated in paragraph (3) of this subsection[2] .

b. Loans issued from the remediation fund shall be for a term not to exceed ten years, except that upon the transfer of ownership of any real property for which the loan was made, the unpaid balance of the loan shall become immediately payable in full. Loans shall bear an interest rate [1][of 1% below the prime rate as published in Publication No. H15 entitled "Selected Rates," available from the Federal Reserve System in Washington, except that the rate shall be no lower than 3%] equal to the [2][lower of the][2] Federal Discount Rate at the time of approval or at the time of the loan closing, [2][with a minimum of] whichever is lower, except that the rate shall be no lower than[2] five percent[1]. [1][Loans and

grants, upon request of the applicant and if qualified, shall] Financial assistance and grants may[1] be issued for up to 100% of the estimated applicable remediation cost, except that [1][no loan] the cumulative maximum amount of financial assistance which may be issued[1] to a person other than a governmental entity [1][may be issued to any applicant][1] in any calendar year, for one or more properties, [1][in an amount that exceeds] shall be[1] $1,000,000. [1][Loans] Financial assistance[1] and grants [1][,][1] to any one municipal governmental entity may not exceed $2,000,000 in any calendar year. Repayments of principal and interest on the loans issued from the remediation fund shall be paid to the authority and shall be deposited into the remediation fund.

c. No person, other than a municipal governmental entity, or a person engaging in a voluntary remediation, shall be eligible for [1][a loan] financial assistance[1] from the remediation fund to the extent that person is capable of establishing a remediation funding source for the remediation as required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill).

d. The authority may use a sum that represents up to 2% of the moneys issued as [1][loans] financial assistance[1] or grants from the remediation fund each year for administrative expenses incurred in connection with the operation of the fund and the issuance of [1][loans] financial assistance[1] and grants.

e. Prior to March 1 of each year, the authority shall submit to the Senate Environment Committee and the Assembly Energy and Hazardous Waste Committee, or their successors, a report detailing the amount of money that was available for [1][loans] financial assistance[1] and grants from the remediation fund for the previous calendar year, the amount of money estimated to be available for [1][loans] financial assistance[1] and grants for the current calendar year, the amount of [1][loans] financial assistance[1] and grants issued for the previous calendar year and the category for which each [1][loan] financial assistance[1] and grant was [1][made] rendered[1], and any suggestions for legislative action the authority deems advisable to further the legislative intent to facilitate remediation and promote [1]the[1] redevelopment and use of existing industrial sites.

REPLACE SECTION 29 TO READ:

29. (New section) a. [1][A qualified applicant for a loan or grant from the remediation fund shall be awarded a loan or grant by the authority upon the availability of sufficient moneys in the remediation fund for the purpose of the loan or grant.][1] [2]A qualified applicant for financial assistance or a grant from the remediation fund shall be awarded financial assistance or a grant by the authority upon the availability of sufficient moneys in the remediation fund for the purpose of the financial assistance or grant.[2] Priority for awarding [1][loans] financial assistance[1] and grants from the remediation fund shall be based upon the date of receipt by the authority of a complete application from the applicant.

If an application is determined to be incomplete by the authority, an applicant shall have 30 days from receipt of written notice of incompleteness to file any additional information as may be required by the authority for a completed application. If an applicant fails to file the additional information within those 30 days, the filing date for that application shall be the date that the additional information is received by the authority. An application shall be deemed complete when all the information required by the authority has been received in the required form.

b. Within 90 days, for a private entity, or 180 days for a municipal government entity, of notice of approval of a 2[loan] financial assistance2 or grant application, an applicant shall submit to the authority an executed contract for the remediation activities for which the 2[loan] financial assistance2 or grant application was made. The contract shall be consistent with the terms and conditions for which the 1[loan] financial assistance1 or grant was 1[made] rendered1. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for the alteration of an applicant's priority ranking for the awarding of 2[a loan] financial assistance2 or 2a2 grant.

2[1c. Information submitted as part of a financial assistance application or agreement shall be deemed a public record subject to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.).1]2

REPLACE SECTION 30 TO READ:

30. (New section) a. The authority 1[, in consultation with the Department of Environmental Protection,]1 shall, by rule or regulation:

(1) 1[prescribe forms for, and procedures for the filing of, loan and grant applications;

(2) require a person applying for a loan who is not the owner of the subject property to provide a copy of the contract or lease between the operator and owner;

(3) require, if the applicant is an owner who is not the operator of the subject property, the owner to provide a copy of the contract or lease between the owner and the operator;

(4) prohibit the assignment or encumbrance of a loan or loan payment;

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

(6) provide that moneys from the approved loan or grant shall be released by the authority to the applicant in only those amounts that represent work completed;

(7) require the loan or grant recipient to provide access at reasonable times to the subject property to determine compliance with the terms and conditions of the loan or grant;

(8) require that, during the life of the loan, the applicant will comply with all environmental laws, and

pay all required taxes or other governmental assessments due on the subject property for which a loan application is made, or on the loan collateral;

(9) reserve the right to suspend or terminate a loan or grant or declare a loan in default if any term or condition of the loan or grant is violated by a loan or grant recipient, and take any necessary action to secure repayment of the loan or grant;

(10) reserve the right to modify, as necessary and by mutual consent, the terms or conditions of a loan or grant, which modification shall, however, not be inconsistent with regulations of the Department of Environment Protection concerning the performance of remediation of contaminated property;

(11)]1 2require a financial assistance or grant recipient to provide to the authority, as necessary or upon request, evidence that financial assistance or grant moneys are being spent for the purposes for which the financial assistance or grant was made, and that the applicant is adhering to all of the terms and conditions of the financial assistance or grant agreement;

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

(3)2 establish a priority system for 1[making loans] rendering financial assistance1 or grants for remediations 1identified by the department as1 involving an imminent and significant threat to a public water source, human health, or to a sensitive or significant ecological area pursuant to paragraph (7) of subsection a. of section 28 of P.L. , c. (C.)(now before the Legislature as this bill);

1[(12)] 2[(2)1] (4)2 provide that payment of a grant shall be conditioned upon the subrogation to the department of all rights of the recipient to recover remediation costs from the discharger or other responsible party. All monies collected in a cost recovery subrogation action shall be deposited into the remediation fund;

1[(13)] 2[(3)1] (5)2 provide that an applicant for 1[a loan] financial assistance1 or 1a1 grant pay a reasonable fee for the application which shall be used by the authority for the administration of the loan and grant program;

1[(14)] 2[(4)1] (6)2 provide that where 1[a loan] financial assistance1 to a person other than a municipal governmental entity , is for a portion of the remediation cost, that the 1[loan money] proceeds thereof1 not be disbursed to the applicant until the costs of the remediation for which a remediation funding source has been established has been expended;

1[(15)] 2[(5)1] (7)2 adopt such other requirements as 1the authority1 shall 1[be deemed] deem1 necessary or appropriate in carrying out the purposes for which the Hazardous Discharge Site Remediation Fund was created.

b. An applicant for 1[a loan] financial assistance1 or 1a1 grant shall be required to:

(1) provide proof, as determined sufficient by the authority, that the applicant, where applicable, cannot establish a remediation funding source for all or part of the remediation costs, as required by section 25 of P.L. , c. (C.)(now before the Legislature as this bill). The provisions of the paragraph do not apply to grants to innocent persons or to [1][loans] financial assistance[1] or grants to municipal governmental entities; [1]and[1]

(2) [1][submit documentation on the nature and scope of the remediation to be performed, costs estimates thereon, and, as available, proofs of the actual cost of all work performed;

(3) submit copies of all court orders, administrative consent orders, memoranda of agreement, or directives issued by the Department of Environmental Protection [1]and Energy[1] and, if deemed necessary by the authority, any reports, plans, or results of any preliminary assessment, site investigation, remedial investigation, remedial action workplan, remedial action, or other documentation required to be prepared or submitted to the department; and

(4)][1] demonstrate the ability to repay the amount of the [1][loan] financial assistance[1] and interest, and, if necessary, to provide adequate collateral to secure the [1][loan] financial assistance[1] amount.

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

d. In establishing requirements for [1][loan] financial assistance[1] or grant applications and [1][loan] financial assistance[1] or grant agreements, the authority:

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

(2) may not require [1][loan] financial assistance[1] or grant conditions that interfere with the everyday normal operations of [1][a loan or grant] the[1] recipient's business activities, except to the extent necessary to [1][prevent intentional actions designed to avoid repayment of the loan, or that significantly affect] ensure the recipient's ability to repay the financial assistance and to preserve[1] the value of the loan collateral; and

(3) shall expeditiously process all [1][loan] financial assistance[1] or grant applications in accordance with a schedule established by the authority for the review and the taking of final action on the application, which schedule shall reflect the degree of complexity of a [1][loan] financial assistance[1] or grant application.

REPLACE SECTION 33 TO READ:

33. (New section) a. There is imposed upon every person who is required to establish a remediation funding source pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) a remediation funding source surcharge. The remediation funding source surcharge shall be in an amount equal to 1% of the required amount of the remediation funding source

required by the department to be maintained. No surcharge, however, may be imposed upon (1) that amount of the remediation funding source that is met by a self-guarantee as provided in subsection [1][e.] f.[1] of section 25 of P.L. , c. (C.)(now before the Legislature as this bill), (2) that amount of the remediation funding source that is met by [1][a loan] financial assistance[1] or [2]a[2] grant from the remediation fund, (3) any person who voluntarily undertakes a remediation without being so ordered or directed by the department or by a court or pursuant to an administrative consent order, or (4) any person who entered voluntarily into a memorandum of understanding with the department to remediate real property, as long as that person continues the remediation in a reasonable manner, or as required by law, even if subsequent to initiation of the memorandum of understanding, the person received an order by the department or entered into an administrative consent order to perform the remediation. The surcharge shall be based on the cost of remediation work remaining to be completed and shall be paid on an annual basis as long as the remediation continues and until the Department of Environmental Protection [2]and Energy[2] issues a no further action letter for the property subject to the remediation. The [2][cleanup][2] remediation funding source surcharge shall be due and payable within 14 days of the time of the department's approval of a remedial action workplan or signing an administrative consent order or as otherwise provided by law. The department shall collect the surcharge and shall remit all moneys collected to the Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund.

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

REPLACE SECTION 35 TO READ:

35. (New section) a. The Department of Environmental Protection [1]and Energy[1] shall adopt minimum remediation standards for soil, groundwater, and surface water quality necessary for the remediation of contamination of real property. The remediation standards shall be developed to ensure that the potential for harm to public health and safety and to the environment is minimized to acceptable levels, taking into consideration the location, [1]the[1] surroundings, the intended use of the property, the potential exposure to the discharge, and the surrounding ambient conditions, whether naturally occurring or man-made.

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

The department shall not propose or adopt remediation standards protective of the environment pursuant to this section, except standards for groundwater or surface water, until recommendations are made by the Environment Advisory Task Force created pursuant to section 37 of P.L. , c. (C.)(now before the Legislature as this bill). Until the Environment Advisory Task Force issues its recommendations and the department adopts remediation standards protective of the environment as required by this section, the department shall continue to determine the need for and the application of remediation standards protective of the environment on a case-by-case basis in accordance with the guidance and regulations of the 2[federal] United States2 Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable.

b. In developing minimum remediation standards the department shall:

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

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

(3) avoid the use of redundant conservative assumptions. The department shall avoid the use of redundant conservative assumptions by the use of parameters that provide an adequate margin of safety and which avoid the use of unrealistic conservative exposure parameters and which 1[are consistent with]1 guidelines 1make use of the guidance and regulations1 for exposure assessment developed by the 2[federal] United States2 Environmental Protection Agency 1pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act 2of 19802," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable1; and

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

c. (1) The department shall develop residential and nonresidential soil remediation standards that are protective of public health and safety. For contaminants that are mobile and 1[may be transported] transportable1 to groundwater, the residential and nonresidential soil remediation standards shall be protective of groundwater 1and surface water1. Residential soil remediation standards shall be set at levels or concentrations of contamination for real property based upon the use of that property for residential or similar uses and which will allow the unrestricted use of that property without exceeding a health risk level greater than that provided in subsection d. of this section. Nonresidential soil remediation standards shall be set at levels or concentrations of contaminants that recognize the lower likelihood of exposure to contamination on property that

will not be used for residential or similar uses. Whenever real property is remediated to a nonresidential soil remediation standard, except as otherwise provided in paragraph (3) of subsection g. of this section, the department shall require [1][, pursuant to section 36 of P.L. , c. (C.)(now before the Legislature as this bill),]1 2, pursuant to section 36 of P.L. , c. (C.)(now before the Legislature as this bill),2 that the use of the property be restricted to nonresidential or other uses compatible with the extent of the contamination of the soil and that access to that site be restricted in a manner compatible with the allowable use of that property.

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

d. In developing minimum remediation standards intended to be protective of public health and safety, the department shall identify the 1[hazard] hazards1 posed by a contaminant to determine whether exposure to that contaminant can cause an increase in the incidence of an adverse health effect and whether the adverse health effect may occur in humans. The department shall set minimum soil remediation standards for both residential and nonresidential uses that:

(1) for 1human1 carcinogens, 1as categorized by the 2[federal] United States2 Environmental Protection Agency,1 will result in an additional cancer risk of one in one million;

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

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

e. Remediation standards and other requirements established pursuant to this section shall apply to remediation activities required pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21 et seq.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et seq.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the "Comprehensive Regulated Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the "Sanitary Landfill Facility Closure and Contingency Fund Act," P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333 (C.13:1E-177 et seq.), 2[1P.L.1986, c.102 (C.58:10A-21 et seq.)1]2 or any other law or regulation by which the State may compel a person to perform remediation activities on contaminated property. However, nothing in this subsection shall be construed to limit the authority of the department to establish

discharge limits for pollutants or to prescribe penalties for violations of those limits pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), or to require the complete removal of [1][nonhazardous][1] [2]nonhazardous[2] solid waste pursuant to law.

f. (1) A person performing a remediation of contaminated real property, in lieu of using the established minimum soil remediation standard for either residential use or nonresidential use adopted by the department pursuant to subsection c. of this section, may submit to the department a request to use an alternative residential use or nonresidential use soil remediation standard. The use of an alternative soil remediation standard shall be based upon site specific factors which may include (1) physical site characteristics which may vary from those used by the department in the development of the soil remediation standards adopted pursuant to this section; or (2) a site specific risk assessment. If a person performing a remediation requests to use an alternative soil remediation standard based upon a site specific risk assessment, that person shall demonstrate to the department that the requested deviation from the risk assessment protocol used by the department in the development of soil remediation standards pursuant to this section is consistent with the [1][guidelines] guidance and regulations[1] for exposure assessment developed by the [2][federal] United States[2] Environmental Protection Agency [1]pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act [2]of 1980[2] ," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable[1]. A site specific risk assessment may consider exposure scenarios and assumptions that take into account the form of the contaminant present, natural biodegradation, fate and transport of the contaminant, and available toxicological data that are based upon generally accepted and peer reviewed scientific evidence or methodologies.

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

(2) The department may, upon its own initiative [1],[1] require an alternative remediation standard for a particular contaminant for a specific real property site, in lieu of using the established minimum residential use or nonresidential use soil remediation standard adopted by the department for a particular contaminant pursuant to this section. The department may require an alternative remediation standard pursuant to this paragraph upon a determination by the department, based on the weight of the scientific evidence, that due to specific physical site characteristics of the subject real property, the use of the adopted residential use or nonresidential use soil remediation standards would not be protective of public health or safety or of the environment, as appropriate.

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

(1) Permanent and nonpermanent remedies shall be allowed except that permanent remedies shall be preferred over nonpermanent remedies for remedial actions;

(2) Contamination may, upon the department's approval, be left onsite at levels or concentrations that exceed the minimum soil remediation standards for residential use or nonresidential use if the [1][requirement] implementation[1] of institutional or engineering controls at that site will result in the protection of public health, safety and the environment at the risk level established in subsection d. of this section and [1][where] if[1] the requirements established in subsections a., b., c. and d. of section 36 of P.L. . c. (C.)(now before the Legislature as this bill) are met.

(3) Real property on which there is soil that has not been remediated to the residential soil remediation standards, or real property on which the soil, groundwater, or surface water has been remediated to meet the required health risk level by the use of engineering or institutional controls, may be developed or used for residential purposes, or for any other similar purpose, if (a) all areas of that real property at which a person may come into contact with soil are remediated to meet the residential soil remediation standards and (b) it is [1]clearly[1] demonstrated that for all areas of the real property, other than those described in subparagraph (a) above, engineering and institutional controls can be implemented and maintained on the real property sufficient to meet the health risk level as established in subsection d. of this section;

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

(5) Remediation shall not be required [1][by] of[1] the owner or operator of real property for contamination coming onto the site from another property owned and operated by another person [1], unless [2][said] the[2] owner or operator is in any way responsible for the discharge[1];

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

(7) [1][The effectiveness of each remedial action alternative in protecting public health, safety and the environment] The technical performance, effectiveness and reliability of the proposed remedial action in attaining and maintaining compliance with applicable remediation standards and required health risk levels. In reviewing a proposed remedial action, the department shall also consider the ability of the owner or operator to implement the proposed remedial action within a reasonable time frame without jeopardizing public health, safety or the environment[1];

(8) [1][The implementability of each alternative] In the case of a proposed remedial action that will not meet the established minimum residential use soil remediation standards, the cost of all available permanent remedies [2][are] is[2] unreasonable, as determined by department rules designed to provide a cost-based preference for the use of permanent remedies. The department shall adopt regulations, no later than 18 months after the effective date of this act, establishing criteria and procedures for allowing a person to demonstrate that the cost of [2][a proposed remedial action using a nonpermanent remedy is reasonable] all available permanent remedies is unreasonable[2]. Until the department [2][promulgates] adopts[2] those regulations, it shall not require a person performing a remedial action to implement a permanent remedy, unless the cost of implementing a nonpermanent remedy is 50 percent or more [2][then] than[2] the cost of implementing a permanent remedy; provided, however, that the preceding provision shall not apply to any owner or operator of an industrial establishment who is implementing a remedial action pursuant to subsection i. of section 4 of P.L. 1983 [2]c.330[2].[1];

(9) [1][The time it would take to implement each alternative;

(10) The cost of each alternative including capital costs, operation, maintenance and monitoring costs, whether a particular remedial action is cost effective, and whether the cost of performing a specific remedial action is excessive compared to the cost of other alternatives; and

(11) The technological efficacy of any particular remedial action] The use of the established nonresidential soil remediation standard shall not be unreasonably disapproved by the department[1].

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

h. (1) The department shall adopt regulations which establish a procedure for a person to demonstrate that a particular parcel of land contains large quantities of historical fill material. Upon a determination by the department that large quantities of historic fill material exist on that parcel of land, there is a rebuttable presumption that the department shall not require any person to remove or treat the fill material in order to comply with a remediation standard. In these areas the department shall establish by regulation the

requirement for engineering or institutional controls that are designed to prevent exposure of these contaminants to humans, that allow for the continued use of the property, that are less costly than removal or treatment, which maintain the health risk levels as established in subsection d. of this section, and, as applicable, are protective of the environment. The department may rebut the presumption only upon a finding by the preponderance of the evidence that the use of engineering or institutional controls would not be effective in protecting 1[human] public1 health, safety, and the environment. For the purposes of this paragraph "historic fill material" means generally large volumes of non-indigenous material, used to raise the topographic elevation of a site, which were contaminated prior to emplacement and are in no way connected with the operations at the location of emplacement and which include, but 1are1 not limited to, construction debris, dredge spoils, incinerator residue, demolition debris, fly ash, and 1[non hazardous] non-hazardous1 solid waste. Historic fill material shall not include any material which is substantially chromate chemical production waste or any other chemical production waste or waste from 1[mining or]1 processing of metal or mineral ores, residues, slags or tailings.

(2) The department shall develop recommendations for remedial actions in large areas of historic industrial contamination. These recommendations shall be designed to meet the health risk levels established in subsection d. of this section, and 1to1 be protective of the environment and shall take into account the industrial history of these sites, the extent of the contamination that may exist, the costs of 1[alternative]1 remedial actions, the economic impacts of these policies, and the anticipated uses of these properties. The department, within one year of the enactment of this act, shall issue a report to the Senate Environment Committee and to the Assembly Energy and Hazardous Waste Committee, or their successors, explaining these recommendations and making any recommendations for legislative or regulatory action.

(3) The department may not, as a condition of allowing the use of a nonresidential use soil remediation standard, or the use of institutional or engineering controls, require the owner of that real property, except as provided in section 36 of P.L. , c. (C.)(now before the Legislature as this bill), to restrict the use of that property through the filing of a deed easement, covenant, or condition.

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

j. Upon the approval by the department of a remedial action workplan, or similar 1[approval] plan1 that describes the extent of contamination at a site and the remedial action to be implemented to address that

contamination, the department may not subsequently require a change to that workplan or similar [1][approval] plan[1] in order to compel a different remediation standard due to the fact that the established remediation standards have changed; however, the department may compel a different remediation standard if the difference between the new remediation standard and the remediation standard approved in the workplan or other [1][approval] plan[1] differs by an order of magnitude. The limitation to the department's authority to change a workplan or similar [1][approval] plan[1] pursuant to this subsection shall only apply [1][where] if[1] the workplan or similar [1][approval] plan[1] is being implemented in a reasonable timeframe [1], as may be indicated in the approved remedial action workplan or similar plan[1].

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

l. Upon the adoption of a remediation standard for a particular contaminant in soil, groundwater, or surface water pursuant to this section, the department may amend that remediation standard only upon a finding that a new standard is necessary to maintain the health risk levels established in subsection d. of section 35 of P.L. , c. (C.)(now before the Legislature as this bill) or to protect the environment, as applicable. The department may not amend a public health based soil remediation standard to a level that would result in a health risk level more protective than that provided for in subsection d. of section 35 of P.L. , c. (C.).

[1]m. Nothing in [2][this amendatory and supplementary act,][2] P.L. , c. (now before the Legislature as this bill), shall be construed to restrict or in any way diminish the public participation which is otherwise provided under the provisions of the "Spill Compensation and Control Act," P.L. 1976, c.141 (C.58:10-23.11 et seq.).[1]

REPLACE SECTION 40 TO READ:

40. (New section) a. [1][Any person who undertakes the remediation of suspected or actual contamination on real or personal property that is not owned by that person, may enter upon the property to conduct the necessary remediation if there is an agreement, in writing, between the person conducting the remediation and the owner of the property authorizing the entry onto the property.

If, after a good faith effort, the person undertaking the remediation and the property owner fail to reach an agreement concerning access to the property, the person may seek a court order authorizing access which shall be issued pursuant to subsection b. of this section.

b. Any person who undertakes the remediation of suspected or actual contamination on real or personal property that is not owned by the person responsible for the remediation, and fails to reach an agreement with the property owner pursuant to subsection a. of this section may institute an action in the Superior Court for injunctive and other relief, to gain access to the property and the court may proceed in the action in a summary manner.] (1) Any person who undertakes the remediation of suspected or actual contamination and who requires access to conduct such remediation on real or personal property that is not owned by that person, may enter upon the property to conduct the necessary remediation if there is an agreement, in writing, between the person conducting the remediation and the owner of the property authorizing the entry onto the property. If, after good faith efforts, the person undertaking the remediation and the property owner fail to reach an agreement concerning access to the property, the person undertaking the remediation shall seek an order from the Superior Court directing the property owner to grant reasonable access to the property and the court may proceed in the action in a summary manner.

(2)[1] Such relief may include, singly or in combination:

[1][(1)] (a)[1] A temporary or permanent injunction;

[1][(2)] (b)[1] Assessment of the person undertaking the remediation for costs associated with any disruption in operations on the property;

[1][(3)] (c)[1] Assessment of the person undertaking the remediation for any costs to return the property to its condition before the commencement of the remediation;

[1][(4)] (d)[1] A requirement that the person undertaking the remediation indemnify the owner of the property for any damages, penalties or liabilities resulting from the remediation;

[1][(5)] (e)[1] A requirement that the person undertaking the remediation indemnify the owner of the property for any liability resulting from the entry of persons onto the property to perform the remediation.

[1]b. The court shall promptly issue any access order sought pursuant to this section upon a showing that (1) a reasonable possibility exists that contamination from another site has migrated onto the owner's property, or (2) access to the property is reasonable and necessary to remediate contamination. The presence of an applicable department oversight document or a remediation obligation pursuant to law involving the property for which access is sought shall constitute prima facie evidence sufficient to support the issuance of an order.

Unless the court otherwise orders for notice and for good cause shown, an action for an access order shall not be joined with non-germane issues against the owner of the property for which access is sought or other person who may be liable for the contamination. Non-germane issues shall include, but not be limited to, issues concerning contribution, treble damages, or other damages involving either the contamination or the remediation.

The court may impose reasonable conditions as part of the access order, including without limitation, that the

person undertaking the remediation take all reasonable measures to minimize the disruption to the property and the activities conducted there and return the property to its condition prior to the commencement of remediation.[1]

c. The department may not impose or seek to impose any civil or civil administrative penalties upon any person for failure to perform a remediation on property not owned by that person within the time schedule required by regulation on property not owned by that person if (1) the failure to perform the remediation was the result of an inability of that person to enter upon real or personal property owned by another person, and (2) the person took all appropriate action pursuant to this section to obtain access to the property.

[1]d. Nothing herein shall be construed as limiting the rights of the owner of the property against which the access order is issued to initiate a civil action to seek any damages available under law.

e. Nothing herein shall be construed as limiting the rights of the person conducting the remediation from initiating any subsequent civil action against the owner of the property [2]upon which access was ordered[2].[1]

REPLACE SECTION 44 TO READ:

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

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

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

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

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

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

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

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

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

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

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

For the purpose of determining priority of this lien over all other claims or liens which are or have been

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

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

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

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

(2) A person, including an owner or operator of a major facility, who owns real property acquired after the effective date of P.L. , c. (C.)(now before the Legislature as this bill), on which there has been a discharge, shall be considered a person in any way responsible for the discharged hazardous substance pursuant to subsection c. of this section, unless that person can establish by a preponderance of the evidence that all of the following apply:

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

(b) (i) at the time the person acquired the real property, the person did not know and had no reason to know that any hazardous substance had been discharged at the real property, or (ii) the person acquired the real property by devise or succession, except that any other funds or property received by that person from the deceased real property owner who discharged a hazardous substance or was in any way responsible for a hazardous substance, shall be made available to satisfy the requirements of P.L.1976, c.141;

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

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

To establish that a person had no reason to know that any hazardous substance had been discharged for the purposes of this paragraph (2), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property. [2][In order to determine if all appropriate inquiry was undertake, any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the fair market value of the property if not impacted by discharges of hazardous substances, commonly known or reasonably ascertainable information about the property, the obviousness of the discharge at the property, and the ability to detect the discharge of hazardous substances by appropriate inspection shall be taken into account] For the purposes of this paragraph (2), all appropriate inquiry shall mean the performance of a preliminary assessment, and site investigation (if the preliminary assessment indicates that a site investigation is necessary), as defined in section 23 of P.L. , c. (C.)(now before the Legislature as this bill), and performed in accordance with rules and regulations promulgated by the department defining these terms[2] .

Nothing in this paragraph (2) shall be construed to alter liability of any person who acquired real property prior to the effective date of P.L. , c. (C.) (now before the Legislature as this bill).

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

(4) Any federal, State, or local government entity which acquires ownership of real property through bankruptcy, tax delinquency, abandonment, escheat, eminent domain, condemnation or any circumstance in which the government involuntarily acquires title by virtue of its function as sovereign, shall not be liable for the cleanup and removal costs of any discharge which occurred or began prior to that ownership. This paragraph shall not apply to any federal, State or local government entity which has caused or contributed to the discharge of a hazardous substance.

(cf: P.L.1991, c.85, s.4)

STATEMENT

These amendments make various technical and clarifying changes. The amendments clarify that a mortage holder or holder of a security interest is not included in the deifinition of "direct owner or operator," "owner" or "operator" unless or until it loses its exemption as a

secured lender under P.L.1993, c.112 (C.58:10-23.11g4 et al.) or if it obtains title to the industrial establishment.

The amendments also provide that when performing a preliminary assessment, a person need only to do a historic search to 1932, rather than 1900. The amendments also provide that for the de minimis exemption under ISRA, only that part of a mixture that is actually hazardous will be considered hazardous, rather than the entire mixture. The amendments also make various changes to the remediation fund so that no bonds may be issued by the Economic Development Authority and certain controls and requirements will be placed on the issuance of grants and financial assistance by the authority. Finally, the amendments specify the inquiry that must be made to establish that all appropriate inquiry was conducted for the purposes of establishing that a person who acquires contaminated property after a discharge has occurred, is not in any way responsible for a hazardous substance.

LEGISLATIVE FISCAL ESTIMATE TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1070

STATE OF NEW JERSEY

DATED: May 19, 1993

The Senate Committee Substitute for Senate Bill No. 1070 of 1992 amends the "Environmental Cleanup Responsibility Act" (ECRA), P.L.1983, c.330, by reforming its review process, establishing a level of remediation standards, and providing grants and low interest loans to support site remediation costs. First, the bill, which would retitle ECRA as the "Industrial Site Remediation Act" (ISRA), reforms the ECRA review process by allowing for most remediations to proceed without prior departmental review of each stage in the cleanup. Further, any site that has already undergone an ECRA or similar type of remediation may comply with ECRA requirements by means of a private certification.

Second, the bill establishes standards by which soil and water must be remediated under all State remediation laws. It would require different standards for residential and nonresidential sites, allow the use of engineering and institutional controls in lieu of cleaning a site where appropriate, and set forth explicit criteria to determine how standards should be developed and what remedies are appropriate.

Last, the bill establishes the Hazardous Discharge Site Remediation Fund, a low-interest loan program for municipalities and for those who cannot otherwise afford to finance a cleanup. It would also offer grants to municipalities to investigate contamination on public properties, and to "innocent" persons who unknowingly acquire contaminated properties. These programs would be administered by the N.J. Economic Development Authority (EDA) and funding would be derived from an annual one percent surcharge on the declining balance of the cost of a remediation; an appropriation of $45 million from the "Hazardous Discharge Bond Act of 1986"; and an appropriation of $10 million from the Economic Recovery Fund (made pursuant to Senate Bill No. 1036 of 1992). A Remediation Guarantee Fund is also created to enable the Department of Environmental Protection and Energy (DEPE) to remediate property which a responsible party has failed to remediate. This fund would be capitalized with $5 million from the "Hazardous Discharge Bond Act of 1986".

The Office of Legislative Services estimates that the DEPE's current administrative costs and ECRA fee revenues will not change significantly under ISRA in the short-term but will eventually diminish if the bill's objectives are met. In FY1993, ECRA program costs are estimated at $7.2 million, all of which are supported by current year fee revenues (estimated at $4.9 million) and unexpended revenues from previous years ($2.3 million). The department currently employs 110 ECRA staff to review approximately 6,400 applications and requests for letters of non-applicability annually. As mentioned, staff costs and revenues should eventually decline under ISRA due to the streamlining, adjusted timing, and elimination of various stages of the review process.

The department's administrative cost to remediate ECRA properties through the Remediation Guarantee Fund cannot be estimated at this time due to the absence of information concerning potential sites. Under the bill, this function can be supported by cost recoveries from delinquent property owners plus other allowable charges to the Fund, although the latter is limited by amounts earned through investments from Fund balances. If such balances prove to be low, some administrative support may have to be found elsewhere.

The EDA's administrative cost to operate the Hazardous Discharge Site Remediation Fund also cannot be estimated at this time due to the lack of information concerning the number of potential applicants for loans and grants. Under the bill, administrative support for the Fund consists of application fees and an amount from the Fund equal to two percent of monies issued annually for loans and grants. If necessary, application fee rates can probably be tailored to cover a good portion of these expenses.

Finally, the costs to remediate affected sites will be limited by the $45 million available from Hazardous Discharge bonds, the revenues generated from the one percent surcharge, and the remediation funding sources established by the affected property owners. The latter amount cannot be estimated at this time due to the uncertainty of the number of affected persons who may elect, under the bill, to be exempted from the surcharge. Such exemptions can be granted to owners who voluntarily clean up their properties, self-guarantee their remediation funding sources, or have received assistance from the Hazardous Discharge Site Remediation Fund.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

Laws of 1993, Chapter 139

Approved June 16, 1993

[SECOND REPRINT]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1070

STATE OF NEW JERSEY

ADOPTED MARCH 15, 1993

Sponsored by Senators McNAMARA, RICE,
Assemblymen Albohn, DiGaetano,
Assemblywoman Crecco and Assemblyman Pascrell

AN ACT concerning the remediation of contaminated property, amending and supplementing P.L.1983, c.330, amending P.L.1976, c.141, supplementing Title 58 of the Revised Statutes, [1]amending P.L.1993, c.112,[1] and making an appropriation from the "Hazardous Discharge Bond Act of 1986."

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

1. Section 1 of P.L.1983, c.330 (C.13:1K-6) is amended to read as follows:

1. This act shall be known and may be cited as the ["Environmental Cleanup Responsibility Act."] "Industrial Site Recovery Act."

(cf: P.L.1983, c.330, s.1)

2. Section 2 of P.L.1983, c.330 (C.13:1K-7) is amended to read as follows:

2. [The Legislature finds and declares that the generation, handling, storage and disposal of hazardous substances and wastes pose an inherent danger of exposing the citizens, property and natural resources of this State to substantial risk of harm or degradation; that the closing of operations and the transfer of real property utilized for the generation, handling, storage and disposal of hazardous substances and wastes should be conducted in a rational and orderly way, so as to mitigate potential risks; and that it is necessary to impose a precondition on any closure or transfer of these operations by requiring the adequate preparation and implementation of acceptable cleanup procedures therefor.]

The Legislature finds that discharges of toxic chemicals dating back to early industrialization has left a legacy of contaminated industrial property in this State; that in 1983, due to the growing public awareness and concern of the risks to the public health and the environment and the potential costs to the State to clean up abandoned contaminated sites, the "Environmental Cleanup and Responsibility Act [1[,]1]" was enacted. The Legislature also finds that the act's imposition of a cleanup plan approval before the transfer or upon the closing of an industrial establishment and the

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

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
1 Assembly APR committee amendments adopted June 3, 1993.
2 Assembly floor amendments adopted June 10, 1993.

requirement to establish a funding source for the cleanup 1[is] are1 in the general public interest by ensuring the discovery of contamination, by assuring that funding for cleanup is set aside at the time it is available from a transfer or closing, and by assuring that contaminated property is not abandoned to the State for cleanup. The Legislature further finds that at the time of the act's passage, the extent of the State's industrial contamination 1[,]1 and the cost and complexity of remediations 1[.]1 were not well understood; that in the intervening years, there has been a significant advance in the body of knowledge concerning how to remediate contaminated sites effectively and how to manage the remediation efficiently; that the regulated and financial 1[community is] communities are1 now more familiar with the liabilities involving contaminated property and with the necessity to discover and remediate that contamination; and that it is in the interest of the environment and the State's economic health to promote certainty in the regulatory process by incorporating that knowledge to create a more efficient regulatory structure and to allow greater privatization of that process where it is possible to do so without incurring unnecessary risks to the public health or the environment.

The Legislature therefore declares that it is the policy of this State to protect the public health, safety, and the environment, to promote efficient and timely cleanups, and to eliminate any unnecessary financial burden of remediating contaminated sites; that these policies can be achieved by streamlining the regulatory process, by establishing summary administrative procedures for industrial establishments that have previously undergone an environmental review, and by reducing oversight of those industrial establishments where less extensive regulatory review will 1[assure] ensure1 the same degree of protection to 1[human] public1 health 1, safety,1 and the environment; and that the new procedures established pursuant to this act shall be designed to 1[remove] guard against1 redundancy from the regulatory process and to minimize governmental involvement in certain business transactions.

(cf: P.L.1983, c.330, s.2)

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

3. As used in this act:

[a. "Cleanup plan"] "Remedial action workplan" means a plan for the [cleanup of] remedial action to be undertaken at an industrial [establishments, approved by the department, which may include a description of the locations, types and quantities of hazardous substances and wastes that will remain on the premises; a description of the types and locations of storage vessels, surface impoundments, or secured landfills containing hazardous substances and wastes; recommendations regarding the most practicable method of cleanup; and] establishment, or at any area to which a discharge originating at the industrial establishment is migrating or has migrated; a description of the remedial action to be used to remediate the industrial establishment; a time schedule and cost estimate of the [cleanup plan.] implementation of the remedial action; and any other

[1]relevant[1] information the department deems necessary;

[The department, upon a finding that the evaluation of a site for cleanup purposes necessitates additional information, may require graphic and narrative descriptions of geographic and hydrogeologic characteristics of the industrial establishment and evaluation of all residual soil, groundwater, and surface water contamination;

b. "Closing, terminating or transferring operations" means the cessation of all operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes, or any temporary cessation for a period of not less than two years, or any other transaction or proceeding through which an industrial establishment becomes nonoperational for health or safety reasons or undergoes change in ownership, except for corporate reorganization not substantially affecting the ownership of the industrial establishment, including but not limited to sale of stock in the form of a statutory merger or consolidation, sale of the controlling share of the assets, the conveyance of the real property, dissolution of corporate identity, financial reorganization and initiation of bankruptcy proceedings]

"Closing operations" means:

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

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

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

(4) the initiation of bankruptcy proceedings pursuant to Chapter 7 of the federal Bankruptcy Code, 11 U.S.C. [2][§70100] §701[2] et seq. or the filing of a plan of reorganization that provides for a liquidation pursuant to Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. §1101 et seq.; [1][or][1]

(5) any change in operations of an industrial establishment that changes the industrial establishment's Standard Industrial Classification number to one that is not subject to this act; [1]or

(6) the termination of a lease unless there is no disruption in operations of the industrial establishment, or the assignment of a lease;[1]

"Transferring ownership or operations" means:

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

(2) the sale or transfer of more than 50% of the assets of an industrial establishment within any five year period [1], as measured on a constant, annual date-specific basis[1];

(3) the execution of a lease for a period of 99 years or longer for an industrial establishment; [1]or[1]

(4) [1][the termination of a lease unless renewed without a disruption in operations of the industrial establishment, or the assignment of a lease; or

(5)][1] the dissolution of an entity that is an owner or operator or an indirect owner of an industrial establishment, except for any dissolution of an indirect owner of an industrial establishment whose assets would have been unavailable for the remediation of the industrial establishment if the dissolution had not occurred;

"Change in ownership" means:

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

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

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

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

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

"Change in ownership" shall not include:

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

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

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

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

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

(6) [1][the execution of a mortgage, the filing of a lien, the

granting of a security interest, or the assignment of a lease to secure a loan, or the refinancing of a debt, not including a sale and lease back agreement, by the owner or operator of an industrial establishment;

(7)]1 a transfer to release a contingent or reversionary interest except for any transfer of a lessor's reversionary interest in leased real property;

1[(8)] (7)1 a transfer of an industrial establishment by devise or intestate succession;

1[(9)] (8)1 the granting or termination of an easement or a license to any portion of an industrial establishment; 1[or

(10)] (9)1 the sale or transfer of real property pursuant to a condemnation proceeding initiated pursuant to the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.) 1;

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

(11) any transfer of personal property pursuant to a valid security agreement, collateral assignment or other lien, including, but not limited to, seizure or replevin of such personal property which transfer is for the purpose of implementing the secured party's rights in the personal property which is the collateral1.

[c.] "Department" means the Department of Environmental Protection 1and Energy1;

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

[e.] "Hazardous waste" [means any amount of any waste substances required to be reported to the Department of Environmental Protection on the special waste manifest pursuant to N.J.A.C.7:26-7.4, or as otherwise provided by law] shall have the same meaning as provided in section 1 of P.L.1976, c.99 (C.13:1E-38);

[f.] "Industrial establishment" means any place of business engaged in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or hazardous wastes on-site, above or below ground, having a Standard Industrial Classification number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard Industrial Classifications Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States. Those facilities or parts of facilities subject to operational closure and post-closure maintenance requirements pursuant to the "Solid Waste

Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.) or the "Solid Waste Disposal Act" (42 U.S.C.§6901 et seq.), or any establishment engaged in the production or distribution of agricultural commodities, shall not **be considered industrial establishments for the purposes of this** act. The department may, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), exempt certain sub-groups or classes of operations within those sub-groups within the Standard Industrial Classification major group numbers listed in this subsection upon a finding that the operation of the industrial establishment does not pose a risk to public health and safety;

[g.] "Negative declaration" means a written declaration, submitted by the owner or operator of an industrial establishment [1]or other person assuming responsibility for the remediation under paragraph (3) of subsection b. of section 4 of P.L.1983, c.330[1] [and approved by the department] to the department, certifying that there has been no discharge of hazardous substances or hazardous wastes on the site, or that any such discharge on the site or discharge that has migrated or is migrating from the site has been [cleaned up] remediated in accordance with procedures approved by the department [, and there remain no hazardous substances or wastes at the site of the industrial establishment] and in accordance with any applicable remediation regulations;

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

"No further action letter" means a written determination by the department that, based upon an evaluation of the historical use of the industrial establishment and the property, or of an area of concern or areas of concern, as applicable, and any other investigation or action the department deems necessary, there are no discharged hazardous substances or hazardous wastes present at the site of the industrial establishment, at the area of concern or areas of concern, or at any other site to which [1][a discharge] discharged hazardous substances or hazardous wastes[1] originating at the industrial establishment [1][has] have[1] migrated, and that any discharged hazardous substances or hazardous wastes present at the industrial establishment or that have migrated from the site have been remediated in accordance with applicable remediation regulations;

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

"Direct owner or operator" means any person that directly owns or operates an industrial establishment [2]. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be a direct owner or operator of the industrial establishment unless or until it loses its

exemption under P.L.1993, c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process[2];

"Area of concern" means any [2][existing or former][2] location where hazardous substances or hazardous wastes are or were known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, or disposed, or where hazardous substances or hazardous wastes have or may have migrated;

"Remediation standards" means the combination of numeric and narrative standards to which hazardous substances or hazardous wastes must be investigated or remediated as established by the department pursuant to section 35 of P.L. , c. (C.)(now before the Legislature as this bill);

"Owner" means any person who owns the real property of an industrial establishment or who owns the industrial establishment [2]. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be an owner of the industrial establishment unless or until it loses its exemption under P.L.1993, c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process[2] ;

"Operator" means any person, including users, tenants, [1]or[1] occupants, [1][or trespassers,][1] having and exercising direct actual control of the operations of an industrial establishment [2]. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be an operator of the industrial establishment unless or until it loses its exemption under P.L.1993, c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process[2] ;

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether hazardous substances or hazardous wastes are or were present at an industrial establishment or have migrated or are migrating from the industrial establishment, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or [1][potential] latent[1] discharge of any hazardous substance or hazardous waste is required [1]. The evaluation of historic information shall be conducted from [2][1900] 1932[2] to the present, except that the department may require the search for and evaluation of additional information relating to ownership and use of the site prior to [2][1900] 1932[2] if such information is available through diligent inquiry of public records[1];

"Remediation" or "remediate" means all necessary actions to investigate and clean up any known [1][or] ,[1] suspected [1], or threatened[1] discharge of hazardous substances or hazardous wastes, including [1], as necessary,[1] the preliminary assessment, site investigation, remedial investigation, and remedial action;

"Remedial action" means those actions taken at an industrial establishment or offsite of an industrial establishment if

hazardous substances or hazardous wastes have migrated or are migrating therefrom, as may be required by the department [1][, including] to protect public health, safety, and the environment. These actions may include[1] the removal, treatment, containment, transportation, securing, or other engineering [1][or treatment][1] measures, whether of a permanent nature or otherwise, designed to ensure that any discharged hazardous substances or hazardous wastes at the site or that have migrated or are migrating from the site, are remediated in compliance with the applicable remediation standards;

"Remedial investigation" means a process to determine the nature and extent of a discharge of hazardous substances or hazardous wastes at an industrial establishment or a discharge of hazardous substances or hazardous wastes that have migrated or are migrating from the site and the problems presented by a discharge, and may include data [2][collected] collection[2], site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the evaluation of [1][remediated alternatives] remedial actions if necessary[1];

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

(cf: P.L.1983, c.330, s.3)

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

4. [a. The owner or operator of an industrial establishment planning to close operations shall:

(1) Notify the department in writing, no more than five days subsequent to public release, of its decision to close operations;

(2) Upon closing operations, or 60 days subsequent to public release of its decision to close or transfer operations, whichever is later, the owner or operator shall submit a negative declaration or a copy of a cleanup plan to the department for approval and a surety bond or other financial security for approval by the department guaranteeing performance of the cleanup in an amount equal to the cost estimate for the cleanup plan.

b. The owner or operator of an industrial establishment planning to sell or transfer operations shall:

(1) Notify the department in writing within five days of the execution of an agreement of sale or any option to purchase;

(2) Submit within 60 days prior to transfer of title a negative declaration to the department for approval, or within 60 days prior to transfer of title, attach a copy of any cleanup plan to the contract or agreement of sale or any option to purchase which may be entered into with respect to the transfer of operations. In the event that any sale or transfer agreements or options have been executed prior to the submission of the plan to the department, the cleanup plan shall be transmitted, by certified mail, prior to the transfer of operations, to all parties to any

transaction concerning the transfer of operations, including purchasers, bankruptcy trustees, mortgagees, sureties, and financiers;

(3) Obtain, upon approval of the cleanup plan by the department, a surety bond or other financial security approved by the department guaranteeing performance of the cleanup plan in an amount equal to the cost estimate for the cleanup plan.

c. The cleanup plan and detoxification of the site shall be implemented by the owner or operator, provided that the purchaser, transferee, mortgagee or other party to the transfer may assume that responsibility pursuant to the provisions of this act.]

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

b. (1) Subsequent to the submittal of the notice required pursuant to subsection a. of this section, the owner or operator of an industrial establishment shall, except as otherwise provided by P.L.1983, c.330 or P.L. , c. (C.)(now before the Legislature as this bill), remediate the industrial establishment. The remediation shall be conducted in accordance with criteria, procedures, and time schedules established by the department.

(2) The owner or operator shall attach a copy of any approved negative declaration, approved remedial action workplan, [1]no further action letter,[1] or remediation agreement approval to the contract or agreement of sale or agreement to transfer or any option to purchase which may be entered into with respect to the transfer of ownership or operations. In the event that any sale or transfer agreements or options have been executed prior to the approval of a negative declaration, remedial action workplan, [1]no further action letter,[1] or remediation agreement, these documents, as relevant, shall be transmitted by the owner or operator by certified mail, [1]overnight delivery, or personal

service,[1] prior to the transfer of ownership or operations, to all parties to any transaction concerning the transfer of ownership or operations, including purchasers, bankruptcy trustees, mortgagees, sureties, and financiers.

(3) The preliminary assessment, site investigation, remedial investigation, [1][remedial action workplan,][1] and remedial action for the industrial establishment shall be performed and implemented by the owner or operator of the industrial establishment, except that any other party may assume that responsibility pursuant to the provisions of P.L.1983, c.330.

c. The owner or operator of an industrial establishment shall, subsequent to closing operations, or of its public release of its decision to close operations, or prior to transferring ownership or operations except as otherwise provided in subsection e. of this section, as applicable, submit to the department for approval a proposed negative declaration or proposed remedial action workplan. Except as otherwise provided in [2]section 6 of P.L.1983, c.330 (C.13:1K-11), and[2] sections [2][1]11[1][2], 13, [1][14,][1] 16, 17 and 18 of P.L. , c. (C.)(now before the Legislature as this bill), the owner or operator of an industrial establishment shall not transfer ownership or operations until a negative declaration or a remedial action workplan has been approved by the department or the conditions of subsection e. of this section for remediation agreements have been met and until, in cases where a remedial action workplan is required to be approved or a remediation agreement has been approved, a remediation funding source, as required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill), has been established.

d. (1) Upon the submission of the results of either the preliminary assessment, site investigation, [2][or][2] remedial investigation, [2]or remedial action, where applicable,[2] which demonstrate that there are no discharged hazardous substances or hazardous wastes at the industrial establishment, or that have migrated from or are migrating from the industrial establishment, in violation of the applicable remediation standards, the owner or operator may submit to the department for approval a proposed negative declaration as provided in subsection c. of this section.

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

e. The owner or operator of an industrial establishment [1][1] who has submitted a notice to the department pursuant to subsection a. of this section , may transfer ownership or operations of the industrial establishment prior to the approval of a negative declaration or remedial action workplan upon

application to and approval by the department of a remediation agreement. The owner or operator requesting a remediation agreement shall submit the following documents: (1) an [1][estimation] estimate[1] of the cost of the remediation that is approved by the department; (2) a certification of the statutory liability of the owner or operator pursuant to P.L.1983, c.330 to perform and to complete a remediation of the industrial establishment in the manner and time limits provided by the department in regulation and consistent with all applicable laws and regulations; however, nothing in this paragraph shall be construed to be an admission of liability, or to impose liability on the owner or operator, pursuant to P.L.1976, c.141 [1](C.58:10-23.11 et seq.)[1] or pursuant to any other statute or common law; (3) evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with the provisions of section 25 of P.L. , c. (C.)(now before the Legislature as this bill); (4) a certification that the owner or operator is subject to the provisions of P.L.1983, c.330, including the liability for penalties for violating the act, defenses to liability and limitations thereon, the requirement to perform a remediation as required by the department, allowing the department access to the industrial establishment as provided in section 5 of P.L.1983, c.330 (C.13:1K-10), and the requirement to prepare and submit any document required by the department relevant to the remediation of the industrial establishment; and (5) evidence of the payment of all applicable fees required by the department.

The department may require in the remediation agreement [1][,][1] that all plans for and results of the preliminary assessment, site investigation, remedial investigation, and [1]the implementation of the[1] remedial action workplan [1][and the implementation thereof][1] , prepared or initiated subsequent to the transfer of ownership or operations, be submitted to the department, for review purposes only, at the completion of each phase of the remediation.

The department shall adopt regulations establishing the manner in which the documents required pursuant to paragraphs (1) through (5), inclusive, of this subsection shall be submitted. The department shall approve the application for the remediation agreement upon the complete and accurate submission of the documents required to be submitted pursuant to this subsection. The regulations shall include a sample form of the certifications. Approval of a remediation agreement shall not affect an owner's or [1][operator'] operator's[1] right to avail itself of the provisions of section 6 of P.L.1983, c.330 (C.13:1K-11), of sections 12, 13, 14, 15, 16, 17, or 18 of P.L. , c. (C.)(now before the Legislature as this bill), or of the other provisions of this section.

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

site investigation, and remedial investigation may, at the discretion of the owner or operator, be submitted to the department for its review and approval at the completion of each phase of the remediation.

g. [1][(1)][1] [2](1)[2] The soil remediation standard to be implemented on an industrial establishment shall be selected in conformance with the policies and criteria enumerated in section 35 of P.L. , c. (C.)(now before the Legislature as this bill).

(2) [1][The owner or operator proposing to implement the nonresidential use soil remediation standards shall review and consider for implementation, at a minimum, each relevant remedial action that is set forth in the guidance document published pursuant to section 38 of P.L. , c. (C.)(now before the Legislature as this bill).

(3)][1] The department may not disapprove the use of the minimum nonresidential soil remediation standards adopted by the department except upon a finding that the use of [2][a] the[2] nonresidential soil remediation standards at that site would not be protective of public health, safety, or the environment or except as provided in subsection [1][j.] i.[1] of this section.

h. An owner or operator of an industrial establishment may implement a soil remedial action at an industrial establishment without prior department approval of the remedial action workplan for the remediation of soil when the remedial action can reasonably be expected to be completed pursuant to standards, criteria, and time schedules established by the department [1][within] , which schedules shall not exceed[1] five years [1][of] from[1] the commencement of the implementation of the remedial action and if [1][:

(1) the owner or operator is transferring ownership or operations of the industrial establishment and the soil remediation meets the established minimum residential or nonresidential use soil remediation standards adopted by the department; or

(2) the owner or operator is closing operations of the industrial establishment and the soil remediation meets the established minimum residential use soil remediation standards adopted by the department] the owner or operator is implementing a soil remediation which meets the established minimum residential or nonresidential use soil remediation standards adopted by the department[1].

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

i. An owner or operator of an industrial establishment [1][proposing to implement soil remediation of an industrial establishment shall submit a proposed remedial action workplan for the remediation of soil to the department for its prior review and approval if:

(1) the remedial action cannot reasonably be expected to be completed pursuant to standards, criteria, and time schedules

established by the department within five years of the commencement of the implementation of the remediation action;

(2) the owner or operator of the industrial establishment is closing operations and the remediation will meet the established minimum nonresidential use soil remediation standards; or

(3) the soil remediation does not meet either the established minimum residential or nonresidential use soil remediation standards adopted by the department] shall base 2[its] his2 decision to use the nonresidential use soil remediation standards for the industrial establishment upon the criteria listed below, as applicable:

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

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

(3) The transferee of the industrial establishment has agreed to the implementation of the nonresidential use soil remediation 2[standard] standards2 ;

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

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

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

The department shall, within 18 months of the effective date of 2[this amendatory and supplementary act,] P.L. , c. (C.) (now before the Legislature as this bill),2 promulgate regulations to clearly define how the department will evaluate the application of the criteria enumerated in paragraphs (1) through (6) of this subsection; provided, however, that notwithstanding the preceding requirement, 2the2 criteria 2enumerated in paragraphs2 (1) through (4) and 2in paragraph2 (6) shall become immediately operative. Until the department promulgates those regulations, it shall impose reasonable standards and requirements upon any owner or operator deciding to use nonresidential use soil remediation standards pursuant to this subsection. Furthermore, the department shall not impose any requirement or standard with regard to 2the2 criterion 2enumerated in paragraph2 (5) that would require an owner or operator to implement residential use soil remediation standards unless the cost difference between implementing the residential standards and the nonresidential standards is a de 2[minimus] minimis2 amount. For the purposes of the preceding, de 2[minimus] minimis2 shall mean a cost difference not exceeding 10 percent of the cost of implementing the nonresidential standards.

At any time after the effective date of 2[this amendatory and supplementary act] P.L. , c. (now before the Legislature as this bill)2, an owner or operator may request the department to provide a determination as to whether a proposed remedial action is consistent with the criteria set forth above in paragraphs (1) through (6). The department shall provide any such determination

within 30 calendar days of the department's receipt of the request[1].

j. [1][The department shall review and approve or disapprove the proposed remedial action workplan required to be submitted pursuant to subsection i. of this section to determine if the proposed remedial action workplan is in compliance with the rules and regulations regarding remediation and, if applicable, that the use of the nonresidential use soil remediation standards are appropriate for the industrial establishment. The department shall base its decision to approve or disapprove the use of nonresidential use soil remediation standards for the industrial establishment upon the criteria listed below, as applicable.

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

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

(3) The transferee of the industrial establishment agrees to the implementation of the nonresidential use soil remediation standard;

(4) The potential for the hazardous substances or hazardous wastes to affect other property; and

(5) The difference in cost between the use of the residential use soil remediation standards and the nonresidential use soil remediation standards] An owner or operator proposing to implement a [2]soil[2] remedial action other than one which is set forth in subsection h. of this section must receive department approval prior to implementation of the remedial action[1].

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

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

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

The department shall review all information submitted to it by the owner or operator at the completion of the remediation to determine whether the actions taken were in compliance with

rules and regulations of the department regarding remediation.

The department may review and approve or disapprove every remedial action workplan, no matter when submitted, to determine, in accordance with the criteria listed in subsection g. of section 35 of P.L. , c. (C.)(now before the Legislature as this bill) if the remedial action that has occurred or that will occur is appropriate to meet the [1][established] applicable[1] remediation standards.

The department may order additional remediation activities at the industrial establishment, or offsite where necessary, or may require the submission of additional information, where (a) the department determines that the remediation activities undertaken were not in compliance with [1]the[1] applicable rules or regulations of the department; (b) all documents required to be submitted to the department were not submitted or, if submitted, were inaccurate, or deficient; or (c) [2][if][2] discharged hazardous substances or hazardous wastes remain at the industrial establishment, or have migrated or are migrating offsite, at levels or concentrations in violation of the applicable remediation standards. Upon a finding by the department that the remediation conducted at the industrial establishment was in compliance with all applicable regulations, that no hazardous substances or hazardous wastes remain at the industrial establishment in violation of the applicable remediation standards, and that all hazardous substances or hazardous wastes that migrated from the industrial establishment have been remediated in conformance with the applicable remediation standards, the department shall approve the remediation for that industrial establishment by the issuance of a no further action letter.

(cf: P.L.1983, c.330, s.4)

5. Section 2 of P.L.1991, c.238 (C.13:1K-9.2) is amended to read as follows:

2. The acquiring of title to an industrial establishment by a municipality pursuant to a foreclosure action pertaining to a certificate of tax sale purchased and held by the municipality shall not relieve the previous owner or operator of the industrial establishment of his duty to [implement a cleanup plan if the implementation is deemed necessary by the Department of Environmental Protection] remediate the industrial establishment as required pursuant to P.L.1983, c.330.

(cf: P.L.1991, c.238, s.2)

6. Section 3 of P.L.1991, c.238 (C.13:1K-9.3) is amended to read as follows:

3. If a municipality undertakes [to clean up hazardous substances and wastes on the site of] a remediation of an industrial establishment, the title to which the municipality acquired pursuant to a foreclosure action pertaining to a certificate of tax sale, all expenditures incurred in the [cleanup] remediation shall be a debt of the immediate past [owners] owner or operator of the industrial establishment. The debt shall constitute a lien on all property owned by the immediate past owner or operator when a notice of lien, incorporating a description of the property subject to the [cleanup and removal]

remediation and an identification of the amount of [cleanup, removal] remediation and related costs expended by the municipality is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment or order docket the name and address of the immediate past owner or operator and the amount of the lien as set forth in the notice of lien. Upon entry by the clerk, the lien shall attach to the revenues and all real and personal property of the immediate past owner or operator, whether or not he is insolvent. The notice of lien filed pursuant to this section which affects any property of an immediate past owner or operator shall have priority from the day of the filing of the notice of the lien, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this section.

(cf: P.L.1991, c.238, s.3)

7. Section 5 of P.L.1991, c.238 (C.13:1K-9.5) is amended to read as follows:

5. If a municipality undertakes a [cleanup of hazardous substances and wastes on the site] remediation of an industrial establishment, the municipality shall [make any submissions required by P.L.1983, c.330 (C.13:1K-6 et seq.) and] undertake that remediation and shall obtain [approval of] all approvals required by the Department of Environmental Protection [1]and Energy[1] [prior to the initiation of the sampling plan and the cleanup plan].

(cf: P.L.1991, c.238, s.5)

8. (New section) Upon the submission of the complete and accurate results of a phase of the remediation pursuant to section 4 of P.L.[2][1993] 1983[2] , c.330 [1][(C.13:1K-7)] (C.13:1K-9)[1] or of any other document required to be submitted that requires the department's review and approval in order to comply with P.L.1983, c.330, the department shall review and approve, approve with conditions, or disapprove the submission or other documents in accordance with the review schedules established pursuant to section 2 of P.L.1991, c.423 (C.13:1D-106).

9. (New section) The owner or operator of an industrial establishment may, upon submission of a written notice to the department, transfer ownership or operations or close operations without complying with the provisions of section 4 of P.L.1983, c.330 (C.13:1K-9) if the total quantity of hazardous substances and hazardous wastes generated, manufactured, refined, transported, treated, stored, handled, or disposed of at the industrial establishment at any one time during the [1][owner] owner's[1] or operator's period of ownership or operations [1]:

(a)[1] does not exceed 500 pounds or 55 gallons [1][, or,] ;[1]

[1](b)[1] if a hazardous substance or hazardous waste is mixed with nonhazardous substances, the total quantity [2][of] in[2] the mixture does not exceed 500 pounds or 55 gallons [1]; or

(c) if, in the aggregate, hydraulic or lubricating oil, does not exceed 220 gallons[1].

10. Section 5 of P.L.1983, c.330 (C.13:1K-10) is amended to read as follows:

5. a. The department shall, pursuant to the "Administrative

Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing: [minimum standards for soil, groundwater and surface water quality necessary for the detoxification of the site of an industrial establishment, including buildings and equipment, to ensure that the potential for harm to public health and safety is minimized to the maximum extent practicable, taking into consideration the location of the site and surrounding ambient conditions;] (1) criteria and minimum standards necessary for the submission, evaluation and approval of [cleanup plans;] plans or results of preliminary assessments, site investigations, remedial investigations, and remedial action workplans and for the implementation thereof. The documents for the preliminary assessment, site investigation, remedial investigation, and remedial action workplan required to be submitted for a remediation [,] shall not be [based on] identical to the [same] criteria and standards used for similar [or identical] documents submitted pursuant to federal law [,] except as may be required by federal law. In establishing criteria and minimum standards for these terms [,] the department shall strive to avoid duplicate or unnecessarily costly or time consuming conditions or standards; (2) a fee schedule, as necessary, reflecting the actual costs associated with the review of plans for or results of negative declarations, preliminary assessments, site investigations, remedial investigations, and [cleanup plans] remedial [action workplans] actions , and review of the implementation thereof and for any other review or approval required by the department; (3) standards and procedures for remediation agreements authorized pursuant to subsection [d.] e. of section 4 of P.L.1983, c.330 (C.13:1K-9); and (4) any other provisions or procedures necessary to implement this act. [Until the minimum standards described herein are adopted, the department shall review, approve or disapprove negative declarations and cleanup plans on a case by case basis.]

b. [The department shall, within 45 days of submission, approve the negative declaration, or inform the industrial establishment that a cleanup plan shall be submitted.

c. The department shall, in accordance with the schedule contained in an approved cleanup plan, inspect the premises to determine conformance with the minimum standards for soil, groundwater and surface water quality and shall certify that the cleanup plan remedial action workplan has been executed and that the site has been detoxified.] The owner or operator shall allow the department reasonable access to the industrial establishment and to offsite areas under the owner's or operator's control to inspect the premises, review records, and to take soil, groundwater, or other samples or measurements as deemed necessary by the department to verify the results of any submission made to the department and to verify the owner's or operator's compliance with the requirements of this act.

(cf: P.L.1983, c.330, s.5)

11. Section 6 of P.L.1983, c.330 (C.13:1K-11) is amended to read as follows:

6. a. [The provisions of any law, rule or regulation to the contrary notwithstanding, the transferring of an industrial

establishment is contingent on the implementation of the provisions of this act.

b. If the premises of] The owner or operator of an industrial establishment planning to transfer ownership or operations may apply to the department for a deferral of the preparation, approval, and implementation of a remedial action workplan for the industrial establishment. The applicant shall submit to the department:

(1) a certification signed by the purchaser, transferee, mortgagee or other party to the transfer, approved by the department, that the industrial establishment would be subject to substantially the same use by the purchaser, transferee, mortgagee or other party to the transfer[, and upon written certification thereto and approval by the department thereof, the implementation of a cleanup plan and the detoxification of the site] ;

(2) a certification, approved by the department, that the owner or operator has satisfactorily completed a preliminary assessment, site investigation, and remedial investigation [1][,]1 of the industrial establishment;

(3) a cost estimate for the remedial action necessary at the industrial establishment, approved by the department [1]based upon the information collected in the preliminary assessment, site investigation, and remedial investigation and developed in accordance with department regulations[1]; and

(4) a certification, approved by the department, that the purchaser, transferee, mortgagee or other party to the transfer [1][,]1 has the financial ability to pay for the implementation of the necessary remedial action.

The preparation, approval, and implementation of a remedial action workplan for the industrial establishment may be deferred [2]for that transfer[2] until the use changes or until the purchaser, transferee, mortgagee or other party to the transfer closes[, terminates or transfers] operations [1][or transfers ownership or operations]1.

[(1) Within 60 days of receiving notice of the sale or realty transfer and the certification that the industrial establishment would be subject to substantially the same use, the department shall approve, conditionally approve, or deny the certification.

(2) Upon approval of the certification, the implementation of a cleanup plan and detoxification of the site shall be deferred.

(3) Upon denial of the certification, the cleanup plan and detoxification of the site shall be implemented pursuant to the provisions of this act.

c.] b. Upon [1][satisfactory]1 submission of a complete and accurate application, the department shall approve the deferral. Upon approval of the deferral, the preparation, approval, and implementation of remedial action workplan at the industrial establishment shall be deferred. [1][The deferral shall be denied by the department if a complete and accurate application is not submitted to the department or if the department fails to approve any of the components of the application. Upon denial of the deferral, the remediation of the industrial establishment shall be continued pursuant to the provisions of this act.]1

c. The authority to defer [implementation of the cleanup plan] the preparation, approval, and implementation of a remedial action workplan set forth in [2][subsection [b.] a. of][2] this section shall not be construed to limit, restrict, or prohibit the department from directing site [cleanup] remediation under any other statute, rule, or regulation, but shall be solely applicable to the obligations of the owner or operator of an industrial establishment, pursuant to the provisions of this act, nor shall any other provisions of this act be construed to limit, restrict, or prohibit the department from directing site [cleanup] remediation under any other statute, rule, or regulation.

[1]For the purposes of this section, substantially the same use means that the industrial establishment shall retain the same three digit Industry Group Number, as designated in the Standard Industrial Classifications Manual prepared by the federal Office of Management and Budget in the Executive Office of the President of the United States. In a manner and form, and in accordance with the specific criteria prescribed by the department, an applicant may petition for a finding by the department that the affected industrial establishment be deemed subject to substantially the same use based upon its retention of the same two digit Major Group Number, as designated in the Standard Industrial Classifications Manual.[1]

(cf: P.L.1983, c.330, s.6)

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

8. a. Failure of the transferor to [comply with any of] perform a remediation and obtain department approval thereof as required pursuant to the provisions of this act is grounds for voiding the sale or transfer of an industrial establishment or any real property utilized in connection therewith by the transferee, entitles the transferee to recover damages from the transferor, and renders the owner or operator of the industrial establishment strictly liable, without regard to fault, for all [cleanup and removal] remediation costs and for all direct and indirect damages resulting from the failure to implement the [cleanup plan] remedial action workplan. A transferee may not act to void the sale or transfer of an industrial establishment or any real property except upon providing notice to the transferor of the failure to perform and affording the transferor a reasonable amount of time to comply with the provisions of this act.

b. [Failure to submit a negative declaration, or cleanup plan pursuant to the provisions of section 4 of this act is grounds for voiding the sale by the department.

c.] Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of this act is liable for a penalty of not more than $25,000.00 for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense. Penalties shall be collected in a civil action by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). Any officer or management official of an industrial establishment who knowingly directs or authorizes the violation of any provisions of this act shall be personally

liable for the penalties established in this subsection.
(cf: P.L.1983, c.330, s.8)

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

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

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department [1]or the [2][federal] United States[2] Environmental Protection Agency, pursuant to the [2][federal][2] "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act [2]of 1980[2]," 42 U.S.C. §9601 et seq.,[1] [2]or any other law,[2] has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment [1][,] that are[1] consistent with current regulations established by the department [1][,][1] in order to identify areas of concern that are new or have continued in use since the issuance of a no further action letter, negative declaration approval, or remediation approval as described in paragraph (2) of this subsection, and [1][that] ,[1] based on those remediation activities [1][the owner or operator certifies] ,[1] that there has been no discharge of a hazardous substance or hazardous waste at the industrial establishment subsequent to the approval of the negative declaration, the issuance of the no further action letter, or the equivalent remediation; or, if any discharge has occurred, a certification listing any discharge, describing the action taken to remediate the discharge, a certification that the remediation was performed in accordance with procedures established by the department, a certification that the remediation was approved by the department and a copy of the document evidencing the departmental approval;

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

(5) a copy of the [1]most recent[1] negative declaration, or no further action letter, or other approval [1],[1] as applicable, [1][last][1] approved by the department for the entire industrial establishment; and

(6) a proposed negative declaration.

b. Upon the submission of a complete and accurate application

and after an inspection, if necessary, the department shall approve or disapprove the negative declaration. The department shall approve the negative declaration upon a finding that the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the proposed negative declaration by the department pursuant to this section, the owner or operator shall comply with the provisions of section 4 of P.L.1983, c.330.

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

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

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department [1]or the [2][federal] United States[2] Environmental Protection Agency, pursuant to the [2][federal "resource] "Resource[2] Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act [2]of 1980[2]," 42 U.S.C. §9601 et seq.,[1] [2]or any other law,[2] has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment [1][,] that are[1] consistent with current regulations established by the department [1][,][1] in order to identify areas of concern and [1][that] ,[1] based on those remediation activities [1][the owner or operator certifies] ,[1] that subsequent to the issuance of the negative declaration, no further action letter or remediation approval described in paragraph (2) of this subsection, a discharge has occurred at the industrial establishment that was not remediated in accordance with the procedures established by the department or that any remediation performed has not been approved by the department and that no other discharge of a hazardous substance or hazardous waste has occurred at the industrial establishment;

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

(5) a copy of the [1]most recent[1] negative declaration, no further action letter, or other approval, as applicable, [1][last][1] approved by the department for the industrial establishment; and

(6) a proposed negative declaration, if applicable.

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

(1) approve the negative declaration upon a finding that any discharge of a hazardous substance or hazardous waste, as certified to pursuant to paragraph (3) of subsection a. of this section, has been remediated consistent with the applicable remediation standards as established by the department; or

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

c. The owner or operator of an industrial establishment subject to the provisions of this section shall not close operations or transfer ownership or operations until a remedial action workplan, or a negative declaration, as applicable, has been approved by the department or upon approval of a remediation agreement as provided in subsection [1]d.] e.[1] of section 4 of P.L.1983, c.330.

15. (New section) a. The owner or operator of an industrial establishment who is required to perform a remediation at an industrial establishment pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) [1][,][1] may apply to the department for an area of concern waiver. Approval of the area of concern waiver shall relieve the owner or operator of the requirement to perform a remediation pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) for any area of concern at that industrial establishment for which a remediation has previously been conducted and approved by the department. An application pursuant to this subsection shall include:

(1) a certification that the department [1]or the [2][federal] United States[2] Environmental Protection Agency, pursuant to the [2][federal][2] "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act [2]of 1980[2]," 42 U.S.C. §9601 et seq.,[1] [2]or any other law,[2] has previously approved a remediation at an area of concern and has issued a no further action letter or an equivalent approval of a remediation for that area of concern [1][,] ;[1]

(2) a copy of the [1]most recent[1] no further action letter or equivalent approval for that area of concern, [1][last][1] approved by the department [1][,] ;1 and

(3) a certification that the owner or operator has performed remediation activities at that area of concern [1][,] that are[1] consistent with current regulations established by the department, and [1][that][1] based on those remediation activities [1][the owner or operator certifies] ,[1] that subsequent to the issuance of the no further action letter or equivalent approval described in paragraph (1) of this subsection, there has been no discharge of a hazardous substance or hazardous waste at that area of concern.

b. Upon submission of a complete and accurate application and after an inspection, if necessary, the department shall approve the application for an area of concern waiver upon a finding that

the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the application by the department pursuant to this section, the owner or operator shall perform a remediation of the subject area of concern as may be required pursuant to subsection b. of section 4 of P.L.1983, c.330.

16. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 (C.13:1K-9), if the industrial establishment is already in the process of a remediation pursuant to subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) or a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330 [1], including a cleanup being performed under the [2][federal][2] "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act [2]of 1980[2]," 42 U.S.C. §9601 et seq.[1]. The application shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330 [1][,] ;[1]

(2) a certification that there has been no discharge of any hazardous substance or hazardous waste at the industrial establishment during the applicant's period of operation or ownership or that the remediation of any discharge of a hazardous substance or hazardous waste that [1][occured] occurred[1] during the applicant's period of ownership or operation was approved by the department [1][,] ;[1]

(3) a certification by the owner or operator that a remediation funding source for the cost of the remediation or the implementation of the remedial action workplan at the industrial establishment has been established as required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) [1][,] ;[1] and

(4) a certification, as applicable, that any transferee of the industrial establishment has been notified that the industrial establishment is the subject of a remediation.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, that the applicant may close operations or transfer ownership or operations of the industrial establishment.

17. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 if the only areas of concern or the only discharges at the industrial establishment are from an underground storage tank [1]or tanks[1] regulated pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.). The application shall

include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330 [1][,] ;[1]

(2) the submission of a preliminary assessment that shows that the only area of concern at an industrial establishment is an underground storage tank or tanks as defined pursuant to section 2 of P.L.1986, c.102 (C.58:10A-22), or the submission of a site investigation that shows that the only discharged hazardous substances or hazardous wastes at the industrial establishment, or that has migrated offsite, above the applicable remediation standards are from a leak or discharge from that underground storage tank or tanks [1][,] ;[1] and

(3) a certification that the owner or operator of the industrial establishment is in compliance with the provisions of P.L.1986, c.102 for all underground storage tanks [1]at the industrial establishment that are[1] covered by that act [1][, at the industrial establishment][1]. The owner or operator of an industrial establishment, at which a discharge of a hazardous substance or hazardous waste from an underground storage tank has occurred, shall be deemed in compliance with the provisions of P.L.1986, c.102, as it relates to that discharge for the purposes of this paragraph, if the owner or operator has been issued an order by or has entered into an agreement with the department to remediate that discharge and the owner or operator is in compliance with that order or agreement.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, the applicant to close operations or transfer ownership or operations of the industrial establishment.

18. (New section) a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or without the approval of a remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 if the discharge of hazardous substances or hazardous wastes at the industrial establishment is of minimal environmental concern. Upon the completion of a preliminary assessment, site investigation, and remedial investigation for the industrial establishment, conducted pursuant to subsection b. of section 4 of P.L.1983, c.330, any owner or operator may submit to the department an application for a determination that the discharge at an industrial establishment is of minimal environmental concern, which application shall include:

(1) a certification, supported by the submission of data from the preliminary assessment, site investigation, and remedial investigation, that there are no more than two areas of concern at the industrial establishment that are contaminated at levels above the applicable remediation standards, and that remedial action at those areas of concern can be completed pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(2) a certification that a remedial action workplan shall be prepared pursuant to standards and criteria established by the department and that [2][in the case of a closure the remediation will meet the residential use soil remediation standards and that in the case of a transfer of ownership or operations][2] the remediation will meet either the nonresidential use or residential use soil remediation standards [2]and the applicable surface water and groundwater remediation standards[2];

(3) a certification that the remedial action workplan will be prepared and implemented pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(4) evidence that the remediation funding source required pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) has been established [1][or if all or part of the remediation funding source is to be established by a grant or loan from the remediation fund pursuant to section 27 and 28 of P.L. , c. (C.)(now before the Legislature as this bill), evidence that an application has been made for that loan or grant and that there is a reasonable expectation that the loan or grant will be awarded][1] ;

(5) the payment of all fees or surcharges related to the remediation imposed pursuant to P.L.1983, c.330, P.L. , c. (C.)(now before the Legislature as this bill), and section 33 of P.L. , c. (C.) (now before the Legislature as this bill), and any rules or regulations adopted pursuant thereto; and

(6) documentation establishing that the discharged hazardous substances or hazardous wastes at the industrial establishment do not pose a threat to human health because of the proximity of an area of concern to a drinking water source or because of the location, complexity, or the nature of the discharge.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall approve the application for a determination that the discharge at an industrial establishment is of minimal environmental concern. Prior to making a finding upon the application pursuant to this section, the department may inspect the industrial establishment, as necessary, to verify the information in the application. The decision of the department shall be made within 30 days of the submission of a complete application. In determining the amount of time necessary to complete the remedial action, the department shall not include that time in which it takes the department to issue a permit for a discharge to surface water pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.).

c. The owner or operator shall, upon the completion of the remedial action at the subject areas of concern, certify to the department that the remedial action workplan has been implemented in accordance with the standards and criteria established by the department and in compliance with the certifications made pursuant to this section. The certification shall include a copy of the remedial action workplan and the results of all sampling analysis and any tests performed as part of

the remedial action. Within 45 days of receipt of the certification, the department shall issue a no further action letter to the owner or operator. The department may perform an inspection of the industrial establishment or any area offsite that is under the owner's or operator's control, as relevant, prior to issuing the no further action letter.

The department may refuse to issue the no further action letter pursuant to this section only upon a finding that hazardous substances or hazardous wastes remain at the relevant areas of concern at levels or concentrations in excess of the applicable remediation standards.

d. Upon the failure of an owner or operator to complete the implementation of a remedial action workplan within the six month period as provided in subsection a. of this section, the owner or operator shall so notify the department in writing and [1]provide[1] the reasons therefor. The owner or operator shall have no more than 120 additional days to complete the implementation of the remedial action. If the implementation of the remedial action is not completed within this additional time, the department may rescind its determination that the industrial establishment is of minimal environmental concern and may require that a new remedial action workplan be submitted and implemented by the owner or operator in a manner and under the terms and conditions provided in its general regulations for remedial action workplan submissions and implementation.

19. (New section) a. The owner of an industrial establishment may transfer a portion of the real property on which an industrial establishment is situated without conducting a remediation of the entire industrial establishment pursuant to the provisions of P.L.1983, c.330, if, upon application by the owner, the department issues a certificate of limited conveyance [1]pursuant to subsections b. through e. of this section, or if the owner transfers the portion of real property in accordance with the provisions of subsection f. of this section[1].

b. An application for a certificate of limited conveyance shall be in the form of a certification by the owner which shall include a description of the real property to be transferred, an appraisal of the real property to be transferred, the sale price or market value of the real property to be transferred, an appraisal of the entire industrial establishment, and an appraisal of the remaining property if the certificate of limited conveyance were issued, as well as any other information the department deems necessary to make the findings required in subsection c. of this section.

c. The department shall issue a certificate of limited conveyance for a portion of the real property on which an industrial establishment is situated after the submission of a complete and accurate application and upon a finding that the sales price or market value of the real property to be conveyed, together with any additional diminution in value to the remaining property as a result of the conveyance is not more than one third of the total appraised value of the industrial establishment prior to the transfer, and that the remaining real property is an industrial establishment subject to the provisions of P.L.1983, c.330. The appraisals shall be made no more than one year prior

to the submission of application for a certificate of limited conveyance. Conveyances made pursuant to this section shall not exceed one third of the value of the industrial establishment during the period of ownership of the applicant.

d. Upon issuance of the certificate of limited conveyance, the owner or operator shall, prior to the conveyance, comply with the provisions of section 4 of P.L.1983, c.330 for that portion of the real property certified for conveyance. The remediation that may be required on the real property subject to the certificate of limited conveyance shall include any hazardous substances or hazardous wastes that are migrating from the remaining portion of the industrial establishment onto the real property being conveyed. The remaining portion of the industrial establishment, upon the subsequent closing [1][,][1] of operations or transferring of ownership or operations [1],[1] shall be subject to the provisions of P.L.1983, c.330 and [2][this act] P.L. , c. (C.)(now before the Legislature as this bill)[2] .

e. A certificate of limited conveyance shall be valid for three years from the date of issuance.

[1]f. An owner, either as part of or subsequent to a conveyance made in accordance with subsections b. through e. of this section, may transfer additional portions of the real property of the industrial establishment in excess of the conveyance limitation set forth in subsection c. of this section; provided, however, that the additional portions proposed for transfer do not constitute a closing of operations or transferring of ownership or operations, subject to section 4 of P.L.1983, c.330.

The amount paid for the additional portion of real property, or any part thereof, which exceeds the permissible conveyance limitation under subsection c. of this section shall be used exclusively for the purposes of remediating that parcel of real property in accordance with the provisions of subsection d. of this section; provided, however, if any portion of that amount shall remain unexpended for the remediation of the parcel, that unexpended amount shall be deposited in a remediation trust fund as provided in subsection g. of this section.

g. To provide for the subsequent remediation of that portion of the real property of an industrial establishment which was not transferred pursuant to subsection f. of this section, the owner shall establish a remediation trust fund in accordance with subsection c. of section 25 of P.L. , c. (C.)(now pending before the Legislature as this bill) and [2][to] shall[2] deposit any unexpended amounts, as provided in subsection f. of this section, into that fund.[1]

20. (New section) a. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, the landlord shall be responsible for providing any information that is requested by the tenant that is not otherwise available through a diligent inquiry by the tenant, and the tenant shall be responsible for providing any information that is requested by the landlord that is not otherwise available through a diligent inquiry by the landlord.

b. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, the

person that remediates the industrial establishment shall provide copies to the other person of all submissions to the department concerning the remediation.

c. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, and there has been a failure to comply with the provisions of P.L.1983, c.330, the landlord or the tenant may petition the department, in writing, to first compel that party who is responsible pursuant to the provisions of the lease, to comply with the requirements of P.L.1983, c.330. The petition shall include a copy of the signed lease between the landlord and the tenant. Upon a determination by the department that the provisions of the lease are unclear as it relates to the responsibility of either party to comply with the provisions of P.L.1983, c.330, or upon the failure by the person responsible pursuant to the provisions of the lease to comply, the department may compel compliance by all persons subject to the requirements of P.L.1983, c.330 for the industrial establishment.

21. (New section). a. Any person who, prior to the effective date of [1][this act] P.L. , c. (now before the Legislature as this bill)[1], violated the provisions of P.L.1983, c.330 by closing operations or transferring ownership or operations of an industrial establishment without receiving departmental approval of a cleanup plan or a negative declaration pursuant to the provisions of P.L.1983, c.330, or without entering into an administrative consent order that allows the closure of operations or transfer of ownership or operations, shall not be subject to a penalty for that violation if the person notifies the department of the closure of operations or of the transfer of ownership or operations of the industrial establishment, and, within one year of the effective date of [1][this section] P.L. , c. (now before the Legislature as this bill)[1], enters into an administrative consent order or a memorandum of agreement with the department to complete a remediation of the industrial establishment pursuant to the provisions of P.L.1983, c.330 and any rules or regulations adopted pursuant thereto.

b. Notwithstanding the provisions of subsection a. of this section, any person who enters into a memorandum of agreement or an administrative consent order with the department pursuant to this section and fails to remediate the industrial establishment in accordance with the memorandum of agreement or administrative consent order [1][,][1] shall be subject to penalties for violations that occurred before the effective date of [1][this act] P.L. , c.)(now before the Legislature as this bill)[1] as well as any penalties for subsequent violations.

c. Any documents or information provided to the department pursuant to this section may not be used in a criminal investigation or criminal prosecution against the person providing the information or documents for those violations that occurred before the effective date of [1][this act] P.L. , c. (now before the Legislature as this bill)[1] as long as the person remediates the industrial establishment in conformance with the administrative consent order or memorandum of agreement entered into pursuant to subsection a of this section.

22. (New section) a. Within one year of the effective date of [1][this act] P.L. , c. (now before the Legislature as this bill)[1], the Department of Environmental Protection [1]and Energy[1] shall conduct an audit of the negative declarations and remedial action workplans that have been submitted to the department pursuant to P.L.1983, c.330 [1](C.13:1K-6 et seq.)[1]. On the basis of this audit, and any other information it may have available to it, the department shall adopt regulations identifying, within the Standard Industrial Classification major group numbers listed in the definition of "industrial establishment," all industries designated by Standard Industrial Classification number subgroups, or classes of operations within those subgroups, that should not pose a risk to public health and safety or to the environment. The audit shall, to the extent practicable, distinguish between hazardous substances or hazardous wastes at an industrial establishment caused by a particular type of industry and hazardous substances or hazardous wastes that exists as a result of activities at an industrial establishment unrelated to the activities of that industry.

b. An industrial establishment for which a remedial action workplan was previously implemented and a no further action letter was received pursuant to P.L.1983, c.330, a negative declaration was previously approved by the department pursuant to P.L.1983, c.330, or for which the department has previously approved a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330, and [1][which industrial establishment] that[1] is designated by a Standard Industrial Classification subgroup or class of operations that does not pose a risk to public health and safety or to the environment as identified in subsection a. of this section, shall not be considered an industrial establishment for the purposes of P.L.1983, c.330.

23. (New section) As used in sections 23 through 43 of P.L. , c. (C.)(now before the Legislature as this bill):

"Area of concern" means any [2][existing or former][2] location where contaminants are or were known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, or disposed, or where contaminants have or may have migrated;

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

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

"Department" means the Department of Environmental Protection [1]and Energy[1];

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

"Engineering controls" means any mechanism to contain or stabilize contamination or ensure the effectiveness of a remedial

action. Engineering controls may include, without limitation, caps, covers, dikes, trenches, leachate collection systems, signs, fences and access controls:

[1]"Financial assistance" means loans [2][,] or[2] loan guarantees [2][, bonds and such other funding mechanisms as may be established by the authority][2] ;[1]

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

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

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether contaminants are or were present at a site or have migrated or are migrating from a site, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or [1][potential] latent[1] discharge of any contaminant is required [1]. The evaluation of historic information shall be conducted from [2][1900] 1932[2] to the present, except that the department may require the search for and evaluation of additional information relating to ownership and use of the site prior to [2][1900] 1932[2] if such information is available through diligent inquiry of the public records[1];

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

"Remedial investigation" means a process to determine the nature and extent of a discharge of a contaminant at a site or a discharge of a contaminant that has migrated or is migrating from the site and the problems presented by a discharge, and may include data collected, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant

information necessary to determine the necessity for remedial action and to support the [1][valuation] evaluation[1] of [1][remediated alternatives] remedial actions if necessary[1];

"Remediation" or "remediate" means all necessary actions to investigate and clean up any known [1][or] ,[1] suspected [1], or threatened[1] discharge of contaminants, including [1], as necessary,[1] the preliminary assessment, site investigation, remedial investigation, and remedial action;

"Site investigation" means the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site or has migrated or is migrating from the site at levels in excess of the applicable remediation standards. A site investigation shall be developed based upon the information collected pursuant to the preliminary assessment.

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

"Remediation fund" means the Hazardous Discharge Site Remediation Fund established pursuant to section 26 of P.L. , c. (C.)(now before the Legislature as this bill);

"Remediation funding source" means the methods of financing the remediation of a discharge required to be established by a person performing the remediation pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill);

"Remediation standards" means the combination of numeric and narrative standards to which contaminants must be remediated for soil, groundwater, or surface water as provided by the department pursuant to section 35 of P.L. , c. (C.)(now before the Legislature as this bill).

24. (New section) The department shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing criteria and minimum standards necessary for the submission, evaluation and approval of plans or results of preliminary assessments, site investigations, remedial investigations, and remedial action workplans and for the implementation thereof. The documents for the preliminary assessment, site investigation, remedial investigation, and remedial action workplan required to be submitted for a remediation, shall not be [1][based on] identical to[1] the [1][same][1] criteria and standards used for similar [1][or identical][1] documents submitted pursuant to federal law [1],[1] except as may be required by federal law. In establishing criteria and minimum standards for these terms the department shall strive to avoid duplicate or unnecessarily costly or time consuming conditions or standards.

25. (New section) a. The owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), or a discharger or person in any way responsible for a hazardous substance who has been issued a directive or an order

by a State agency, who has entered into an administrative consent order with a State agency, or who has been ordered by a court to clean up and remove a hazardous substance or hazardous waste discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall [1][,]1 establish and maintain a remediation funding source in the amount necessary to pay the estimated cost of the required remediation. A person who voluntarily undertakes a remediation pursuant to a memorandum of agreement with the department, or without the department's oversight, is not required to establish or maintain a remediation funding source. A person required to establish a remediation funding source pursuant to this section shall provide to the department satisfactory documentation that the requirement has been met.

The remediation funding source shall be established in an amount equal to or greater than the cost estimate of the implementation of the remediation (1) as approved by the department, (2) as provided in an administrative consent order or remediation agreement as required pursuant to subsection [1][d.] e.1 of section 4 of P.L.1983, c.330, (3) as stated in a departmental order or directive, or (4) as agreed to by a court, and shall be in effect for a term not less than the actual time necessary to perform the remediation at the site. Whenever the remediation cost estimate increases, the person required to establish the remediation funding source shall cause the amount of the remediation funding source to be increased to an amount at least equal to the new estimate. Whenever the remediation or cost estimate decreases, the person required to obtain the remediation funding source may file a written request to the department to decrease the amount in the remediation funding source. The remediation funding source may be decreased to the amount of the new estimate upon written approval by the department delivered to the person who established the remediation funding source and to the trustee or the person or institution providing the remediation trust 2, the environmental insurance policy,2 or the line of credit, as applicable. The department shall approve the request upon a finding that the remediation cost estimate decreased 1by the requested amount1.

b. The person responsible for performing the remediation and who established the remediation funding source may use the remediation funding source to pay for the actual cost of the remediation. The department may not require any other financial assurance by the person responsible for performing the remediation other than that required in this section. In the case of a remediation performed pursuant to P.L.1983, c.330, the remediation funding source shall be established no more than 14 days after the approval by the department of a remedial action workplan or upon approval of a remediation agreement pursuant to subsection [1][d.] e.1 of section 4 of P.L.1983, c.330 (C.13:1K-9) 1, unless the department approves an extension1. In the case of a remediation performed pursuant to P.L.1976, c.141, the remediation funding source shall be established as provided in an administrative consent order signed by the parties, as provided by a court, or as directed or ordered by the department. The establishment of a remediation funding source for that part of

the remediation funding source to be established by a grant or [1][loan] financial assistance[1] from the [2][Remediation Fund] remediation fund[2] may be established for the purposes of this subsection by the application for a grant or [1][loan] financial assistance[1] from the remediation fund and satisfactory evidence submitted to the department that the grant or [1][loan] financial assistance[1] will be awarded. However, if the [1][loan] financial assistance[1] or grant is denied or the department finds that the person responsible for establishing the remediation funding source did not take reasonable action to obtain the grant or [1][loan] financial assistance[1], the department shall require that the full amount of the remediation funding source be established within 14 days of the denial or finding. The remediation funding source shall be evidenced by the establishment and maintenance of (1) a remediation trust fund, (2) [1]an environmental insurance policy, issued by an entity licensed by the Department of Insurance to transact business in the State of New Jersey, to fund the remediation, (3)[1] a line of credit from a person or institution satisfactory to the department authorizing the person responsible for performing the remediation to borrow money, or [1][(3) a self guarantee] (4) a self-guarantee[1], or by any combination thereof. Where it can be demonstrated that a person cannot establish and maintain a remediation funding source for the full cost of the remediation by a method specified in this subsection, that person may establish the remediation funding source for all or a portion of the remediation, by securing [2][a][2] [1][loan] financial assistance[1] from the Hazardous Discharge Site Remediation Fund as provided in section 29 of P.L. , c. (C)(now before the Legislature as this bill).

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

The trust fund agreement shall provide that the remediation trust fund may not be revoked or terminated by the person required to establish the remediation funding source or by the trustee without the written consent of the department. The trustee shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those monies as the department authorizes, in writing, to be released. The person entitled to receive money from the remediation trust fund shall submit documentation to the department detailing the costs incurred or

to be incurred as part of the remediation. Upon a determination by the department that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement of moneys from the remediation trust fund in the amount of the documented costs.

The department shall return the original remediation trust fund agreement to the trustee for termination after the person required to establish the remediation funding source substitutes an alternative remediation funding source as specified in this section or the department notifies the person that [2]that[2] person is no longer required to maintain a remediation funding source for remediation of the contaminated site.

[1]d. An environmental insurance policy shall be established pursuant to the provisions of this subsection. An originally signed duplicate of the insurance policy shall be delivered to the department by certified mail [2],overnight delivery, or personal service[2] within 30 days of receipt of notice from the department that the remedial action workplan or remediation agreement, as provided in subsection e. of section 4 of P.L.1983, c.330, is approved or as specified in an administrative consent order, civil order, or order of the department, as applicable.

The environmental insurance policy may not be revoked or terminated without the written consent of the department. The insurance company shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those monies as the department authorizes, in writing, to be released. The person entitled to receive money from the environmental insurance policy shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation.[1]

[1][d.] e.[1] A line of credit shall be established pursuant to the provisions of this subsection. A line of credit shall allow the person establishing it to borrow money up to a limit established in a written agreement in order to pay for the cost of the remediation for which the line of credit was established. An originally signed duplicate of the line of credit agreement shall be delivered to the department by certified mail [2], overnight delivery, or personal service[2] within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection [1][d.] e.[1] of section 4 of P.L.1983, c.330 is approved, or as specified in an administrative consent order, civil order, or order of the department, as applicable. The line of credit agreement shall conform to a model agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department.

A line of credit agreement shall provide that the line of credit may not be revoked or terminated by the person required to obtain the remediation funding source or the person or institution providing the line of credit without the written consent of the department. The person or institution providing the line of credit shall release to the person required to establish the remediation funding source, or to the department or transferee of the property as appropriate, only those monies as the department

authorizes, in writing, to be released. The person entitled to draw upon the line of credit shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation. Upon a determination that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement from the line of credit in the amount of the documented costs.

The department shall return the original line of credit agreement to the person or institution providing the line of credit for termination after the person required to establish the remediation funding source substitutes an alternative remediation funding source as specified in this section, or after the department notifies the person that [2]that[2] person is no longer required to maintain a remediation funding source for remediation of the contaminated site.

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

[1][f.] g.[1] (1) [1][Where] If[1] the person required to establish the remediation funding source [1][has failed] fails[1] to perform the

remediation as required, the department shall make a written determination of this fact. A copy of the determination by the department shall be delivered to the person required to establish the remediation funding source and, in the case of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), to any transferee of the property. Following this written determination, the department may perform the remediation in place of the person required to establish the remediation funding source. In order to finance the cost of the remediation the department may make disbursements from the remediation trust fund or the line of credit [2]or claims upon the environmental insurance policy,[2] as appropriate, or, if sufficient moneys are not available from those funds, from the remediation guarantee fund created pursuant to section 45 of P.L. , c. (C.)(now before the Legislature as this bill).

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

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

26. (New section) a. There is established in the New Jersey Economic Development Authority a special, revolving fund to be known as the Hazardous Discharge Site Remediation Fund. Moneys in the remediation fund shall be dedicated for the provision of [1][loans] financial assistance[1] or grants to municipal governmental entities, individuals, corporations, partnerships, and other private business entities, for the purpose of financing remediation activities at sites at which there is, or is suspected of being, a discharge of hazardous substances or hazardous wastes.

b. The remediation fund shall be credited with:

(1) moneys as are appropriated by the Legislature;

(2) moneys deposited into the fund as repayment of principal

and interest on outstanding loans made from the fund;

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

(4) remediation funding source surcharges imposed pursuant to section 33 of P.L. , c. (C.)(now before the Legislature as this bill);

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

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

27. (New section) a. (1) 1[Loans] Financial assistance1 from the remediation fund, made to persons other than municipal governmental entities or to persons who voluntarily undertake a remediation, may only be 1[made] rendered1 to persons who cannot establish a remediation funding source for the full amount of a remediation. 1[Loans] Financial assistance pursuant to this act1 may be 1[made] rendered1 only for that amount of the cost of a remediation for which the person cannot establish a remediation funding source.

(2) 1[Loans made] Financial assistance rendered1 to persons who voluntarily undertake a remediation may only be made for that amount of the cost of the remediation that the person cannot otherwise fund by any of the authorized methods to establish a remediation funding source.

b. 1[Loans] Financial assistance1 may be 1[made] rendered1 from the remediation fund to (1) owners or operators of industrial establishments who are required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), upon closing operations or prior to the transfer of ownership or operations of an industrial establishment, (2) persons who have discharged a hazardous substance or who are in any way responsible for a hazardous substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), and (3) persons who voluntarily undertake the remediation of a discharge of a hazardous substance or hazardous waste and who have not been ordered or directed to perform the remediation by the department or by a court.

c. 1[Loans] Financial assistance1 and grants may be made from the remediation fund to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste.

d. Grants may be made from the remediation fund to persons other than governmental entities who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant pursuant to section 28 of P.L. , c. (C.)(now before the Legislature as this bill).

28. (New section) a. Except for moneys deposited in the remediation fund for specific purposes, 1[loans] financial assistance1 and grants 1[of moneys]1 from the remediation fund shall be 1[made] rendered1 for the following purposes and, on an annual basis, obligated in the percentages as provided in this subsection. Upon a written 1joint1 determination by the 1[Economic Development Authority] authority and the department1 that it is 1in1 the public interest, 1[loans] financial

assistance[1] and grants dedicated for the purposes and in the percentages set forth in paragraphs (1), (2), or (3) of this subsection, may, for any particular year, be obligated to other purposes set forth in this subsection. The written determination shall be sent to the Senate Environment Committee, and the Assembly Energy and Hazardous Waste Committee, or their successors.

(1) At least 15% of the moneys shall be allocated for [1][loans] financial assistance[1] to persons, other than governmental entities, for remediation of real property located in a qualifying municipality as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

(2) At least 10% of the moneys shall be allocated for [1][loans] financial assistance[1] and grants to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been or on which there is suspected of being a discharge of hazardous substances or hazardous wastes. Grants shall be used for performing preliminary assessments and site investigations on property owned by a municipal governmental entity, or on which the municipality holds a tax sale certificate, in order to determine the existence or extent of any hazardous substance or hazardous waste contamination on those properties. A municipal governmental entity that has performed a preliminary assessment and site investigation on property may obtain a loan for the purpose of continuing the remediation on those properties it owns as necessary to comply with the applicable remediation standards adopted by the department;

(3) At least 15% of the moneys shall be allocated for [1][loans] financial assistance[1] to persons or municipal government entities for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area;

(4) At least 10% of the moneys shall be allocated for [1][loans] financial assistance[1] to persons, other than municipal government entities, who voluntarily undertake the remediation of a hazardous substance or hazardous waste discharge, and who have not been ordered to undertake the remediation by the department or by a court [1][,] ;[1]

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

(6) At least 20% of the moneys shall be allocated for grants to persons, other than municipal government entities, who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant. A person qualifies for an innocent party grant if that person acquired the property prior to December 31,

1983. the hazardous substance or hazardous waste that was discharged at the property was not used by the person at that site, and that person certifies that he did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered. A grant authorized pursuant to this paragraph may be for up to 50% of the remediation costs at the area of concern for which the person qualifies for an innocent party grant, except that no grant awarded pursuant to this paragraph to any person may exceed $1,000,000.

(7) Ten percent of the moneys in the remediation fund shall be allocated for [1][loans] financial assistance[1] or grants for any of the purposes enumerated in paragraphs (1) through (6) of this subsection [1][, except that where moneys in the fund are insufficient to fund all the applications in any calendar year that would otherwise qualify for a loan or grant pursuant this paragraph, the authority shall give priority to loan applications that meet the criteria enumerated in paragraph (3) of this subsection]1 [2].except that where moneys in the fund are insufficient to fund all the applications in any calendar year that would otherwise qualify for financial assistance or a grant pursuant this paragraph, the authority shall give priority to financial assistance applications that meet the criteria enumerated in paragraph (3) of this subsection[2] .

b. Loans issued from the remediation fund shall be for a term not to exceed ten years, except that upon the transfer of ownership of any real property for which the loan was made, the unpaid balance of the loan shall become immediately payable in full. Loans shall bear an interest rate [1][of 1% below the prime rate as published in Publication No. H15 entitled "Selected Rates," available from the Federal Reserve System in Washington, except that the rate shall be no lower than 3%] equal to the [2][lower of the][2] Federal Discount Rate at the time of approval or at the time of the loan closing, [2][with a minimum of] whichever is lower, except that the rate shall be no lower than[2] five percent[1]. [1][Loans and grants, upon request of the applicant and if qualified, shall] Financial assistance and grants may[1] be issued for up to 100% of the estimated applicable remediation cost, except that [1][no loan] the cumulative maximum amount of financial assistance which may be issued[1] to a person other than a governmental entity [1][may be issued to any applicant][1] in any calendar year, for one or more properties, [1][in an amount that exceeds] shall be[1] $1,000,000. [1][Loans] Financial assistance[1] and grants [1][,][1] to any one municipal governmental entity may not exceed $2,000,000 in any calendar year. Repayments of principal and interest on the loans issued from the remediation fund shall be paid to the authority and shall be deposited into the remediation fund.

c. No person, other than a municipal governmental entity, or a person engaging in a voluntary remediation, shall be eligible for [1][a loan] financial assistance[1] from the remediation fund to the extent that person is capable of establishing a remediation funding source for the remediation as required pursuant to section 25 of P.L. . c. (C.)(now before the Legislature as this bill).

d. The authority may use a sum that represents up to 2% of the moneys issued as [1][loans] financial assistance[1] or grants from the remediation fund each year for administrative expenses incurred in connection with the operation of the fund and the issuance of [1][loans] financial assistance[1] and grants.

e. Prior to March 1 of each year, the authority shall submit to the Senate Environment Committee and the Assembly Energy and Hazardous Waste Committee, or their successors, a report detailing the amount of money that was available for [1][loans] financial assistance[1] and grants from the remediation fund for the previous calendar year, the amount of money estimated to be available for [1][loans] financial assistance[1] and grants for the current calendar year, the amount of [1][loans] financial assistance[1] and grants issued for the previous calendar year and the category for which each [1][loan] financial assistance[1] and grant was [1][made] rendered[1], and any suggestions for legislative action the authority deems advisable to further the legislative intent to facilitate remediation and promote [1]the[1] redevelopment and use of existing industrial sites.

29. (New section) a. [1][A qualified applicant for a loan or grant from the remediation fund shall be awarded a loan or grant by the authority upon the availability of sufficient moneys in the remediation fund for the purpose of the loan or grant.][1] [2]A qualified applicant for financial assistance or a grant from the remediation fund shall be awarded financial assistance or a grant by the authority upon the availability of sufficient moneys in the remediation fund for the purpose of the financial assistance or grant.[2] Priority for awarding [1][loans] financial assistance[1] and grants from the remediation fund shall be based upon the date of receipt by the authority of a complete application from the applicant. If an application is determined to be incomplete by the authority, an applicant shall have 30 days from receipt of written notice of incompleteness to file any additional information as may be required by the authority for a completed application. If an applicant fails to file the additional information within those 30 days, the filing date for that application shall be the date that the additional information is received by the authority. An application shall be deemed complete when all the information required by the authority has been received in the required form.

b. Within 90 days, for a private entity, or 180 days for a municipal government entity, of notice of approval of a [2][loan] financial assistance[2] or grant application, an applicant shall submit to the authority an executed contract for the remediation activities for which the [2][loan] financial assistance[2] or grant application was made. The contract shall be consistent with the terms and conditions for which the [1][loan] financial assistance[1] or grant was [1][made] rendered[1]. Failure to submit an executed contract within the time provided, without good cause. shall constitute grounds for the alteration of an applicant s priority ranking for the awarding of [2][a loan] financial assistance[2] or [2]a[2] grant.

[2][1]c. Information submitted as part of a financial assistance application or agreement shall be deemed a public record subject

to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.).[1]]2

30. (New section) a. The authority [1][, in consultation with the Department of Environmental Protection,]1 shall, by rule or regulation:

(1) [1][prescribe forms for, and procedures for the filing of, loan and grant applications;

(2) require a person applying for a loan who is not the owner of the subject property to provide a copy of the contract or lease between the operator and owner;

(3) require, if the applicant is an owner who is not the operator of the subject property, the owner to provide a copy of the contract or lease between the owner and the operator;

(4) prohibit the assignment or encumbrance of a loan or loan payment;

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

(6) provide that moneys from the approved loan or grant shall be released by the authority to the applicant in only those amounts that represent work completed;

(7) require the loan or grant recipient to provide access at reasonable times to the subject property to determine compliance with the terms and conditions of the loan or grant;

(8) require that, during the life of the loan, the applicant will comply with all environmental laws, and pay all required taxes or other governmental assessments due on the subject property for which a loan application is made, or on the loan collateral;

(9) reserve the right to suspend or terminate a loan or grant or declare a loan in default if any term or condition of the loan or grant is violated by a loan or grant recipient, and take any necessary action to secure repayment of the loan or grant;

(10) reserve the right to modify, as necessary and by mutual consent, the terms or conditions of a loan or grant, which modification shall, however, not be inconsistent with regulations of the Department of Environment Protection concerning the performance of remediation of contaminated property;

(11)]1 [2]require a financial assistance or grant recipient to provide to the authority, as necessary or upon request, evidence that financial assistance or grant moneys are being spent for the purposes for which the financial assistance or grant was made, and that the applicant is adhering to all of the terms and conditions of the financial assistance or grant agreement;

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

(3)]2 establish a priority system for [1][making loans] rendering financial assistance[1] or grants for remediations [1]identified by the department as[1] involving an imminent and significant threat to a public water source, human health, or to a sensitive or significant ecological area pursuant to paragraph (7) of subsection a. of section 28 of P.L. , c. (C.)(now before the Legislature

as this bill);

[1][(12)] [2][(2)1] (4)2 provide that payment of a grant shall be conditioned upon the subrogation to the department of all rights of the recipient to recover remediation costs from the discharger or other responsible party. All monies collected in a cost recovery subrogation action shall be deposited into the remediation fund;

[1][(13)] [2][(3)1] (5)2 provide that an applicant for [1][a loan] financial assistance[1] or [1]a[1] grant pay a reasonable fee for the application which shall be used by the authority for the administration of the loan and grant program;

[1][(14)] [2][(4)1] (6)2 provide that where [1][a loan] financial assistance[1] to a person other than a municipal governmental entity , is for a portion of the remediation cost, that the [1][loan money] proceeds thereof[1] not be disbursed to the applicant until the costs of the remediation for which a remediation funding source has been established has been expended;

[1][(15)] [2][(5)1] (7)2 adopt such other requirements as [1]the authority[1] shall [1][be deemed] deem[1] necessary or appropriate in carrying out the purposes for which the Hazardous Discharge Site Remediation Fund was created.

b. An applicant for [1][a loan] financial assistance[1] or [1]a[1] grant shall be required to:

(1) provide proof, as determined sufficient by the authority, that the applicant, where applicable, cannot establish a remediation funding source for all or part of the remediation costs, as required by section 25 of P.L. , c. (C.)(now before the Legislature as this bill). The provisions of the paragraph do not apply to grants to innocent persons or to [1][loans] financial assistance[1] or grants to municipal governmental entities; [1]and[1]

(2) [1][submit documentation on the nature and scope of the remediation to be performed, costs estimates thereon, and, as available, proofs of the actual cost of all work performed;

(3) submit copies of all court orders, administrative consent orders, memoranda of agreement, or directives issued by the Department of Environmental Protection [1]and Energy[1] and, if deemed necessary by the authority, any reports, plans, or results of any preliminary assessment, site investigation, remedial investigation, remedial action workplan, remedial action, or other documentation required to be prepared or submitted to the department; and

(4)][1] demonstrate the ability to repay the amount of the [1][loan] financial assistance[1] and interest, and, if necessary, to provide adequate collateral to secure the [1][loan] financial assistance[1] amount.

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

d. In establishing requirements for [1][loan] financial assistance[1] or grant applications and [1][loan] financial assistance[1] or grant agreements, the authority:

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

(2) may not require [1][loan] financial assistance[1] or grant

conditions that interfere with the everyday normal operations of [1][a loan or grant] the[1] recipient's business activities, except to the extent necessary to [1][prevent intentional actions designed to avoid repayment of the loan, or that significantly affect] ensure the recipient's ability to repay the financial assistance and to preserve[1] the value of the loan collateral; and

(3) shall expeditiously process all [1][loan] financial assistance[1] or grant applications in accordance with a schedule established by the authority for the review and the taking of final action on the application, which schedule shall reflect the degree of complexity of a [1][loan] financial assistance[1] or grant application.

31. (New section) No [1][loan] financial assistance[1] or grant from the remediation fund shall be [1][made] rendered[1] to a person who is currently in violation of an administrative or judicial order, judgment, or consent agreement regarding violation or threatened violation of an environmental law regarding the subject property, unless the violation, fee, penalty or assessment is currently being contested by the person in a manner prescribed by law or unless the violation resulted from a lack of sufficient money to perform required remediation activities.

32. (New section) a. The lack of sufficient moneys in the remediation fund to satisfy all [1][loan] financial assistance[1] or grant applications shall not affect in any way an applicant's legal responsibility to comply with the requirements of P.L.1983, c.330 (C.13:1K-6 et seq.), P.L.1976, c.141 (C.58:10-23.11 et seq.), or any other applicable provision of law.

b. Nothing in sections 23 through 43 of P.L. , c. (C.) (now before the Legislature as this bill) shall be construed to:

(1) impose any obligation on the State for any [1][loan] financial assistance[1] or grant commitments [1][made] rendered[1] by the authority, and the authority's obligations shall be limited to the amount of otherwise unobligated moneys available in the fund therefor; or

(2) impose any obligation on the authority for the quality of any work performed pursuant to a remediation undertaken with [1][a loan] financial assistance[1] or grant [1][made] rendered[1] pursuant section 28 of P.L. , c. (C.)(now before the Legislature as this bill).

33. (New section) a. There is imposed upon every person who is required to establish a remediation funding source pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) a remediation funding source surcharge. The remediation funding source surcharge shall be in an amount equal to 1% of the required amount of the remediation funding source required by the department to be maintained. No surcharge, however, may be imposed upon (1) that amount of the remediation funding source that is met by a self-guarantee as provided in subsection [1][e.] f.[1] of section 25 of P.L. , c. (C.)(now before the Legislature as this bill), (2) that amount of the remediation funding source that is met by [1][a loan] financial assistance[1] or [2]a[2] grant from the remediation fund, (3) any person who voluntarily undertakes a remediation without being so ordered or directed by the department or by a court or pursuant to an administrative consent order, or (4) any person who entered

voluntarily into a memorandum of understanding with the department to remediate real property, as long as that person continues the remediation in a reasonable manner, or as required by law, even if subsequent to initiation of the memorandum of understanding, the person received an order by the department or entered into an administrative consent order to perform the remediation. The surcharge shall be based on the cost of remediation work remaining to be completed and shall be paid on an annual basis as long as the remediation continues and until the Department of Environmental Protection [2]and Energy[2] issues a no further action letter for the property subject to the remediation. The [2][cleanup][2] remediation funding source surcharge shall be due and payable within 14 days of the time of the department's approval of a remedial action workplan or signing an administrative consent order or as otherwise provided by law. The department shall collect the surcharge and shall remit all moneys collected to the Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund.

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

34. (New section) a. There is appropriated from the "Hazardous Discharge Fund of 1986," created pursuant to "Hazardous Discharge Bond Act of 1986," P.L.1986, c.113, the sum of $45,000,000 to the New Jersey Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund, created pursuant to section 26 of P.L. , c. (C.)(now before the Legislature as this bill) for the purposes of issuing [1][loans] financial assistance[1] and grants for the investigation of property suspected of being contaminated by a hazardous substance or hazardous waste or for the remediation of property contaminated by a hazardous substance or hazardous waste.

[1][Of the money appropriated pursuant to this subsection, (1)$15,000,000 shall be dedicated to the issuance of loans or grants to municipal governmental entities in accordance with the purposes of the remediation fund; (2) $10,000,000 shall be dedicated to the issuance of loans to persons other than governmental entities in accordance with the purposes of the remediation fund; and (3) $20,000,000 shall be dedicated to the issuance of grants to innocent parties in accordance with the purposes of the remediation fund.][1]

b. There is appropriated from the "Hazardous Discharge Fund of 1986," created pursuant to "Hazardous Discharge Bond Act of 1986," P.L.1986, c.113, the sum of $5,000,000 to the Department of Environmental Protection for deposit into the Remediation Guarantee Fund, created pursuant to section 45 of P.L. , c. (C.)(now before the Legislature as this bill), for the purposes of that fund.

35. (New section) a. The Department of Environmental

Protection [1]and Energy[1] shall adopt minimum remediation standards for soil, groundwater, and surface water quality necessary for the remediation of contamination of real property. The remediation standards shall be developed to ensure that the potential for harm to public health and safety and to the environment is minimized to acceptable levels, taking into consideration the location, [1]the[1] surroundings, the intended use of the property, the potential exposure to the discharge, and the surrounding ambient conditions, whether naturally occurring or man-made.

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

The department shall not propose or adopt remediation standards protective of the environment pursuant to this section, except standards for groundwater or surface water, until recommendations are made by the Environment Advisory Task Force created pursuant to section 37 of P.L. , c. (C.)(now before the Legislature as this bill). Until the Environment Advisory Task Force issues its recommendations and the department adopts remediation standards protective of the environment as required by this section, the department shall continue to determine the need for and the application of remediation standards protective of the environment on a case-by-case basis in accordance with the guidance and regulations of the [2][federal] United States[2] Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable.

b. In developing minimum remediation standards the department shall:

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

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

(3) avoid the use of redundant conservative assumptions. The department shall avoid the use of redundant conservative assumptions by the use of parameters that provide an adequate margin of safety and which avoid the use of unrealistic conservative exposure parameters and which [1][are consistent with][1] guidelines [1]make use of the guidance and regulations[1] for exposure assessment developed by the [2][federal] United States[2] Environmental Protection Agency [1]pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act [2]of 1980[2]," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable[1]; and

(4) where feasible, establish the remediation standards as numeric or narrative standards setting forth acceptable levels or

concentrations for particular contaminants.

c. (1) The department shall develop residential and nonresidential soil remediation standards that are protective of public health and safety. For contaminants that are mobile and [1][may be transported] transportable[1] to groundwater, the residential and nonresidential soil remediation standards shall be protective of groundwater [1]and surface water[1]. Residential soil remediation standards shall be set at levels or concentrations of contamination for real property based upon the use of that property for residential or similar uses and which will allow the unrestricted use of that property without exceeding a health risk level greater than that provided in subsection d. of this section. Nonresidential soil remediation standards shall be set at levels or concentrations of contaminants that recognize the lower likelihood of exposure to contamination on property that will not be used for residential or similar uses. Whenever real property is remediated to a nonresidential soil remediation standard, except as otherwise provided in paragraph (3) of subsection g. of this section, the department shall require [1][, pursuant to section 36 of P.L. , c. (C.)(now before the Legislature as this bill),]1 [2], pursuant to section 36 of P.L. , c. (C.)(now before the Legislature as this bill),[2] that the use of the property be restricted to nonresidential or other uses compatible with the extent of the contamination of the soil and that access to that site be restricted in a manner compatible with the allowable use of that property.

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

d. In developing minimum remediation standards intended to be protective of public health and safety, the department shall identify the [1][hazard] hazards[1] posed by a contaminant to determine whether exposure to that contaminant can cause an increase in the incidence of an adverse health effect and whether the adverse health effect may occur in humans. The department shall set minimum soil remediation standards for both residential and nonresidential uses that:

(1) for [1]human[1] carcinogens, [1]as categorized by the [2][federal] United States[2] Environmental Protection Agency,[1] will result in an additional cancer risk of one in one million;

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

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

e. Remediation standards and other requirements established pursuant to this section shall apply to remediation activities required pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21 et seq.), the "Industrial Site Recovery Act,"

P.L.1983, c.330 (C.13:1K-6 et seq.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the "Comprehensive Regulated Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the "Sanitary Landfill Facility Closure and Contingency Fund Act," P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333 (C.13:1E-177 et seq.), 2[1P.L.1986, c.102 (C.58:10A-21 et seq.)1]2 or any other law or regulation by which the State may compel a person to perform remediation activities on contaminated property. However, nothing in this subsection shall be construed to limit the authority of the department to establish discharge limits for pollutants or to prescribe penalties for violations of those limits pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), or to require the complete removal of 1[nonhazardous]1 2nonhazardous2 solid waste pursuant to law.

f. (1) A person performing a remediation of contaminated real property, in lieu of using the established minimum soil remediation standard for either residential use or nonresidential use adopted by the department pursuant to subsection c. of this section, may submit to the department a request to use an alternative residential use or nonresidential use soil remediation standard. The use of an alternative soil remediation standard shall be based upon site specific factors which may include (1) physical site characteristics which may vary from those used by the department in the development of the soil remediation standards adopted pursuant to this section; or (2) a site specific risk assessment. If a person performing a remediation requests to use an alternative soil remediation standard based upon a site specific risk assessment, that person shall demonstrate to the department that the requested deviation from the risk assessment protocol used by the department in the development of soil remediation standards pursuant to this section is consistent with the 1[guidelines] guidance and regulations1 for exposure assessment developed by the 2[federal] United States2 Environmental Protection Agency 1pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act 2of 19802 ," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable1. A site specific risk assessment may consider exposure scenarios and assumptions that take into account the form of the contaminant present, natural biodegradation, fate and transport of the contaminant, and available toxicological data that are based upon generally accepted and peer reviewed scientific evidence or methodologies.

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

(2) The department may, upon its own initiative 1,1 require an alternative remediation standard for a particular contaminant for a specific real property site, in lieu of using the established

minimum residential use or nonresidential use soil remediation standard adopted by the department for a particular contaminant pursuant to this section. The department may require an alternative remediation standard pursuant to this paragraph upon a determination by the department, based on the weight of the scientific evidence, that due to specific physical site characteristics of the subject real property, the use of the adopted residential use or nonresidential use soil remediation standards would not be protective of public health or safety or of the environment, as appropriate.

g. The development, selection, and implementation of any remediation standard or remedial action shall ensure that it is protective of public health, safety, and the environment, as applicable, as provided in this section. In determining the appropriate remedial action that shall occur at a site in order to meet the established remediation standards, the department, or any person performing the remediation, shall base its decision on the following factors:

(1) Permanent and nonpermanent remedies shall be allowed except that permanent remedies shall be preferred over nonpermanent remedies for remedial actions;

(2) Contamination may, upon the department's approval, be left onsite at levels or concentrations that exceed the minimum soil remediation standards for residential use or nonresidential use if the [1][requirement] <u>implementation</u>[1] of institutional or engineering controls at that site will result in the protection of public health, safety and the environment at the risk level established in subsection d. of this section and [1][where] <u>if</u>[1] the requirements established in subsections a., b., c. and d. of section 36 of P.L. , c. (C.)(now before the Legislature as this bill) are met.

(3) Real property on which there is soil that has not been remediated to the residential soil remediation standards, or real property on which the soil, groundwater, or surface water has been remediated to meet the required health risk level by the use of engineering or institutional controls, may be developed or used for residential purposes, or for any other similar purpose, if (a) all areas of that real property at which a person may come into contact with soil are remediated to meet the residential soil remediation standards and (b) it is [1]<u>clearly</u>[1] demonstrated that for all areas of the real property, other than those described in subparagraph (a) above, engineering and institutional controls can be implemented and maintained on the real property sufficient to meet the health risk level as established in subsection d. of this section;

(4) Remediation shall not be required beyond the regional natural background levels for any particular contaminant. The department shall develop regulations that set forth a process to identify background levels of contaminants for a particular region. For the purpose of this paragraph "regional natural background levels" means the concentration of a contaminant consistently present in the environment of the region of the site and which has not been influenced by localized human activities;

(5) Remediation shall not be required [1][by] <u>of</u>[1] the owner or

operator of real property for contamination coming onto the site from another property owned and operated by another person [1], unless [2][said] the[2] owner or operator is in any way responsible for the discharge[1];

(6) Groundwater that is contaminated shall not be required to be remediated to a level or concentration for any particular contaminant lower than the level or concentration that is migrating onto the property from another property owned and operated by another person;

(7) [1][The effectiveness of each remedial action alternative in protecting public health, safety and the environment] The technical performance, effectiveness and reliability of the proposed remedial action in attaining and maintaining compliance with applicable remediation standards and required health risk levels. In reviewing a proposed remedial action, the department shall also consider the ability of the owner or operator to implement the proposed remedial action within a reasonable time frame without jeopardizing public health, safety or the environment[1];

(8) [1][The implementability of each alternative] In the case of a proposed remedial action that will not meet the established minimum residential use soil remediation standards, the cost of all available permanent remedies [2][are] is[2] unreasonable, as determined by department rules designed to provide a cost-based preference for the use of permanent remedies. The department shall adopt regulations, no later than 18 months after the effective date of this act, establishing criteria and procedures for allowing a person to demonstrate that the cost of [2][a proposed remedial action using a nonpermanent remedy is reasonable] all available permanent remedies is unreasonable[2]. Until the department [2][promulgates] adopts[2] those regulations, it shall not require a person performing a remedial action to implement a permanent remedy, unless the cost of implementing a nonpermanent remedy is 50 percent or more [2][then] than[2] the cost of implementing a permanent remedy; provided, however, that the preceding provision shall not apply to any owner or operator of an industrial establishment who is implementing a remedial action pursuant to subsection i. of section 4 of P.L.1983 [2], c.330[2].[1];

(9) [1][The time it would take to implement each alternative;

(10) The cost of each alternative including capital costs, operation, maintenance and monitoring costs, whether a particular remedial action is cost effective, and whether the cost of performing a specific remedial action is excessive compared to the cost of other alternatives; and

(11) The technological efficacy of any particular remedial action] The use of the established nonresidential soil remediation standard shall not be unreasonably disapproved by the department[1].

The department may require the person performing the remediation to supply the information required pursuant to this subsection as is necessary for the department to make a determination.

h. (1) The department shall adopt regulations which establish

a procedure for a person to demonstrate that a particular parcel of land contains large quantities of historical fill material. Upon a determination by the department that large quantities of historic fill material exist on that parcel of land, there is a rebuttable presumption that the department shall not require any person to remove or treat the fill material in order to comply with a remediation standard. In these areas the department shall establish by regulation the requirement for engineering or institutional controls that are designed to prevent exposure of these contaminants to humans, that allow for the continued use of the property, that are less costly than removal or treatment, which maintain the health risk levels as established in subsection d. of this section, and, as applicable, are protective of the environment. The department may rebut the presumption only upon a finding by the preponderance of the evidence that the use of engineering or institutional controls would not be effective in protecting [1][human] public[1] health, safety, and the environment. For the purposes of this paragraph "historic fill material" means generally large volumes of non-indigenous material, used to raise the topographic elevation of a site, which were contaminated prior to emplacement and are in no way connected with the operations at the location of emplacement and which include, but [1]are[1] not limited to, construction debris, dredge spoils, incinerator residue, demolition debris, fly ash, and [1][non hazardous] non-hazardous[1] solid waste. Historic fill material shall not include any material which is substantially chromate chemical production waste or any other chemical production waste or waste from [1][mining or][1] processing of metal or mineral ores, residues, slags or tailings.

(2) The department shall develop recommendations for remedial actions in large areas of historic industrial contamination. These recommendations shall be designed to meet the health risk levels established in subsection d. of this section, and [1]to[1] be protective of the environment and shall take into account the industrial history of these sites, the extent of the contamination that may exist, the costs of [1][alternative][1] remedial actions, the economic impacts of these policies, and the anticipated uses of these properties. The department, within one year of the enactment of this act, shall issue a report to the Senate Environment Committee and to the Assembly Energy and Hazardous Waste Committee, or their successors, explaining these recommendations and making any recommendations for legislative or regulatory action.

(3) The department may not, as a condition of allowing the use of a nonresidential use soil remediation standard, or the use of institutional or engineering controls, require the owner of that real property, except as provided in section 36 of P.L. . c. (C.)(now before the Legislature as this bill), to restrict the use of that property through the filing of a deed easement, covenant, or condition.

i. The department may not require a remedial action workplan to be prepared or implemented or engineering or institutional controls to be imposed upon any real property unless sampling performed at that real property demonstrates the existence of

contamination above the applicable remediation standards.

j. Upon the approval by the department of a remedial action workplan, or similar [1][approval] plan[1] that describes the extent of contamination at a site and the remedial action to be implemented to address that contamination, the department may not subsequently require a change to that workplan or similar [1][approval] plan[1] in order to compel a different remediation standard due to the fact that the established remediation standards have changed; however, the department may compel a different remediation standard if the difference between the new remediation standard and the remediation standard approved in the workplan or other [1][approval] plan[1] differs by an order of magnitude. The limitation to the department's authority to change a workplan or similar [1][approval] plan[1] pursuant to this subsection shall only apply [1][where] if[1] the workplan or similar [1][approval] plan[1] is being implemented in a reasonable timeframe [1], as may be indicated in the approved remedial action workplan or similar plan[1].

k. Notwithstanding any other provisions of this section, all remediation standards and remedial actions that involve real property located in the [1][pinelands] Pinelands[1] area shall be consistent with the provisions of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), any rules and regulations promulgated pursuant thereto, and with section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. §4711.

l. Upon the adoption of a remediation standard for a particular contaminant in soil, groundwater, or surface water pursuant to this section, the department may amend that remediation standard only upon a finding that a new standard is necessary to maintain the health risk levels established in subsection d. of section 35 of P.L. , c. (C.)(now before the Legislature as this bill) or to protect the environment, as applicable. The department may not amend a public health based soil remediation standard to a level that would result in a health risk level more protective than that provided for in subsection d. of section 35 of P.L. , c. (C.).

[1]m. Nothing in [2][this amendatory and supplementary act,][2] P.L. , c. (now before the Legislature as this bill), shall be construed to restrict or in any way diminish the public participation which is otherwise provided under the provisions of the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.).[1]

36. (New section) a. When real property is remediated to a nonresidential soil remediation standard or engineering or institutional controls are used in lieu of remediating a site to meet an established remediation standard for soil, groundwater, or surface water, the department shall, as a condition of the use of that standard or control measure:

(1) require the establishment of any engineering or institutional controls the department determines are reasonably necessary to prevent exposure to the contaminants, [1][to][1] require maintenance, as necessary, of those controls, and [1][to][1] require the restriction of the use of the property in a manner that prevents exposure:

(2) require, with the consent of the owner of the real property, the recording with the office of the county recording officer, in the county in which the property is located, a notice to inform prospective holders of an interest in the property that contamination exists on the property at a level that may statutorily restrict certain uses of or access to all or part of that property, a delineation of those restrictions, a description of all specific engineering or institutional controls at the property that exist and that shall be maintained in order to prevent exposure to contaminants remaining on the property, and the written consent to the notice by the owner of the property;

(3) require a notice to the governing body of each municipality in which the property is located that contaminants will exist at the property above residential use soil remediation standards or 1[of]1 any other remediation standards and specifying the restrictions on the use of or access to all or part of that property and of the specific engineering or institutional controls at the property that exist and that shall be maintained;

(4) require, when determined necessary by the department, that signs be posted at any location at the site where access is restricted or in those areas that must be maintained in a prescribed manner, to inform persons on the property that there are restrictions on the use of that property or restrictions on access to any part of the site; 1[and]1

(5) require that a list of the restrictions be kept on site for inspection by governmental enforcement officials 1; and

(6) require a person, prior to commencing a remedial action, to notify the governing body of each municipality wherein the property being remediated is located. The notice shall include, but not be limited to, the commencement date for the remedial action; the name, mailing address and business telephone number of the person implementing the remedial action, or his designated representative; and a brief description of the remedial action1.

b. If the owner of the real property does not consent to the recording of a notice pursuant to paragraph (2) of subsection a. of this section, the department shall 1[not allow] require1 the use of a 1[nonresidential] residential1 soil remediation standard 1[or the use of engineering or institutional controls]1 in the remediation of that real property.

c. 1[Where] Whenever1 engineering or institutional controls on property as provided in subsection a. of this section are no longer required, or 1[where] whenever1 the engineering or institutional controls are changed because of the performance of subsequent remedial activities, a change in conditions at the site, or the adoption of revised remediation standards, the department shall 1[,]1 require that the owner or operator of that property 1[,]1 record with the office of the county recording officer a notice that the use of the property is no longer restricted or delineating the new restrictions. The department shall also require that the owner or operator notify, in writing, the municipality in which the property is located of the removal or change of the restrictive use conditions.

d. The owner or lessee of any real property, or any person operating a business on real property, which has been remediated

to a nonresidential use soil remediation standard or on which the department has allowed engineering or institutional controls for soil, groundwater, or surface water to protect the public health, safety, or the environment, as applicable, shall maintain the engineering or institutional controls as required by the department. An owner, lessee, or operator who takes any action that results in the improper alteration or removal of engineering or institutional controls or who fails to maintain the engineering or institutional controls as required by the department, shall be subject to the penalties and actions set forth in section 22 of P.L.1976, c.141 (C.58:10-23.11u). The provisions of this subsection shall not apply if a notification received pursuant to subsection b. of this section authorizes all restrictions or controls to be removed from the subject property.

e. Notwithstanding the provisions of any other law, or any rule, regulation, or order adopted pursuant thereto to the contrary, whenever contamination at a property is remediated in compliance with any soil, groundwater, or surface water remediation standards that were in effect at the completion of the remediation, the owner or operator of the property or person performing the remediation, except as otherwise provided in this section, shall not be liable for the cost of any additional remediation that may be required by a subsequent adoption by the department of a more stringent remediation standard for a particular contaminant. Upon the adoption of a regulation that amends a remediation standard, only a person who is liable to clean up [1]and remove[1] that contamination pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g) shall be liable for any additional remediation costs necessary to bring the site into compliance with the new remediation standards except that no person shall be so liable unless the difference between the new remediation standard and the level or concentration of a contaminant at the property differs by an order of magnitude.

Nothing in the provisions of this subsection shall be construed to affect the authority of the department, pursuant to subsection f. of this section, to require additional remediation on real property where engineering or institutional controls were implemented [1][of this section][1].

Nothing in the provisions of this subsection shall limit the rights of a person, other than the State, or any department or agency thereof, to bring a civil action for damages, contribution, or indemnification as provided by statutory or common law.

f. [1][Where] Whenever[1] the department approves or has approved the use of engineering or institutional controls for the remediation of soil, groundwater, or surface water, to protect public health, safety or the environment in lieu of remediating a site to a condition that meets an established [1]residential[1] remediation standard, the department shall not require additional remediation of that site unless the engineering or institutional controls no longer are protective of public health, safety, or the environment.

37. (New section) a. There is established, in but not of the Department of Environmental Protection [1]and Energy[1], an Environment Advisory Task Force. The Task Force shall consist

of 15 members as follows: (1) the Commissioner of Environmental Protection [1]and Energy[1], or his designee; (2) one representative from the National Academy of Sciences who shall be selected by the Academy; (3) one representative from the New Jersey Environmental and Occupational Health Sciences Institute who has experience in risk assessment, who shall be selected by the Institute; (4) one representative each from the industrial real estate development industry, the environmental consulting profession, a public interest environmental organization, and the legal community, who shall be appointed by the Governor with the advice and consent of the Senate; (5) four members who shall have at least a master's degree in a relevant science discipline and who shall, to the greatest extent possible, include a plant or animal biologist, a toxicologist, an ornithologist, and a physiologist, who shall be appointed by the Governor with the advice and consent of the Senate; (6) two members who shall have at least a master's degree in a science discipline, have relevant experience, and be employed by an industrial business, who shall be appointed by the President of the Senate; and (7) two members who shall have at least a master's degree in a science discipline, have relevant experience, and be employed by an industrial business, who shall be appointed by the Speaker of the General Assembly.

b. The Environment Advisory Task Force shall meet as soon as practicable after the appointment and qualification of all its members. The Commissioner of Environmental Protection, or the commissioner's designee, shall be the chairperson of the Environment Advisory Task Force. The Environment Advisory Task Force shall meet at the call of its chairperson and in the locations the chairperson shall choose.

c. The Environment Advisory Task Force shall, within two years after its first meeting, make recommendations to the department on the feasibility, development, and application of remediation standards protective of the environment. A copy of the recommendations shall be submitted to the Senate Environment Committee and to the Assembly Energy and Hazardous Waste Committee, or to their successors.

d. The Environment Advisory Task Force shall:

(1) review the scientific literature to identify existing sources of information and data necessary for the development of remediation standards protective of the environment and to determine the current state-of-the-science in the identification of adverse impacts of contamination on ecological receptors and the establishment of contaminant concentration levels necessary to protect the environment;

(2) review scientific literature on the methods, procedures, data input needs, limitations, interpretation, and uses of environment risk assessments;

(3) collect information on public and private activities concerning the development and uses of environment risk assessments and remediation standards protective of the environment;

(4) evaluate the ecological components which should be protected through the application of remediation standards

protective of the environment;

(5) identify public policy issues involved in the development of remediation standards protective of the environment;

(6) suggest an approach and methodology for the development of remediation standards protective of the environment;

(7) evaluate the social, economic and environmental impacts of regulations which would incorporate state-of-the-art environment risk assessment methodologies;

(8) recommend necessary changes in statutes and regulations necessary to implement the advice of the Environment Advisory Task Force; and

(9) review and make recommendations on any other aspect of the adoption of these remediation standards the [1][department] task force[1] determines is necessary for a complete evaluation of these issues.

e. Prior to the submittal of its recommendations to the department, the Environment Advisory Task Force shall release a proposed recommendation to the public. The Environment Advisory Task Force shall hold at least one public meeting at least 14 days after public release of its proposed recommendations. Members of the public shall be allowed to present written and oral comments on the proposed recommendations at the public meeting. The [1][Task Force] task force[1] is not required to record, consider, or comment upon the public comments. Upon submittal of its final recommendations to the department concerning the adoption of remediation standards protective of the environment, the Environment Advisory Task Force shall expire.

38. (New section) Within 12 months of the effective date of this act, the department shall develop a guidance document for the remediation of contaminated soils. The guidance document shall include a description of remedial actions the department determines are effective in remediating soil contamination to the residential or nonresidential use soil remediation standards and that should be considered by a person performing a soil remediation. The department shall revise the guidance document periodically as it determines necessary. Adoption of the guidance document, or the revisions thereto, shall be published in the New Jersey Register but the adoption of the guidance document, or the revisions thereto, shall not otherwise be subject to the notice, comment, publication, or other requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

39. (New section) a. Any person who, before the effective date of P.L. , c. (C.)(now before the Legislature as this bill), has discharged a hazardous substance in violation of P.L.1976, c.141, and:

(1) has not been issued a directive to remove or arrange for the removal of the discharge pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f) [1][.] ;1

(2) has not been assessed a civil penalty, a civil administrative penalty, or is not the subject of an action pursuant to the provisions of section 22 of P.L.1976, c.141 (C.58:10-23.11u) [1][,] ;1

(3) has not entered in to an administrative consent order to

clean up and remove the discharge [1][, or] ; and[1]

(4) has not been ordered by a court to clean up and remove the discharge, shall not be subject to a monetary penalty for the failure to report the discharge or for any civil violation of P.L.1976, c.141 (C.58:10-23.11 et seq.) or P.L.1977, c.74 (C.58:10A-1 et seq.) that resulted in the discharge if the person notifies the department of the discharge and enters into an administrative consent order or a memorandum of agreement with the department to remediate the discharge in accordance with the provisions of P.L.1976, c.141 (C.58:10-23.11 et seq.), or any rules or regulations adopted pursuant thereto, within one year of the effective date of P.L. , c. (C.)(now before the Legislature as this bill). Any person who notifies the department of the discharge pursuant to this section shall be liable for all cleanup and removal costs as provided in section 8 of P.L.1976, c.141 (C.58:10-23.11g).

b. Notwithstanding the provisions of subsection a. of this subsection, any person who enters into a memorandum of agreement or administrative consent order pursuant to this section and fails to remediate the discharge in accordance with the memorandum of agreement or administrative consent order, shall be subject to all penalties for violations that occurred before the effective date of P.L. , c. (C.)(now before the Legislature as this bill) as well as any penalties for subsequent violations.

c. The provisions of this section shall not apply to violations of a permit issued pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.).

d. Any documents or information provided to the department pursuant to this section may not be used in a criminal investigation or criminal prosecution against the person providing the information or documents for those violations that occurred before the effective date of this act as long as the person remediates the discharge in conformance with the administrative consent order or memorandum of agreement entered into pursuant to subsection a. of this section.

40. (New section) a. [1][Any person who undertakes the remediation of suspected or actual contamination on real or personal property that is not owned by that person, may enter upon the property to conduct the necessary remediation if there is an agreement, in writing, between the person conducting the remediation and the owner of the property authorizing the entry onto the property.

If, after a good faith effort, the person undertaking the remediation and the property owner fail to reach an agreement concerning access to the property, the person may seek a court order authorizing access which shall be issued pursuant to subsection b. of this section.

b. Any person who undertakes the remediation of suspected or actual contamination on real or personal property that is not owned by the person responsible for the remediation, and fails to reach an agreement with the property owner pursuant to subsection a. of this section may institute an action in the Superior Court for injunctive and other relief, to gain access to the property and the court may proceed in the action in a

summary manner.] (1) Any person who undertakes the remediation of suspected or actual contamination and who requires access to conduct such remediation on real or personal property that is not owned by that person, may enter upon the property to conduct the necessary remediation if there is an agreement, in writing, between the person conducting the remediation and the owner of the property authorizing the entry onto the property. If, after good faith efforts, the person undertaking the remediation and the property owner fail to reach an agreement concerning access to the property, the person undertaking the remediation shall seek an order from the Superior Court directing the property owner to grant reasonable access to the property and the court may proceed in the action in a summary manner.

(2)[1] Such relief may include, singly or in combination:

[1][(1)] (a)[1] A temporary or permanent injunction;

[1][(2)] (b)[1] Assessment of the person undertaking the remediation for costs associated with any disruption in operations on the property;

[1][(3)] (c)[1] Assessment of the person undertaking the remediation for any costs to return the property to its condition before the commencement of the remediation;

[1][(4)] (d)[1] A requirement that the person undertaking the remediation indemnify the owner of the property for any damages, penalties or liabilities resulting from the remediation;

[1][(5)] (e)[1] A requirement that the person undertaking the remediation indemnify the owner of the property for any liability resulting from the entry of persons onto the property to perform the remediation.

[1]b. The court shall promptly issue any access order sought pursuant to this section upon a showing that (1) a reasonable possibility exists that contamination from another site has migrated onto the owner's property, or (2) access to the property is reasonable and necessary to remediate contamination. The presence of an applicable department oversight document or a remediation obligation pursuant to law involving the property for which access is sought shall constitute prima facie evidence sufficient to support the issuance of an order.

Unless the court otherwise orders for notice and for good cause shown, an action for an access order shall not be joined with non-germane issues against the owner of the property for which access is sought or other person who may be liable for the contamination. Non-germane issues shall include, but not be limited to, issues concerning contribution, treble damages, or other damages involving either the contamination or the remediation.

The court may impose reasonable conditions as part of the access order, including without limitation, that the person undertaking the remediation take all reasonable measures to minimize the disruption to the property and the activities conducted there and return the property to its condition prior to the commencement of remediation.[1]

c. The department may not impose or seek to impose any civil or civil administrative penalties upon any person for failure to

perform a remediation on property not owned by that person within the time schedule required by regulation on property not owned by that person if (1) the failure to perform the remediation was the result of an inability of that person to enter upon real or personal property owned by another person, and (2) the person took all appropriate action pursuant to this section to obtain access to the property.

[1]d. Nothing herein shall be construed as limiting the rights of the owner of the property against which the access order is issued to initiate a civil action to seek any damages available under law.

e. Nothing herein shall be construed as limiting the rights of the person conducting the remediation from initiating any subsequent civil action against the owner of the property [2]upon which access was ordered[2].[1]

41. (New section) a. Any person conducting a remediation of a contaminated site may dispute a decision by the department concerning the remediation in accordance with the guidelines developed pursuant to subsection b. of this section. The disputed decision shall be reviewed, and a determination shall be made, by the next level of the department's management, and the review may continue, upon the request of the person seeking review, until the Commissioner or his designee has issued a decision on the dispute. Each successive level of management review and the resulting determination on the dispute, shall occur within seven days of the department's receipt of the request for review.

b. Within 60 days of the effective date of [1][this act] P.L. , c. (now pending before the Legislature as this bill)[1], the department shall develop guidelines that establish a procedure through which a person conducting a remediation of a contaminated site may dispute a department decision concerning the remediation. [1]Those guidelines shall include provisions for an expedited review procedure under which the Commissioner, or his designee, shall issue a decision of the dispute within 21 calendar days of the date on which the request for that review was received.[1]

42. (New section) The Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Department of Environmental Protection [1]and Energy[1], shall prepare, and the department shall distribute, for the cost of reproduction and postage, to any interested person, informational materials that set forth criteria that may be used to evaluate the qualifications of environmental consultants, environmental consulting firms, engineers, geologists or any other consultant, whose expertise or training may be required by a person to comply with the provisions of P.L.1986, c.102 [1](C.58:10A-21 et seq.)[1], P.L.1983, c.330 [1](C.13:1K-6 et seq.)[1], P.L.1976, c.141 [1](C.58:10-23.11 et seq.)[1], and P.L. , c. (C.)(now before the Legislature as this bill) relating to the remediation of contaminated real property. The materials may describe the expertise or training necessary to address specific types of environmental cleanups, sites or contamination, the significance and availability of various types of [1]professional[1] liability insurance [1], issued by an entity licensed by the Department of Insurance to transact business in the State of New Jersey[1], the

average cost of services and tests commonly performed by consultants, the significance of available accreditations or certifications, the ethics code applicable to any consultant, the references that may be requested and any other relevant factor that may be used to evaluate the qualifications and expertise of persons performing remediation services.

43. (New section) The owner or operator of an industrial establishment [1][,][1] who has submitted a notice to the department pursuant to subsection a. of section 4 of P.L.1983, c.330 (C.13:1K-9), or any person who has discharged a hazardous substance or is liable for the remediation of that discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), [1]or any person who[1] has been directed to or has entered into an agreement with the department to remediate a discharge, may implement an interim response action prior to departmental approval of that action. The interim response action may be implemented when the expeditious temporary or partial remediation of a discharged hazardous substance or hazardous waste is necessary to contain or stabilize a discharge prior to implementation of an approved remedial action workplan in order to prevent, minimize, or mitigate damage to public health or safety or to the environment which may otherwise result from a discharge. The interim response action shall be implemented in compliance with the procedures and standards established by the department. The department may require submission of a notice of intent to implement an interim response action, what those actions will be, and may require, subsequent to completion of the interim response action, a report detailing the actions taken and a certification that the interim response action was implemented in accordance with all applicable laws and regulations. The department shall review these submissions to verify whether the interim response action was implemented in accordance with applicable laws and regulations. The department shall not require that additional remediation be undertaken at an area of concern subject to the interim response action except in instances when further remediation is necessary to bring that area of concern into compliance with the applicable remediation standards.

The department may, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing a fee schedule, as necessary, reflecting the actual costs associated with the review of the interim response action and any implementation thereof.

44. Section 8 of P.L.1976, c.141 (C.58:10-23.11g) is amended to read as follows:

8. a. The fund shall be strictly liable, without regard to fault, for all cleanup and removal costs and for all direct and indirect damages no matter by whom sustained, including but not limited to:

(1) The cost of restoring, repairing, or replacing any real or personal property damaged or destroyed by a discharge, any income lost from the time such property is damaged to the time such property is restored, repaired or replaced, and any reduction in value of such property caused by such discharge by comparison with its value prior thereto;

(2) The cost of restoration and replacement, where possible, of any natural resource damaged or destroyed by a discharge;

(3) Loss of income or impairment of earning capacity due to damage to real or personal property, including natural resources destroyed or damaged by a discharge; provided that such loss or impairment exceeds 10% of the amount which claimant derives, based upon income or business records, exclusive of other sources of income, from activities related to the particular real or personal property or natural resources damaged or destroyed by such discharge during the week, month or year for which the claim is filed;

(4) Loss of tax revenue by the State or local governments for a period of one year due to damage to real or personal property proximately resulting from a discharge;

(5) Interest on loans obtained or other obligations incurred by a claimant for the purpose of ameliorating the adverse effects of a discharge pending the payment of a claim in full as provided by this act.

b. The damages which may be recovered by the fund, without regard to fault, subject to the defenses enumerated in subsection d. of this section against the owner or operator of a major facility or vessel, shall not exceed $50,000,000.00 for each major facility or $150.00 per gross ton for each vessel, except that such maximum limitation shall not apply and the owner or operator shall be liable, jointly and severally, for the full amount of such damages if it can be shown that such discharge was the result of (1) gross negligence or willful misconduct, within the knowledge and privity of the owner, operator or person in charge, or (2) a gross or willful violation of applicable safety, construction or operating standards or regulations. Damages which may be recovered from, or by, any other person shall be limited to those authorized by common or statutory law.

c. (1) Any person who has discharged a hazardous substance, or is in any way responsible for any hazardous substance, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. Such person shall also be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the department or a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141 (C.58:10-23.11f).

(2) In addition to the persons liable pursuant to paragraph (1) of this subsection, in the case of a discharge of a hazardous substance from a vessel into the waters of the State, the owner or operator of a refinery, storage, transfer, or pipeline facility to which the vessel was en route to deliver the hazardous substance who, by contract, agreement, or otherwise, was scheduled to assume ownership of the discharged hazardous substance, and any other person who was so scheduled to assume ownership of the discharged hazardous substance, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs if the owner or operator of the vessel did not have the evidence of financial responsibility required pursuant to section 2 of P.L.1991, c.58 (C.58:10-23.11g2).

Where a person is liable for cleanup and removal costs as

provided in this paragraph, any expenditures made by the administrator for that cleanup and removal shall constitute a debt of that person to the fund. The debt shall constitute a lien on all property owned by that person when a notice of lien identifying the nature of the discharge and the amount of the cleanup, removal and related costs expended from the fund is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment or order docket the name and address of the liable person and the amount of the lien as set forth in the notice of lien. Upon entry by the clerk, the lien, to the amount committed by the administrator for cleanup and removal, shall attach to the revenues and all real and personal property of the liable person, whether or not that person is insolvent.

For the purpose of determining priority of this lien over all other claims or liens which are or have been filed against the property of an owner or operator of a refinery, storage, transfer, or pipeline facility, the lien on the facility to which the discharged hazardous substance was en route shall have priority over all other claims or liens which are or have been filed against the property. The notice of lien filed pursuant to this paragraph which affects any property of a person liable pursuant to this paragraph other than the property of an owner or operator of a refinery, storage, transfer, or pipeline facility to which the discharged hazardous substance was en route, shall have priority from the day of the filing of the notice of the lien over all claims and liens filed against the property, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this paragraph.

To the extent that a person liable pursuant to this paragraph is not otherwise liable pursuant to paragraph (1) of this subsection, or under any other provision of law or under common law, that person may bring an action for indemnification for costs paid pursuant to this paragraph against any other person who is strictly liable pursuant to paragraph (1) of this subsection.

Nothing in this paragraph shall be construed to extend or negate the right of any person to bring an action for contribution that may exist under P.L.1976, c.141, or any other act or under common law.

d. (1) [An] In addition to those defenses provided in this subsection, an act or omission caused solely by war, sabotage, or God, or a combination thereof, shall be the only defenses which may be raised by any owner or operator of a major facility or vessel responsible for a discharge in any action arising under the provisions of this act.

(2) A person, including an owner or operator of a major facility, who owns real property acquired after the effective date of P.L. , c. (C.)(now before the Legislature as this bill), on which there has been a discharge, shall be considered a person in any way responsible for the discharged hazardous substance pursuant to subsection c. of this section, unless that person can establish by a preponderance of the evidence that all of the following apply:

(a) the person acquired the real property after the discharge of that hazardous substance at the real property;

(b) (i) at the time the person acquired the real property, the person did not know and had no reason to know that any hazardous substance had been discharged at the real property, or (ii) the person acquired the real property by devise or succession, except that any other funds or property received by that person from the deceased real property owner who discharged a hazardous substance or was in any way responsible for a hazardous substance, shall be made available to satisfy the requirements of P.L.1976, c.141;

(c) the person did not discharge the hazardous substance and is not in any way responsible for the hazardous substance; and

(d) the person gave notice of the discharge to the department upon actual discovery of that discharge.

To establish that a person had no reason to know that any hazardous substance had been discharged for the purposes of this paragraph (2), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property. [2][In order to determine if all appropriate inquiry was undertake, any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the fair market value of the property if not impacted by discharges of hazardous substances, commonly known or reasonably ascertainable information about the property, the obviousness of the discharge at the property, and the ability to detect the discharge of hazardous substances by appropriate inspection shall be taken into account] For the purposes of this paragraph (2), all appropriate inquiry shall mean the performance of a preliminary assessment, and site investigation (if the preliminary assessment indicates that a site investigation is necessary), as defined in section 23 of P.L. , c. (C.)(now before the Legislature as this bill), and performed in accordance with rules and regulations promulgated by the department defining these terms[2] .

Nothing in this paragraph (2) shall be construed to alter liability of any person who acquired real property prior to the effective date of P.L. , c. (C.) (now before the Legislature as this bill).

(3) Notwithstanding the provisions of paragraph (2) of this subsection to the contrary, if a person who owns real property obtains actual knowledge of a discharge of a hazardous substance at the real property during the period of that person's ownership and subsequently transfers ownership of the property to another person without disclosing that knowledge, the transferor shall be strictly liable for the cleanup and removal costs of the discharge and no defense under this subsection shall be available to that person.

(4) Any federal, State, or local government entity which acquires ownership of real property through bankruptcy, tax delinquency, abandonment, escheat, eminent domain, condemnation or any circumstance in which the government involuntarily acquires title by virtue of its function as sovereign, shall not be liable for the cleanup and removal costs of any

discharge which occurred or began prior to that ownership. This paragraph shall not apply to any federal, State or local government entity which has caused or contributed to the discharge of a hazardous substance.

(cf: P.L.1991, c.85, s.4)

45. (New section) a. There is created in the Department of Environmental Protection a special, revolving fund to be known as the Remediation Guarantee Fund. The fund shall be credited with all monies appropriated to it by law, all monies collected in subrogation actions to recover monies expended from the fund, and all moneys earned from the investment of the monies in the fund.

b. The Commissioner of Environmental Protection shall appoint and supervise an administrator of the fund. The administrator shall be the chief executive of the fund, shall approve all disbursements of monies from the fund and, and shall ensure the proper deposit of all monies authorized to be deposited into the fund.

c. Monies in the fund shall be used by the Department of Environmental Protection to remediate, or contract for the remediation of, any real property for which a person was required to establish a remediation funding source pursuant to section 25 of P.L. , c. (C.)(now before the Legislature as this bill) and where that person fails to conduct or properly conduct that remediation.

d. Any monies expended by the department from the fund pursuant to this subsection shall constitute a debt of the person required to establish the remediation funding source and against the discharger. The debt shall constitute a lien on all property owned by the person required to establish the remediation funding source and against the discharger to the same extent and in the same manner as provided for liens in subsection f. of section 7 of P.L.1976, c.141 (C.58:10-23.11f).

e. Whenever the department expends monies from the fund for a remediation, it shall have a cause of action to recover from the person required to establish the remediation funding source or from any other person liable for the discharge pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g) triple the amount of monies expended for the remediation.

f. Monies in the fund may be appropriated to pay for the costs to administer the fund except that those appropriations may not exceed the amount of monies deposited into the fund earned from the investment of monies in the fund.

[1]46. Section 7 of P.L.1993, c.112 (C.13:1K-11.1) is amended to read as follows:

7. [a. The following transactions shall be excluded from the provisions of the "Environmental Cleanup Responsibility Act," P.L.1983, c.330 (C.13:1K-6 et al.):

(1) Execution, delivery and filing or recording of any mortgage, security interest, collateral assignment or other lien on real or personal property; and

(2) Any transfer of personal property pursuant to a valid security agreement, collateral assignment or other lien, including, but not limited to, seizure or replevin of such personal

property which transfer is for the purpose of implementing the secured party's rights in the personal property which is the collateral.

b.] In the event of the closing, termination or transfer of an industrial establishment, which industrial establishment is all or part of a trust, receivership estate, guardianship estate or estate of a deceased person, only the assets of the trust or estate, or assets of any discharger other than the fiduciary of such trust or estate shall be subject to the obligation to remove the discharge as set forth in P.L.1983, c.330 (C.13:1K-6 et al.).[1]

(cf: P.L.1993, c.112, s.7)

[1]47. (New section) a. There is created a special Environmental Risk Assessment and Risk Management Study Commission. The commission shall consist of 10 members and shall include the Commissioner of Environmental Protection and Energy, or his designee, as a non-voting member, and eight members who shall have advanced degrees and relevant experience in any of the following disciplines: (1) environmental medicine, health, or epidemiology; (2) environmental toxicology; (3) soil science, geology, or hydrogeology, and (4) environmental engineering with experience in site remediation. The Governor shall appoint one representative from each of those disciplines; the Senate President shall appoint two representatives, provided, however, both of those appointees shall not be from the same discipline; and the Speaker of the General Assembly shall appoint two representatives, provided, however, both of those appointees shall not be from the same discipline. A ninth member, who shall be a recognized expert in the field of risk assessment as it applies to contaminated sites or to the remediation of such sites, shall be jointly appointed by the Governor, Senate President, and the Speaker. The chairman of the commission shall be jointly appointed by the Governor, Senate President, and Speaker from among the appointed members. All members shall serve without compensation. Vacancies in the membership shall be filled in the same manner as the original appointments were made.

b. It shall be the duty of the commission:

(1) To examine and assess the scientific basis for selecting the risk management standard of one in one million for the purposes of P.L. , c. (C.)(now pending before the Legislature as this bill) and to consider and assess alternative scientific standards and criteria for that purpose; and

(2) To examine and assess methodologies of risk assessment and their efficacy and applicability for the purposes of establishing remediation standards.

c. The commission shall organize as soon after the appointment of its members as is practicable.

d. The commission shall be entitled to call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes, and to employ such stenographic and clerical assistants and incur such traveling and other miscellaneous expenses as it may deem necessary, in order to perform its duties, and as may be within the limits of funds appropriated or otherwise made

available to it.

e. The commission may meet and hold hearings at such place or places as it shall designate. The commission shall hold at least one public hearing to accept written and oral testimony from the public prior to commencing its deliberations. The commission shall hold at least one other public hearing prior to formally submitting its findings and recommendations to the Governor and the Legislature. This public hearing, or hearings, as the case may be, shall be held at least 14 days after the commission has made public its proposed findings and recommendations. The public shall be permitted to present written and oral comments on the proposed findings and recommendations at that public hearing, or hearings, as the case may be. Thereafter, the commission shall report its findings and recommendations to the Governor and Legislature, along with any recommendations for Legislative action, as follows:

(1) The report and recommendations concerning the scientific basis for selecting risk management standards shall be delivered no later than six months after the effective date of P.L. , c. (now pending before the Legislature and this bill); and

(2) The report and recommendations concerning risk assessment methodologies and their efficacy and applicability for establishing remediation standards shall be delivered no later than one year after the effective date of P.L. , c. (now before the Legislature as this bill).

f. The commission shall expire upon the issuance of its final report.[1]

[1]48. (New section) Within nine months of the enactment of P.L. , c. (now before the Legislature as this bill), the Commissioner of the Department of Environmental Protection and Energy, in consultation with the Attorney General, shall issue a report to the Governor and the Legislature concerning the effectiveness and fairness of the imposition of strict, joint and several liability on persons who have discharged, or are in any way responsible for, a hazardous substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.). The report shall:

a. analyze methods to expedite the securing of funding for the remediation of hazardous discharge sites;

b. analyze methods to lower the public and private legal costs associated with the determinations of liability for discharges of hazardous substances;

c. examine the historical and legal basis for the imposition of strict, joint and several liability for the discharge of a hazardous substance;

d. discuss the effect on the Department of Environmental Protection and Energy's site remediation program of modifying the existing statutory scheme of strict, joint and several liability and replacing it with another standard of liability; and

e. review and discuss methods to enhance the fairness of the imposition of liability for hazardous substance discharges including the possible use of mixed public and private funding for site remediations and the use of de minimis settlements for potentially responsible parties.

In preparing its report, the department shall review the

provisions of the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," as amended by the "Superfund Amendments and Reauthorization Act of 1986," the regulations and policies of the federal Environmental Protection Agency in implementing that act, proposed changes being considered by Congress in the reauthorization of that act, and the discharge liability laws of other states as may be relevant. The report shall contain recommendations for regulatory or legislative actions.[1]

[1]49. (New section) Within six months of the enactment of P.L. , c. (now before the Legislature as this bill), the Commissioner of Environmental Protection and Energy shall issue a report to the Governor and the Legislature providing an evaluation, recommendations, and a plan of action for developing and implementing a certification program for persons engaging in the remediation of contaminated sites. In preparing his report, the commissioner shall review the certification programs for persons engaging in the remediation of contaminated sites which other states have implemented and which may be relevant.[1]

[1][46.] 50.[1] This act shall take effect immediately except that section 44 shall remain inoperative until the 90th day following enactment.

Makes various changes to various hazardous discharge site remediation programs; imposes a surcharge on remediations; establishes a loan and grant fund for remediation activities; appropriates bond moneys.

S1070/A162/A1727/A1835

OFFICE OF THE GOVERNOR
NEWS RELEASE

CN-001
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Release:

THURSDAY
JUNE 10, 1993

GOV. FLORIO HAILS ECRA REFORMS

Gov. Jim Florio praised legislative leaders for the bipartisan cooperation that led to today's passage of sweeping reforms in the state Environmental Cleanup Responsibility Act.

"This is a good example of how much we can accomplish when we work together to improve New Jersey's economy," Gov. Florio said. "This legislation strikes the proper balance between economic development and environmental protection. It will allow the state to cut through red tape to create jobs."

The governor intends to sign the legislation after it is reviewed by Counsel's Office. The legislation is sponsored by Sen. Henry McNamara, R-Bergen, Sen. Ronald Rice, D-Essex, and Assemblyman Paul DiGaetano, R-Passaic.

S1070/A162/A1727/
A1835

OFFICE OF THE GOVERNOR
NEWS RELEASE

CN-001
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TRENTON, N.J. 08625
Release: Wednesday
June 16, 1993

GOVERNOR FLORIO CUTS RED TAPE WITH SWEEPING CLEAN-UP REFORM MEASURE
New Law Will Help Create Jobs

PASSAIC -- Acting to cut red tape and create jobs, Governor Jim Florio today signed a bill overhauling the state's environmental cleanup law, ending a decade of bureaucratic delays that have stymied private investment and slowed pollution cleanup.

"This new law may be called the Industrial Site Recovery Act, but I like to think of it as the New Jersey Jobs Creation Act. Today, we're taking another step to cut red tape and create jobs. We're helping the private sector open new frontiers for economic development," said Governor Florio, who signed the law at an abandoned industrial site, destroyed by fire in 1985, which took five years to be approved for cleanup under the state's old law. "Most important, we're acting forcefully to create jobs."

"We're going to restore the right balance between economic renewal and environmental protection in the State of New Jersey, keeping fully aware that we can't have one without the other. We'll attract private sector investment where it's needed most, recover unused land for more productive uses and above all, untie the hands of industry to create new jobs," said Governor Florio.

The Industrial Site Recovery Act (ISRA) replaces the state's decade-old environmental clean-up law. Governor Florio had called on the Legislature to take speedy action to reform the law, calling ECRA -- the Environmental Clean-Up Responsibility Act a "symbol for regulations run amok." He credited Senator Henry McNamara and Assemblyman Paul DiGaetano, the bill's primary sponsors for their strong leadership in crafting the bill and the critical bipartisan effort to move it through the Legislature.

"Someone told me that if Washington tried these same kinds of reform with our federal regulations, it would take 100 years," Governor Florio said. "In New Jersey, we got it done in 18 months."

ECRA was signed into law in 1983 and was intended to be a national model by requiring industrial property owners to clean up their sites prior to selling the property. Throughout its history, however, the law had been severely criticized as

creating a bureaucratic nightmare, hindering both cleanup and further economic development at the sites.

The new law will help spur private investment by streamlining the regulatory process. It encourages municipalities to reclaim and resell abandoned industrial sites to stimulate economic renewal. It will unshackle industries and entrepreneurs entangled in red tape to create new jobs.

The Industrial Site Recovery Act will:

- ***Ease the credit crunch*** facing manufacturers by providing up to $50 million in loans and grants to help small businesses, individuals and municipalities obtain financing for cleanup.
- ***Speed cleanup*** by allowing expedited reviews at sites that have already undergone state-approved cleanup.
- ***Keep factories*** open and save jobs by allowing businesses to defer cleanups if the new use of the property remains substantially the same.
- ***Enable privatized cleanups*** with minimal bureaucratic intervention by allowing businesses to proceed with most soil cleanups without prior approval by the state Department of Environmental Protection and Energy.
- ***Provide greater administrative certainty*** and stabilize the industrial real estate market by requiring DEPE to adopt sound, statewide cleanup standards for contamination.
- ***Stimulate the market for industrial real estate*** by cutting unnecessary cleanup costs.

"When entrepreneurs wanted to invest in New Jersey, the first barrier they faced was ECRA and it often stopped them in their tracks," said Governor Florio. "Our task was clear. We didn't create ECRA, but it was up to us to fix it. Today we're taking a bad law and making it better, much better."

At the same time, the new law maintains the same environmental standard embodied under ECRA to determine cleanup: polluted sites are required to be cleansed using the same strict environment safeguards. The bill also establishes a blue-ribbon panel including the best scientific and policy-making minds to work closely with DEPE on making sure the state's risk levels make sense. The panel will also assist in the development of appropriate methods for meeting standards. "We must have the best science in the painstaking work of setting standards. That's not something we should be afraid of, it's something we should embrace," Governor Florio stressed.

"This law heralds a new era of environmental management and illustrates the results that can be achieved when everybody works together and focuses on the underlying public policy objective of revitalizing industrial sites while protecting the environment," said DEPE Commissioner Scott Weiner. "This law provides the department with greater legislative guidance in our administration of the program, thereby enabling us to manage the cleanup of sites more efficiently and effectively."

"Jobs are what it's all about in New Jersey. The private sector creates permanent jobs, not big government. Where regulations serve no other purpose than to justify bureaucracies and frustrate business, we need to eliminate them," said Governor Florio.

The law, S 1070/A 162/1727/1835 was sponsored by Senators Henry McNamara and Ronald Rice, and Assemblypersons Arthur Albohn, Paul DiGaetano, Marion Crecco and William Pascrell.

# # #

PROPOSED ECONOMIC DEVELOPMENT SITE

Governor Florio will sign the Industrial Site Recovery Act at the 5.5 acre Alpha Omega site which is presently vacant. The site housed a former industrial park which was destroyed by fire in 1985. Resulting contamination from the fire caused surface soil contamination, in addition to previous contamination caused by leaking underground storage tanks and pre-existing fill dirt.

Under the state's previous law, ECRA, the cleanup process took five years to get underway; the site was finally approved for cleanup in October, 1992. Under the new law, the cleanup process will move forward more rapidly and is more streamlined to encourage a faster reuse of industrial sites for new economic development and job creation.

Proposed redevelopment plans for the site include the construction of a strip mall and supermarket with parking facilities which will enhance economic revitalization in the downtown area.

MAJOR ECONOMIC BENEFITS PROVIDED BY THE INDUSTRIAL SITE RECOVERY ACT

- ***Eases the credit crunch facing manufacturers*** by providing up to $50 million in EDA-sponsored grants, low-interest loans and loan guarantees to businesses that cannot obtain alternative financing for cleanups, and by eliminating the costly requirement for a company to post a separate cleanup bond while drawing upon a second funding source to pay for a cleanup.

- ***Keeps factories on-line and saves manufacturing jobs*** by providing an acquiring corporation with the right to postpone cleanup, and by enabling DEPE to waive ECRA requirements when a financially-troubled manufacturer is making good faith efforts to expand its operations.

- ***Encourages cities to reclaim and resell abandoned industrial properties*** by providing a municipality with certain liability exemptions upon foreclosure of a tax lien, and by making municipalities eligible for financial assistance under the proposed EDA trust fund.

- ***Eliminates unnecessary cleanup costs*** and enhances the marketability of industrial properties by authorizing the use of different cleanup standards for residential and non-residential property uses and by allowing the use of site-specific cleanup standards.

- ***Reduces the number of business transactions*** subject to ECRA by exempting industries handling small amounts of hazardous materials, and by requiring DEPE to waive requirements for industry categories shown to have minimal environmental impacts.

- ***Speeds up industry cleanups*** by setting strict timetables for DEPE review of cleanup proposals, and by establishing "fast-track" review procedures for several classes of industrial sites.

- ***Authorizes "privatized" cleanups with minimal bureaucratic intervention*** by allowing businesses to proceed with most soil cleanups without prior DEPE approval, and by requiring DEPE to prepare recommendations on a plan of action for the certification of engineers and scientists designing cleanups.

- ***Provides greater administrative certainty*** and finality for cleanups and stabilizes the industrial real estate market by requiring DEPE to adopt scientifically-sound, statewide cleanup standards for contamination present in soil, aquifers or waterways.

- ***Enhances the fairness of the liability system*** by creating a new defense for "innocent landowners" and by requiring DEPE and the Attorney General's Office to study possible modifications to the current strict, joint and several liability standard.