

COMMITTEE STATEMENT:	ASSEMBLY:	Yes
	SENATE:	No
FLOOR AMENDMENT STATEMENTS:		No
LEGISLATIVE FISCAL ESTIMATE:		No
VETO MESSAGE:		No
GOVERNOR'S PRESS RELEASE ON SIGNING:		Yes

FOLLOWING WERE PRINTED:

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REPORTS:	No
HEARINGS:	No
NEWSPAPER ARTICLES:	Yes

"Law meant to hasten cleanup of brownfields is costly, foes say," 7-14-2001 Star Ledger, p. 9

SENATE, No. 2345

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MAY 3, 2001

Sponsored by:

Senator HENRY P. MCNAMARA

District 40 (Bergen and Passaic)

Senator JOHN H. ADLER

District 6 (Camden)

SYNOPSIS

Extends and changes statute of limitations for actions by the State pursuant to various environmental cleanup laws.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/12/2001)

1 AN ACT concerning the limitation of actions under certain
2 environmental laws, and amending P.L.1991, c.387.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 2 of P.L.1991, c.387 (C.2A:14-1.2) is amended to read
8 as follows:

9 2. a. (1) Except as provided in paragraph (2) of this subsection,
10 or except where a limitations provision expressly and specifically
11 applies to actions commenced by the State or where a longer
12 limitations period would otherwise apply, and subject to any statutory
13 provisions or common law rules extending limitations periods, any
14 civil action commenced by the State shall be commenced within ten
15 years next after the cause of action shall have accrued.

16 (2) Except where a limitations provision expressly and specifically
17 applies to actions commenced by the State or where a longer
18 limitations period would otherwise apply, and subject to any statutory
19 provisions or common law rules extending limitations periods, any
20 civil action concerning the remediation of a contaminated site or the
21 closure of a sanitary landfill facility commenced by the State pursuant
22 to the State's environmental laws shall be commenced within three
23 years next after the cause of action shall have accrued.

24 b. (1) For purposes of determining whether [an] a civil action
25 subject to the limitations period specified in paragraph (1) of
26 subsection a. of this section has been commenced within time, no
27 [such] cause of action shall be deemed to have accrued prior to
28 January 1, 1992.

29 (2) For purposes of determining whether a civil action subject to
30 the limitations period specified in paragraph (2) of subsection a. of this
31 section has been commenced within time, no cause of action shall be
32 deemed to have accrued prior to January 1, 2002, or until the
33 contaminated site has been remediated or the sanitary landfill facility
34 has been properly closed, whichever is later.

35 c. As used in this act[, the term] :

36 "State's environmental laws" means the "Spill Compensation and
37 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water
38 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
39 P.L.1986, c.102 (C.58:10A-21 et seq.), the "Brownfield and
40 Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1
41 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6
42 et al.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1
43 et seq.), the "Comprehensive Regulated Medical Waste Management

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.

1 Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous
2 Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the
3 "Sanitary Landfill Facility Closure and Contingency Fund Act,"
4 P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level
5 Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333
6 (C.13:1E-177 et seq.), or any other law or regulation by which the
7 State may compel a person to perform remediation activities on
8 contaminated property; and

9 "State" means the State, its political subdivisions, any office,
10 department, division, bureau, board, commission or agency of the
11 State or one of its political subdivisions, and any public authority or
12 public agency, including, but not limited to, the New Jersey Transit
13 Corporation and the University of Medicine and Dentistry of New
14 Jersey.

15 (cf: P.L.1991, c.387, s.2)

16

17 2. This act shall take effect immediately.

18

19

20

STATEMENT

21

22 This bill would extend and change the statute of limitations for civil
23 actions brought by the State pursuant to laws concerning the
24 remediation of contaminated sites or the closure of sanitary landfill
25 facilities. The bill would provide that a cause of action concerning the
26 remediation of contaminated sites or the closure of sanitary landfill
27 facilities shall not be deemed to have accrued, for the purposes of the
28 statute of limitations, prior to January 1, 2002, or until the
29 contaminated site has been remediated or the landfill has been properly
30 closed, whichever is later, in which case any civil action by the State
31 must be commenced within three years next after the cause of action
32 shall have accrued.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2345

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED JUNE 11, 2001

Sponsored by:

Senator HENRY P. MCNAMARA

District 40 (Bergen and Passaic)

Senator JOHN H. ADLER

District 6 (Camden)

SYNOPSIS

Establishes and extends statute of limitations for site cleanups; clarifies liability for purchasers of contaminated sites.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Environment Committee.



1 AN ACT concerning the cleanup of contaminated property, amending
2 and supplementing Title 58 of the Revised Statutes, and amending
3 P.L.1991, c.387.

4

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

7

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

10 3. Unless the context clearly indicates otherwise, the following
11 terms shall have the following meanings:

12 "Act of God" means an act exclusively occasioned by an
13 unanticipated, grave natural disaster without the interference of any
14 human agency;

15 "Administrator" means the chief executive of the New Jersey Spill
16 Compensation Fund;

17 "Barrel" means 42 United States gallons or 159.09 liters or an
18 appropriate equivalent measure set by the director for hazardous
19 substances which are other than fluid or which are not commonly
20 measured by the barrel;

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

23 "Cleanup and removal costs" means all costs associated with a
24 discharge, incurred by the State or its political subdivisions or their
25 agents or any person with written approval from the department in the:
26 (1) removal or attempted removal of hazardous substances, or (2)
27 taking of reasonable measures to prevent or mitigate damage to the
28 public health, safety, or welfare, including, but not limited to, public
29 and private property, shorelines, beaches, surface waters, water
30 columns and bottom sediments, soils and other affected property,
31 including wildlife and other natural resources, and shall include costs
32 incurred by the State for the indemnification and legal defense of
33 contractors pursuant to sections 1 through 11 of P.L.1991, c.373
34 (C.58:10-23.11f8 et seq.). For the purposes of this definition, costs
35 incurred by the State shall not include any indirect costs for
36 department oversight performed after the effective date of P.L.1997,
37 c.278 (C.58:10B-1.1 et al.), but may include only those program costs
38 directly related to the cleanup and removal of the discharge; however,
39 where the State or the fund have expended money for the cleanup and
40 removal of a discharge and are seeking to recover the costs incurred
41 in that cleanup and removal action from a responsible party, costs
42 incurred by the State shall include any indirect costs;

43 "Commissioner" means the Commissioner of Environmental

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.

1 Protection;

2 "Contamination" or "contaminant" means any discharged
3 hazardous substance, hazardous waste as defined pursuant to section
4 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to
5 section 3 of P.L.1977, c.74 (C.58:10A-3);

6 "Department" means the Department of Environmental Protection;

7 "Director" means the Director of the Division of Taxation in the
8 Department of the Treasury;

9 "Discharge" means any intentional or unintentional action or
10 omission resulting in the releasing, spilling, leaking, pumping, pouring,
11 emitting, emptying or dumping of hazardous substances into the
12 waters or onto the lands of the State, or into waters outside the
13 jurisdiction of the State when damage may result to the lands, waters
14 or natural resources within the jurisdiction of the State;

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

19 "Fair market value" means the invoice price of the hazardous
20 substances transferred, including transportation charges; but where no
21 price is so fixed, "fair market value" shall mean the market price as of
22 the close of the nearest day to the transfer, paid for similar hazardous
23 substances, as shall be determined by the taxpayer pursuant to rules of
24 the director;

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

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

45 "Local unit" means any county or municipality, or any agency or
46 other instrumentality thereof, or a duly incorporated volunteer fire,

1 ambulance, first aid, emergency, or rescue company or squad;

2 "Major facility" includes, but is not limited to, any refinery, storage
3 or transfer terminal, pipeline, deep-water port, drilling platform or any
4 appurtenance related to any of the preceding that is used or is capable
5 of being used to refine, produce, store, handle, transfer, process or
6 transport hazardous substances. "Major facility" shall include a vessel
7 only when that vessel is engaged in a transfer of hazardous substances
8 between it and another vessel, and in any event shall not include a
9 vessel used solely for activities directly related to recovering,
10 containing, cleaning up or removing discharges of petroleum in the
11 surface waters of the State, including training, research, and other
12 activities directly related to spill response.

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

16 (1) 20,000 gallons or more for hazardous substances which are
17 other than petroleum or petroleum products, or

18 (2) 200,000 gallons or more for hazardous substances of all kinds.

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

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

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

34 "Owner" or "operator" means, with respect to a vessel, any person
35 owning, operating or chartering by demise such vessel; with respect to
36 any major facility, any person owning such facility, or operating it by
37 lease, contract or other form of agreement; with respect to abandoned
38 or derelict major facilities, the person who owned or operated such
39 facility immediately prior to such abandonment, or the owner at the
40 time of discharge;

41 "Person" means public or private corporations, companies,
42 associations, societies, firms, partnerships, joint stock companies,
43 individuals, the United States, the State of New Jersey and any of its
44 political subdivisions or agents;

45 "Petroleum" or "petroleum products" means oil or petroleum of
46 any kind and in any form, including, but not limited to, oil, petroleum,

1 gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other
2 wastes, crude oils, and substances or additives to be utilized in the
3 refining or blending of crude petroleum or petroleum stock in this
4 State; however, any compound designated by specific chemical name
5 on the list of hazardous substances adopted by the department
6 pursuant to this section shall not be considered petroleum or a
7 petroleum product for the purposes of P.L.1976, c.141, unless such
8 compound is to be utilized in the refining or blending of crude
9 petroleum or petroleum stock in this State;

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

22 "Remedial action" means those actions taken at a site or offsite if
23 a contaminant has migrated or is migrating therefrom, as may be
24 required by the department, including the removal, treatment,
25 containment, transportation, securing, or other engineering or
26 treatment measures, whether to an unrestricted use or otherwise,
27 designed to ensure that any discharged contaminant at the site or that
28 has migrated or is migrating from the site, is remediated in compliance
29 with the applicable health risk or environmental standards;

30 "Remedial investigation" means a process to determine the nature
31 and extent of a discharge of a contaminant at a site or a discharge of
32 a contaminant that has migrated or is migrating from the site and the
33 problems presented by a discharge, and may include data collected,
34 site characterization, sampling, monitoring, and the gathering of any
35 other sufficient and relevant information necessary to determine the
36 necessity for remedial action and to support the evaluation of remedial
37 actions if necessary;

38 "Remediation" or "remediate" means all necessary actions to
39 investigate and clean up or respond to any known, suspected, or
40 threatened discharge, including, as necessary, the preliminary
41 assessment, site investigation, remedial investigation, and remedial
42 action, provided, however, that "remediation" or "remediate" shall not
43 include the payment of compensation for damage to, or loss of, natural
44 resources;

45 "Site investigation" means the collection and evaluation of data
46 adequate to determine whether or not discharged contaminants exist

1 at a site or have migrated or are migrating from the site at levels in
2 excess of the applicable remediation standards. A site investigation
3 shall be developed based upon the information collected pursuant to
4 the preliminary assessment:

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

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

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

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

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

23 (cf: P.L.1997, c.278, s.19)

24
25 2. Section 8 of P.L.1976, c.141 (C.58:10-23.11g) is amended to
26 read as follows:

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

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

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

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

46 (4) Loss of tax revenue by the State or local governments for a

1 period of one year due to damage to real or personal property
2 proximately resulting from a discharge;

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

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

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

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

40 Where a person is liable for cleanup and removal costs as provided
41 in this paragraph, any expenditures made by the administrator for that
42 cleanup and removal shall constitute a debt of that person to the fund.
43 The debt shall constitute a lien on all property owned by that person
44 when a notice of lien identifying the nature of the discharge and the
45 amount of the cleanup, removal and related costs expended from the
46 fund is duly filed with the clerk of the Superior Court. The clerk shall

1 promptly enter upon the civil judgment or order docket the name and
2 address of the liable person and the amount of the lien as set forth in
3 the notice of lien. Upon entry by the clerk, the lien, to the amount
4 committed by the administrator for cleanup and removal, shall attach
5 to the revenues and all real and personal property of the liable person,
6 whether or not that person is insolvent.

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

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

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

31 (3) In addition to the persons liable pursuant to this subsection,
32 any person who owns real property acquired on or after September 14,
33 1993 on which there has been a discharge prior to the person's
34 acquisition of that property and who knew or should have known that
35 a hazardous substance had been discharged at the real property, shall
36 be strictly liable, jointly and severally, without regard to fault, for all
37 cleanup and removal costs no matter by whom incurred. Such person
38 shall also be strictly liable, jointly and severally, without regard to
39 fault, for all cleanup and removal costs incurred by the department or
40 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141
41 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter
42 liability of any person who acquired real property prior to September
43 14, 1993.

44 d. (1) In addition to those defenses provided in this subsection, an
45 act or omission caused solely by war, sabotage, or God, or a
46 combination thereof, shall be the only defenses which may be raised by

1 any owner or operator of a major facility or vessel responsible for a
2 discharge in any action arising under the provisions of this act.

3 (2) A person, including an owner or operator of a major facility,
4 who owns real property acquired on or after September 14, 1993 on
5 which there has been a discharge, shall not be liable for cleanup and
6 removal costs or for any other damages to the State or to any other
7 person for the discharged hazardous substance pursuant to subsection
8 c. of this section or pursuant to civil common law, if that person can
9 establish by a preponderance of the evidence that subparagraphs (a)
10 through (d) apply, or if applicable, subparagraphs (a) through (e)
11 apply:

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

14 (b) (i) at the time the person acquired the real property, the person
15 did not know and had no reason to know that any hazardous substance
16 had been discharged at the real property, or (ii) the person acquired
17 the real property by devise or succession, except that any other funds
18 or property received by that person from the deceased real property
19 owner who discharged a hazardous substance or was in any way
20 responsible for a hazardous substance, shall be made available to
21 satisfy the requirements of P.L.1976, c.141, or (iii) the person
22 complies with the provisions of subparagraph (e) of paragraph (2) of
23 this subsection;

24 (c) the person did not discharge the hazardous substance, is not
25 in any way responsible for the hazardous substance, and is not a
26 corporate successor to the discharger or to any person in any way
27 responsible for the hazardous substance or to anyone liable for cleanup
28 and removal costs pursuant to this section;

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

31 To establish that a person had no reason to know that any
32 hazardous substance had been discharged for the purposes of this
33 paragraph (2), the person must have undertaken, at the time of
34 acquisition, all appropriate inquiry into the previous ownership and
35 uses of the property. For the purposes of this paragraph (2), all
36 appropriate inquiry shall mean the performance of a preliminary
37 assessment, and site investigation, if the preliminary assessment
38 indicates that a site investigation is necessary, as defined in section 23
39 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with
40 rules and regulations promulgated by the department defining these
41 terms.

42 Nothing in this paragraph (2) shall be construed to alter liability of
43 any person who acquired real property prior to September 14, 1993;
44 and

45 (e) For the purposes of this subparagraph the person must have (i)
46 acquired the property subsequent to a hazardous substance being

1 discharged on the site and which discharge was discovered at the time
2 of acquisition as a result of the appropriate inquiry, as defined in this
3 paragraph (2), (ii) performed, following the effective date of P.L.1997,
4 c.278, a remediation of the site or discharge consistent with the
5 provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied
6 upon a valid no further action letter from the department for a
7 remediation performed prior to acquisition, or obtained approval of a
8 remedial action workplan by the department after the effective date of
9 P.L.1997, c.278 and continued to comply with the conditions of that
10 workplan, and (iii) established and maintained all engineering and
11 institutional controls as may be required pursuant to sections 35 and
12 36 of P.L.1993, c.139. A person who complies with the provisions of
13 this subparagraph by actually performing a remediation of the site or
14 discharge as set forth in (ii) above shall be issued, upon application, a
15 no further action letter by the department. A person who complies
16 with the provisions of this subparagraph either by receipt of a no
17 further action letter from the department following the effective date
18 of P.L.1997, c.278, or by relying on a previously issued no further
19 action letter shall not be liable for any further remediation including
20 any changes in a remediation standard or for the subsequent discovery
21 of a hazardous substance, at the site, if the remediation was for the
22 entire site, and the hazardous substance was discharged prior to the
23 person acquiring the property. Notwithstanding any other provisions
24 of this subparagraph, a person who complies with the provisions of
25 this subparagraph only by virtue of the existence of a previously issued
26 no further action letter shall receive no liability protections for any
27 discharge which occurred during the time period between the issuance
28 of the no further action letter and the property acquisition.
29 Compliance with the provisions of this subparagraph (e) shall not
30 relieve any person of any liability for a discharge that is off the site of
31 the property covered by the no further action letter, for a discharge
32 that occurs at that property after the person acquires the property, for
33 any actions that person negligently takes that aggravates or contributes
34 to a discharge of a hazardous substance, for failure to comply in the
35 future with laws and regulations, or if that person fails to maintain the
36 institutional or engineering controls on the property or to otherwise
37 comply with the provisions of the no further action letter.

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

46 (4) Any federal, State, or local governmental entity which acquires

1 ownership of real property through bankruptcy, tax delinquency,
2 abandonment, escheat, eminent domain, condemnation or any
3 circumstance in which the governmental entity involuntarily acquires
4 title by virtue of its function as sovereign, or where the governmental
5 entity acquires the property by any means for the purpose of
6 promoting the redevelopment of that property, shall not be liable,
7 pursuant to subsection c. of this section or pursuant to common law,
8 to the State or to any other person for any discharge which occurred
9 or began prior to that ownership. This paragraph shall not provide any
10 liability protection to any federal, State or local governmental entity
11 which has caused or contributed to the discharge of a hazardous
12 substance. This paragraph shall not provide any liability protection to
13 any federal, State, or local government entity that acquires ownership
14 of real property by condemnation or eminent domain where the real
15 property is being remediated in a timely manner at the time of the
16 condemnation or eminent domain action.

17 (5) A person, including an owner or operator of a major facility,
18 who owns real property acquired prior to September 14, 1993 on
19 which there has been a discharge, shall not be liable for cleanup and
20 removal costs or for any other damages to the State or to any other
21 person for the discharged hazardous substance pursuant to subsection
22 c. of this section or pursuant to civil common law, if that person can
23 establish by a preponderance of the evidence that subparagraphs (a)
24 through (d) apply:

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

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

35 (c) the person did not discharge the hazardous substance, is not
36 in any way responsible for the hazardous substance, and is not a
37 corporate successor to the discharger or to any person in any way
38 responsible for the hazardous substance or to anyone liable for cleanup
39 and removal costs pursuant to this section;

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

42 To establish that a person had no reason to know that any
43 hazardous substance had been discharged for the purposes of this
44 paragraph (5), the person must have undertaken, at the time of
45 acquisition, all appropriate inquiry on the previous ownership and uses
46 of the property based upon generally accepted good and customary

1 standards.

2 Nothing in this paragraph (5) shall be construed to alter liability of
3 any person who acquired real property on or after September 14,
4 1993.

5 e. Neither the fund nor the Sanitary Landfill Contingency Fund
6 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be
7 liable for any damages incurred by any person who is relieved from
8 liability pursuant to subsection d. or f. of this section for a remediation
9 that involves the use of engineering controls but the fund and the
10 Sanitary Landfill Contingency Fund shall be liable for any remediation
11 that involves only the use of institutional controls if after a valid no
12 further action letter has been issued the department orders additional
13 remediation except that the fund and the Sanitary Landfill Contingency
14 Fund shall not be liable for any additional remediation that is required
15 to remove an institutional control.

16 f. Notwithstanding any other provision of this section, a person,
17 who owns real property acquired on or after the effective date of
18 P.L.1997, c.278 (C.58:10B-11.1 et al.), shall not be liable for any
19 cleanup and removal costs or damages, under this section or pursuant
20 to any other statutory or civil common law, to any person, other than
21 the State and the federal government, harmed by any hazardous
22 substance discharged on that property prior to acquisition, and any
23 migration off that property related to that discharge, provided all the
24 conditions of this subsection are met:

25 (1) the person acquired the real property after the discharge of
26 that hazardous substance at the real property;

27 (2) the person did not discharge the hazardous substance, is not in
28 any way responsible for the hazardous substance, and is not a
29 corporate successor to the discharger or to any person in any way
30 responsible for the hazardous substance or to anyone liable for a
31 discharge pursuant to this section;

32 (3) the person gave notice of the discharge to the department upon
33 actual discovery of that discharge;

34 (4) within 30 days after acquisition of the property, the person
35 commenced a remediation of the discharge, including any migration,
36 pursuant to a department oversight document executed prior to
37 acquisition, and the department is satisfied that remediation was
38 completed in a timely and appropriate fashion; and

39 (5) Within ten days after acquisition of the property, the person
40 agrees in writing to provide access to the State for remediation and
41 related activities, as determined by the State.

42 The provisions of this subsection shall not relieve any person of
43 any liability:

44 (1) for a discharge that occurs at that property after the person
45 acquired the property;

46 (2) for any actions that person negligently takes that aggravates or

1 contributes to the harm inflicted upon any person;

2 (3) if that person fails to maintain the institutional or engineering
3 controls on the property or to otherwise comply with the provisions
4 of a no further action letter or a remedial action workplan and a
5 person is harmed thereby;

6 (4) for any liability to clean up and remove, pursuant to the
7 department's regulations and directions, any hazardous substances that
8 may have been discharged on the property or that may have migrated
9 therefrom; and

10 (5) for that person's failure to comply in the future with laws and
11 regulations.

12 g. Nothing in the amendatory provisions to this section adopted
13 pursuant to P.L.1997, c.278 shall be construed to remove any defense
14 to liability that a person may have had pursuant to subsection e. of this
15 section that existed prior to the effective date of P.L.1997, c.278.

16 h. Nothing in this section shall limit the requirements of any
17 person to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).
18 (cf: P.L.1997, c.278, s.20)

19

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

22 23. As used in sections 23 through 43 and section 45 of P.L.1993,
23 c.139 (C.58:10B-1 et seq.) , as may be amended and supplemented:

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

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

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

35 "Department" means the Department of Environmental Protection;

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

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

45 "Environmental opportunity zone" has the meaning given that term
46 pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);

1 "Financial assistance" means loans or loan guarantees;

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

10 "Limited restricted use remedial action" means any remedial action
11 that requires the continued use of institutional controls but does not
12 require the use of an engineering control;

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

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

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

43 "Remedial action workplan" means a plan for the remedial action
44 to be undertaken at a site, or at any area to which a discharge
45 originating at a site is migrating or has migrated; a description of the
46 remedial action to be used to remediate a site; a time schedule and cost

1 estimate of the implementation of the remedial action; and any other
2 information the department deems necessary;

3 "Remedial investigation" means a process to determine the nature
4 and extent of a discharge of a contaminant at a site or a discharge of
5 a contaminant that has migrated or is migrating from the site and the
6 problems presented by a discharge, and may include data collected,
7 site characterization, sampling, monitoring, and the gathering of any
8 other sufficient and relevant information necessary to determine the
9 necessity for remedial action and to support the evaluation of remedial
10 actions if necessary;

11 "Remediation" or "remediate" means all necessary actions to
12 investigate and clean up or respond to any known, suspected, or
13 threatened discharge of contaminants, including, as necessary, the
14 preliminary assessment, site investigation, remedial investigation, and
15 remedial action , provided, however, that "remediation" or "remediate"
16 shall not include the payment of compensation for damage to, or loss
17 of, natural resources;

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

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

25 "Remediation standards" means the combination of numeric
26 standards that establish a level or concentration , and narrative
27 standards to which contaminants must be treated, removed, or
28 otherwise cleaned for soil, groundwater, or surface water, as provided
29 by the department pursuant to section 35 of P.L.1993, c.139
30 (C.58:10B-12) in order to meet the health risk or environmental
31 standards;

32 "Restricted use remedial action" means any remedial action that
33 requires the continued use of engineering and institutional controls in
34 order to meet the established health risk or environmental standards;

35 "Site investigation" means the collection and evaluation of data
36 adequate to determine whether or not discharged contaminants exist
37 at a site or have migrated or are migrating from the site at levels in
38 excess of the applicable remediation standards. A site investigation
39 shall be developed based upon the information collected pursuant to
40 the preliminary assessment;

41 "Unrestricted use remedial action" means any remedial action that
42 does not require the continued use of engineering or institutional
43 controls in order to meet the established health risk or environmental
44 standards;

45 "Voluntarily perform a remediation" means performing a
46 remediation without having been ordered or directed to do so by the

1 department or by a court and without being compelled to perform a
2 remediation pursuant to the provisions of P.L.1983, c.330 (C.13:1K-6
3 et al.).

4 (cf: P.L.1997, c.278, s.9)

5
6 4. Section 6 of P.L.1997, c.278 (C.58:10B-13.1) is amended to
7 read as follows:

8 6. a. Whenever after the effective date of P.L.1997, c.278
9 (C.58:10B-1.1 et al.) the Department of Environmental Protection
10 issues a no further action letter pursuant to a remediation, it shall also
11 issue to the person performing the remediation a covenant not to sue
12 with respect to the real property upon which the remediation has been
13 conducted. A covenant not to sue shall be executed by the person
14 performing the remediation and by the department in order to become
15 effective. The covenant not to sue shall be consistent with any
16 conditions and limitations contained in the no further action letter.
17 The covenant not to sue shall be for any area of concern remediated
18 and may apply to the entire real property if the remediation included
19 a preliminary assessment and, if necessary, a site investigation of the
20 entire real property, and any other necessary remedial actions. The
21 covenant remains effective only for as long as the real property for
22 which the covenant was issued continues to meet the conditions of the
23 no further action letter. Upon a finding by the department that real
24 property or a portion thereof to which a covenant not to sue pertains,
25 no longer meets with the conditions of the no further action letter, the
26 department shall provide notice of that fact to the person responsible
27 for maintaining compliance with the no further action letter. The
28 department may allow the person a reasonable time to come into
29 compliance with the terms of the original no further action letter. If
30 the property does not meet the conditions of the no further action
31 letter and if the department does not allow for a period of time to
32 come into compliance or if the person fails to come into compliance
33 within the time period, the department may invoke the provisions of
34 the covenant not to sue permitting revocation of the covenant not to
35 sue.

36 Except as provided in subsection e. of this section, a covenant not
37 to sue shall contain the following, as applicable:

38 (1) a provision releasing the person who undertook the remediation
39 from all civil liability to the State to perform any additional
40 remediation, to pay compensation for damage to, or loss of, natural
41 resources, or for any cleanup and removal costs;

42 (2) for a remediation that involves the use of engineering or
43 institutional controls:

44 (a) a provision requiring the person, or any subsequent owner,
45 lessee, or operator during the person's period of ownership, tenancy,
46 or operation, to maintain those controls, conduct periodic monitoring

1 for compliance, and submit to the department, on a biennial basis, a
2 certification that the engineering and institutional controls are being
3 properly maintained and continue to be protective of public health and
4 safety and of the environment. The certification shall state the
5 underlying facts and shall include the results of any tests or
6 procedures performed that support the certification; and

7 (b) a provision revoking the covenant if the engineering or
8 institutional controls are not being maintained or are no longer in
9 place; and

10 (3) for a remediation that involves the use of engineering controls
11 but not for any remediation that involves the use of institutional
12 controls only, a provision barring the person or persons whom the
13 covenant not to sue benefits, from making a claim against the New
14 Jersey Spill Compensation Fund and the Sanitary Landfill Facility
15 Contingency Fund for any costs or damages relating to the real
16 property and remediation covered by the covenant not to sue. The
17 covenant not to sue shall not bar a claim by any person against the
18 New Jersey Spill Compensation Fund and the Sanitary Landfill
19 Contingency Fund for any remediation that involves only the use of
20 institutional controls if, after a valid no further action letter has been
21 issued, the department orders additional remediation, except that the
22 covenant shall bar such a claim if the department ordered additional
23 remediation in order to remove the institutional control.

24 b. Unless a covenant not to sue issued under this section is
25 revoked by the department, the covenant shall remain effective. The
26 covenant not to sue shall apply to all successors in ownership of the
27 property and to all persons who lease the property or who engage in
28 operations on the property.

29 c. If a covenant not to sue is revoked, liability for any additional
30 remediation shall not be applied retroactively to any person for whom
31 the covenant remained in effect during that person's ownership,
32 tenancy, or operation of the property.

33 d. A covenant not to sue and the protections it affords shall not
34 apply to any discharge that occurs subsequent to the issuance of the
35 no further action letter which was the basis of the issuance of the
36 covenant, nor shall a covenant not to sue and the protections it affords
37 relieve any person of the obligations to comply in the future with laws
38 and regulations.

39 e. The covenant not to sue may be issued to any person who
40 obtains a no further action letter as provided in subsection a. of this
41 section. The covenant not to sue shall not provide relief from any
42 liability, either under statutory or common law, to any person who is
43 liable for cleanup and removal costs pursuant to subsection c. of
44 section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not have
45 a defense to liability pursuant to subsection d. of that section.

46 (cf: P.L.1997, c.278, s.6)

1 5. (New section) a. (1) Except where a limitations provision
2 expressly and specifically applies to actions commenced by the State
3 or where a longer limitations period would otherwise apply, and
4 subject to any statutory provisions or common law rules extending
5 limitations periods, any civil action concerning the remediation of a
6 contaminated site or the closure of a sanitary landfill facility
7 commenced by the State pursuant to the State's environmental laws
8 shall be commenced within three years next after the cause of action
9 shall have accrued.

10 (2) For purposes of determining whether a civil action subject to
11 the limitations periods specified in paragraph (1) of this subsection has
12 been commenced within time, no cause of action shall be deemed to
13 have accrued prior to January 1, 2002 or until the contaminated site
14 is remediated or the sanitary landfill has been properly closed,
15 whichever is later.

16 b. (1) Except where a limitations provision expressly and
17 specifically applies to actions commenced by the State or where a
18 longer limitations period would otherwise apply, and subject to any
19 statutory provisions or common law rules extending limitations
20 periods, any civil action concerning the payment of compensation for
21 damage to, or loss of, natural resources due to the discharge of a
22 hazardous substance, commenced by the State pursuant to the State's
23 environmental laws, shall be commenced within four years next after
24 the cause of action shall have accrued.

25 (2) For purposes of determining whether a civil action subject to
26 the limitations periods specified in paragraph (1) of this subsection has
27 been commenced within time, no cause of action shall be deemed to
28 have accrued prior to January 1, 2002 or until the performance of the
29 preliminary assessment, site investigation, and remedial investigation,
30 if necessary, of the contaminated site or the sanitary landfill facility,
31 whichever is later.

32 c. As used in this section:

33 "State's environmental laws" means the "Spill Compensation and
34 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water
35 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
36 P.L.1986, c.102 (C.58:10A-21 et seq.), the "Brownfield and
37 Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1
38 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6
39 et al.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1
40 et seq.), the "Comprehensive Regulated Medical Waste Management
41 Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous
42 Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the
43 "Sanitary Landfill Facility Closure and Contingency Fund Act,"
44 P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level
45 Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333
46 (C.13:1E-177 et seq.), or any other law or regulation by which the

1 State may compel a person to perform remediation activities on
2 contaminated property; and

3 "State" means the State, its political subdivisions, any office,
4 department, division, bureau, board, commission or agency of the
5 State or one of its political subdivisions, and any public authority or
6 public agency, including, but not limited to, the New Jersey Transit
7 Corporation and the University of Medicine and Dentistry of New
8 Jersey.

9

10 6. (New section) Any person who has a defense to liability
11 pursuant to paragraphs (2) and (5) of subsection d. of section 8 of
12 P.L.1976, c.141 (C.58:10-23.11g) shall not be liable for the payment
13 of compensation for damage to, or loss of, natural resources due to the
14 discharge of a hazardous substance.

15

16 7. Section 2 of P.L.1991, c.387 (C.2A:14-1.2) is amended to read
17 as follows:

18 2. a. Except where a limitations provision expressly and
19 specifically applies to actions commenced by the State or where a
20 longer limitations period would otherwise apply, and subject to any
21 statutory provisions or common law rules extending limitations
22 periods, any civil action commenced by the State shall be commenced
23 within ten years next after the cause of action shall have accrued.

24 b. For purposes of determining whether an action subject to the
25 limitations period specified in subsection a. of this section has been
26 commenced within time, no such action shall be deemed to have
27 accrued prior to January 1, 1992.

28 c. As used in this act, the term "State" means the State, its
29 political subdivisions, any office, department, division, bureau, board,
30 commission or agency of the State or one of its political subdivisions,
31 and any public authority or public agency, including, but not limited
32 to, the New Jersey Transit Corporation and the University of Medicine
33 and Dentistry of New Jersey.

34 The provisions of this section shall not apply to any civil action
35 commenced by the State concerning the remediation of a contaminated
36 site or the closure of a sanitary landfill facility, or the payment of
37 compensation for damage to, or loss of, natural resources due to the
38 discharge of a hazardous substance, and subject to the limitations
39 period specified in section 5 of P.L. , c. (C.) (before the Legislature
40 as this bill).

41 (cf: P.L.1991, c.387, s.2)

42

43 8. This act shall take effect immediately.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2345**

STATE OF NEW JERSEY

DATED: JUNE 11, 2001

The Senate Environment Committee reports favorably a committee substitute for Senate Bill No. 2345.

This committee substitute would make several changes to the laws concerning the cleanup of contaminated sites. First, the committee substitute would provide a new “innocent party” defense to liability under the “Spill Compensation and Control Act,” P.L.1976, c.141 (C.58:10-23.11 et seq.). The substitute would also clarify that “remediation” does not include the payment of compensation for damages to, or loss of, natural resources. Therefore, a person who is not a responsible party and therefore eligible to receive a covenant not to sue, would not be liable for the payment of natural resource damages. Finally, the proposed committee substitute would extend and change the statute of limitations for civil actions brought by the State pursuant to laws concerning the remediation of contaminated sites or the closure of sanitary landfill facilities and for the payment of compensation for damage to, or loss of, natural resources due to the discharge of a hazardous substance, pursuant to the State's environmental laws.

The substitute would provide a new defense to liability for persons who purchased contaminated property prior to September 14, 1993. If it can be established by a preponderance of the evidence that (1) a person acquired the property after the discharge of the hazardous substance, (2) at the time the person acquired the property he did not know and had no reason to know that any hazardous substance had been discharged at the property, or the person acquired the real property by devise or succession, (3) the person did not discharge the hazardous substance, is not in any way responsible for the hazardous substance, and is not a corporate successor to the discharger, or to the person in any way responsible for the hazardous substance or to anyone liable for cleanup and removal costs, and (4) the person gave notice of the discharge to the Department of Environmental Protection upon actual discovery of the discharge, then the person is not liable for cleanup and removal costs or for any other damages to the State or to any other person for the discharged hazardous substance pursuant to the Spill Act or pursuant to civil common law. To establish that a

person had no reason to know that any hazardous substance had been discharged, the person must have undertaken at the time of acquisition, all appropriate inquiry on the previous ownership and uses of the property based upon generally accepted good and customary standards. The substitute is intended to provide a defense to liability for only those persons who purchased contaminated property before September 14, 1993 and, after appropriate inquiry, did not know and had no reason to know that the property was contaminated. The substitute is not intended to change any liability that otherwise exists for persons who acquired contaminated property before September 14, 1993.

The substitute would also clarify that a person who is not a discharger or a person in any way responsible for a hazardous substance, and has a defense to liability, would not be responsible for the payment of compensation for damage to, or loss of, natural resources.

Finally, the substitute would extend and change the statute of limitations for civil actions brought by the State pursuant to laws concerning the remediation of contaminated sites or the closure of sanitary landfill facilities and the payment of compensation for damage to, or loss of, natural resources due to the discharge of a hazardous substance, pursuant to the State's environmental laws. The bill would provide that a cause of action concerning the remediation of contaminated sites or the closure of sanitary landfill facilities shall not be deemed to have accrued, for the purposes of the statute of limitations, prior to January 1, 2002, or until the contaminated site has been remediated or the landfill has been properly closed, whichever is later, in which case any civil action by the State must be commenced within three years next after the cause of action shall have accrued.

The committee substitute would also establish a separate statute of limitations for civil actions brought by the State for the payment of compensation for damage to, or loss of, natural resources due to the discharge of a hazardous substance, pursuant to the State's environmental laws. A civil action must be commenced by the State no more than four years after the cause of action accrues. The substitute provides that the no cause of action would accrue for payment of compensation for damage to, or loss of, natural resources prior to January 1, 2002 or until the performance of the preliminary assessment, site investigation, and remedial investigation, if necessary, of the contaminated site or sanitary landfill facility, whichever is later. The substitute would also provide that actions covered by the limitations period established in section 5 of the committee substitute would not be subject to the limitations period established in P.L.1991, c.387 (C.2A:14-1.2).

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2345**

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 25, 2001

The Assembly Appropriations Committee favorably reports Senate Bill No. 2345 (SCS) with committee amendments.

Senate Bill No. 2345 (SCS), as amended, extends and changes the statute of limitations for civil actions brought by the State pursuant to laws concerning the remediation of contaminated sites or the closure of sanitary landfill facilities.

The bill provides that a cause of action concerning the remediation of contaminated sites or the closure of sanitary landfill facilities shall not be deemed to have accrued, for the purposes of the statute of limitations, prior to January 1, 2002, or until the contaminated site has been remediated or the landfill has been properly closed, whichever is later, in which case any civil action by the State must be commenced within three years next after the cause of action shall have accrued.

The bill, as amended and reported by the committee, is identical to Assembly Bill No. 3328, as reported by the committee.

FISCAL IMPACT:

The bill was not certified as requiring a fiscal note.

COMMITTEE AMENDMENTS:

The amendments delete provisions that would have provided an new “innocent party” defense to liability under the “Spill Compensation and Control Act,” P.L.1976, c.141 (C.58:10-23.11 et seq.), would have clarified that “remediation” does not include the payment of compensation for damages to, or loss of, natural resources; and would have clarified that a person who is not a discharger would not be responsible for the payment of compensation for damage to natural resources.

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2345

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED JUNE 11, 2001

Sponsored by:

Senator HENRY P. MCNAMARA

District 40 (Bergen and Passaic)

Senator JOHN H. ADLER

District 6 (Camden)

Co-Sponsored by:

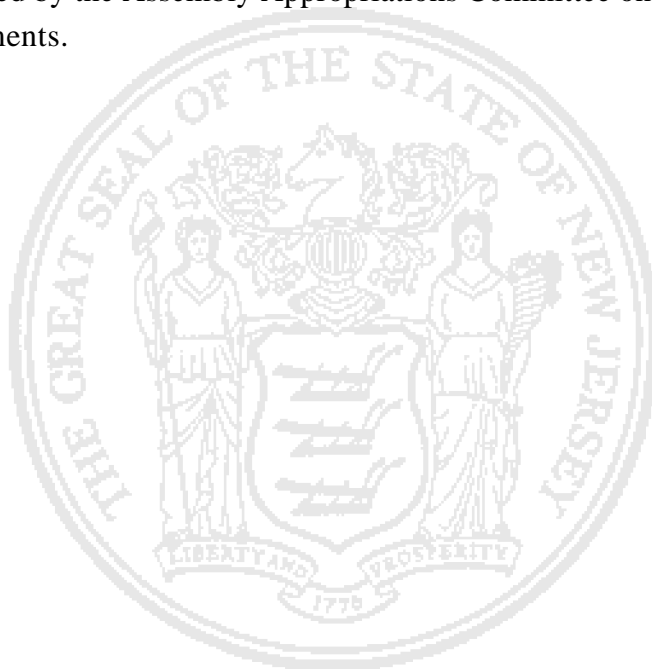
Assemblymen Corodemus, Blee, Felice, Gibson, Kelly, T.Smith and Zecker

SYNOPSIS

Extends and changes statute of limitations for actions by the State pursuant to various environmental cleanup laws.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on June 25, 2001, with amendments.



(Sponsorship Updated As Of: 6/29/2001)

1 AN ACT concerning ¹[the cleanup of contaminated property,
2 amending and supplementing Title 58 of the Revised Statutes]the
3 limitation of actions under certain environmental laws ¹, and
4 amending P.L.1991, c.387.

5

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

8

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

11 3. Unless the context clearly indicates otherwise, the following
12 terms shall have the following meanings:

13 "Act of God" means an act exclusively occasioned by an
14 unanticipated, grave natural disaster without the interference of any
15 human agency;

16 "Administrator" means the chief executive of the New Jersey Spill
17 Compensation Fund;

18 "Barrel" means 42 United States gallons or 159.09 liters or an
19 appropriate equivalent measure set by the director for hazardous
20 substances which are other than fluid or which are not commonly
21 measured by the barrel;

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

24 "Cleanup and removal costs" means all costs associated with a
25 discharge, incurred by the State or its political subdivisions or their
26 agents or any person with written approval from the department in the:
27 (1) removal or attempted removal of hazardous substances, or (2)
28 taking of reasonable measures to prevent or mitigate damage to the
29 public health, safety, or welfare, including, but not limited to, public
30 and private property, shorelines, beaches, surface waters, water
31 columns and bottom sediments, soils and other affected property,
32 including wildlife and other natural resources, and shall include costs
33 incurred by the State for the indemnification and legal defense of
34 contractors pursuant to sections 1 through 11 of P.L.1991, c.373
35 (C.58:10-23.11f8 et seq.). For the purposes of this definition, costs
36 incurred by the State shall not include any indirect costs for
37 department oversight performed after the effective date of P.L.1997,
38 c.278 (C.58:10B-1.1 et al.), but may include only those program costs
39 directly related to the cleanup and removal of the discharge; however,
40 where the State or the fund have expended money for the cleanup and
41 removal of a discharge and are seeking to recover the costs incurred

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 AAP committee amendments adopted June 25, 2001.

1 in that cleanup and removal action from a responsible party, costs
2 incurred by the State shall include any indirect costs;

3 "Commissioner" means the Commissioner of Environmental
4 Protection;

5 "Contamination" or "contaminant" means any discharged
6 hazardous substance, hazardous waste as defined pursuant to section
7 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to
8 section 3 of P.L.1977, c.74 (C.58:10A-3);

9 "Department" means the Department of Environmental Protection;

10 "Director" means the Director of the Division of Taxation in the
11 Department of the Treasury;

12 "Discharge" means any intentional or unintentional action or
13 omission resulting in the releasing, spilling, leaking, pumping, pouring,
14 emitting, emptying or dumping of hazardous substances into the
15 waters or onto the lands of the State, or into waters outside the
16 jurisdiction of the State when damage may result to the lands, waters
17 or natural resources within the jurisdiction of the State;

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

22 "Fair market value" means the invoice price of the hazardous
23 substances transferred, including transportation charges; but where no
24 price is so fixed, "fair market value" shall mean the market price as of
25 the close of the nearest day to the transfer, paid for similar hazardous
26 substances, as shall be determined by the taxpayer pursuant to rules of
27 the director;

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

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

1 (C.58:10-23.11 et seq.);

2 "Local unit" means any county or municipality, or any agency or
3 other instrumentality thereof, or a duly incorporated volunteer fire,
4 ambulance, first aid, emergency, or rescue company or squad;

5 "Major facility" includes, but is not limited to, any refinery, storage
6 or transfer terminal, pipeline, deep-water port, drilling platform or any
7 appurtenance related to any of the preceding that is used or is capable
8 of being used to refine, produce, store, handle, transfer, process or
9 transport hazardous substances. "Major facility" shall include a vessel
10 only when that vessel is engaged in a transfer of hazardous substances
11 between it and another vessel, and in any event shall not include a
12 vessel used solely for activities directly related to recovering,
13 containing, cleaning up or removing discharges of petroleum in the
14 surface waters of the State, including training, research, and other
15 activities directly related to spill response.

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

19 (1) 20,000 gallons or more for hazardous substances which are
20 other than petroleum or petroleum products, or

21 (2) 200,000 gallons or more for hazardous substances of all kinds.

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

27 For the purposes of this definition, "storage capacity" shall mean
28 only that total combined capacity which is dedicated to, used for or
29 intended to be used for storage of hazardous substances of all kinds.
30 Where appropriate to the nature of the facility, storage capacity may
31 be determined by the intended or actual use of open land or
32 unenclosed space as well as by the capacities of tanks or other
33 enclosed storage spaces;

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

37 "Owner" or "operator" means, with respect to a vessel, any person
38 owning, operating or chartering by demise such vessel; with respect to
39 any major facility, any person owning such facility, or operating it by
40 lease, contract or other form of agreement; with respect to abandoned
41 or derelict major facilities, the person who owned or operated such
42 facility immediately prior to such abandonment, or the owner at the
43 time of discharge;

44 "Person" means public or private corporations, companies,
45 associations, societies, firms, partnerships, joint stock companies,
46 individuals, the United States, the State of New Jersey and any of its

1 political subdivisions or agents;

2 "Petroleum" or "petroleum products" means oil or petroleum of
3 any kind and in any form, including, but not limited to, oil, petroleum,
4 gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other
5 wastes, crude oils, and substances or additives to be utilized in the
6 refining or blending of crude petroleum or petroleum stock in this
7 State; however, any compound designated by specific chemical name
8 on the list of hazardous substances adopted by the department
9 pursuant to this section shall not be considered petroleum or a
10 petroleum product for the purposes of P.L.1976, c.141, unless such
11 compound is to be utilized in the refining or blending of crude
12 petroleum or petroleum stock in this State;

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

25 "Remedial action" means those actions taken at a site or offsite if
26 a contaminant has migrated or is migrating therefrom, as may be
27 required by the department, including the removal, treatment,
28 containment, transportation, securing, or other engineering or
29 treatment measures, whether to an unrestricted use or otherwise,
30 designed to ensure that any discharged contaminant at the site or that
31 has migrated or is migrating from the site, is remediated in compliance
32 with the applicable health risk or environmental standards;

33 "Remedial investigation" means a process to determine the nature
34 and extent of a discharge of a contaminant at a site or a discharge of
35 a contaminant that has migrated or is migrating from the site and the
36 problems presented by a discharge, and may include data collected,
37 site characterization, sampling, monitoring, and the gathering of any
38 other sufficient and relevant information necessary to determine the
39 necessity for remedial action and to support the evaluation of remedial
40 actions if necessary;

41 "Remediation" or "remediate" means all necessary actions to
42 investigate and clean up or respond to any known, suspected, or
43 threatened discharge, including, as necessary, the preliminary
44 assessment, site investigation, remedial investigation, and remedial
45 action, provided, however, that "remediation" or "remediate" shall not
46 include the payment of compensation for damage to, or loss of, natural

1 resources:

2 "Site investigation" means the collection and evaluation of data
3 adequate to determine whether or not discharged contaminants exist
4 at a site or have migrated or are migrating from the site at levels in
5 excess of the applicable remediation standards. A site investigation
6 shall be developed based upon the information collected pursuant to
7 the preliminary assessment;

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

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

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

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

22 "Waters" means the ocean and its estuaries to the seaward limit of
23 the State's jurisdiction, all springs, streams and bodies of surface or
24 groundwater, whether natural or artificial, within the boundaries of
25 this State.

26 (cf: P.L.1997, c.278, s.19)]¹

27

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

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

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

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

41 (3) Loss of income or impairment of earning capacity due to
42 damage to real or personal property, including natural resources
43 destroyed or damaged by a discharge; provided that such loss or
44 impairment exceeds 10% of the amount which claimant derives, based
45 upon income or business records, exclusive of other sources of
46 income, from activities related to the particular real or personal

1 property or natural resources damaged or destroyed by such discharge
2 during the week, month or year for which the claim is filed;

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

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

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

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

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

43 Where a person is liable for cleanup and removal costs as provided
44 in this paragraph, any expenditures made by the administrator for that
45 cleanup and removal shall constitute a debt of that person to the fund.
46 The debt shall constitute a lien on all property owned by that person

1 when a notice of lien identifying the nature of the discharge and the
2 amount of the cleanup, removal and related costs expended from the
3 fund is duly filed with the clerk of the Superior Court. The clerk shall
4 promptly enter upon the civil judgment or order docket the name and
5 address of the liable person and the amount of the lien as set forth in
6 the notice of lien. Upon entry by the clerk, the lien, to the amount
7 committed by the administrator for cleanup and removal, shall attach
8 to the revenues and all real and personal property of the liable person,
9 whether or not that person is insolvent.

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

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

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

34 (3) In addition to the persons liable pursuant to this subsection,
35 any person who owns real property acquired on or after September 14,
36 1993 on which there has been a discharge prior to the person's
37 acquisition of that property and who knew or should have known that
38 a hazardous substance had been discharged at the real property, shall
39 be strictly liable, jointly and severally, without regard to fault, for all
40 cleanup and removal costs no matter by whom incurred. Such person
41 shall also be strictly liable, jointly and severally, without regard to
42 fault, for all cleanup and removal costs incurred by the department or
43 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141
44 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter
45 liability of any person who acquired real property prior to September
46 14, 1993.

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

6 (2) A person, including an owner or operator of a major facility,
7 who owns real property acquired on or after September 14, 1993 on
8 which there has been a discharge, shall not be liable for cleanup and
9 removal costs or for any other damages to the State or to any other
10 person for the discharged hazardous substance pursuant to subsection
11 c. of this section or pursuant to civil common law, if that person can
12 establish by a preponderance of the evidence that subparagraphs (a)
13 through (d) apply, or if applicable, subparagraphs (a) through (e)
14 apply:

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

17 (b) (i) at the time the person acquired the real property, the person
18 did not know and had no reason to know that any hazardous substance
19 had been discharged at the real property, or (ii) the person acquired
20 the real property by devise or succession, except that any other funds
21 or property received by that person from the deceased real property
22 owner who discharged a hazardous substance or was in any way
23 responsible for a hazardous substance, shall be made available to
24 satisfy the requirements of P.L.1976, c.141, or (iii) the person
25 complies with the provisions of subparagraph (e) of paragraph (2) of
26 this subsection;

27 (c) the person did not discharge the hazardous substance, is not
28 in any way responsible for the hazardous substance, and is not a
29 corporate successor to the discharger or to any person in any way
30 responsible for the hazardous substance or to anyone liable for cleanup
31 and removal costs pursuant to this section;

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

34 To establish that a person had no reason to know that any
35 hazardous substance had been discharged for the purposes of this
36 paragraph (2), the person must have undertaken, at the time of
37 acquisition, all appropriate inquiry into the previous ownership and
38 uses of the property. For the purposes of this paragraph (2), all
39 appropriate inquiry shall mean the performance of a preliminary
40 assessment, and site investigation, if the preliminary assessment
41 indicates that a site investigation is necessary, as defined in section 23
42 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with
43 rules and regulations promulgated by the department defining these
44 terms.

45 Nothing in this paragraph (2) shall be construed to alter liability of
46 any person who acquired real property prior to September 14, 1993;

1 and

2 (e) For the purposes of this subparagraph the person must have (i)
3 acquired the property subsequent to a hazardous substance being
4 discharged on the site and which discharge was discovered at the time
5 of acquisition as a result of the appropriate inquiry, as defined in this
6 paragraph (2), (ii) performed, following the effective date of P.L.1997,
7 c.278, a remediation of the site or discharge consistent with the
8 provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied
9 upon a valid no further action letter from the department for a
10 remediation performed prior to acquisition, or obtained approval of a
11 remedial action workplan by the department after the effective date of
12 P.L.1997, c.278 and continued to comply with the conditions of that
13 workplan, and (iii) established and maintained all engineering and
14 institutional controls as may be required pursuant to sections 35 and
15 36 of P.L.1993, c.139. A person who complies with the provisions of
16 this subparagraph by actually performing a remediation of the site or
17 discharge as set forth in (ii) above shall be issued, upon application, a
18 no further action letter by the department. A person who complies
19 with the provisions of this subparagraph either by receipt of a no
20 further action letter from the department following the effective date
21 of P.L.1997, c.278, or by relying on a previously issued no further
22 action letter shall not be liable for any further remediation including
23 any changes in a remediation standard or for the subsequent discovery
24 of a hazardous substance, at the site, if the remediation was for the
25 entire site, and the hazardous substance was discharged prior to the
26 person acquiring the property. Notwithstanding any other provisions
27 of this subparagraph, a person who complies with the provisions of
28 this subparagraph only by virtue of the existence of a previously issued
29 no further action letter shall receive no liability protections for any
30 discharge which occurred during the time period between the issuance
31 of the no further action letter and the property acquisition.
32 Compliance with the provisions of this subparagraph (e) shall not
33 relieve any person of any liability for a discharge that is off the site of
34 the property covered by the no further action letter, for a discharge
35 that occurs at that property after the person acquires the property, for
36 any actions that person negligently takes that aggravates or contributes
37 to a discharge of a hazardous substance, for failure to comply in the
38 future with laws and regulations, or if that person fails to maintain the
39 institutional or engineering controls on the property or to otherwise
40 comply with the provisions of the no further action letter.

41 (3) Notwithstanding the provisions of paragraph (2) of this
42 subsection to the contrary, if a person who owns real property obtains
43 actual knowledge of a discharge of a hazardous substance at the real
44 property during the period of that person's ownership and
45 subsequently transfers ownership of the property to another person
46 without disclosing that knowledge, the transferor shall be strictly liable

1 for the cleanup and removal costs of the discharge and no defense
2 under this subsection shall be available to that person.

3 (4) Any federal, State, or local governmental entity which acquires
4 ownership of real property through bankruptcy, tax delinquency,
5 abandonment, escheat, eminent domain, condemnation or any
6 circumstance in which the governmental entity involuntarily acquires
7 title by virtue of its function as sovereign, or where the governmental
8 entity acquires the property by any means for the purpose of
9 promoting the redevelopment of that property, shall not be liable,
10 pursuant to subsection c. of this section or pursuant to common law,
11 to the State or to any other person for any discharge which occurred
12 or began prior to that ownership. This paragraph shall not provide any
13 liability protection to any federal, State or local governmental entity
14 which has caused or contributed to the discharge of a hazardous
15 substance. This paragraph shall not provide any liability protection to
16 any federal, State, or local government entity that acquires ownership
17 of real property by condemnation or eminent domain where the real
18 property is being remediated in a timely manner at the time of the
19 condemnation or eminent domain action.

20 (5) A person, including an owner or operator of a major facility,
21 who owns real property acquired prior to September 14, 1993 on
22 which there has been a discharge, shall not be liable for cleanup and
23 removal costs or for any other damages to the State or to any other
24 person for the discharged hazardous substance pursuant to subsection
25 c. of this section or pursuant to civil common law, if that person can
26 establish by a preponderance of the evidence that subparagraphs (a)
27 through (d) apply:

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

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

38 (c) the person did not discharge the hazardous substance, is not
39 in any way responsible for the hazardous substance, and is not a
40 corporate successor to the discharger or to any person in any way
41 responsible for the hazardous substance or to anyone liable for cleanup
42 and removal costs pursuant to this section;

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

45 To establish that a person had no reason to know that any
46 hazardous substance had been discharged for the purposes of this

1 paragraph (5), the person must have undertaken, at the time of
2 acquisition, all appropriate inquiry on the previous ownership and uses
3 of the property based upon generally accepted good and customary
4 standards.

5 Nothing in this paragraph (5) shall be construed to alter liability of
6 any person who acquired real property on or after September 14,
7 1993.

8 e. Neither the fund nor the Sanitary Landfill Contingency Fund
9 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be
10 liable for any damages incurred by any person who is relieved from
11 liability pursuant to subsection d. or f. of this section for a remediation
12 that involves the use of engineering controls but the fund and the
13 Sanitary Landfill Contingency Fund shall be liable for any remediation
14 that involves only the use of institutional controls if after a valid no
15 further action letter has been issued the department orders additional
16 remediation except that the fund and the Sanitary Landfill Contingency
17 Fund shall not be liable for any additional remediation that is required
18 to remove an institutional control.

19 f. Notwithstanding any other provision of this section, a person,
20 who owns real property acquired on or after the effective date of
21 P.L.1997, c.278 (C.58:10B-11.1 et al.), shall not be liable for any
22 cleanup and removal costs or damages, under this section or pursuant
23 to any other statutory or civil common law, to any person, other than
24 the State and the federal government, harmed by any hazardous
25 substance discharged on that property prior to acquisition, and any
26 migration off that property related to that discharge, provided all the
27 conditions of this subsection are met:

28 (1) the person acquired the real property after the discharge of
29 that hazardous substance at the real property;

30 (2) the person did not discharge the hazardous substance, is not in
31 any way responsible for the hazardous substance, and is not a
32 corporate successor to the discharger or to any person in any way
33 responsible for the hazardous substance or to anyone liable for a
34 discharge pursuant to this section;

35 (3) the person gave notice of the discharge to the department upon
36 actual discovery of that discharge;

37 (4) within 30 days after acquisition of the property, the person
38 commenced a remediation of the discharge, including any migration,
39 pursuant to a department oversight document executed prior to
40 acquisition, and the department is satisfied that remediation was
41 completed in a timely and appropriate fashion; and

42 (5) Within ten days after acquisition of the property, the person
43 agrees in writing to provide access to the State for remediation and
44 related activities, as determined by the State.

45 The provisions of this subsection shall not relieve any person of
46 any liability:

1 (1) for a discharge that occurs at that property after the person
2 acquired the property;

3 (2) for any actions that person negligently takes that aggravates or
4 contributes to the harm inflicted upon any person;

5 (3) if that person fails to maintain the institutional or engineering
6 controls on the property or to otherwise comply with the provisions
7 of a no further action letter or a remedial action workplan and a
8 person is harmed thereby;

9 (4) for any liability to clean up and remove, pursuant to the
10 department's regulations and directions, any hazardous substances that
11 may have been discharged on the property or that may have migrated
12 therefrom; and

13 (5) for that person's failure to comply in the future with laws and
14 regulations.

15 g. Nothing in the amendatory provisions to this section adopted
16 pursuant to P.L.1997, c.278 shall be construed to remove any defense
17 to liability that a person may have had pursuant to subsection e. of this
18 section that existed prior to the effective date of P.L.1997, c.278.

19 h. Nothing in this section shall limit the requirements of any
20 person to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).
21 (cf: P.L.1997, c.278, s.20)]¹

22

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

25 23. As used in sections 23 through 43 and section 45 of P.L.1993,
26 c.139 (C.58:10B-1 et seq.) , as may be amended and supplemented:

27 "Area of concern" means any location where contaminants are or
28 were known or suspected to have been discharged, generated,
29 manufactured, refined, transported, stored, handled, treated, or
30 disposed, or where contaminants have or may have migrated;

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

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

38 "Department" means the Department of Environmental Protection;

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

43 "Engineering controls" means any mechanism to contain or
44 stabilize contamination or ensure the effectiveness of a remedial
45 action. Engineering controls may include, without limitation, caps,
46 covers, dikes, trenches, leachate collection systems, signs, fences and

1 physical access controls;

2 "Environmental opportunity zone" has the meaning given that term
3 pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);

4 "Financial assistance" means loans or loan guarantees;

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

13 "Limited restricted use remedial action" means any remedial action
14 that requires the continued use of institutional controls but does not
15 require the use of an engineering control;

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

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

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

46 "Remedial action workplan" means a plan for the remedial action

1 to be undertaken at a site, or at any area to which a discharge
2 originating at a site is migrating or has migrated; a description of the
3 remedial action to be used to remediate a site; a time schedule and cost
4 estimate of the implementation of the remedial action; and any other
5 information the department deems necessary;

6 "Remedial investigation" means a process to determine the nature
7 and extent of a discharge of a contaminant at a site or a discharge of
8 a contaminant that has migrated or is migrating from the site and the
9 problems presented by a discharge, and may include data collected,
10 site characterization, sampling, monitoring, and the gathering of any
11 other sufficient and relevant information necessary to determine the
12 necessity for remedial action and to support the evaluation of remedial
13 actions if necessary;

14 "Remediation" or "remediate" means all necessary actions to
15 investigate and clean up or respond to any known, suspected, or
16 threatened discharge of contaminants, including, as necessary, the
17 preliminary assessment, site investigation, remedial investigation, and
18 remedial action, provided, however, that "remediation" or "remediate"
19 shall not include the payment of compensation for damage to, or loss
20 of, natural resources;

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

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

28 "Remediation standards" means the combination of numeric
29 standards that establish a level or concentration, and narrative
30 standards to which contaminants must be treated, removed, or
31 otherwise cleaned for soil, groundwater, or surface water, as provided
32 by the department pursuant to section 35 of P.L.1993, c.139
33 (C.58:10B-12) in order to meet the health risk or environmental
34 standards;

35 "Restricted use remedial action" means any remedial action that
36 requires the continued use of engineering and institutional controls in
37 order to meet the established health risk or environmental standards;

38 "Site investigation" means the collection and evaluation of data
39 adequate to determine whether or not discharged contaminants exist
40 at a site or have migrated or are migrating from the site at levels in
41 excess of the applicable remediation standards. A site investigation
42 shall be developed based upon the information collected pursuant to
43 the preliminary assessment;

44 "Unrestricted use remedial action" means any remedial action that
45 does not require the continued use of engineering or institutional
46 controls in order to meet the established health risk or environmental

1 standards;

2 "Voluntarily perform a remediation" means performing a
3 remediation without having been ordered or directed to do so by the
4 department or by a court and without being compelled to perform a
5 remediation pursuant to the provisions of P.L.1983, c.330 (C.13:1K-6
6 et al.).

7 (cf: P.L.1997, c.278, s.9)]¹

8

9 ¹[4. Section 6 of P.L.1997, c.278 (C.58:10B-13.1) is amended to
10 read as follows:

11 6. a. Whenever after the effective date of P.L.1997, c.278
12 (C.58:10B-1.1 et al.) the Department of Environmental Protection
13 issues a no further action letter pursuant to a remediation, it shall also
14 issue to the person performing the remediation a covenant not to sue
15 with respect to the real property upon which the remediation has been
16 conducted. A covenant not to sue shall be executed by the person
17 performing the remediation and by the department in order to become
18 effective. The covenant not to sue shall be consistent with any
19 conditions and limitations contained in the no further action letter.
20 The covenant not to sue shall be for any area of concern remediated
21 and may apply to the entire real property if the remediation included
22 a preliminary assessment and, if necessary, a site investigation of the
23 entire real property, and any other necessary remedial actions. The
24 covenant remains effective only for as long as the real property for
25 which the covenant was issued continues to meet the conditions of the
26 no further action letter. Upon a finding by the department that real
27 property or a portion thereof to which a covenant not to sue pertains,
28 no longer meets with the conditions of the no further action letter, the
29 department shall provide notice of that fact to the person responsible
30 for maintaining compliance with the no further action letter. The
31 department may allow the person a reasonable time to come into
32 compliance with the terms of the original no further action letter. If
33 the property does not meet the conditions of the no further action
34 letter and if the department does not allow for a period of time to
35 come into compliance or if the person fails to come into compliance
36 within the time period, the department may invoke the provisions of
37 the covenant not to sue permitting revocation of the covenant not to
38 sue.

39 Except as provided in subsection e. of this section, a covenant not
40 to sue shall contain the following, as applicable:

41 (1) a provision releasing the person who undertook the remediation
42 from all civil liability to the State to perform any additional
43 remediation, to pay compensation for damage to, or loss of, natural
44 resources, or for any cleanup and removal costs;

45 (2) for a remediation that involves the use of engineering or
46 institutional controls:

- 1 (a) a provision requiring the person, or any subsequent owner,
2 lessee, or operator during the person's period of ownership, tenancy,
3 or operation, to maintain those controls, conduct periodic monitoring
4 for compliance, and submit to the department, on a biennial basis, a
5 certification that the engineering and institutional controls are being
6 properly maintained and continue to be protective of public health and
7 safety and of the environment. The certification shall state the
8 underlying facts and shall include the results of any tests or
9 procedures performed that support the certification; and
- 10 (b) a provision revoking the covenant if the engineering or
11 institutional controls are not being maintained or are no longer in
12 place; and
- 13 (3) for a remediation that involves the use of engineering controls
14 but not for any remediation that involves the use of institutional
15 controls only, a provision barring the person or persons whom the
16 covenant not to sue benefits, from making a claim against the New
17 Jersey Spill Compensation Fund and the Sanitary Landfill Facility
18 Contingency Fund for any costs or damages relating to the real
19 property and remediation covered by the covenant not to sue. The
20 covenant not to sue shall not bar a claim by any person against the
21 New Jersey Spill Compensation Fund and the Sanitary Landfill
22 Contingency Fund for any remediation that involves only the use of
23 institutional controls if, after a valid no further action letter has been
24 issued, the department orders additional remediation, except that the
25 covenant shall bar such a claim if the department ordered additional
26 remediation in order to remove the institutional control.
- 27 b. Unless a covenant not to sue issued under this section is
28 revoked by the department, the covenant shall remain effective. The
29 covenant not to sue shall apply to all successors in ownership of the
30 property and to all persons who lease the property or who engage in
31 operations on the property.
- 32 c. If a covenant not to sue is revoked, liability for any additional
33 remediation shall not be applied retroactively to any person for whom
34 the covenant remained in effect during that person's ownership,
35 tenancy, or operation of the property.
- 36 d. A covenant not to sue and the protections it affords shall not
37 apply to any discharge that occurs subsequent to the issuance of the
38 no further action letter which was the basis of the issuance of the
39 covenant, nor shall a covenant not to sue and the protections it affords
40 relieve any person of the obligations to comply in the future with laws
41 and regulations.
- 42 e. The covenant not to sue may be issued to any person who
43 obtains a no further action letter as provided in subsection a. of this
44 section. The covenant not to sue shall not provide relief from any
45 liability, either under statutory or common law, to any person who is
46 liable for cleanup and removal costs pursuant to subsection c. of
47 section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not have

1 a defense to liability pursuant to subsection d. of that section.
2 (cf: P.L.1997, c.278, s.6)]¹

3
4 ¹[5. (New section) a. (1) Except where a limitations provision
5 expressly and specifically applies to actions commenced by the State
6 or where a longer limitations period would otherwise apply, and
7 subject to any statutory provisions or common law rules extending
8 limitations periods, any civil action concerning the remediation of a
9 contaminated site or the closure of a sanitary landfill facility
10 commenced by the State pursuant to the State's environmental laws
11 shall be commenced within three years next after the cause of action
12 shall have accrued.

13 (2) For purposes of determining whether a civil action subject to
14 the limitations periods specified in paragraph (1) of this subsection has
15 been commenced within time, no cause of action shall be deemed to
16 have accrued prior to January 1, 2002 or until the contaminated site
17 is remediated or the sanitary landfill has been properly closed,
18 whichever is later.

19 b. (1) Except where a limitations provision expressly and
20 specifically applies to actions commenced by the State or where a
21 longer limitations period would otherwise apply, and subject to any
22 statutory provisions or common law rules extending limitations
23 periods, any civil action concerning the payment of compensation for
24 damage to, or loss of, natural resources due to the discharge of a
25 hazardous substance, commenced by the State pursuant to the State's
26 environmental laws, shall be commenced within four years next after
27 the cause of action shall have accrued.

28 (2) For purposes of determining whether a civil action subject to
29 the limitations periods specified in paragraph (1) of this subsection has
30 been commenced within time, no cause of action shall be deemed to
31 have accrued prior to January 1, 2002 or until the performance of the
32 preliminary assessment, site investigation, and remedial investigation,
33 if necessary, of the contaminated site or the sanitary landfill facility,
34 whichever is later.

35 c. As used in this section:

36 "State's environmental laws" means the "Spill Compensation and
37 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water
38 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
39 P.L.1986, c.102 (C.58:10A-21 et seq.), the "Brownfield and
40 Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1
41 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6
42 et al.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1
43 et seq.), the "Comprehensive Regulated Medical Waste Management
44 Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous
45 Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the
46 "Sanitary Landfill Facility Closure and Contingency Fund Act,"

1 P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level
2 Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333
3 (C.13:1E-177 et seq.), or any other law or regulation by which the
4 State may compel a person to perform remediation activities on
5 contaminated property; and

6 "State" means the State, its political subdivisions, any office,
7 department, division, bureau, board, commission or agency of the
8 State or one of its political subdivisions, and any public authority or
9 public agency, including, but not limited to, the New Jersey Transit
10 Corporation and the University of Medicine and Dentistry of New
11 Jersey.]¹

12

13 ¹[6. (New section) Any person who has a defense to liability
14 pursuant to paragraphs (2) and (5) of subsection d. of section 8 of
15 P.L.1976, c.141 (C.58:10-23.11g) shall not be liable for the payment
16 of compensation for damage to, or loss of, natural resources due to the
17 discharge of a hazardous substance.]¹

18

19 ¹[7.] 1.¹ Section 2 of P.L.1991, c.387 (C.2A:14-1.2) is amended
20 to read as follows:

21 2. a. ¹(1)¹ Except ¹ as provided in paragraph (2) of this
22 subsection, or except ¹ where a limitations provision expressly and
23 specifically applies to actions commenced by the State or where a
24 longer limitations period would otherwise apply, and subject to any
25 statutory provisions or common law rules extending limitations
26 periods, any civil action commenced by the State shall be commenced
27 within ten years next after the cause of action shall have accrued.

28 ¹(2) Except where a limitations provision expressly and
29 specifically applies to actions commenced by the State or where a
30 longer limitations period would otherwise apply, and subject to any
31 statutory provisions or common law rules extending limitations
32 periods, any civil action commenced by the State pursuant to the laws
33 concerning the remediation of contaminated sites or the closure of
34 sanitary landfill facilities shall be commenced within three years next
35 after the cause of action shall have accrued.¹

36 b. ¹(1)¹ For purposes of determining whether ¹[an] a civil ¹
37 action subject to the limitations period specified in ¹ paragraph (1) of
38 ¹ subsection a. of this section has been commenced within time, no
39 ¹[such] cause of ¹ action shall be deemed to have accrued prior to
40 January 1, 1992.

41 ¹(2) For purposes of determining whether a civil action subject to
42 the limitations period specified in paragraph (2) of subsection a. of this
43 section has been commenced within time, no cause of action shall be
44 deemed to have accrued prior to January 1, 2002, or until the
45 contaminated site has been remediated or the sanitary landfill facility
46 has been properly closed, whichever is later.¹

1 c. c. As used in this act ¹[, the term]:

2 "Laws concerning the remediation of contaminated sites or the
3 closure of sanitary landfill facilities" means the "Spill Compensation
4 and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water
5 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
6 P.L.1986, c.102 (C.58:10A-21 et seq.), the "Brownfield and
7 Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1
8 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6
9 et al.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1
10 et seq.), the "Comprehensive Regulated Medical Waste Management
11 Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous
12 Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the
13 "Sanitary Landfill Facility Closure and Contingency Fund Act,"
14 P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level
15 Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333
16 (C.13:1E-177 et seq.), or any other law or regulation by which the
17 State may compel a person to perform remediation activities on
18 contaminated property; and ¹

19 "State" means the State, its political subdivisions, any office,
20 department, division, bureau, board, commission or agency of the
21 State or one of its political subdivisions, and any public authority or
22 public agency, including, but not limited to, the New Jersey Transit
23 Corporation and the University of Medicine and Dentistry of New
24 Jersey.

25 ¹[The provisions of this section shall not apply to any civil action
26 commenced by the State concerning the remediation of a contaminated
27 site or the closure of a sanitary landfill facility, or the payment of
28 compensation for damage to, or loss of, natural resources due to the
29 discharge of a hazardous substance, and subject to the limitations
30 period specified in section 5 of P.L. , c. (C.) (before the Legislature
31 as this bill).]¹

32 (cf: P.L.1991, c.387, s.2)

33

34 ¹[8.] 2.¹ This act shall take effect immediately.

STATEMENT TO

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2345

with Senate Floor Amendments
(Proposed By Senator McNAMARA)

ADOPTED: JUNE 28, 2001

These amendments would delete the amendments made in the Assembly Appropriations Committee and would restore the bill's text to that which was approved by the Senate on June 21, 2001.

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2345

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED JUNE 11, 2001

Sponsored by:

Senator HENRY P. MCNAMARA

District 40 (Bergen and Passaic)

Senator JOHN H. ADLER

District 6 (Camden)

Co-Sponsored by:

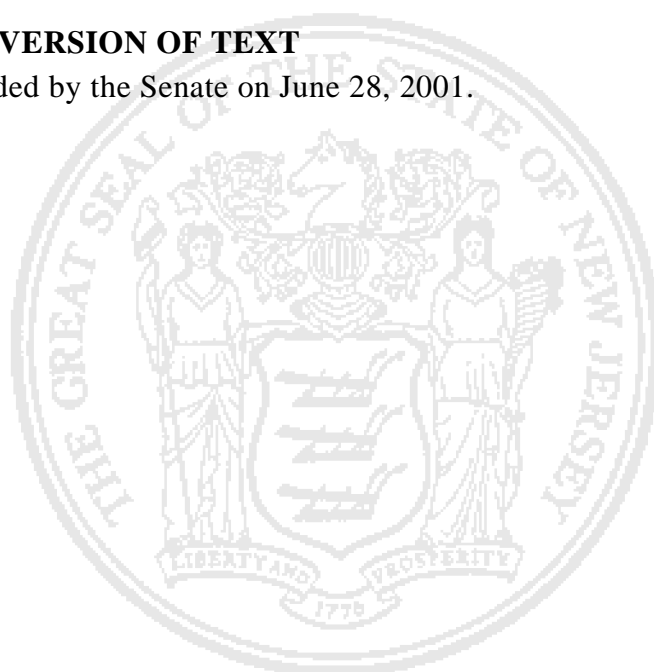
Assemblymen Corodemus, Blee, Felice, Gibson, Kelly, T.Smith and Zecker

SYNOPSIS

Establishes and extends statute of limitations for site cleanups; clarifies liability for purchasers of contaminated sites.

CURRENT VERSION OF TEXT

As amended by the Senate on June 28, 2001.



(Sponsorship Updated As Of: 6/29/2001)

1 AN ACT concerning ¹[the cleanup of contaminated property,
2 amending and supplementing Title 58 of the Revised Statutes]
3 ²[the limitation of actions under certain environmental laws¹] the
4 cleanup of contaminated property, amending and supplementing
5 Title 58 of the Revised Statutes² , and amending P.L.1991, c.387.

6

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

9

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

12 3. Unless the context clearly indicates otherwise, the following
13 terms shall have the following meanings:

14 "Act of God" means an act exclusively occasioned by an
15 unanticipated, grave natural disaster without the interference of any
16 human agency;

17 "Administrator" means the chief executive of the New Jersey Spill
18 Compensation Fund;

19 "Barrel" means 42 United States gallons or 159.09 liters or an
20 appropriate equivalent measure set by the director for hazardous
21 substances which are other than fluid or which are not commonly
22 measured by the barrel;

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

25 "Cleanup and removal costs" means all costs associated with a
26 discharge, incurred by the State or its political subdivisions or their
27 agents or any person with written approval from the department in the:

28 (1) removal or attempted removal of hazardous substances, or (2)
29 taking of reasonable measures to prevent or mitigate damage to the
30 public health, safety, or welfare, including, but not limited to, public
31 and private property, shorelines, beaches, surface waters, water
32 columns and bottom sediments, soils and other affected property,
33 including wildlife and other natural resources, and shall include costs
34 incurred by the State for the indemnification and legal defense of
35 contractors pursuant to sections 1 through 11 of P.L.1991, c.373
36 (C.58:10-23.11f8 et seq.). For the purposes of this definition, costs
37 incurred by the State shall not include any indirect costs for
38 department oversight performed after the effective date of P.L.1997,
39 c.278 (C.58:10B-1.1 et al.), but may include only those program costs
40 directly related to the cleanup and removal of the discharge; however,
41 where the State or the fund have expended money for the 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 AAP committee amendments adopted June 25, 2001.

² Senate floor amendments adopted June 28, 2001.

1 removal of a discharge and are seeking to recover the costs incurred
2 in that cleanup and removal action from a responsible party, costs
3 incurred by the State shall include any indirect costs;

4 "Commissioner" means the Commissioner of Environmental
5 Protection;

6 "Contamination" or "contaminant" means any discharged
7 hazardous substance, hazardous waste as defined pursuant to section
8 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to
9 section 3 of P.L.1977, c.74 (C.58:10A-3);

10 "Department" means the Department of Environmental Protection;

11 "Director" means the Director of the Division of Taxation in the
12 Department of the Treasury;

13 "Discharge" means any intentional or unintentional action or
14 omission resulting in the releasing, spilling, leaking, pumping, pouring,
15 emitting, emptying or dumping of hazardous substances into the
16 waters or onto the lands of the State, or into waters outside the
17 jurisdiction of the State when damage may result to the lands, waters
18 or natural resources within the jurisdiction of the State;

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

23 "Fair market value" means the invoice price of the hazardous
24 substances transferred, including transportation charges; but where no
25 price is so fixed, "fair market value" shall mean the market price as of
26 the close of the nearest day to the transfer, paid for similar hazardous
27 substances, as shall be determined by the taxpayer pursuant to rules of
28 the director;

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

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

1 hazardous substances for the purposes of P.L.1976, c.141
2 (C.58:10-23.11 et seq.);

3 "Local unit" means any county or municipality, or any agency or
4 other instrumentality thereof, or a duly incorporated volunteer fire,
5 ambulance, first aid, emergency, or rescue company or squad;

6 "Major facility" includes, but is not limited to, any refinery, storage
7 or transfer terminal, pipeline, deep-water port, drilling platform or any
8 appurtenance related to any of the preceding that is used or is capable
9 of being used to refine, produce, store, handle, transfer, process or
10 transport hazardous substances. "Major facility" shall include a vessel
11 only when that vessel is engaged in a transfer of hazardous substances
12 between it and another vessel, and in any event shall not include a
13 vessel used solely for activities directly related to recovering,
14 containing, cleaning up or removing discharges of petroleum in the
15 surface waters of the State, including training, research, and other
16 activities directly related to spill response.

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

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

22 (2) 200,000 gallons or more for hazardous substances of all kinds.

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

28 For the purposes of this definition, "storage capacity" shall mean
29 only that total combined capacity which is dedicated to, used for or
30 intended to be used for storage of hazardous substances of all kinds.
31 Where appropriate to the nature of the facility, storage capacity may
32 be determined by the intended or actual use of open land or
33 unenclosed space as well as by the capacities of tanks or other
34 enclosed storage spaces;

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

38 "Owner" or "operator" means, with respect to a vessel, any person
39 owning, operating or chartering by demise such vessel; with respect to
40 any major facility, any person owning such facility, or operating it by
41 lease, contract or other form of agreement; with respect to abandoned
42 or derelict major facilities, the person who owned or operated such
43 facility immediately prior to such abandonment, or the owner at the
44 time of discharge;

45 "Person" means public or private corporations, companies,
46 associations, societies, firms, partnerships, joint stock companies,

1 individuals, the United States, the State of New Jersey and any of its
2 political subdivisions or agents;

3 "Petroleum" or "petroleum products" means oil or petroleum of
4 any kind and in any form, including, but not limited to, oil, petroleum,
5 gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other
6 wastes, crude oils, and substances or additives to be utilized in the
7 refining or blending of crude petroleum or petroleum stock in this
8 State; however, any compound designated by specific chemical name
9 on the list of hazardous substances adopted by the department
10 pursuant to this section shall not be considered petroleum or a
11 petroleum product for the purposes of P.L.1976, c.141, unless such
12 compound is to be utilized in the refining or blending of crude
13 petroleum or petroleum stock in this State;

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

26 "Remedial action" means those actions taken at a site or offsite if
27 a contaminant has migrated or is migrating therefrom, as may be
28 required by the department, including the removal, treatment,
29 containment, transportation, securing, or other engineering or
30 treatment measures, whether to an unrestricted use or otherwise,
31 designed to ensure that any discharged contaminant at the site or that
32 has migrated or is migrating from the site, is remediated in compliance
33 with the applicable health risk or environmental standards;

34 "Remedial investigation" means a process to determine the nature
35 and extent of a discharge of a contaminant at a site or a discharge of
36 a contaminant that has migrated or is migrating from the site and the
37 problems presented by a discharge, and may include data collected,
38 site characterization, sampling, monitoring, and the gathering of any
39 other sufficient and relevant information necessary to determine the
40 necessity for remedial action and to support the evaluation of remedial
41 actions if necessary;

42 "Remediation" or "remediate" means all necessary actions to
43 investigate and clean up or respond to any known, suspected, or
44 threatened discharge, including, as necessary, the preliminary
45 assessment, site investigation, remedial investigation, and remedial
46 action, provided, however, that "remediation" or "remediate" shall not

1 include the payment of compensation for damage to, or loss of, natural
2 resources;

3 "Site investigation" means the collection and evaluation of data
4 adequate to determine whether or not discharged contaminants exist
5 at a site or have migrated or are migrating from the site at levels in
6 excess of the applicable remediation standards. A site investigation
7 shall be developed based upon the information collected pursuant to
8 the preliminary assessment;

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

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

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

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

23 "Waters" means the ocean and its estuaries to the seaward limit of
24 the State's jurisdiction, all springs, streams and bodies of surface or
25 groundwater, whether natural or artificial, within the boundaries of
26 this State.

27 (cf: P.L.1997, c.278, s.19)]¹

28

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

31 3. Unless the context clearly indicates otherwise, the following
32 terms shall have the following meanings:

33 "Act of God" means an act exclusively occasioned by an
34 unanticipated, grave natural disaster without the interference of any
35 human agency;

36 "Administrator" means the chief executive of the New Jersey Spill
37 Compensation Fund;

38 "Barrel" means 42 United States gallons or 159.09 liters or an
39 appropriate equivalent measure set by the director for hazardous
40 substances which are other than fluid or which are not commonly
41 measured by the barrel;

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

44 "Cleanup and removal costs" means all costs associated with a
45 discharge, incurred by the State or its political subdivisions or their
46 agents or any person with written approval from the department in the:

1 (1) removal or attempted removal of hazardous substances, or (2)
2 taking of reasonable measures to prevent or mitigate damage to the
3 public health, safety, or welfare, including, but not limited to, public
4 and private property, shorelines, beaches, surface waters, water
5 columns and bottom sediments, soils and other affected property,
6 including wildlife and other natural resources, and shall include costs
7 incurred by the State for the indemnification and legal defense of
8 contractors pursuant to sections 1 through 11 of P.L.1991, c.373
9 (C.58:10-23.11f8 et seq.). For the purposes of this definition, costs
10 incurred by the State shall not include any indirect costs for
11 department oversight performed after the effective date of P.L.1997,
12 c.278 (C.58:10B-1.1 et al.), but may include only those program costs
13 directly related to the cleanup and removal of the discharge; however,
14 where the State or the fund have expended money for the cleanup and
15 removal of a discharge and are seeking to recover the costs incurred
16 in that cleanup and removal action from a responsible party, costs
17 incurred by the State shall include any indirect costs;

18 "Commissioner" means the Commissioner of Environmental
19 Protection;

20 "Contamination" or "contaminant" means any discharged
21 hazardous substance, hazardous waste as defined pursuant to section
22 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to
23 section 3 of P.L.1977, c.74 (C.58:10A-3);

24 "Department" means the Department of Environmental Protection;

25 "Director" means the Director of the Division of Taxation in the
26 Department of the Treasury;

27 "Discharge" means any intentional or unintentional action or
28 omission resulting in the releasing, spilling, leaking, pumping, pouring,
29 emitting, emptying or dumping of hazardous substances into the
30 waters or onto the lands of the State, or into waters outside the
31 jurisdiction of the State when damage may result to the lands, waters
32 or natural resources within the jurisdiction of the State;

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

37 "Fair market value" means the invoice price of the hazardous
38 substances transferred, including transportation charges; but where no
39 price is so fixed, "fair market value" shall mean the market price as of
40 the close of the nearest day to the transfer, paid for similar hazardous
41 substances, as shall be determined by the taxpayer pursuant to rules of
42 the director;

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

44 "Hazardous substances" means the "environmental hazardous
45 substances" on the environmental hazardous substance list adopted by
46 the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4);

1 such elements and compounds, including petroleum products, which
2 are defined as such by the department, after public hearing, and which
3 shall be consistent to the maximum extent possible with, and which
4 shall include, the list of hazardous substances adopted by the federal
5 Environmental Protection Agency pursuant to section 311 of the
6 federal Water Pollution Control Act Amendments of 1972,
7 Pub.L.92-500, as amended by the Clean Water Act of 1977,
8 Pub.L.95-217 (33 U.S.C. 1251 et seq.); the list of toxic pollutants
9 designated by Congress or the EPA pursuant to section 307 of that
10 act; and the list of hazardous substances adopted by the federal
11 Environmental Protection Agency pursuant to section 101 of the
12 "Comprehensive Environmental Response, Compensation and Liability
13 Act of 1980," Pub.L.96-510 (42 U.S.C. s.9601 et seq.); provided,
14 however, that sewage and sewage sludge shall not be considered as
15 hazardous substances for the purposes of P.L.1976, c.141
16 (C.58:10-23.11 et seq.);

17 "Local unit" means any county or municipality, or any agency or
18 other instrumentality thereof, or a duly incorporated volunteer fire,
19 ambulance, first aid, emergency, or rescue company or squad;

20 "Major facility" includes, but is not limited to, any refinery, storage
21 or transfer terminal, pipeline, deep-water port, drilling platform or any
22 appurtenance related to any of the preceding that is used or is capable
23 of being used to refine, produce, store, handle, transfer, process or
24 transport hazardous substances. "Major facility" shall include a vessel
25 only when that vessel is engaged in a transfer of hazardous substances
26 between it and another vessel, and in any event shall not include a
27 vessel used solely for activities directly related to recovering,
28 containing, cleaning up or removing discharges of petroleum in the
29 surface waters of the State, including training, research, and other
30 activities directly related to spill response.

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

34 (1) 20,000 gallons or more for hazardous substances which are
35 other than petroleum or petroleum products, or

36 (2) 200,000 gallons or more for hazardous substances of all kinds.

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

42 For the purposes of this definition, "storage capacity" shall mean
43 only that total combined capacity which is dedicated to, used for or
44 intended to be used for storage of hazardous substances of all kinds.
45 Where appropriate to the nature of the facility, storage capacity may
46 be determined by the intended or actual use of open land or

1 unenclosed space as well as by the capacities of tanks or other
2 enclosed storage spaces;

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

6 "Owner" or "operator" means, with respect to a vessel, any person
7 owning, operating or chartering by demise such vessel; with respect to
8 any major facility, any person owning such facility, or operating it by
9 lease, contract or other form of agreement; with respect to abandoned
10 or derelict major facilities, the person who owned or operated such
11 facility immediately prior to such abandonment, or the owner at the
12 time of discharge;

13 "Person" means public or private corporations, companies,
14 associations, societies, firms, partnerships, joint stock companies,
15 individuals, the United States, the State of New Jersey and any of its
16 political subdivisions or agents;

17 "Petroleum" or "petroleum products" means oil or petroleum of
18 any kind and in any form, including, but not limited to, oil, petroleum,
19 gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other
20 wastes, crude oils, and substances or additives to be utilized in the
21 refining or blending of crude petroleum or petroleum stock in this
22 State; however, any compound designated by specific chemical name
23 on the list of hazardous substances adopted by the department
24 pursuant to this section shall not be considered petroleum or a
25 petroleum product for the purposes of P.L.1976, c.141, unless such
26 compound is to be utilized in the refining or blending of crude
27 petroleum or petroleum stock in this State;

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

40 "Remedial action" means those actions taken at a site or offsite if
41 a contaminant has migrated or is migrating therefrom, as may be
42 required by the department, including the removal, treatment,
43 containment, transportation, securing, or other engineering or
44 treatment measures, whether to an unrestricted use or otherwise,
45 designed to ensure that any discharged contaminant at the site or that
46 has migrated or is migrating from the site, is remediated in compliance

1 with the applicable health risk or environmental standards;

2 "Remedial investigation" means a process to determine the nature
3 and extent of a discharge of a contaminant at a site or a discharge of
4 a contaminant that has migrated or is migrating from the site and the
5 problems presented by a discharge, and may include data collected,
6 site characterization, sampling, monitoring, and the gathering of any
7 other sufficient and relevant information necessary to determine the
8 necessity for remedial action and to support the evaluation of remedial
9 actions if necessary;

10 "Remediation" or "remediate" means all necessary actions to
11 investigate and clean up or respond to any known, suspected, or
12 threatened discharge, including, as necessary, the preliminary
13 assessment, site investigation, remedial investigation, and remedial
14 action, provided, however, that "remediation" or "remediate" shall not
15 include the payment of compensation for damage to, or loss of, natural
16 resources;

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

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

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

27 "Transfer" means unloading or offloading between major facilities
28 and vessels, or vessels and major facilities, and from vessel to vessel
29 or major facility to major facility, except for fueling or refueling
30 operations and except that with regard to the movement of hazardous
31 substances other than petroleum, it shall also include any unloading of
32 or offloading from a major facility;

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

37 "Waters" means the ocean and its estuaries to the seaward limit of
38 the State's jurisdiction, all springs, streams and bodies of surface or
39 groundwater, whether natural or artificial, within the boundaries of
40 this State.

41 (cf: P.L.1997, c.278, s.19)²

42

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

45 8. a. The fund shall be strictly liable, without regard to fault, for
46 all cleanup and removal costs and for all direct and indirect damages

1 no matter by whom sustained, including but not limited to:

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

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

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

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

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

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

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

46 (2) In addition to the persons liable pursuant to this subsection, in

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

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

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

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

46 Nothing in this paragraph shall be construed to extend or negate

1 the right of any person to bring an action for contribution that may
2 exist under P.L.1976, c.141, or any other act or under common law.

3 (3) In addition to the persons liable pursuant to this subsection,
4 any person who owns real property acquired on or after September 14,
5 1993 on which there has been a discharge prior to the person's
6 acquisition of that property and who knew or should have known that
7 a hazardous substance had been discharged at the real property, shall
8 be strictly liable, jointly and severally, without regard to fault, for all
9 cleanup and removal costs no matter by whom incurred. Such person
10 shall also be strictly liable, jointly and severally, without regard to
11 fault, for all cleanup and removal costs incurred by the department or
12 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141
13 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter
14 liability of any person who acquired real property prior to September
15 14, 1993.

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

21 (2) A person, including an owner or operator of a major facility,
22 who owns real property acquired on or after September 14, 1993 on
23 which there has been a discharge, shall not be liable for cleanup and
24 removal costs or for any other damages to the State or to any other
25 person for the discharged hazardous substance pursuant to subsection
26 c. of this section or pursuant to civil common law, if that person can
27 establish by a preponderance of the evidence that subparagraphs (a)
28 through (d) apply, or if applicable, subparagraphs (a) through (e)
29 apply:

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

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

42 (c) the person did not discharge the hazardous substance, is not
43 in any way responsible for the hazardous substance, and is not a
44 corporate successor to the discharger or to any person in any way
45 responsible for the hazardous substance or to anyone liable for cleanup
46 and removal costs pursuant to this section;

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

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

14 Nothing in this paragraph (2) shall be construed to alter liability of
15 any person who acquired real property prior to September 14, 1993;
16 and

17 (e) For the purposes of this subparagraph the person must have (i)
18 acquired the property subsequent to a hazardous substance being
19 discharged on the site and which discharge was discovered at the time
20 of acquisition as a result of the appropriate inquiry, as defined in this
21 paragraph (2), (ii) performed, following the effective date of P.L.1997,
22 c.278, a remediation of the site or discharge consistent with the
23 provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied
24 upon a valid no further action letter from the department for a
25 remediation performed prior to acquisition, or obtained approval of a
26 remedial action workplan by the department after the effective date of
27 P.L.1997, c.278 and continued to comply with the conditions of that
28 workplan, and (iii) established and maintained all engineering and
29 institutional controls as may be required pursuant to sections 35 and
30 36 of P.L.1993, c.139. A person who complies with the provisions of
31 this subparagraph by actually performing a remediation of the site or
32 discharge as set forth in (ii) above shall be issued, upon application, a
33 no further action letter by the department. A person who complies
34 with the provisions of this subparagraph either by receipt of a no
35 further action letter from the department following the effective date
36 of P.L.1997, c.278, or by relying on a previously issued no further
37 action letter shall not be liable for any further remediation including
38 any changes in a remediation standard or for the subsequent discovery
39 of a hazardous substance, at the site, if the remediation was for the
40 entire site, and the hazardous substance was discharged prior to the
41 person acquiring the property. Notwithstanding any other provisions
42 of this subparagraph, a person who complies with the provisions of
43 this subparagraph only by virtue of the existence of a previously issued
44 no further action letter shall receive no liability protections for any
45 discharge which occurred during the time period between the issuance
46 of the no further action letter and the property acquisition.

1 Compliance with the provisions of this subparagraph (e) shall not
2 relieve any person of any liability for a discharge that is off the site of
3 the property covered by the no further action letter, for a discharge
4 that occurs at that property after the person acquires the property, for
5 any actions that person negligently takes that aggravates or contributes
6 to a discharge of a hazardous substance, for failure to comply in the
7 future with laws and regulations , or if that person fails to maintain the
8 institutional or engineering controls on the property or to otherwise
9 comply with the provisions of the no further action letter.

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

18 (4) Any federal, State, or local governmental entity which acquires
19 ownership of real property through bankruptcy, tax delinquency,
20 abandonment, escheat, eminent domain, condemnation or any
21 circumstance in which the governmental entity involuntarily acquires
22 title by virtue of its function as sovereign, or where the governmental
23 entity acquires the property by any means for the purpose of
24 promoting the redevelopment of that property, shall not be liable,
25 pursuant to subsection c. of this section or pursuant to common law,
26 to the State or to any other person for any discharge which occurred
27 or began prior to that ownership. This paragraph shall not provide any
28 liability protection to any federal, State or local governmental entity
29 which has caused or contributed to the discharge of a hazardous
30 substance. This paragraph shall not provide any liability protection to
31 any federal, State, or local government entity that acquires ownership
32 of real property by condemnation or eminent domain where the real
33 property is being remediated in a timely manner at the time of the
34 condemnation or eminent domain action.

35 (5) A person, including an owner or operator of a major facility,
36 who owns real property acquired prior to September 14, 1993 on
37 which there has been a discharge, shall not be liable for cleanup and
38 removal costs or for any other damages to the State or to any other
39 person for the discharged hazardous substance pursuant to subsection
40 c. of this section or pursuant to civil common law, if that person can
41 establish by a preponderance of the evidence that subparagraphs (a)
42 through (d) apply:

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

45 (b) (i) at the time the person acquired the real property, the person
46 did not know and had no reason to know that any hazardous substance

1 had been discharged at the real property, or (ii) the person acquired
2 the real property by devise or succession, except that any other funds
3 or property received by that person from the deceased real property
4 owner who discharged a hazardous substance or was in any way
5 responsible for a hazardous substance, shall be made available to
6 satisfy the requirements of P.L.1976, c.141;

7 (c) the person did not discharge the hazardous substance, is not
8 in any way responsible for the hazardous substance, and is not a
9 corporate successor to the discharger or to any person in any way
10 responsible for the hazardous substance or to anyone liable for cleanup
11 and removal costs pursuant to this section;

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

14 To establish that a person had no reason to know that any
15 hazardous substance had been discharged for the purposes of this
16 paragraph (5), the person must have undertaken, at the time of
17 acquisition, all appropriate inquiry on the previous ownership and uses
18 of the property based upon generally accepted good and customary
19 standards.

20 Nothing in this paragraph (5) shall be construed to alter liability of
21 any person who acquired real property on or after September 14,
22 1993.

23 e. Neither the fund nor the Sanitary Landfill Contingency Fund
24 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be
25 liable for any damages incurred by any person who is relieved from
26 liability pursuant to subsection d. or f. of this section for a remediation
27 that involves the use of engineering controls but the fund and the
28 Sanitary Landfill Contingency Fund shall be liable for any remediation
29 that involves only the use of institutional controls if after a valid no
30 further action letter has been issued the department orders additional
31 remediation except that the fund and the Sanitary Landfill Contingency
32 Fund shall not be liable for any additional remediation that is required
33 to remove an institutional control.

34 f. Notwithstanding any other provision of this section, a person,
35 who owns real property acquired on or after the effective date of
36 P.L.1997, c.278 (C.58:10B-11.1 et al.), shall not be liable for any
37 cleanup and removal costs or damages, under this section or pursuant
38 to any other statutory or civil common law, to any person, other than
39 the State and the federal government, harmed by any hazardous
40 substance discharged on that property prior to acquisition, and any
41 migration off that property related to that discharge, provided all the
42 conditions of this subsection are met:

43 (1) the person acquired the real property after the discharge of
44 that hazardous substance at the real property;

45 (2) the person did not discharge the hazardous substance, is not in
46 any way responsible for the hazardous substance, and is not a

1 corporate successor to the discharger or to any person in any way
2 responsible for the hazardous substance or to anyone liable for a
3 discharge pursuant to this section;

4 (3) the person gave notice of the discharge to the department upon
5 actual discovery of that discharge;

6 (4) within 30 days after acquisition of the property, the person
7 commenced a remediation of the discharge, including any migration,
8 pursuant to a department oversight document executed prior to
9 acquisition, and the department is satisfied that remediation was
10 completed in a timely and appropriate fashion; and

11 (5) Within ten days after acquisition of the property, the person
12 agrees in writing to provide access to the State for remediation and
13 related activities, as determined by the State.

14 The provisions of this subsection shall not relieve any person of
15 any liability:

16 (1) for a discharge that occurs at that property after the person
17 acquired the property;

18 (2) for any actions that person negligently takes that aggravates or
19 contributes to the harm inflicted upon any person;

20 (3) if that person fails to maintain the institutional or engineering
21 controls on the property or to otherwise comply with the provisions
22 of a no further action letter or a remedial action workplan and a
23 person is harmed thereby;

24 (4) for any liability to clean up and remove, pursuant to the
25 department's regulations and directions, any hazardous substances that
26 may have been discharged on the property or that may have migrated
27 therefrom; and

28 (5) for that person's failure to comply in the future with laws and
29 regulations.

30 g. Nothing in the amendatory provisions to this section adopted
31 pursuant to P.L.1997, c.278 shall be construed to remove any defense
32 to liability that a person may have had pursuant to subsection e. of this
33 section that existed prior to the effective date of P.L.1997, c.278.

34 h. Nothing in this section shall limit the requirements of any
35 person to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).

36 (cf: P.L.1997, c.278, s.20)]¹

37

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

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

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

1 thereto;

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

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

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

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

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

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

40 (2) In addition to the persons liable pursuant to this subsection, in
41 the case of a discharge of a hazardous substance from a vessel into the
42 waters of the State, the owner or operator of a refinery, storage,
43 transfer, or pipeline facility to which the vessel was en route to deliver
44 the hazardous substance who, by contract, agreement, or otherwise,
45 was scheduled to assume ownership of the discharged hazardous
46 substance, and any other person who was so scheduled to assume

1 ownership of the discharged hazardous substance, shall be strictly
2 liable, jointly and severally, without regard to fault, for all cleanup and
3 removal costs if the owner or operator of the vessel did not have the
4 evidence of financial responsibility required pursuant to section 2 of
5 P.L.1991, c.58 (C.58:10-23.11g2).

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

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

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

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

43 (3) In addition to the persons liable pursuant to this subsection,
44 any person who owns real property acquired on or after September 14,
45 1993 on which there has been a discharge prior to the person's
46 acquisition of that property and who knew or should have known that

1 a hazardous substance had been discharged at the real property, shall
2 be strictly liable, jointly and severally, without regard to fault, for all
3 cleanup and removal costs no matter by whom incurred. Such person
4 shall also be strictly liable, jointly and severally, without regard to
5 fault, for all cleanup and removal costs incurred by the department or
6 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141
7 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter
8 liability of any person who acquired real property prior to September
9 14, 1993.

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

15 (2) A person, including an owner or operator of a major facility,
16 who owns real property acquired on or after September 14, 1993 on
17 which there has been a discharge, shall not be liable for cleanup and
18 removal costs or for any other damages to the State or to any other
19 person for the discharged hazardous substance pursuant to subsection
20 c. of this section or pursuant to civil common law, if that person can
21 establish by a preponderance of the evidence that subparagraphs (a)
22 through (d) apply, or if applicable, subparagraphs (a) through (e)
23 apply:

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

26 (b) (i) at the time the person acquired the real property, the person
27 did not know and had no reason to know that any hazardous substance
28 had been discharged at the real property, or (ii) the person acquired
29 the real property by devise or succession, except that any other funds
30 or property received by that person from the deceased real property
31 owner who discharged a hazardous substance or was in any way
32 responsible for a hazardous substance, shall be made available to
33 satisfy the requirements of P.L.1976, c.141, or (iii) the person
34 complies with the provisions of subparagraph (e) of paragraph (2) of
35 this subsection;

36 (c) the person did not discharge the hazardous substance, is not
37 in any way responsible for the hazardous substance, and is not a
38 corporate successor to the discharger or to any person in any way
39 responsible for the hazardous substance or to anyone liable for cleanup
40 and removal costs pursuant to this section;

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

43 To establish that a person had no reason to know that any
44 hazardous substance had been discharged for the purposes of this
45 paragraph (2), the person must have undertaken, at the time of
46 acquisition, all appropriate inquiry into the previous ownership and

1 uses of the property. For the purposes of this paragraph (2), all
2 appropriate inquiry shall mean the performance of a preliminary
3 assessment, and site investigation, if the preliminary assessment
4 indicates that a site investigation is necessary, as defined in section 23
5 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with
6 rules and regulations promulgated by the department defining these
7 terms.

8 Nothing in this paragraph (2) shall be construed to alter liability of
9 any person who acquired real property prior to September 14, 1993;
10 and

11 (e) For the purposes of this subparagraph the person must have (i)
12 acquired the property subsequent to a hazardous substance being
13 discharged on the site and which discharge was discovered at the time
14 of acquisition as a result of the appropriate inquiry, as defined in this
15 paragraph (2), (ii) performed, following the effective date of P.L.1997,
16 c.278, a remediation of the site or discharge consistent with the
17 provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied
18 upon a valid no further action letter from the department for a
19 remediation performed prior to acquisition, or obtained approval of a
20 remedial action workplan by the department after the effective date of
21 P.L.1997, c.278 and continued to comply with the conditions of that
22 workplan, and (iii) established and maintained all engineering and
23 institutional controls as may be required pursuant to sections 35 and
24 36 of P.L.1993, c.139. A person who complies with the provisions of
25 this subparagraph by actually performing a remediation of the site or
26 discharge as set forth in (ii) above shall be issued, upon application, a
27 no further action letter by the department. A person who complies
28 with the provisions of this subparagraph either by receipt of a no
29 further action letter from the department following the effective date
30 of P.L.1997, c.278, or by relying on a previously issued no further
31 action letter shall not be liable for any further remediation including
32 any changes in a remediation standard or for the subsequent discovery
33 of a hazardous substance, at the site, if the remediation was for the
34 entire site, and the hazardous substance was discharged prior to the
35 person acquiring the property. Notwithstanding any other provisions
36 of this subparagraph, a person who complies with the provisions of
37 this subparagraph only by virtue of the existence of a previously issued
38 no further action letter shall receive no liability protections for any
39 discharge which occurred during the time period between the issuance
40 of the no further action letter and the property acquisition.
41 Compliance with the provisions of this subparagraph (e) shall not
42 relieve any person of any liability for a discharge that is off the site of
43 the property covered by the no further action letter, for a discharge
44 that occurs at that property after the person acquires the property, for
45 any actions that person negligently takes that aggravates or contributes
46 to a discharge of a hazardous substance, for failure to comply in the

1 future with laws and regulations , or if that person fails to maintain the
2 institutional or engineering controls on the property or to otherwise
3 comply with the provisions of the no further action letter.

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

12 (4) Any federal, State, or local governmental entity which acquires
13 ownership of real property through bankruptcy, tax delinquency,
14 abandonment, escheat, eminent domain, condemnation or any
15 circumstance in which the governmental entity involuntarily acquires
16 title by virtue of its function as sovereign, or where the governmental
17 entity acquires the property by any means for the purpose of
18 promoting the redevelopment of that property, shall not be liable,
19 pursuant to subsection c. of this section or pursuant to common law,
20 to the State or to any other person for any discharge which occurred
21 or began prior to that ownership. This paragraph shall not provide any
22 liability protection to any federal, State or local governmental entity
23 which has caused or contributed to the discharge of a hazardous
24 substance. This paragraph shall not provide any liability protection to
25 any federal, State, or local government entity that acquires ownership
26 of real property by condemnation or eminent domain where the real
27 property is being remediated in a timely manner at the time of the
28 condemnation or eminent domain action.

29 (5) A person, including an owner or operator of a major facility,
30 who owns real property acquired prior to September 14, 1993 on
31 which there has been a discharge, shall not be liable for cleanup and
32 removal costs or for any other damages to the State or to any other
33 person for the discharged hazardous substance pursuant to subsection
34 c. of this section or pursuant to civil common law, if that person can
35 establish by a preponderance of the evidence that subparagraphs (a)
36 through (d) apply:

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

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

1 (c) the person did not discharge the hazardous substance, is not
2 in any way responsible for the hazardous substance, and is not a
3 corporate successor to the discharger or to any person in any way
4 responsible for the hazardous substance or to anyone liable for cleanup
5 and removal costs pursuant to this section;

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

8 To establish that a person had no reason to know that any
9 hazardous substance had been discharged for the purposes of this
10 paragraph (5), the person must have undertaken, at the time of
11 acquisition, all appropriate inquiry on the previous ownership and uses
12 of the property based upon generally accepted good and customary
13 standards.

14 Nothing in this paragraph (5) shall be construed to alter liability of
15 any person who acquired real property on or after September 14,
16 1993.

17 e. Neither the fund nor the Sanitary Landfill Contingency Fund
18 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be
19 liable for any damages incurred by any person who is relieved from
20 liability pursuant to subsection d. or f. of this section for a remediation
21 that involves the use of engineering controls but the fund and the
22 Sanitary Landfill Contingency Fund shall be liable for any remediation
23 that involves only the use of institutional controls if after a valid no
24 further action letter has been issued the department orders additional
25 remediation except that the fund and the Sanitary Landfill Contingency
26 Fund shall not be liable for any additional remediation that is required
27 to remove an institutional control.

28 f. Notwithstanding any other provision of this section, a person,
29 who owns real property acquired on or after the effective date of
30 P.L.1997, c.278 (C.58:10B-11.1 et al.), shall not be liable for any
31 cleanup and removal costs or damages, under this section or pursuant
32 to any other statutory or civil common law, to any person, other than
33 the State and the federal government, harmed by any hazardous
34 substance discharged on that property prior to acquisition, and any
35 migration off that property related to that discharge, provided all the
36 conditions of this subsection are met:

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

39 (2) the person did not discharge the hazardous substance, is not in
40 any way responsible for the hazardous substance, and is not a
41 corporate successor to the discharger or to any person in any way
42 responsible for the hazardous substance or to anyone liable for a
43 discharge pursuant to this section;

44 (3) the person gave notice of the discharge to the department upon
45 actual discovery of that discharge;

46 (4) within 30 days after acquisition of the property, the person

1 commenced a remediation of the discharge, including any migration,
2 pursuant to a department oversight document executed prior to
3 acquisition, and the department is satisfied that remediation was
4 completed in a timely and appropriate fashion; and

5 (5) Within ten days after acquisition of the property, the person
6 agrees in writing to provide access to the State for remediation and
7 related activities, as determined by the State.

8 The provisions of this subsection shall not relieve any person of
9 any liability:

10 (1) for a discharge that occurs at that property after the person
11 acquired the property;

12 (2) for any actions that person negligently takes that aggravates or
13 contributes to the harm inflicted upon any person;

14 (3) if that person fails to maintain the institutional or engineering
15 controls on the property or to otherwise comply with the provisions
16 of a no further action letter or a remedial action workplan and a
17 person is harmed thereby;

18 (4) for any liability to clean up and remove, pursuant to the
19 department's regulations and directions, any hazardous substances that
20 may have been discharged on the property or that may have migrated
21 therefrom; and

22 (5) for that person's failure to comply in the future with laws and
23 regulations.

24 g. Nothing in the amendatory provisions to this section adopted
25 pursuant to P.L.1997, c.278 shall be construed to remove any defense
26 to liability that a person may have had pursuant to subsection e. of this
27 section that existed prior to the effective date of P.L.1997, c.278.

28 h. Nothing in this section shall limit the requirements of any
29 person to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).

30 (cf: P.L.1997, c.278, s.20)²

31
32 ¹[3. Section 23 of P.L.1993, c.139 (C.58:10B-1) is amended to
33 read as follows:

34 23. As used in sections 23 through 43 and section 45 of P.L.1993,
35 c.139 (C.58:10B-1 et seq.) , as may be amended and supplemented:

36 "Area of concern" means any location where contaminants are or
37 were known or suspected to have been discharged, generated,
38 manufactured, refined, transported, stored, handled, treated, or
39 disposed, or where contaminants have or may have migrated;

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

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

1 "Department" means the Department of Environmental Protection;

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

6 "Engineering controls" means any mechanism to contain or
7 stabilize contamination or ensure the effectiveness of a remedial
8 action. Engineering controls may include, without limitation, caps,
9 covers, dikes, trenches, leachate collection systems, signs, fences and
10 physical access controls;

11 "Environmental opportunity zone" has the meaning given that term
12 pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);

13 "Financial assistance" means loans or loan guarantees;

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

22 "Limited restricted use remedial action" means any remedial action
23 that requires the continued use of institutional controls but does not
24 require the use of an engineering control;

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

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

1 "Remedial action" means those actions taken at a site or offsite if
2 a contaminant has migrated or is migrating therefrom, as may be
3 required by the department, including the removal, treatment,
4 containment, transportation, securing, or other engineering or
5 treatment measures, whether to an unrestricted use or otherwise,
6 designed to ensure that any discharged contaminant at the site or that
7 has migrated or is migrating from the site, is remediated in compliance
8 with the applicable health risk or environmental standards;

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

15 "Remedial investigation" means a process to determine the nature
16 and extent of a discharge of a contaminant at a site or a discharge of
17 a contaminant that has migrated or is migrating from the site and the
18 problems presented by a discharge, and may include data collected,
19 site characterization, sampling, monitoring, and the gathering of any
20 other sufficient and relevant information necessary to determine the
21 necessity for remedial action and to support the evaluation of remedial
22 actions if necessary;

23 "Remediation" or "remediate" means all necessary actions to
24 investigate and clean up or respond to any known, suspected, or
25 threatened discharge of contaminants, including, as necessary, the
26 preliminary assessment, site investigation, remedial investigation, and
27 remedial action provided, however, that "remediation" or "remediate"
28 shall not include the payment of compensation for damage to, or loss
29 of, natural resources;

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

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

37 "Remediation standards" means the combination of numeric
38 standards that establish a level or concentration , and narrative
39 standards to which contaminants must be treated, removed, or
40 otherwise cleaned for soil, groundwater, or surface water, as provided
41 by the department pursuant to section 35 of P.L.1993, c.139
42 (C.58:10B-12) in order to meet the health risk or environmental
43 standards;

44 "Restricted use remedial action" means any remedial action that
45 requires the continued use of engineering and institutional controls in
46 order to meet the established health risk or environmental standards;

1 "Site investigation" means the collection and evaluation of data
2 adequate to determine whether or not discharged contaminants exist
3 at a site or have migrated or are migrating from the site at levels in
4 excess of the applicable remediation standards. A site investigation
5 shall be developed based upon the information collected pursuant to
6 the preliminary assessment;

7 "Unrestricted use remedial action" means any remedial action that
8 does not require the continued use of engineering or institutional
9 controls in order to meet the established health risk or environmental
10 standards;

11 "Voluntarily perform a remediation" means performing a
12 remediation without having been ordered or directed to do so by the
13 department or by a court and without being compelled to perform a
14 remediation pursuant to the provisions of P.L.1983, c.330 (C.13:1K-6
15 et al.).

16 (cf: P.L.1997, c.278, s.9)]¹

17
18 ²3. Section 23 of P.L.1993, c.139 (C.58:10B-1) is amended to
19 read as follows:

20 23. As used in sections 23 through 43 and section 45 of P.L.1993,
21 c.139 (C.58:10B-1 et seq.) , as may be amended and supplemented:

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

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

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

33 "Department" means the Department of Environmental Protection;

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

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

43 "Environmental opportunity zone" has the meaning given that term
44 pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);

45 "Financial assistance" means loans or loan guarantees;

46 "Institutional controls" means a mechanism used to limit human

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

8 "Limited restricted use remedial action" means any remedial action
9 that requires the continued use of institutional controls but does not
10 require the use of an engineering control;

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

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

33 "Remedial action" means those actions taken at a site or offsite if
34 a contaminant has migrated or is migrating therefrom, as may be
35 required by the department, including the removal, treatment,
36 containment, transportation, securing, or other engineering or
37 treatment measures, whether to an unrestricted use or otherwise,
38 designed to ensure that any discharged contaminant at the site or that
39 has migrated or is migrating from the site, is remediated in compliance
40 with the applicable health risk or environmental standards;

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

1 "Remedial investigation" means a process to determine the nature
2 and extent of a discharge of a contaminant at a site or a discharge of
3 a contaminant that has migrated or is migrating from the site and the
4 problems presented by a discharge, and may include data collected,
5 site characterization, sampling, monitoring, and the gathering of any
6 other sufficient and relevant information necessary to determine the
7 necessity for remedial action and to support the evaluation of remedial
8 actions if necessary;

9 "Remediation" or "remediate" means all necessary actions to
10 investigate and clean up or respond to any known, suspected, or
11 threatened discharge of contaminants, including, as necessary, the
12 preliminary assessment, site investigation, remedial investigation, and
13 remedial action, provided, however, that "remediation" or "remediate"
14 shall not include the payment of compensation for damage to, or loss
15 of, natural resources;

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

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

23 "Remediation standards" means the combination of numeric
24 standards that establish a level or concentration, and narrative
25 standards to which contaminants must be treated, removed, or
26 otherwise cleaned for soil, groundwater, or surface water, as provided
27 by the department pursuant to section 35 of P.L.1993, c.139
28 (C.58:10B-12) in order to meet the health risk or environmental
29 standards;

30 "Restricted use remedial action" means any remedial action that
31 requires the continued use of engineering and institutional controls in
32 order to meet the established health risk or environmental standards;

33 "Site investigation" means the collection and evaluation of data
34 adequate to determine whether or not discharged contaminants exist
35 at a site or have migrated or are migrating from the site at levels in
36 excess of the applicable remediation standards. A site investigation
37 shall be developed based upon the information collected pursuant to
38 the preliminary assessment;

39 "Unrestricted use remedial action" means any remedial action that
40 does not require the continued use of engineering or institutional
41 controls in order to meet the established health risk or environmental
42 standards;

43 "Voluntarily perform a remediation" means performing a
44 remediation without having been ordered or directed to do so by the
45 department or by a court and without being compelled to perform a

1 remediation pursuant to the provisions of P.L.1983, c.330 (C.13:1K-6
2 et al.).

3 (cf: P.L.1997, c.278, s.9)²

4

5 ¹[4. Section 6 of P.L.1997, c.278 (C.58:10B-13.1) is amended to
6 read as follows:

7 6. a. Whenever after the effective date of P.L.1997, c.278
8 (C.58:10B-1.1 et al.) the Department of Environmental Protection
9 issues a no further action letter pursuant to a remediation, it shall also
10 issue to the person performing the remediation a covenant not to sue
11 with respect to the real property upon which the remediation has been
12 conducted. A covenant not to sue shall be executed by the person
13 performing the remediation and by the department in order to become
14 effective. The covenant not to sue shall be consistent with any
15 conditions and limitations contained in the no further action letter.
16 The covenant not to sue shall be for any area of concern remediated
17 and may apply to the entire real property if the remediation included
18 a preliminary assessment and, if necessary, a site investigation of the
19 entire real property, and any other necessary remedial actions. The
20 covenant remains effective only for as long as the real property for
21 which the covenant was issued continues to meet the conditions of the
22 no further action letter. Upon a finding by the department that real
23 property or a portion thereof to which a covenant not to sue pertains,
24 no longer meets with the conditions of the no further action letter, the
25 department shall provide notice of that fact to the person responsible
26 for maintaining compliance with the no further action letter. The
27 department may allow the person a reasonable time to come into
28 compliance with the terms of the original no further action letter. If
29 the property does not meet the conditions of the no further action
30 letter and if the department does not allow for a period of time to
31 come into compliance or if the person fails to come into compliance
32 within the time period, the department may invoke the provisions of
33 the covenant not to sue permitting revocation of the covenant not to
34 sue.

35 Except as provided in subsection e. of this section, a covenant not
36 to sue shall contain the following, as applicable:

37 (1) a provision releasing the person who undertook the remediation
38 from all civil liability to the State to perform any additional
39 remediation, to pay compensation for damage to, or loss of, natural
40 resources, or for any cleanup and removal costs;

41 (2) for a remediation that involves the use of engineering or
42 institutional controls:

43 (a) a provision requiring the person, or any subsequent owner,
44 lessee, or operator during the person's period of ownership, tenancy,
45 or operation, to maintain those controls, conduct periodic monitoring
46 for compliance, and submit to the department, on a biennial basis, a

1 certification that the engineering and institutional controls are being
2 properly maintained and continue to be protective of public health and
3 safety and of the environment. The certification shall state the
4 underlying facts and shall include the results of any tests or
5 procedures performed that support the certification; and

6 (b) a provision revoking the covenant if the engineering or
7 institutional controls are not being maintained or are no longer in
8 place; and

9 (3) for a remediation that involves the use of engineering controls
10 but not for any remediation that involves the use of institutional
11 controls only, a provision barring the person or persons whom the
12 covenant not to sue benefits, from making a claim against the New
13 Jersey Spill Compensation Fund and the Sanitary Landfill Facility
14 Contingency Fund for any costs or damages relating to the real
15 property and remediation covered by the covenant not to sue. The
16 covenant not to sue shall not bar a claim by any person against the
17 New Jersey Spill Compensation Fund and the Sanitary Landfill
18 Contingency Fund for any remediation that involves only the use of
19 institutional controls if, after a valid no further action letter has been
20 issued, the department orders additional remediation, except that the
21 covenant shall bar such a claim if the department ordered additional
22 remediation in order to remove the institutional control.

23 b. Unless a covenant not to sue issued under this section is
24 revoked by the department, the covenant shall remain effective. The
25 covenant not to sue shall apply to all successors in ownership of the
26 property and to all persons who lease the property or who engage in
27 operations on the property.

28 c. If a covenant not to sue is revoked, liability for any additional
29 remediation shall not be applied retroactively to any person for whom
30 the covenant remained in effect during that person's ownership,
31 tenancy, or operation of the property.

32 d. A covenant not to sue and the protections it affords shall not
33 apply to any discharge that occurs subsequent to the issuance of the
34 no further action letter which was the basis of the issuance of the
35 covenant, nor shall a covenant not to sue and the protections it affords
36 relieve any person of the obligations to comply in the future with laws
37 and regulations.

38 e. The covenant not to sue may be issued to any person who
39 obtains a no further action letter as provided in subsection a. of this
40 section. The covenant not to sue shall not provide relief from any
41 liability, either under statutory or common law, to any person who is
42 liable for cleanup and removal costs pursuant to subsection c. of
43 section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not have
44 a defense to liability pursuant to subsection d. of that section.

45 (cf: P.L.1997, c.278, s.6)]¹

1 ²4. Section 6 of P.L.1997, c.278 (C.58:10B-13.1) is amended to
2 read as follows:

3 6. a. Whenever after the effective date of P.L.1997, c.278
4 (C.58:10B-1.1 et al.) the Department of Environmental Protection
5 issues a no further action letter pursuant to a remediation, it shall also
6 issue to the person performing the remediation a covenant not to sue
7 with respect to the real property upon which the remediation has been
8 conducted. A covenant not to sue shall be executed by the person
9 performing the remediation and by the department in order to become
10 effective. The covenant not to sue shall be consistent with any
11 conditions and limitations contained in the no further action letter.
12 The covenant not to sue shall be for any area of concern remediated
13 and may apply to the entire real property if the remediation included
14 a preliminary assessment and, if necessary, a site investigation of the
15 entire real property, and any other necessary remedial actions. The
16 covenant remains effective only for as long as the real property for
17 which the covenant was issued continues to meet the conditions of the
18 no further action letter. Upon a finding by the department that real
19 property or a portion thereof to which a covenant not to sue pertains,
20 no longer meets with the conditions of the no further action letter, the
21 department shall provide notice of that fact to the person responsible
22 for maintaining compliance with the no further action letter. The
23 department may allow the person a reasonable time to come into
24 compliance with the terms of the original no further action letter. If
25 the property does not meet the conditions of the no further action
26 letter and if the department does not allow for a period of time to
27 come into compliance or if the person fails to come into compliance
28 within the time period, the department may invoke the provisions of
29 the covenant not to sue permitting revocation of the covenant not to
30 sue.

31 Except as provided in subsection e. of this section, a covenant not
32 to sue shall contain the following, as applicable:

33 (1) a provision releasing the person who undertook the remediation
34 from all civil liability to the State to perform any additional
35 remediation, to pay compensation for damage to, or loss of, natural
36 resources, or for any cleanup and removal costs;

37 (2) for a remediation that involves the use of engineering or
38 institutional controls:

39 (a) a provision requiring the person, or any subsequent owner,
40 lessee, or operator during the person's period of ownership, tenancy,
41 or operation, to maintain those controls, conduct periodic monitoring
42 for compliance, and submit to the department, on a biennial basis, a
43 certification that the engineering and institutional controls are being
44 properly maintained and continue to be protective of public health and
45 safety and of the environment. The certification shall state the
46 underlying facts and shall include the results of any tests or

1 procedures performed that support the certification; and

2 (b) a provision revoking the covenant if the engineering or
3 institutional controls are not being maintained or are no longer in
4 place; and

5 (3) for a remediation that involves the use of engineering controls
6 but not for any remediation that involves the use of institutional
7 controls only, a provision barring the person or persons whom the
8 covenant not to sue benefits, from making a claim against the New
9 Jersey Spill Compensation Fund and the Sanitary Landfill Facility
10 Contingency Fund for any costs or damages relating to the real
11 property and remediation covered by the covenant not to sue. The
12 covenant not to sue shall not bar a claim by any person against the
13 New Jersey Spill Compensation Fund and the Sanitary Landfill
14 Contingency Fund for any remediation that involves only the use of
15 institutional controls if, after a valid no further action letter has been
16 issued, the department orders additional remediation, except that the
17 covenant shall bar such a claim if the department ordered additional
18 remediation in order to remove the institutional control.

19 b. Unless a covenant not to sue issued under this section is
20 revoked by the department, the covenant shall remain effective. The
21 covenant not to sue shall apply to all successors in ownership of the
22 property and to all persons who lease the property or who engage in
23 operations on the property.

24 c. If a covenant not to sue is revoked, liability for any additional
25 remediation shall not be applied retroactively to any person for whom
26 the covenant remained in effect during that person's ownership,
27 tenancy, or operation of the property.

28 d. A covenant not to sue and the protections it affords shall not
29 apply to any discharge that occurs subsequent to the issuance of the
30 no further action letter which was the basis of the issuance of the
31 covenant, nor shall a covenant not to sue and the protections it affords
32 relieve any person of the obligations to comply in the future with laws
33 and regulations.

34 e. The covenant not to sue may be issued to any person who
35 obtains a no further action letter as provided in subsection a. of this
36 section. The covenant not to sue shall not provide relief from any
37 liability, either under statutory or common law, to any person who is
38 liable for cleanup and removal costs pursuant to subsection c. of
39 section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not have
40 a defense to liability pursuant to subsection d. of that section.

41 (cf: P.L.1997, c.278, s.6)²

42

43 ¹[5. (New section) a. (1) Except where a limitations provision
44 expressly and specifically applies to actions commenced by the State
45 or where a longer limitations period would otherwise apply, and
46 subject to any statutory provisions or common law rules extending

1 limitations periods, any civil action concerning the remediation of a
2 contaminated site or the closure of a sanitary landfill facility
3 commenced by the State pursuant to the State's environmental laws
4 shall be commenced within three years next after the cause of action
5 shall have accrued.

6 (2) For purposes of determining whether a civil action subject to
7 the limitations periods specified in paragraph (1) of this subsection has
8 been commenced within time, no cause of action shall be deemed to
9 have accrued prior to January 1, 2002 or until the contaminated site
10 is remediated or the sanitary landfill has been properly closed,
11 whichever is later.

12 b. (1) Except where a limitations provision expressly and
13 specifically applies to actions commenced by the State or where a
14 longer limitations period would otherwise apply, and subject to any
15 statutory provisions or common law rules extending limitations
16 periods, any civil action concerning the payment of compensation for
17 damage to, or loss of, natural resources due to the discharge of a
18 hazardous substance, commenced by the State pursuant to the State's
19 environmental laws, shall be commenced within four years next after
20 the cause of action shall have accrued.

21 (2) For purposes of determining whether a civil action subject to
22 the limitations periods specified in paragraph (1) of this subsection has
23 been commenced within time, no cause of action shall be deemed to
24 have accrued prior to January 1, 2002 or until the performance of the
25 preliminary assessment, site investigation, and remedial investigation,
26 if necessary, of the contaminated site or the sanitary landfill facility,
27 whichever is later.

28 c. As used in this section:

29 "State's environmental laws" means the "Spill Compensation and
30 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water
31 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
32 P.L.1986, c.102 (C.58:10A-21 et seq.), the "Brownfield and
33 Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1
34 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6
35 et al.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1
36 et seq.), the "Comprehensive Regulated Medical Waste Management
37 Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous
38 Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the
39 "Sanitary Landfill Facility Closure and Contingency Fund Act,"
40 P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level
41 Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333
42 (C.13:1E-177 et seq.), or any other law or regulation by which the
43 State may compel a person to perform remediation activities on
44 contaminated property; and

45 "State" means the State, its political subdivisions, any office,
46 department, division, bureau, board, commission or agency of the

1 State or one of its political subdivisions, and any public authority or
2 public agency, including, but not limited to, the New Jersey Transit
3 Corporation and the University of Medicine and Dentistry of New
4 Jersey.]¹

5
6 ²5. (New section) a. (1) Except where a limitations provision
7 expressly and specifically applies to actions commenced by the State
8 or where a longer limitations period would otherwise apply, and
9 subject to any statutory provisions or common law rules extending
10 limitations periods, any civil action concerning the remediation of a
11 contaminated site or the closure of a sanitary landfill facility
12 commenced by the State pursuant to the State's environmental laws
13 shall be commenced within three years next after the cause of action
14 shall have accrued.

15 (2) For purposes of determining whether a civil action subject to
16 the limitations periods specified in paragraph (1) of this subsection has
17 been commenced within time, no cause of action shall be deemed to
18 have accrued prior to January 1, 2002 or until the contaminated site
19 is remediated or the sanitary landfill has been properly closed,
20 whichever is later.

21 b. (1) Except where a limitations provision expressly and
22 specifically applies to actions commenced by the State or where a
23 longer limitations period would otherwise apply, and subject to any
24 statutory provisions or common law rules extending limitations
25 periods, any civil action concerning the payment of compensation for
26 damage to, or loss of, natural resources due to the discharge of a
27 hazardous substance, commenced by the State pursuant to the State's
28 environmental laws, shall be commenced within four years next after
29 the cause of action shall have accrued.

30 (2) For purposes of determining whether a civil action subject to
31 the limitations periods specified in paragraph (1) of this subsection has
32 been commenced within time, no cause of action shall be deemed to
33 have accrued prior to January 1, 2002 or until the performance of the
34 preliminary assessment, site investigation, and remedial investigation,
35 if necessary, of the contaminated site or the sanitary landfill facility,
36 whichever is later.

37 c. As used in this section:

38 "State's environmental laws" means the "Spill Compensation and
39 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water
40 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
41 P.L.1986, c.102 (C.58:10A-21 et seq.), the "Brownfield and
42 Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1
43 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6
44 et al.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1
45 et seq.), the "Comprehensive Regulated Medical Waste Management
46 Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous

1 Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the
2 "Sanitary Landfill Facility Closure and Contingency Fund Act,"
3 P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level
4 Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333
5 (C.13:1E-177 et seq.), or any other law or regulation by which the
6 State may compel a person to perform remediation activities on
7 contaminated property; and

8 "State" means the State, its political subdivisions, any office,
9 department, division, bureau, board, commission or agency of the
10 State or one of its political subdivisions, and any public authority or
11 public agency, including, but not limited to, the New Jersey Transit
12 Corporation and the University of Medicine and Dentistry of New
13 Jersey.²

14
15 ²6. (New section) Any person who has a defense to liability
16 pursuant to paragraphs (2) and (5) of subsection d. of section 8 of
17 P.L.1976, c.141 (C.58:10-23.11g) shall not be liable for the payment
18 of compensation for damage to, or loss of, natural resources due to the
19 discharge of a hazardous substance.²

20
21 ¹[7.] ²[1.] ¹7.² Section 2 of P.L.1991, c.387 (C.2A:14-1.2) is
22 amended to read as follows:

23 2. a. ²[¹(1)]² Except ²[¹ as provided in paragraph (2) of this
24 subsection, or except ¹]² where a limitations provision expressly and
25 specifically applies to actions commenced by the State or where a
26 longer limitations period would otherwise apply, and subject to any
27 statutory provisions or common law rules extending limitations
28 periods, any civil action commenced by the State shall be commenced
29 within ten years next after the cause of action shall have accrued.

30 ²[¹(2) Except where a limitations provision expressly and
31 specifically applies to actions commenced by the State or where a
32 longer limitations period would otherwise apply, and subject to any
33 statutory provisions or common law rules extending limitations
34 periods, any civil action commenced by the State pursuant to the laws
35 concerning the remediation of contaminated sites or the closure of
36 sanitary landfill facilities shall be commenced within three years next
37 after the cause of action shall have accrued.¹²

38 b. ²[¹(1)]² For purposes of determining whether ¹[an] ²[a civil
39]² an² action subject to the limitations period specified in ²[¹
40 paragraph (1) of ¹]² subsection a. of this section has been commenced
41 within time, no ¹[such] ²[cause of ¹] such² action shall be deemed to
42 have accrued prior to January 1, 1992.

43 ²[¹(2) For purposes of determining whether a civil action subject
44 to the limitations period specified in paragraph (2) of subsection a. of
45 this section has been commenced within time, no cause of action shall

1 be deemed to have accrued prior to January 1, 2002, or until the
2 contaminated site has been remediated or the sanitary landfill facility
3 has been properly closed, whichever is later.¹²

4 c. As used in this act ¹ [, the term] ² [:

5 "Laws concerning the remediation of contaminated sites or the
6 closure of sanitary landfill facilities" means the "Spill Compensation
7 and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water
8 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
9 P.L.1986, c.102 (C.58:10A-21 et seq.), the "Brownfield and
10 Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1
11 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6
12 et al.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1
13 et seq.), the "Comprehensive Regulated Medical Waste Management
14 Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous
15 Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the
16 "Sanitary Landfill Facility Closure and Contingency Fund Act,"
17 P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level
18 Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333
19 (C.13:1E-177 et seq.), or any other law or regulation by which the
20 State may compel a person to perform remediation activities on
21 contaminated property; and ¹] , the term² "State" means the State, its
22 political subdivisions, any office, department, division, bureau, board,
23 commission or agency of the State or one of its political subdivisions,
24 and any public authority or public agency, including, but not limited
25 to, the New Jersey Transit Corporation and the University of Medicine
26 and Dentistry of New Jersey.

27 ¹ [The provisions of this section shall not apply to any civil action
28 commenced by the State concerning the remediation of a contaminated
29 site or the closure of a sanitary landfill facility, or the payment of
30 compensation for damage to, or loss of, natural resources due to the
31 discharge of a hazardous substance, and subject to the limitations
32 period specified in section 5 of P.L. , c. (C.) (before the Legislature
33 as this bill).]² The provisions of this section shall not apply to any
34 civil action commenced by the State concerning the remediation of a
35 contaminated site or the closure of a sanitary landfill facility, or the
36 payment of compensation for damage to, or loss of, natural resources
37 due to the discharge of a hazardous substance, and subject to the
38 limitations period specified in section 5 of P.L. , c. (C.) (before the
39 Legislature as this bill).²

40 (cf: P.L.1991, c.387, s.2)

41
42 ¹ [8.] ² [2.1] 8.² This act shall take effect immediately.

ASSEMBLY, No. 3328

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED MARCH 22, 2001

Sponsored by:

**Assemblyman STEVE CORODEMUS
District 11 (Monmouth)**

Co-Sponsored by:

Assemblymen Blee, Felice, Gibson, Kelly, T.Smith and Zecker

SYNOPSIS

Extends and changes statute of limitations for actions by the State pursuant to various environmental cleanup laws.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/29/2001)

A3328 CORODEMUS

2

1 AN ACT concerning the limitation of actions under certain
2 environmental laws, and amending P.L.1991, c.387.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 2 of P.L.1991, c.387 (C.2A:14-1.2) is amended to read
8 as follows:

9 2. a. (1) Except as provided in paragraph (2) of this subsection,
10 or except where a limitations provision expressly and specifically
11 applies to actions commenced by the State or where a longer
12 limitations period would otherwise apply, and subject to any statutory
13 provisions or common law rules extending limitations periods, any
14 civil action commenced by the State shall be commenced within ten
15 years next after the cause of action shall have accrued.

16 (2) Except where a limitations provision expressly and specifically
17 applies to actions commenced by the State or where a longer
18 limitations period would otherwise apply, and subject to any statutory
19 provisions or common law rules extending limitations periods, any
20 civil action commenced by the State pursuant to the laws concerning
21 the remediation of contaminated sites or the closure of sanitary landfill
22 facilities shall be commenced within three years next after the cause of
23 action shall have accrued.

24 b. (1) For purposes of determining whether [an] a civil action
25 subject to the limitations period specified in paragraph (1) of
26 subsection a. of this section has been commenced within time, no
27 [such] cause of action shall be deemed to have accrued prior to
28 January 1, 1992.

29 (2) For purposes of determining whether a civil action subject to
30 the limitations period specified in paragraph (2) of subsection a. of this
31 section has been commenced within time, no cause of action shall be
32 deemed to have accrued prior to January 1, 2002, or until the
33 contaminated site has been remediated or the sanitary landfill facility
34 has been properly closed, whichever is later.

35 c. As used in this act[, the term]:

36 "Laws concerning the remediation of contaminated sites or the
37 closure of sanitary landfill facilities" means the "Spill Compensation
38 and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water
39 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
40 P.L.1986, c.102 (C.58:10A-21 et seq.), the "Brownfield and
41 Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1
42 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6
43 et al.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1

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.

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

10 "State" means the State, its political subdivisions, any office,
11 department, division, bureau, board, commission or agency of the
12 State or one of its political subdivisions, and any public authority or
13 public agency, including, but not limited to, the New Jersey Transit
14 Corporation and the University of Medicine and Dentistry of New
15 Jersey.

16 (cf: P.L.1991, c.387, s.2)

17

18 2. This act shall take effect immediately.

19

20

21

STATEMENT

22

23 This bill would extend and change the statute of limitations for civil
24 actions brought by the State pursuant to laws concerning the
25 remediation of contaminated sites or the closure of sanitary landfill
26 facilities. The bill would provide that a cause of action concerning the
27 remediation of contaminated sites or the closure of sanitary landfill
28 facilities shall not be deemed to have accrued, for the purposes of the
29 statute of limitations, prior to January 1, 2002, or until the
30 contaminated site has been remediated or the landfill has been properly
31 closed, whichever is later, in which case any civil action by the State
32 must be commenced within three years next after the cause of action
33 shall have accrued.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3328

STATE OF NEW JERSEY

DATED: JUNE 25, 2001

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3328.

Assembly Bill No. 3328 extends and changes the statute of limitations for civil actions brought by the State pursuant to laws concerning the remediation of contaminated sites or the closure of sanitary landfill facilities.

The bill provides that a cause of action concerning the remediation of contaminated sites or the closure of sanitary landfill facilities shall not be deemed to have accrued, for the purposes of the statute of limitations, prior to January 1, 2002, or until the contaminated site has been remediated or the landfill has been properly closed, whichever is later, in which case any civil action by the State must be commenced within three years next after the cause of action shall have accrued.

The bill as reported is identical to Senate Bill No. 2345 (SCS), as amended and reported by the committee.

FISCAL IMPACT:

The bill was not certified as requiring a fiscal note.

P.L. 2001, CHAPTER 154, *approved July 13, 2001*
Senate Committee Substitute (*Second Reprint*) for
Senate, No. 2345

1 AN ACT concerning ¹[the cleanup of contaminated property,
2 amending and supplementing Title 58 of the Revised Statutes]
3 ²[the limitation of actions under certain environmental laws¹] the
4 cleanup of contaminated property, amending and supplementing
5 Title 58 of the Revised Statutes², and amending P.L.1991, c.387.
6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:
9

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

12 3. Unless the context clearly indicates otherwise, the following
13 terms shall have the following meanings:

14 "Act of God" means an act exclusively occasioned by an
15 unanticipated, grave natural disaster without the interference of any
16 human agency;

17 "Administrator" means the chief executive of the New Jersey Spill
18 Compensation Fund;

19 "Barrel" means 42 United States gallons or 159.09 liters or an
20 appropriate equivalent measure set by the director for hazardous
21 substances which are other than fluid or which are not commonly
22 measured by the barrel;

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

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

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 AAP committee amendments adopted June 25, 2001.

² Senate floor amendments adopted June 28, 2001.

1 department oversight performed after the effective date of P.L.1997,
2 c.278 (C.58:10B-1.1 et al.), but may include only those program costs
3 directly related to the cleanup and removal of the discharge; however,
4 where the State or the fund have expended money for the cleanup and
5 removal of a discharge and are seeking to recover the costs incurred
6 in that cleanup and removal action from a responsible party, costs
7 incurred by the State shall include any indirect costs;

8 "Commissioner" means the Commissioner of Environmental
9 Protection;

10 "Contamination" or "contaminant" means any discharged
11 hazardous substance, hazardous waste as defined pursuant to section
12 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to
13 section 3 of P.L.1977, c.74 (C.58:10A-3);

14 "Department" means the Department of Environmental Protection;

15 "Director" means the Director of the Division of Taxation in the
16 Department of the Treasury;

17 "Discharge" means any intentional or unintentional action or
18 omission resulting in the releasing, spilling, leaking, pumping, pouring,
19 emitting, emptying or dumping of hazardous substances into the
20 waters or onto the lands of the State, or into waters outside the
21 jurisdiction of the State when damage may result to the lands, waters
22 or natural resources within the jurisdiction of the State;

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

27 "Fair market value" means the invoice price of the hazardous
28 substances transferred, including transportation charges; but where no
29 price is so fixed, "fair market value" shall mean the market price as of
30 the close of the nearest day to the transfer, paid for similar hazardous
31 substances, as shall be determined by the taxpayer pursuant to rules of
32 the director;

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

34 "Hazardous substances" means the "environmental hazardous
35 substances" on the environmental hazardous substance list adopted by
36 the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4);
37 such elements and compounds, including petroleum products, which
38 are defined as such by the department, after public hearing, and which
39 shall be consistent to the maximum extent possible with, and which
40 shall include, the list of hazardous substances adopted by the federal
41 Environmental Protection Agency pursuant to section 311 of the
42 federal Water Pollution Control Act Amendments of 1972,
43 Pub.L.92-500, as amended by the Clean Water Act of 1977,
44 Pub.L.95-217 (33 U.S.C. 1251 et seq.); the list of toxic pollutants
45 designated by Congress or the EPA pursuant to section 307 of that
46 act; and the list of hazardous substances adopted by the federal

1 Environmental Protection Agency pursuant to section 101 of the
2 "Comprehensive Environmental Response, Compensation and Liability
3 Act of 1980," Pub.L.96-510 (42 U.S.C. s.9601 et seq.); provided,
4 however, that sewage and sewage sludge shall not be considered as
5 hazardous substances for the purposes of P.L.1976, c.141
6 (C.58:10-23.11 et seq.);

7 "Local unit" means any county or municipality, or any agency or
8 other instrumentality thereof, or a duly incorporated volunteer fire,
9 ambulance, first aid, emergency, or rescue company or squad;

10 "Major facility" includes, but is not limited to, any refinery, storage
11 or transfer terminal, pipeline, deep-water port, drilling platform or any
12 appurtenance related to any of the preceding that is used or is capable
13 of being used to refine, produce, store, handle, transfer, process or
14 transport hazardous substances. "Major facility" shall include a vessel
15 only when that vessel is engaged in a transfer of hazardous substances
16 between it and another vessel, and in any event shall not include a
17 vessel used solely for activities directly related to recovering,
18 containing, cleaning up or removing discharges of petroleum in the
19 surface waters of the State, including training, research, and other
20 activities directly related to spill response.

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

24 (1) 20,000 gallons or more for hazardous substances which are
25 other than petroleum or petroleum products, or

26 (2) 200,000 gallons or more for hazardous substances of all kinds.

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

32 For the purposes of this definition, "storage capacity" shall mean
33 only that total combined capacity which is dedicated to, used for or
34 intended to be used for storage of hazardous substances of all kinds.
35 Where appropriate to the nature of the facility, storage capacity may
36 be determined by the intended or actual use of open land or
37 unenclosed space as well as by the capacities of tanks or other
38 enclosed storage spaces;

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

42 "Owner" or "operator" means, with respect to a vessel, any person
43 owning, operating or chartering by demise such vessel; with respect to
44 any major facility, any person owning such facility, or operating it by
45 lease, contract or other form of agreement; with respect to abandoned
46 or derelict major facilities, the person who owned or operated such

1 facility immediately prior to such abandonment, or the owner at the
2 time of discharge;

3 "Person" means public or private corporations, companies,
4 associations, societies, firms, partnerships, joint stock companies,
5 individuals, the United States, the State of New Jersey and any of its
6 political subdivisions or agents;

7 "Petroleum" or "petroleum products" means oil or petroleum of
8 any kind and in any form, including, but not limited to, oil, petroleum,
9 gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other
10 wastes, crude oils, and substances or additives to be utilized in the
11 refining or blending of crude petroleum or petroleum stock in this
12 State; however, any compound designated by specific chemical name
13 on the list of hazardous substances adopted by the department
14 pursuant to this section shall not be considered petroleum or a
15 petroleum product for the purposes of P.L.1976, c.141, unless such
16 compound is to be utilized in the refining or blending of crude
17 petroleum or petroleum stock in this State;

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

30 "Remedial action" means those actions taken at a site or offsite if
31 a contaminant has migrated or is migrating therefrom, as may be
32 required by the department, including the removal, treatment,
33 containment, transportation, securing, or other engineering or
34 treatment measures, whether to an unrestricted use or otherwise,
35 designed to ensure that any discharged contaminant at the site or that
36 has migrated or is migrating from the site, is remediated in compliance
37 with the applicable health risk or environmental standards;

38 "Remedial investigation" means a process to determine the nature
39 and extent of a discharge of a contaminant at a site or a discharge of
40 a contaminant that has migrated or is migrating from the site and the
41 problems presented by a discharge, and may include data collected,
42 site characterization, sampling, monitoring, and the gathering of any
43 other sufficient and relevant information necessary to determine the
44 necessity for remedial action and to support the evaluation of remedial
45 actions if necessary;

46 "Remediation" or "remediate" means all necessary actions to

1 investigate and clean up or respond to any known, suspected, or
2 threatened discharge, including, as necessary, the preliminary
3 assessment, site investigation, remedial investigation, and remedial
4 action, provided, however, that "remediation" or "remediate" shall not
5 include the payment of compensation for damage to, or loss of, natural
6 resources;

7 "Site investigation" means the collection and evaluation of data
8 adequate to determine whether or not discharged contaminants exist
9 at a site or have migrated or are migrating from the site at levels in
10 excess of the applicable remediation standards. A site investigation
11 shall be developed based upon the information collected pursuant to
12 the preliminary assessment;

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

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

17 "Transfer" means onloading or offloading between major facilities
18 and vessels, or vessels and major facilities, and from vessel to vessel
19 or major facility to major facility, except for fueling or refueling
20 operations and except that with regard to the movement of hazardous
21 substances other than petroleum, it shall also include any onloading of
22 or offloading from a major facility;

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

27 "Waters" means the ocean and its estuaries to the seaward limit of
28 the State's jurisdiction, all springs, streams and bodies of surface or
29 groundwater, whether natural or artificial, within the boundaries of
30 this State.

31 (cf: P.L.1997, c.278, s.19)]¹

32

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

35 3. Unless the context clearly indicates otherwise, the following
36 terms shall have the following meanings:

37 "Act of God" means an act exclusively occasioned by an
38 unanticipated, grave natural disaster without the interference of any
39 human agency;

40 "Administrator" means the chief executive of the New Jersey Spill
41 Compensation Fund;

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

46 "Board" means a board of arbitration convened by the

1 administrator to settle disputed disbursements from the fund;

2 "Cleanup and removal costs" means all costs associated with a
3 discharge, incurred by the State or its political subdivisions or their
4 agents or any person with written approval from the department in the:
5 (1) removal or attempted removal of hazardous substances, or (2)
6 taking of reasonable measures to prevent or mitigate damage to the
7 public health, safety, or welfare, including, but not limited to, public
8 and private property, shorelines, beaches, surface waters, water
9 columns and bottom sediments, soils and other affected property,
10 including wildlife and other natural resources, and shall include costs
11 incurred by the State for the indemnification and legal defense of
12 contractors pursuant to sections 1 through 11 of P.L.1991, c.373
13 (C.58:10-23.11f8 et seq.). For the purposes of this definition, costs
14 incurred by the State shall not include any indirect costs for
15 department oversight performed after the effective date of P.L.1997,
16 c.278 (C.58:10B-1.1 et al.), but may include only those program costs
17 directly related to the cleanup and removal of the discharge; however,
18 where the State or the fund have expended money for the cleanup and
19 removal of a discharge and are seeking to recover the costs incurred
20 in that cleanup and removal action from a responsible party, costs
21 incurred by the State shall include any indirect costs;

22 "Commissioner" means the Commissioner of Environmental
23 Protection;

24 "Contamination" or "contaminant" means any discharged
25 hazardous substance, hazardous waste as defined pursuant to section
26 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to
27 section 3 of P.L.1977, c.74 (C.58:10A-3);

28 "Department" means the Department of Environmental Protection;

29 "Director" means the Director of the Division of Taxation in the
30 Department of the Treasury;

31 "Discharge" means any intentional or unintentional action or
32 omission resulting in the releasing, spilling, leaking, pumping, pouring,
33 emitting, emptying or dumping of hazardous substances into the
34 waters or onto the lands of the State, or into waters outside the
35 jurisdiction of the State when damage may result to the lands, waters
36 or natural resources within the jurisdiction of the State;

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

41 "Fair market value" means the invoice price of the hazardous
42 substances transferred, including transportation charges; but where no
43 price is so fixed, "fair market value" shall mean the market price as of
44 the close of the nearest day to the transfer, paid for similar hazardous
45 substances, as shall be determined by the taxpayer pursuant to rules of
46 the director;

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

2 "Hazardous substances" means the "environmental hazardous
3 substances" on the environmental hazardous substance list adopted by
4 the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4);
5 such elements and compounds, including petroleum products, which
6 are defined as such by the department, after public hearing, and which
7 shall be consistent to the maximum extent possible with, and which
8 shall include, the list of hazardous substances adopted by the federal
9 Environmental Protection Agency pursuant to section 311 of the
10 federal Water Pollution Control Act Amendments of 1972,
11 Pub.L.92-500, as amended by the Clean Water Act of 1977,
12 Pub.L.95-217 (33 U.S.C. 1251 et seq.); the list of toxic pollutants
13 designated by Congress or the EPA pursuant to section 307 of that
14 act; and the list of hazardous substances adopted by the federal
15 Environmental Protection Agency pursuant to section 101 of the
16 "Comprehensive Environmental Response, Compensation and Liability
17 Act of 1980," Pub.L.96-510 (42 U.S.C. s.9601 et seq.); provided,
18 however, that sewage and sewage sludge shall not be considered as
19 hazardous substances for the purposes of P.L.1976, c.141
20 (C.58:10-23.11 et seq.);

21 "Local unit" means any county or municipality, or any agency or
22 other instrumentality thereof, or a duly incorporated volunteer fire,
23 ambulance, first aid, emergency, or rescue company or squad;

24 "Major facility" includes, but is not limited to, any refinery, storage
25 or transfer terminal, pipeline, deep-water port, drilling platform or any
26 appurtenance related to any of the preceding that is used or is capable
27 of being used to refine, produce, store, handle, transfer, process or
28 transport hazardous substances. "Major facility" shall include a vessel
29 only when that vessel is engaged in a transfer of hazardous substances
30 between it and another vessel, and in any event shall not include a
31 vessel used solely for activities directly related to recovering,
32 containing, cleaning up or removing discharges of petroleum in the
33 surface waters of the State, including training, research, and other
34 activities directly related to spill response.

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

38 (1) 20,000 gallons or more for hazardous substances which are
39 other than petroleum or petroleum products, or

40 (2) 200,000 gallons or more for hazardous substances of all kinds.

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

46 For the purposes of this definition, "storage capacity" shall mean

1 only that total combined capacity which is dedicated to, used for or
2 intended to be used for storage of hazardous substances of all kinds.
3 Where appropriate to the nature of the facility, storage capacity may
4 be determined by the intended or actual use of open land or
5 unenclosed space as well as by the capacities of tanks or other
6 enclosed storage spaces;

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

10 "Owner" or "operator" means, with respect to a vessel, any person
11 owning, operating or chartering by demise such vessel; with respect to
12 any major facility, any person owning such facility, or operating it by
13 lease, contract or other form of agreement; with respect to abandoned
14 or derelict major facilities, the person who owned or operated such
15 facility immediately prior to such abandonment, or the owner at the
16 time of discharge;

17 "Person" means public or private corporations, companies,
18 associations, societies, firms, partnerships, joint stock companies,
19 individuals, the United States, the State of New Jersey and any of its
20 political subdivisions or agents;

21 "Petroleum" or "petroleum products" means oil or petroleum of
22 any kind and in any form, including, but not limited to, oil, petroleum,
23 gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other
24 wastes, crude oils, and substances or additives to be utilized in the
25 refining or blending of crude petroleum or petroleum stock in this
26 State; however, any compound designated by specific chemical name
27 on the list of hazardous substances adopted by the department
28 pursuant to this section shall not be considered petroleum or a
29 petroleum product for the purposes of P.L.1976, c.141, unless such
30 compound is to be utilized in the refining or blending of crude
31 petroleum or petroleum stock in this State;

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

44 "Remedial action" means those actions taken at a site or offsite if
45 a contaminant has migrated or is migrating therefrom, as may be
46 required by the department, including the removal, treatment,

1 containment, transportation, securing, or other engineering or
2 treatment measures, whether to an unrestricted use or otherwise,
3 designed to ensure that any discharged contaminant at the site or that
4 has migrated or is migrating from the site, is remediated in compliance
5 with the applicable health risk or environmental standards;

6 "Remedial investigation" means a process to determine the nature
7 and extent of a discharge of a contaminant at a site or a discharge of
8 a contaminant that has migrated or is migrating from the site and the
9 problems presented by a discharge, and may include data collected,
10 site characterization, sampling, monitoring, and the gathering of any
11 other sufficient and relevant information necessary to determine the
12 necessity for remedial action and to support the evaluation of remedial
13 actions if necessary;

14 "Remediation" or "remediate" means all necessary actions to
15 investigate and clean up or respond to any known, suspected, or
16 threatened discharge, including, as necessary, the preliminary
17 assessment, site investigation, remedial investigation, and remedial
18 action, provided, however, that "remediation" or "remediate" shall not
19 include the payment of compensation for damage to, or loss of, natural
20 resources;

21 "Site investigation" means the collection and evaluation of data
22 adequate to determine whether or not discharged contaminants exist
23 at a site or have migrated or are migrating from the site at levels in
24 excess of the applicable remediation standards. A site investigation
25 shall be developed based upon the information collected pursuant to
26 the preliminary assessment;

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

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

31 "Transfer" means unloading or offloading between major facilities
32 and vessels, or vessels and major facilities, and from vessel to vessel
33 or major facility to major facility, except for fueling or refueling
34 operations and except that with regard to the movement of hazardous
35 substances other than petroleum, it shall also include any unloading of
36 or offloading from a major facility;

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

41 "Waters" means the ocean and its estuaries to the seaward limit of
42 the State's jurisdiction, all springs, streams and bodies of surface or
43 groundwater, whether natural or artificial, within the boundaries of
44 this State.

45 (cf: P.L.1997, c.278, s.19)²

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

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

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

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

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

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

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

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

42 c. (1) Any person who has discharged a hazardous substance, or
43 is in any way responsible for any hazardous substance, shall be strictly
44 liable, jointly and severally, without regard to fault, for all cleanup and
45 removal costs no matter by whom incurred. Such person shall also be
46 strictly liable, jointly and severally, without regard to fault, for all

1 cleanup and removal costs incurred by the department or a local unit
2 pursuant to subsection b. of section 7 of P.L.1976, c.141
3 (C.58:10-23.11f).

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

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

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

44 To the extent that a person liable pursuant to this paragraph is not
45 otherwise liable pursuant to paragraph (1) of this subsection, or under
46 any other provision of law or under common law, that person may

1 bring an action for indemnification for costs paid pursuant to this
2 paragraph against any other person who is strictly liable pursuant to
3 paragraph (1) of this subsection.

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

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

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

25 (2) A person, including an owner or operator of a major facility,
26 who owns real property acquired on or after September 14, 1993 on
27 which there has been a discharge, shall not be liable for cleanup and
28 removal costs or for any other damages to the State or to any other
29 person for the discharged hazardous substance pursuant to subsection
30 c. of this section or pursuant to civil common law, if that person can
31 establish by a preponderance of the evidence that subparagraphs (a)
32 through (d) apply, or if applicable, subparagraphs (a) through (e)
33 apply:

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

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

46 (c) the person did not discharge the hazardous substance, is not

1 in any way responsible for the hazardous substance , and is not a
2 corporate successor to the discharger or to any person in any way
3 responsible for the hazardous substance or to anyone liable for cleanup
4 and removal costs pursuant to this section;

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

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

18 Nothing in this paragraph (2) shall be construed to alter liability of
19 any person who acquired real property prior to September 14, 1993;
20 and

21 (e) For the purposes of this subparagraph the person must have (i)
22 acquired the property subsequent to a hazardous substance being
23 discharged on the site and which discharge was discovered at the time
24 of acquisition as a result of the appropriate inquiry, as defined in this
25 paragraph (2), (ii) performed, following the effective date of P.L.1997,
26 c.278, a remediation of the site or discharge consistent with the
27 provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied
28 upon a valid no further action letter from the department for a
29 remediation performed prior to acquisition, or obtained approval of a
30 remedial action workplan by the department after the effective date of
31 P.L.1997, c.278 and continued to comply with the conditions of that
32 workplan, and (iii) established and maintained all engineering and
33 institutional controls as may be required pursuant to sections 35 and
34 36 of P.L.1993, c.139. A person who complies with the provisions of
35 this subparagraph by actually performing a remediation of the site or
36 discharge as set forth in (ii) above shall be issued, upon application, a
37 no further action letter by the department. A person who complies
38 with the provisions of this subparagraph either by receipt of a no
39 further action letter from the department following the effective date
40 of P.L.1997, c.278, or by relying on a previously issued no further
41 action letter shall not be liable for any further remediation including
42 any changes in a remediation standard or for the subsequent discovery
43 of a hazardous substance, at the site, if the remediation was for the
44 entire site, and the hazardous substance was discharged prior to the
45 person acquiring the property. Notwithstanding any other provisions
46 of this subparagraph, a person who complies with the provisions of

1 this subparagraph only by virtue of the existence of a previously issued
2 no further action letter shall receive no liability protections for any
3 discharge which occurred during the time period between the issuance
4 of the no further action letter and the property acquisition.
5 Compliance with the provisions of this subparagraph (e) shall not
6 relieve any person of any liability for a discharge that is off the site of
7 the property covered by the no further action letter, for a discharge
8 that occurs at that property after the person acquires the property, for
9 any actions that person negligently takes that aggravates or contributes
10 to a discharge of a hazardous substance, for failure to comply in the
11 future with laws and regulations , or if that person fails to maintain the
12 institutional or engineering controls on the property or to otherwise
13 comply with the provisions of the no further action letter.

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

22 (4) Any federal, State, or local governmental entity which acquires
23 ownership of real property through bankruptcy, tax delinquency,
24 abandonment, escheat, eminent domain, condemnation or any
25 circumstance in which the governmental entity involuntarily acquires
26 title by virtue of its function as sovereign, or where the governmental
27 entity acquires the property by any means for the purpose of
28 promoting the redevelopment of that property, shall not be liable,
29 pursuant to subsection c. of this section or pursuant to common law,
30 to the State or to any other person for any discharge which occurred
31 or began prior to that ownership. This paragraph shall not provide any
32 liability protection to any federal, State or local governmental entity
33 which has caused or contributed to the discharge of a hazardous
34 substance. This paragraph shall not provide any liability protection to
35 any federal, State, or local government entity that acquires ownership
36 of real property by condemnation or eminent domain where the real
37 property is being remediated in a timely manner at the time of the
38 condemnation or eminent domain action.

39 (5) A person, including an owner or operator of a major facility,
40 who owns real property acquired prior to September 14, 1993 on
41 which there has been a discharge, shall not be liable for cleanup and
42 removal costs or for any other damages to the State or to any other
43 person for the discharged hazardous substance pursuant to subsection
44 c. of this section or pursuant to civil common law, if that person can
45 establish by a preponderance of the evidence that subparagraphs (a)
46 through (d) apply:

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

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

11 (c) the person did not discharge the hazardous substance, is not
12 in any way responsible for the hazardous substance, and is not a
13 corporate successor to the discharger or to any person in any way
14 responsible for the hazardous substance or to anyone liable for cleanup
15 and removal costs pursuant to this section;

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

18 To establish that a person had no reason to know that any
19 hazardous substance had been discharged for the purposes of this
20 paragraph (5), the person must have undertaken, at the time of
21 acquisition, all appropriate inquiry on the previous ownership and uses
22 of the property based upon generally accepted good and customary
23 standards.

24 Nothing in this paragraph (5) shall be construed to alter liability of
25 any person who acquired real property on or after September 14,
26 1993.

27 e. Neither the fund nor the Sanitary Landfill Contingency Fund
28 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be
29 liable for any damages incurred by any person who is relieved from
30 liability pursuant to subsection d. or f. of this section for a remediation
31 that involves the use of engineering controls but the fund and the
32 Sanitary Landfill Contingency Fund shall be liable for any remediation
33 that involves only the use of institutional controls if after a valid no
34 further action letter has been issued the department orders additional
35 remediation except that the fund and the Sanitary Landfill Contingency
36 Fund shall not be liable for any additional remediation that is required
37 to remove an institutional control.

38 f. Notwithstanding any other provision of this section, a person,
39 who owns real property acquired on or after the effective date of
40 P.L.1997, c.278 (C.58:10B-11.1 et al.), shall not be liable for any
41 cleanup and removal costs or damages, under this section or pursuant
42 to any other statutory or civil common law, to any person, other than
43 the State and the federal government, harmed by any hazardous
44 substance discharged on that property prior to acquisition, and any
45 migration off that property related to that discharge, provided all the
46 conditions of this subsection are met:

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

3 (2) the person did not discharge the hazardous substance, is not in
4 any way responsible for the hazardous substance, and is not a
5 corporate successor to the discharger or to any person in any way
6 responsible for the hazardous substance or to anyone liable for a
7 discharge pursuant to this section;

8 (3) the person gave notice of the discharge to the department upon
9 actual discovery of that discharge;

10 (4) within 30 days after acquisition of the property, the person
11 commenced a remediation of the discharge, including any migration,
12 pursuant to a department oversight document executed prior to
13 acquisition, and the department is satisfied that remediation was
14 completed in a timely and appropriate fashion; and

15 (5) Within ten days after acquisition of the property, the person
16 agrees in writing to provide access to the State for remediation and
17 related activities, as determined by the State.

18 The provisions of this subsection shall not relieve any person of
19 any liability:

20 (1) for a discharge that occurs at that property after the person
21 acquired the property;

22 (2) for any actions that person negligently takes that aggravates or
23 contributes to the harm inflicted upon any person;

24 (3) if that person fails to maintain the institutional or engineering
25 controls on the property or to otherwise comply with the provisions
26 of a no further action letter or a remedial action workplan and a
27 person is harmed thereby;

28 (4) for any liability to clean up and remove, pursuant to the
29 department's regulations and directions, any hazardous substances that
30 may have been discharged on the property or that may have migrated
31 therefrom; and

32 (5) for that person's failure to comply in the future with laws and
33 regulations.

34 g. Nothing in the amendatory provisions to this section adopted
35 pursuant to P.L.1997, c.278 shall be construed to remove any defense
36 to liability that a person may have had pursuant to subsection e. of this
37 section that existed prior to the effective date of P.L.1997, c.278.

38 h. Nothing in this section shall limit the requirements of any
39 person to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).

40 (cf: P.L.1997, c.278, s.20)]¹

41

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

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

47 (1) The cost of restoring, repairing, or replacing any real or

1 personal property damaged or destroyed by a discharge, any income
2 lost from the time such property is damaged to the time such property
3 is restored, repaired or replaced, and any reduction in value of such
4 property caused by such discharge by comparison with its value prior
5 thereto;

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

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

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

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

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

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

44 (2) In addition to the persons liable pursuant to this subsection, in
45 the case of a discharge of a hazardous substance from a vessel into the
46 waters of the State, the owner or operator of a refinery, storage,

1 transfer, or pipeline facility to which the vessel was en route to deliver
2 the hazardous substance who, by contract, agreement, or otherwise,
3 was scheduled to assume ownership of the discharged hazardous
4 substance, and any other person who was so scheduled to assume
5 ownership of the discharged hazardous substance, shall be strictly
6 liable, jointly and severally, without regard to fault, for all cleanup and
7 removal costs if the owner or operator of the vessel did not have the
8 evidence of financial responsibility required pursuant to section 2 of
9 P.L.1991, c.58 (C.58:10-23.11g2).

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

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

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

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

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

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

19 (2) A person, including an owner or operator of a major facility,
20 who owns real property acquired on or after September 14, 1993 on
21 which there has been a discharge, shall not be liable for cleanup and
22 removal costs or for any other damages to the State or to any other
23 person for the discharged hazardous substance pursuant to subsection
24 c. of this section or pursuant to civil common law, if that person can
25 establish by a preponderance of the evidence that subparagraphs (a)
26 through (d) apply, or if applicable, subparagraphs (a) through (e)
27 apply:

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

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

40 (c) the person did not discharge the hazardous substance, is not
41 in any way responsible for the hazardous substance, and is not a
42 corporate successor to the discharger or to any person in any way
43 responsible for the hazardous substance or to anyone liable for cleanup
44 and removal costs pursuant to this section;

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

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

12 Nothing in this paragraph (2) shall be construed to alter liability of
13 any person who acquired real property prior to September 14, 1993;
14 and

15 (e) For the purposes of this subparagraph the person must have (i)
16 acquired the property subsequent to a hazardous substance being
17 discharged on the site and which discharge was discovered at the time
18 of acquisition as a result of the appropriate inquiry, as defined in this
19 paragraph (2), (ii) performed, following the effective date of P.L.1997,
20 c.278, a remediation of the site or discharge consistent with the
21 provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied
22 upon a valid no further action letter from the department for a
23 remediation performed prior to acquisition, or obtained approval of a
24 remedial action workplan by the department after the effective date of
25 P.L.1997, c.278 and continued to comply with the conditions of that
26 workplan, and (iii) established and maintained all engineering and
27 institutional controls as may be required pursuant to sections 35 and
28 36 of P.L.1993, c.139. A person who complies with the provisions of
29 this subparagraph by actually performing a remediation of the site or
30 discharge as set forth in (ii) above shall be issued, upon application, a
31 no further action letter by the department. A person who complies
32 with the provisions of this subparagraph either by receipt of a no
33 further action letter from the department following the effective date
34 of P.L.1997, c.278, or by relying on a previously issued no further
35 action letter shall not be liable for any further remediation including
36 any changes in a remediation standard or for the subsequent discovery
37 of a hazardous substance, at the site, if the remediation was for the
38 entire site, and the hazardous substance was discharged prior to the
39 person acquiring the property. Notwithstanding any other provisions
40 of this subparagraph, a person who complies with the provisions of
41 this subparagraph only by virtue of the existence of a previously issued
42 no further action letter shall receive no liability protections for any
43 discharge which occurred during the time period between the issuance
44 of the no further action letter and the property acquisition.
45 Compliance with the provisions of this subparagraph (e) shall not
46 relieve any person of any liability for a discharge that is off the site of

1 the property covered by the no further action letter, for a discharge
2 that occurs at that property after the person acquires the property, for
3 any actions that person negligently takes that aggravates or contributes
4 to a discharge of a hazardous substance, for failure to comply in the
5 future with laws and regulations , or if that person fails to maintain the
6 institutional or engineering controls on the property or to otherwise
7 comply with the provisions of the no further action letter.

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

16 (4) Any federal, State, or local governmental entity which acquires
17 ownership of real property through bankruptcy, tax delinquency,
18 abandonment, escheat, eminent domain, condemnation or any
19 circumstance in which the governmental entity involuntarily acquires
20 title by virtue of its function as sovereign, or where the governmental
21 entity acquires the property by any means for the purpose of
22 promoting the redevelopment of that property, shall not be liable,
23 pursuant to subsection c. of this section or pursuant to common law,
24 to the State or to any other person for any discharge which occurred
25 or began prior to that ownership. This paragraph shall not provide any
26 liability protection to any federal, State or local governmental entity
27 which has caused or contributed to the discharge of a hazardous
28 substance. This paragraph shall not provide any liability protection to
29 any federal, State, or local government entity that acquires ownership
30 of real property by condemnation or eminent domain where the real
31 property is being remediated in a timely manner at the time of the
32 condemnation or eminent domain action.

33 (5) A person, including an owner or operator of a major facility,
34 who owns real property acquired prior to September 14, 1993 on
35 which there has been a discharge, shall not be liable for cleanup and
36 removal costs or for any other damages to the State or to any other
37 person for the discharged hazardous substance pursuant to subsection
38 c. of this section or pursuant to civil common law, if that person can
39 establish by a preponderance of the evidence that subparagraphs (a)
40 through (d) apply:

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

43 (b) (i) at the time the person acquired the real property, the person
44 did not know and had no reason to know that any hazardous substance
45 had been discharged at the real property, or (ii) the person acquired
46 the real property by devise or succession, except that any other funds

1 or property received by that person from the deceased real property
2 owner who discharged a hazardous substance or was in any way
3 responsible for a hazardous substance, shall be made available to
4 satisfy the requirements of P.L.1976, c.141;

5 (c) the person did not discharge the hazardous substance, is not
6 in any way responsible for the hazardous substance, and is not a
7 corporate successor to the discharger or to any person in any way
8 responsible for the hazardous substance or to anyone liable for cleanup
9 and removal costs pursuant to this section;

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

12 To establish that a person had no reason to know that any
13 hazardous substance had been discharged for the purposes of this
14 paragraph (5), the person must have undertaken, at the time of
15 acquisition, all appropriate inquiry on the previous ownership and uses
16 of the property based upon generally accepted good and customary
17 standards.

18 Nothing in this paragraph (5) shall be construed to alter liability of
19 any person who acquired real property on or after September 14,
20 1993.

21 e. Neither the fund nor the Sanitary Landfill Contingency Fund
22 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be
23 liable for any damages incurred by any person who is relieved from
24 liability pursuant to subsection d. or f. of this section for a remediation
25 that involves the use of engineering controls but the fund and the
26 Sanitary Landfill Contingency Fund shall be liable for any remediation
27 that involves only the use of institutional controls if after a valid no
28 further action letter has been issued the department orders additional
29 remediation except that the fund and the Sanitary Landfill Contingency
30 Fund shall not be liable for any additional remediation that is required
31 to remove an institutional control.

32 f. Notwithstanding any other provision of this section, a person,
33 who owns real property acquired on or after the effective date of
34 P.L.1997, c.278 (C.58:10B-11.1 et al.), shall not be liable for any
35 cleanup and removal costs or damages, under this section or pursuant
36 to any other statutory or civil common law, to any person, other than
37 the State and the federal government, harmed by any hazardous
38 substance discharged on that property prior to acquisition, and any
39 migration off that property related to that discharge, provided all the
40 conditions of this subsection are met:

41 (1) the person acquired the real property after the discharge of
42 that hazardous substance at the real property;

43 (2) the person did not discharge the hazardous substance, is not in
44 any way responsible for the hazardous substance, and is not a
45 corporate successor to the discharger or to any person in any way
46 responsible for the hazardous substance or to anyone liable for a

1 discharge pursuant to this section;

2 (3) the person gave notice of the discharge to the department upon
3 actual discovery of that discharge;

4 (4) within 30 days after acquisition of the property, the person
5 commenced a remediation of the discharge, including any migration,
6 pursuant to a department oversight document executed prior to
7 acquisition, and the department is satisfied that remediation was
8 completed in a timely and appropriate fashion; and

9 (5) Within ten days after acquisition of the property, the person
10 agrees in writing to provide access to the State for remediation and
11 related activities, as determined by the State.

12 The provisions of this subsection shall not relieve any person of
13 any liability:

14 (1) for a discharge that occurs at that property after the person
15 acquired the property;

16 (2) for any actions that person negligently takes that aggravates or
17 contributes to the harm inflicted upon any person;

18 (3) if that person fails to maintain the institutional or engineering
19 controls on the property or to otherwise comply with the provisions
20 of a no further action letter or a remedial action workplan and a
21 person is harmed thereby;

22 (4) for any liability to clean up and remove, pursuant to the
23 department's regulations and directions, any hazardous substances that
24 may have been discharged on the property or that may have migrated
25 therefrom; and

26 (5) for that person's failure to comply in the future with laws and
27 regulations.

28 g. Nothing in the amendatory provisions to this section adopted
29 pursuant to P.L.1997, c.278 shall be construed to remove any defense
30 to liability that a person may have had pursuant to subsection e. of this
31 section that existed prior to the effective date of P.L.1997, c.278.

32 h. Nothing in this section shall limit the requirements of any
33 person to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).

34 (cf: P.L.1997, c.278, s.20)²

35

36 ¹[3. Section 23 of P.L.1993, c.139 (C.58:10B-1) is amended to
37 read as follows:

38 23. As used in sections 23 through 43 and section 45 of P.L.1993,
39 c.139 (C.58:10B-1 et seq.) , as may be amended and supplemented:

40 "Area of concern" means any location where contaminants are or
41 were known or suspected to have been discharged, generated,
42 manufactured, refined, transported, stored, handled, treated, or
43 disposed, or where contaminants have or may have migrated;

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

46 "Contamination" or "contaminant" means any discharged

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

5 "Department" means the Department of Environmental Protection;

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

10 "Engineering controls" means any mechanism to contain or
11 stabilize contamination or ensure the effectiveness of a remedial
12 action. Engineering controls may include, without limitation, caps,
13 covers, dikes, trenches, leachate collection systems, signs, fences and
14 physical access controls;

15 "Environmental opportunity zone" has the meaning given that term
16 pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);

17 "Financial assistance" means loans or loan guarantees;

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

26 "Limited restricted use remedial action" means any remedial action
27 that requires the continued use of institutional controls but does not
28 require the use of an engineering control;

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

39 "Preliminary assessment" means the first phase in the process of
40 identifying areas of concern and determining whether contaminants are
41 or were present at a site or have migrated or are migrating from a site,
42 and shall include the initial search for and evaluation of, existing site
43 specific operational and environmental information, both current and
44 historic, to determine if further investigation concerning the
45 documented, alleged, suspected or latent discharge of any contaminant
46 is required. The evaluation of historic information shall be conducted

1 from 1932 to the present, except that the department may require the
2 search for and evaluation of additional information relating to
3 ownership and use of the site prior to 1932 if such information is
4 available through diligent inquiry of the public records;

5 "Remedial action" means those actions taken at a site or offsite if
6 a contaminant has migrated or is migrating therefrom, as may be
7 required by the department, including the removal, treatment,
8 containment, transportation, securing, or other engineering or
9 treatment measures, whether to an unrestricted use or otherwise,
10 designed to ensure that any discharged contaminant at the site or that
11 has migrated or is migrating from the site, is remediated in compliance
12 with the applicable health risk or environmental standards;

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

19 "Remedial investigation" means a process to determine the nature
20 and extent of a discharge of a contaminant at a site or a discharge of
21 a contaminant that has migrated or is migrating from the site and the
22 problems presented by a discharge, and may include data collected,
23 site characterization, sampling, monitoring, and the gathering of any
24 other sufficient and relevant information necessary to determine the
25 necessity for remedial action and to support the evaluation of remedial
26 actions if necessary;

27 "Remediation" or "remediate" means all necessary actions to
28 investigate and clean up or respond to any known, suspected, or
29 threatened discharge of contaminants, including, as necessary, the
30 preliminary assessment, site investigation, remedial investigation, and
31 remedial action, provided, however, that "remediation" or "remediate"
32 shall not include the payment of compensation for damage to, or loss
33 of, natural resources;

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

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

41 "Remediation standards" means the combination of numeric
42 standards that establish a level or concentration, and narrative
43 standards to which contaminants must be treated, removed, or
44 otherwise cleaned for soil, groundwater, or surface water, as provided
45 by the department pursuant to section 35 of P.L.1993, c.139
46 (C.58:10B-12) in order to meet the health risk or environmental

1 standards;

2 "Restricted use remedial action" means any remedial action that
3 requires the continued use of engineering and institutional controls in
4 order to meet the established health risk or environmental standards;

5 "Site investigation" means the collection and evaluation of data
6 adequate to determine whether or not discharged contaminants exist
7 at a site or have migrated or are migrating from the site at levels in
8 excess of the applicable remediation standards. A site investigation
9 shall be developed based upon the information collected pursuant to
10 the preliminary assessment;

11 "Unrestricted use remedial action" means any remedial action that
12 does not require the continued use of engineering or institutional
13 controls in order to meet the established health risk or environmental
14 standards;

15 "Voluntarily perform a remediation" means performing a
16 remediation without having been ordered or directed to do so by the
17 department or by a court and without being compelled to perform a
18 remediation pursuant to the provisions of P.L.1983, c.330 (C.13:1K-6
19 et al.).

20 (cf: P.L.1997, c.278, s.9)]¹

21

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

24 23. As used in sections 23 through 43 and section 45 of P.L.1993,
25 c.139 (C.58:10B-1 et seq.) , as may be amended and supplemented:

26 "Area of concern" means any location where contaminants are or
27 were known or suspected to have been discharged, generated,
28 manufactured, refined, transported, stored, handled, treated, or
29 disposed, or where contaminants have or may have migrated;

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

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

37 "Department" means the Department of Environmental Protection;

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

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

1 "Environmental opportunity zone" has the meaning given that term
2 pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);

3 "Financial assistance" means loans or loan guarantees;

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

12 "Limited restricted use remedial action" means any remedial action
13 that requires the continued use of institutional controls but does not
14 require the use of an engineering control;

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

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

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

45 "Remedial action workplan" means a plan for the remedial action
46 to be undertaken at a site, or at any area to which a discharge

1 originating at a site is migrating or has migrated; a description of the
2 remedial action to be used to remediate a site; a time schedule and cost
3 estimate of the implementation of the remedial action; and any other
4 information the department deems necessary;

5 "Remedial investigation" means a process to determine the nature
6 and extent of a discharge of a contaminant at a site or a discharge of
7 a contaminant that has migrated or is migrating from the site and the
8 problems presented by a discharge, and may include data collected,
9 site characterization, sampling, monitoring, and the gathering of any
10 other sufficient and relevant information necessary to determine the
11 necessity for remedial action and to support the evaluation of remedial
12 actions if necessary;

13 "Remediation" or "remediate" means all necessary actions to
14 investigate and clean up or respond to any known, suspected, or
15 threatened discharge of contaminants, including, as necessary, the
16 preliminary assessment, site investigation, remedial investigation, and
17 remedial action, provided, however, that "remediation" or "remediate"
18 shall not include the payment of compensation for damage to, or loss
19 of, natural resources;

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

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

27 "Remediation standards" means the combination of numeric
28 standards that establish a level or concentration, and narrative
29 standards to which contaminants must be treated, removed, or
30 otherwise cleaned for soil, groundwater, or surface water, as provided
31 by the department pursuant to section 35 of P.L.1993, c.139
32 (C.58:10B-12) in order to meet the health risk or environmental
33 standards;

34 "Restricted use remedial action" means any remedial action that
35 requires the continued use of engineering and institutional controls in
36 order to meet the established health risk or environmental standards;

37 "Site investigation" means the collection and evaluation of data
38 adequate to determine whether or not discharged contaminants exist
39 at a site or have migrated or are migrating from the site at levels in
40 excess of the applicable remediation standards. A site investigation
41 shall be developed based upon the information collected pursuant to
42 the preliminary assessment;

43 "Unrestricted use remedial action" means any remedial action that
44 does not require the continued use of engineering or institutional
45 controls in order to meet the established health risk or environmental
46 standards;

1 "Voluntarily perform a remediation" means performing a
2 remediation without having been ordered or directed to do so by the
3 department or by a court and without being compelled to perform a
4 remediation pursuant to the provisions of P.L.1983, c.330 (C.13:1K-6
5 et al.).

6 (cf: P.L.1997, c.278, s.9)²

7

8 ¹[4. Section 6 of P.L.1997, c.278 (C.58:10B-13.1) is amended to
9 read as follows:

10 6. a. Whenever after the effective date of P.L.1997, c.278
11 (C.58:10B-1.1 et al.) the Department of Environmental Protection
12 issues a no further action letter pursuant to a remediation, it shall also
13 issue to the person performing the remediation a covenant not to sue
14 with respect to the real property upon which the remediation has been
15 conducted. A covenant not to sue shall be executed by the person
16 performing the remediation and by the department in order to become
17 effective. The covenant not to sue shall be consistent with any
18 conditions and limitations contained in the no further action letter.
19 The covenant not to sue shall be for any area of concern remediated
20 and may apply to the entire real property if the remediation included
21 a preliminary assessment and, if necessary, a site investigation of the
22 entire real property, and any other necessary remedial actions. The
23 covenant remains effective only for as long as the real property for
24 which the covenant was issued continues to meet the conditions of the
25 no further action letter. Upon a finding by the department that real
26 property or a portion thereof to which a covenant not to sue pertains,
27 no longer meets with the conditions of the no further action letter, the
28 department shall provide notice of that fact to the person responsible
29 for maintaining compliance with the no further action letter. The
30 department may allow the person a reasonable time to come into
31 compliance with the terms of the original no further action letter. If
32 the property does not meet the conditions of the no further action
33 letter and if the department does not allow for a period of time to
34 come into compliance or if the person fails to come into compliance
35 within the time period, the department may invoke the provisions of
36 the covenant not to sue permitting revocation of the covenant not to
37 sue.

38 Except as provided in subsection e. of this section, a covenant not
39 to sue shall contain the following, as applicable:

40 (1) a provision releasing the person who undertook the remediation
41 from all civil liability to the State to perform any additional
42 remediation, to pay compensation for damage to, or loss of, natural
43 resources, or for any cleanup and removal costs;

44 (2) for a remediation that involves the use of engineering or
45 institutional controls:

46 (a) a provision requiring the person, or any subsequent owner,

1 lessee, or operator during the person's period of ownership, tenancy,
2 or operation, to maintain those controls, conduct periodic monitoring
3 for compliance, and submit to the department, on a biennial basis, a
4 certification that the engineering and institutional controls are being
5 properly maintained and continue to be protective of public health and
6 safety and of the environment. The certification shall state the
7 underlying facts and shall include the results of any tests or
8 procedures performed that support the certification; and

9 (b) a provision revoking the covenant if the engineering or
10 institutional controls are not being maintained or are no longer in
11 place; and

12 (3) for a remediation that involves the use of engineering controls
13 but not for any remediation that involves the use of institutional
14 controls only, a provision barring the person or persons whom the
15 covenant not to sue benefits, from making a claim against the New
16 Jersey Spill Compensation Fund and the Sanitary Landfill Facility
17 Contingency Fund for any costs or damages relating to the real
18 property and remediation covered by the covenant not to sue. The
19 covenant not to sue shall not bar a claim by any person against the
20 New Jersey Spill Compensation Fund and the Sanitary Landfill
21 Contingency Fund for any remediation that involves only the use of
22 institutional controls if, after a valid no further action letter has been
23 issued, the department orders additional remediation, except that the
24 covenant shall bar such a claim if the department ordered additional
25 remediation in order to remove the institutional control.

26 b. Unless a covenant not to sue issued under this section is
27 revoked by the department, the covenant shall remain effective. The
28 covenant not to sue shall apply to all successors in ownership of the
29 property and to all persons who lease the property or who engage in
30 operations on the property.

31 c. If a covenant not to sue is revoked, liability for any additional
32 remediation shall not be applied retroactively to any person for whom
33 the covenant remained in effect during that person's ownership,
34 tenancy, or operation of the property.

35 d. A covenant not to sue and the protections it affords shall not
36 apply to any discharge that occurs subsequent to the issuance of the
37 no further action letter which was the basis of the issuance of the
38 covenant, nor shall a covenant not to sue and the protections it affords
39 relieve any person of the obligations to comply in the future with laws
40 and regulations.

41 e. The covenant not to sue may be issued to any person who
42 obtains a no further action letter as provided in subsection a. of this
43 section. The covenant not to sue shall not provide relief from any
44 liability, either under statutory or common law, to any person who is
45 liable for cleanup and removal costs pursuant to subsection c. of
46 section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not have

1 a defense to liability pursuant to subsection d. of that section.
2 (cf: P.L.1997, c.278, s.6)]¹

3
4 ²4. Section 6 of P.L.1997, c.278 (C.58:10B-13.1) is amended to
5 read as follows:

6 6. a. Whenever after the effective date of P.L.1997, c.278
7 (C.58:10B-1.1 et al.) the Department of Environmental Protection
8 issues a no further action letter pursuant to a remediation, it shall also
9 issue to the person performing the remediation a covenant not to sue
10 with respect to the real property upon which the remediation has been
11 conducted. A covenant not to sue shall be executed by the person
12 performing the remediation and by the department in order to become
13 effective. The covenant not to sue shall be consistent with any
14 conditions and limitations contained in the no further action letter.
15 The covenant not to sue shall be for any area of concern remediated
16 and may apply to the entire real property if the remediation included
17 a preliminary assessment and, if necessary, a site investigation of the
18 entire real property, and any other necessary remedial actions. The
19 covenant remains effective only for as long as the real property for
20 which the covenant was issued continues to meet the conditions of the
21 no further action letter. Upon a finding by the department that real
22 property or a portion thereof to which a covenant not to sue pertains,
23 no longer meets with the conditions of the no further action letter, the
24 department shall provide notice of that fact to the person responsible
25 for maintaining compliance with the no further action letter. The
26 department may allow the person a reasonable time to come into
27 compliance with the terms of the original no further action letter. If
28 the property does not meet the conditions of the no further action
29 letter and if the department does not allow for a period of time to
30 come into compliance or if the person fails to come into compliance
31 within the time period, the department may invoke the provisions of
32 the covenant not to sue permitting revocation of the covenant not to
33 sue.

34 Except as provided in subsection e. of this section, a covenant not
35 to sue shall contain the following, as applicable:

36 (1) a provision releasing the person who undertook the remediation
37 from all civil liability to the State to perform any additional
38 remediation, to pay compensation for damage to, or loss of, natural
39 resources, or for any cleanup and removal costs;

40 (2) for a remediation that involves the use of engineering or
41 institutional controls:

42 (a) a provision requiring the person, or any subsequent owner,
43 lessee, or operator during the person's period of ownership, tenancy,
44 or operation, to maintain those controls, conduct periodic monitoring
45 for compliance, and submit to the department, on a biennial basis, a
46 certification that the engineering and institutional controls are being

1 properly maintained and continue to be protective of public health and
2 safety and of the environment. The certification shall state the
3 underlying facts and shall include the results of any tests or
4 procedures performed that support the certification; and

5 (b) a provision revoking the covenant if the engineering or
6 institutional controls are not being maintained or are no longer in
7 place; and

8 (3) for a remediation that involves the use of engineering controls
9 but not for any remediation that involves the use of institutional
10 controls only, a provision barring the person or persons whom the
11 covenant not to sue benefits, from making a claim against the New
12 Jersey Spill Compensation Fund and the Sanitary Landfill Facility
13 Contingency Fund for any costs or damages relating to the real
14 property and remediation covered by the covenant not to sue. The
15 covenant not to sue shall not bar a claim by any person against the
16 New Jersey Spill Compensation Fund and the Sanitary Landfill
17 Contingency Fund for any remediation that involves only the use of
18 institutional controls if, after a valid no further action letter has been
19 issued, the department orders additional remediation, except that the
20 covenant shall bar such a claim if the department ordered additional
21 remediation in order to remove the institutional control.

22 b. Unless a covenant not to sue issued under this section is
23 revoked by the department, the covenant shall remain effective. The
24 covenant not to sue shall apply to all successors in ownership of the
25 property and to all persons who lease the property or who engage in
26 operations on the property.

27 c. If a covenant not to sue is revoked, liability for any additional
28 remediation shall not be applied retroactively to any person for whom
29 the covenant remained in effect during that person's ownership,
30 tenancy, or operation of the property.

31 d. A covenant not to sue and the protections it affords shall not
32 apply to any discharge that occurs subsequent to the issuance of the
33 no further action letter which was the basis of the issuance of the
34 covenant, nor shall a covenant not to sue and the protections it affords
35 relieve any person of the obligations to comply in the future with laws
36 and regulations.

37 e. The covenant not to sue may be issued to any person who
38 obtains a no further action letter as provided in subsection a. of this
39 section. The covenant not to sue shall not provide relief from any
40 liability, either under statutory or common law, to any person who is
41 liable for cleanup and removal costs pursuant to subsection c. of
42 section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not have
43 a defense to liability pursuant to subsection d. of that section.

44 (cf: P.L.1997, c.278, s.6)²

45

46 ¹[5. (New section) a. (1) Except where a limitations provision

1 expressly and specifically applies to actions commenced by the State
2 or where a longer limitations period would otherwise apply, and
3 subject to any statutory provisions or common law rules extending
4 limitations periods, any civil action concerning the remediation of a
5 contaminated site or the closure of a sanitary landfill facility
6 commenced by the State pursuant to the State's environmental laws
7 shall be commenced within three years next after the cause of action
8 shall have accrued.

9 (2) For purposes of determining whether a civil action subject to
10 the limitations periods specified in paragraph (1) of this subsection has
11 been commenced within time, no cause of action shall be deemed to
12 have accrued prior to January 1, 2002 or until the contaminated site
13 is remediated or the sanitary landfill has been properly closed,
14 whichever is later.

15 b. (1) Except where a limitations provision expressly and
16 specifically applies to actions commenced by the State or where a
17 longer limitations period would otherwise apply, and subject to any
18 statutory provisions or common law rules extending limitations
19 periods, any civil action concerning the payment of compensation for
20 damage to, or loss of, natural resources due to the discharge of a
21 hazardous substance, commenced by the State pursuant to the State's
22 environmental laws, shall be commenced within four years next after
23 the cause of action shall have accrued.

24 (2) For purposes of determining whether a civil action subject to
25 the limitations periods specified in paragraph (1) of this subsection has
26 been commenced within time, no cause of action shall be deemed to
27 have accrued prior to January 1, 2002 or until the performance of the
28 preliminary assessment, site investigation, and remedial investigation,
29 if necessary, of the contaminated site or the sanitary landfill facility,
30 whichever is later.

31 c. As used in this section:

32 "State's environmental laws" means the "Spill Compensation and
33 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water
34 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
35 P.L.1986, c.102 (C.58:10A-21 et seq.), the "Brownfield and
36 Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1
37 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6
38 et al.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1
39 et seq.), the "Comprehensive Regulated Medical Waste Management
40 Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous
41 Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the
42 "Sanitary Landfill Facility Closure and Contingency Fund Act,"
43 P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level
44 Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333
45 (C.13:1E-177 et seq.), or any other law or regulation by which the
46 State may compel a person to perform remediation activities on

1 contaminated property; and

2 "State" means the State, its political subdivisions, any office,
3 department, division, bureau, board, commission or agency of the
4 State or one of its political subdivisions, and any public authority or
5 public agency, including, but not limited to, the New Jersey Transit
6 Corporation and the University of Medicine and Dentistry of New
7 Jersey.]¹

8

9 25. (New section) a. (1) Except where a limitations provision
10 expressly and specifically applies to actions commenced by the State
11 or where a longer limitations period would otherwise apply, and
12 subject to any statutory provisions or common law rules extending
13 limitations periods, any civil action concerning the remediation of a
14 contaminated site or the closure of a sanitary landfill facility
15 commenced by the State pursuant to the State's environmental laws
16 shall be commenced within three years next after the cause of action
17 shall have accrued.

18 (2) For purposes of determining whether a civil action subject to
19 the limitations periods specified in paragraph (1) of this subsection has
20 been commenced within time, no cause of action shall be deemed to
21 have accrued prior to January 1, 2002 or until the contaminated site
22 is remediated or the sanitary landfill has been properly closed,
23 whichever is later.

24 b. (1) Except where a limitations provision expressly and
25 specifically applies to actions commenced by the State or where a
26 longer limitations period would otherwise apply, and subject to any
27 statutory provisions or common law rules extending limitations
28 periods, any civil action concerning the payment of compensation for
29 damage to, or loss of, natural resources due to the discharge of a
30 hazardous substance, commenced by the State pursuant to the State's
31 environmental laws, shall be commenced within four years next after
32 the cause of action shall have accrued.

33 (2) For purposes of determining whether a civil action subject to
34 the limitations periods specified in paragraph (1) of this subsection has
35 been commenced within time, no cause of action shall be deemed to
36 have accrued prior to January 1, 2002 or until the performance of the
37 preliminary assessment, site investigation, and remedial investigation,
38 if necessary, of the contaminated site or the sanitary landfill facility,
39 whichever is later.

40 c. As used in this section:

41 "State's environmental laws" means the "Spill Compensation and
42 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water
43 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
44 P.L.1986, c.102 (C.58:10A-21 et seq.), the "Brownfield and
45 Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1
46 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6

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

11 "State" means the State, its political subdivisions, any office,
12 department, division, bureau, board, commission or agency of the
13 State or one of its political subdivisions, and any public authority or
14 public agency, including, but not limited to, the New Jersey Transit
15 Corporation and the University of Medicine and Dentistry of New
16 Jersey.²

17

18 ²6. (New section) Any person who has a defense to liability
19 pursuant to paragraphs (2) and (5) of subsection d. of section 8 of
20 P.L.1976, c.141 (C.58:10-23.11g) shall not be liable for the payment
21 of compensation for damage to, or loss of, natural resources due to the
22 discharge of a hazardous substance.²

23

24 ¹[7.] ²[¹.¹] 7.² Section 2 of P.L.1991, c.387 (C.2A:14-1.2) is
25 amended to read as follows:

26 2. a. ²[¹(1)¹]² Except ²[¹ as provided in paragraph (2) of this
27 subsection, or except ¹]² where a limitations provision expressly and
28 specifically applies to actions commenced by the State or where a
29 longer limitations period would otherwise apply, and subject to any
30 statutory provisions or common law rules extending limitations
31 periods, any civil action commenced by the State shall be commenced
32 within ten years next after the cause of action shall have accrued.

33 ²[¹(2) Except where a limitations provision expressly and
34 specifically applies to actions commenced by the State or where a
35 longer limitations period would otherwise apply, and subject to any
36 statutory provisions or common law rules extending limitations
37 periods, any civil action commenced by the State pursuant to the laws
38 concerning the remediation of contaminated sites or the closure of
39 sanitary landfill facilities shall be commenced within three years next
40 after the cause of action shall have accrued.¹]²

41 b. ²[¹(1)¹]² For purposes of determining whether ¹[an] ²[a civil
42 ¹] an² action subject to the limitations period specified in [² ¹
43 paragraph (1) of ¹]² subsection a. of this section has been commenced
44 within time, no ¹[such] ²[cause of ¹] such² action shall be deemed to
45 have accrued prior to January 1, 1992.

1 ²[¹(2) For purposes of determining whether a civil action subject
2 to the limitations period specified in paragraph (2) of subsection a. of
3 this section has been commenced within time, no cause of action shall
4 be deemed to have accrued prior to January 1, 2002, or until the
5 contaminated site has been remediated or the sanitary landfill facility
6 has been properly closed, whichever is later.¹²

7 c. As used in this act ¹[, the term] ²[:

8 "Laws concerning the remediation of contaminated sites or the
9 closure of sanitary landfill facilities" means the "Spill Compensation
10 and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water
11 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
12 P.L.1986, c.102 (C.58:10A-21 et seq.), the "Brownfield and
13 Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1
14 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6
15 et al.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1
16 et seq.), the "Comprehensive Regulated Medical Waste Management
17 Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous
18 Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the
19 "Sanitary Landfill Facility Closure and Contingency Fund Act,"
20 P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level
21 Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333
22 (C.13:1E-177 et seq.), or any other law or regulation by which the
23 State may compel a person to perform remediation activities on
24 contaminated property; and ¹], the term² "State" means the State, its
25 political subdivisions, any office, department, division, bureau, board,
26 commission or agency of the State or one of its political subdivisions,
27 and any public authority or public agency, including, but not limited
28 to, the New Jersey Transit Corporation and the University of Medicine
29 and Dentistry of New Jersey.

30 ¹[The provisions of this section shall not apply to any civil action
31 commenced by the State concerning the remediation of a contaminated
32 site or the closure of a sanitary landfill facility, or the payment of
33 compensation for damage to, or loss of, natural resources due to the
34 discharge of a hazardous substance, and subject to the limitations
35 period specified in section 5 of P.L. , c. (C.) (before the Legislature
36 as this bill).]¹ ² The provisions of this section shall not apply to any
37 civil action commenced by the State concerning the remediation of a
38 contaminated site or the closure of a sanitary landfill facility, or the
39 payment of compensation for damage to, or loss of, natural resources
40 due to the discharge of a hazardous substance, and subject to the
41 limitations period specified in section 5 of P.L. , c. (C.) (before the
42 Legislature as this bill).²

43 (cf: P.L.1991, c.387, s.2)

44
45 ¹[8.] ²[2.1] 8.² This act shall take effect immediately.

1

2

3 Establishes and extends statute of limitations for site cleanups;

4 clarifies liability for purchasers of contaminated sites.

CHAPTER 154

AN ACT concerning the cleanup of contaminated property, amending and supplementing Title 58 of the Revised Statutes, and amending P.L.1991, c.387.

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

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

C.58:10-23.11b Definitions.

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

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

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

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

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

"Cleanup and removal costs" means all costs associated with a discharge, incurred by the State or its political subdivisions or their agents or any person with written approval from the department in the: (1) removal or attempted removal of hazardous substances, or (2) taking of reasonable measures to prevent or mitigate damage to the public health, safety, or welfare, including, but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property, including wildlife and other natural resources, and shall include costs incurred by the State for the indemnification and legal defense of contractors pursuant to sections 1 through 11 of P.L.1991, c.373 (C.58:10-23.11f8 et seq.). For the purposes of this definition, costs incurred by the State shall not include any indirect costs for department oversight performed after the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.), but may include only those program costs directly related to the cleanup and removal of the discharge; however, where the State or the fund have expended money for the cleanup and removal of a discharge and are seeking to recover the costs incurred in that cleanup and removal action from a responsible party, costs incurred by the State shall include any indirect costs;

"Commissioner" means the Commissioner of Environmental Protection;

"Contamination" or "contaminant" means any discharged hazardous substance, 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;

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

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

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

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

"Fund" means the New Jersey Spill Compensation Fund;

"Hazardous substances" means the "environmental hazardous substances" on the environmental hazardous substance list adopted by the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4); such 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 federal Environmental Protection Agency pursuant to section 311 of the federal Water Pollution Control Act Amendments of 1972, Pub.L.92-500, as amended by the Clean Water Act of 1977, Pub.L.95-217 (33 U.S.C. s.1251 et seq.); the list of toxic pollutants designated by Congress or the EPA pursuant to section 307 of that act; and the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 101 of the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L.96-510 (42 U.S.C. s.9601 et seq.); provided, however, that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.);

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

"Major facility" includes, but is not limited to, any refinery, storage or transfer terminal, pipeline, deep-water port, drilling platform or any appurtenance related to any of the preceding that is used or is capable of being used to refine, produce, store, handle, transfer, process or transport hazardous substances. "Major facility" shall include a vessel only when that vessel is engaged in a transfer of hazardous substances between it and another vessel, and in any event shall not include a vessel used solely for activities directly related to recovering, containing, cleaning up or removing discharges of petroleum in the surface waters of the State, including training, research, and other activities directly related to spill response.

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

- (1) 20,000 gallons or more for hazardous substances which are other than petroleum or petroleum products, or
- (2) 200,000 gallons or more for hazardous substances of all kinds.

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

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

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

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

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

"Petroleum" or "petroleum products" means oil or petroleum of any kind and in any form, including, but not limited to, oil, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, and substances or additives to be utilized in the refining or blending of crude petroleum or petroleum stock in this State; however, any compound designated by specific chemical name on the list of hazardous substances adopted by the department pursuant to this section shall not be considered petroleum or a petroleum product for the purposes of P.L.1976, c.141, unless such compound is to be utilized in the refining or blending of crude petroleum or petroleum stock in this State;

"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 latent discharge of any contaminant is required. The evaluation of historic information shall be conducted from 1932 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 1932 if such information is available through diligent inquiry of the public records;

"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 to an unrestricted use or otherwise, designed to ensure that any discharged contaminant at the site or that has migrated or is migrating from the site, is remediated in compliance with the applicable health risk or environmental 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 evaluation of remedial actions if necessary;

"Remediation" or "remediate" means all necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, provided, however, that "remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources;

"Site investigation" means the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site 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;

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

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

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

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

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

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

C.58:10-23.11g Liability for cleanup and removal costs.

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 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.

(3) In addition to the persons liable pursuant to this subsection, any person who owns real property acquired on or after September 14, 1993 on which there has been a discharge prior to the person's acquisition of that property and who knew or should have known that a hazardous substance had been discharged at the real property, 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). Nothing in this paragraph shall be construed to alter liability of any person who acquired real property prior to September 14, 1993.

d. (1) 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 on or after September 14, 1993 on which there has been a discharge, shall not be liable for cleanup and removal costs or for any other damages to the State or to any other person for the discharged hazardous substance pursuant to subsection c. of this section or pursuant to civil common law, if that person can establish by a preponderance of the evidence that subparagraphs (a) through (d) apply, or if applicable, subparagraphs (a) through (e) 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, or (iii) the person complies with the provisions of subparagraph (e) of paragraph (2) of this subsection;

(c) the person did not discharge the hazardous substance, is not in any way responsible for the hazardous substance, and is not a corporate successor to the discharger or to any person in any way responsible for the hazardous substance or to anyone liable for cleanup and removal costs pursuant to this section;

(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. 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.1993, c.139 (C.58:10B-1), and performed in accordance with rules and regulations promulgated by the department defining these terms.

Nothing in this paragraph (2) shall be construed to alter liability of any person who acquired real property prior to September 14, 1993; and

(e) For the purposes of this subparagraph the person must have (i) acquired the property subsequent to a hazardous substance being discharged on the site and which discharge was discovered at the time of acquisition as a result of the appropriate inquiry, as defined in this

paragraph (2), (ii) performed, following the effective date of P.L.1997, c.278, a remediation of the site or discharge consistent with the provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied upon a valid no further action letter from the department for a remediation performed prior to acquisition, or obtained approval of a remedial action workplan by the department after the effective date of P.L.1997, c.278 and continued to comply with the conditions of that workplan, and (iii) established and maintained all engineering and institutional controls as may be required pursuant to sections 35 and 36 of P.L.1993, c.139. A person who complies with the provisions of this subparagraph by actually performing a remediation of the site or discharge as set forth in (ii) above shall be issued, upon application, a no further action letter by the department. A person who complies with the provisions of this subparagraph either by receipt of a no further action letter from the department following the effective date of P.L.1997, c.278, or by relying on a previously issued no further action letter shall not be liable for any further remediation including any changes in a remediation standard or for the subsequent discovery of a hazardous substance, at the site, if the remediation was for the entire site, and the hazardous substance was discharged prior to the person acquiring the property. Notwithstanding any other provisions of this subparagraph, a person who complies with the provisions of this subparagraph only by virtue of the existence of a previously issued no further action letter shall receive no liability protections for any discharge which occurred during the time period between the issuance of the no further action letter and the property acquisition. Compliance with the provisions of this subparagraph (e) shall not relieve any person of any liability for a discharge that is off the site of the property covered by the no further action letter, for a discharge that occurs at that property after the person acquires the property, for any actions that person negligently takes that aggravates or contributes to a discharge of a hazardous substance, for failure to comply in the future with laws and regulations, or if that person fails to maintain the institutional or engineering controls on the property or to otherwise comply with the provisions of the no further action letter.

(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 governmental entity which acquires ownership of real property through bankruptcy, tax delinquency, abandonment, escheat, eminent domain, condemnation or any circumstance in which the governmental entity involuntarily acquires title by virtue of its function as sovereign, or where the governmental entity acquires the property by any means for the purpose of promoting the redevelopment of that property, shall not be liable, pursuant to subsection c. of this section or pursuant to common law, to the State or to any other person for any discharge which occurred or began prior to that ownership. This paragraph shall not provide any liability protection to any federal, State or local governmental entity which has caused or contributed to the discharge of a hazardous substance. This paragraph shall not provide any liability protection to any federal, State, or local government entity that acquires ownership of real property by condemnation or eminent domain where the real property is being remediated in a timely manner at the time of the condemnation or eminent domain action.

(5) A person, including an owner or operator of a major facility, who owns real property acquired prior to September 14, 1993 on which there has been a discharge, shall not be liable for cleanup and removal costs or for any other damages to the State or to any other person for the discharged hazardous substance pursuant to subsection c. of this section or pursuant to civil common law, if that person can establish by a preponderance of the evidence that subparagraphs (a) through (d) 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, is not in any way responsible for the hazardous substance, and is not a corporate successor to the discharger or to any person in any way responsible for the hazardous substance or to anyone liable for cleanup and removal costs pursuant to this section;

(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 (5), the person must have undertaken, at the time of acquisition, all appropriate inquiry on the previous ownership and uses of the property based upon generally accepted good and customary standards.

Nothing in this paragraph (5) shall be construed to alter liability of any person who acquired real property on or after September 14, 1993.

e. Neither the fund nor the Sanitary Landfill Contingency Fund established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be liable for any damages incurred by any person who is relieved from liability pursuant to subsection d. or f. of this section for a remediation that involves the use of engineering controls but the fund and the Sanitary Landfill Contingency Fund shall be liable for any remediation that involves only the use of institutional controls if after a valid no further action letter has been issued the department orders additional remediation except that the fund and the Sanitary Landfill Contingency Fund shall not be liable for any additional remediation that is required to remove an institutional control.

f. Notwithstanding any other provision of this section, a person, who owns real property acquired on or after the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for any cleanup and removal costs or damages, under this section or pursuant to any other statutory or civil common law, to any person, other than the State and the federal government, harmed by any hazardous substance discharged on that property prior to acquisition, and any migration off that property related to that discharge, provided all the conditions of this subsection are met:

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

(2) the person did not discharge the hazardous substance, is not in any way responsible for the hazardous substance, and is not a corporate successor to the discharger or to any person in any way responsible for the hazardous substance or to anyone liable for a discharge pursuant to this section;

(3) the person gave notice of the discharge to the department upon actual discovery of that discharge;

(4) within 30 days after acquisition of the property, the person commenced a remediation of the discharge, including any migration, pursuant to a department oversight document executed prior to acquisition, and the department is satisfied that remediation was completed in a timely and appropriate fashion; and

(5) Within ten days after acquisition of the property, the person agrees in writing to provide access to the State for remediation and related activities, as determined by the State.

The provisions of this subsection shall not relieve any person of any liability:

(1) for a discharge that occurs at that property after the person acquired the property;

(2) for any actions that person negligently takes that aggravates or contributes to the harm inflicted upon any person;

(3) if that person fails to maintain the institutional or engineering controls on the property or to otherwise comply with the provisions of a no further action letter or a remedial action workplan and a person is harmed thereby;

(4) for any liability to clean up and remove, pursuant to the department's regulations and directions, any hazardous substances that may have been discharged on the property or that may have migrated therefrom; and

(5) for that person's failure to comply in the future with laws and regulations.

g. Nothing in the amendatory provisions to this section adopted pursuant to P.L.1997, c.278 shall be construed to remove any defense to liability that a person may have had pursuant to subsection e. of this section that existed prior to the effective date of P.L.1997, c.278.

h. Nothing in this section shall limit the requirements of any person to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).

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

C.58:10B-1 Definitions.

23. As used in sections 23 through 43 and section 45 of P.L.1993, c.139 (C.58:10B-1 et seq.), as may be amended and supplemented:

"Area of concern" means any 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 physical access controls;

"Environmental opportunity zone" has the meaning given that term pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);

"Financial assistance" means loans or loan guarantees;

"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;

"Limited restricted use remedial action" means any remedial action that requires the continued use of institutional controls but does not require the use of an engineering control;

"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 latent discharge of any contaminant is required. The evaluation of historic information shall be conducted from 1932 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 1932 if such information is available through diligent inquiry of the public records;

"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 to an unrestricted use or otherwise, designed to ensure that any discharged contaminant at the site or that has migrated or is migrating from the site, is remediated in compliance with the applicable health risk or environmental standards;

"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;

"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 evaluation of remedial actions if necessary;

"Remediation" or "remediate" means all necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, provided, however, that "remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources;

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

"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.1993, c.139 (C.58:10B-3);

"Remediation standards" means the combination of numeric standards that establish a level or concentration, and narrative standards to which contaminants must be treated, removed, or otherwise cleaned for soil, groundwater, or surface water, as provided by the department pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12) in order to meet the health risk or environmental standards;

"Restricted use remedial action" means any remedial action that requires the continued use of engineering and institutional controls in order to meet the established health risk or environmental standards;

"Site investigation" means the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site 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;

"Unrestricted use remedial action" means any remedial action that does not require the continued use of engineering or institutional controls in order to meet the established health risk or environmental standards;

"Voluntarily perform a remediation" means performing a remediation without having been ordered or directed to do so by the department or by a court and without being compelled to perform a remediation pursuant to the provisions of P.L.1983, c.330 (C.13:1K-6 et al.).

4. Section 6 of P.L.1997, c.278 (C.58:10B-13.1) is amended to read as follows:

C.58:10B-13.1 No further action letter; covenant not to sue.

6. a. Whenever after the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.) the Department of Environmental Protection issues a no further action letter pursuant to a remediation, it shall also issue to the person performing the remediation a covenant not to sue with respect to the real property upon which the remediation has been conducted. A covenant not to sue shall be executed by the person performing the remediation and by the department in order to become effective. The covenant not to sue shall be consistent with any conditions

and limitations contained in the no further action letter. The covenant not to sue shall be for any area of concern remediated and may apply to the entire real property if the remediation included a preliminary assessment and, if necessary, a site investigation of the entire real property, and any other necessary remedial actions. The covenant remains effective only for as long as the real property for which the covenant was issued continues to meet the conditions of the no further action letter. Upon a finding by the department that real property or a portion thereof to which a covenant not to sue pertains, no longer meets with the conditions of the no further action letter, the department shall provide notice of that fact to the person responsible for maintaining compliance with the no further action letter. The department may allow the person a reasonable time to come into compliance with the terms of the original no further action letter. If the property does not meet the conditions of the no further action letter and if the department does not allow for a period of time to come into compliance or if the person fails to come into compliance within the time period, the department may invoke the provisions of the covenant not to sue permitting revocation of the covenant not to sue.

Except as provided in subsection e. of this section, a covenant not to sue shall contain the following, as applicable:

(1) a provision releasing the person who undertook the remediation from all civil liability to the State to perform any additional remediation, to pay compensation for damage to, or loss of, natural resources, or for any cleanup and removal costs;

(2) for a remediation that involves the use of engineering or institutional controls:

(a) a provision requiring the person, or any subsequent owner, lessee, or operator during the person's period of ownership, tenancy, or operation, to maintain those controls, conduct periodic monitoring for compliance, and submit to the department, on a biennial basis, a certification that the engineering and institutional controls are being properly maintained and continue to be protective of public health and safety and of the environment. The certification shall state the underlying facts and shall include the results of any tests or procedures performed that support the certification; and

(b) a provision revoking the covenant if the engineering or institutional controls are not being maintained or are no longer in place; and

(3) for a remediation that involves the use of engineering controls but not for any remediation that involves the use of institutional controls only, a provision barring the person or persons whom the covenant not to sue benefits, from making a claim against the New Jersey Spill Compensation Fund and the Sanitary Landfill Facility Contingency Fund for any costs or damages relating to the real property and remediation covered by the covenant not to sue. The covenant not to sue shall not bar a claim by any person against the New Jersey Spill Compensation Fund and the Sanitary Landfill Contingency Fund for any remediation that involves only the use of institutional controls if, after a valid no further action letter has been issued, the department orders additional remediation, except that the covenant shall bar such a claim if the department ordered additional remediation in order to remove the institutional control.

b. Unless a covenant not to sue issued under this section is revoked by the department, the covenant shall remain effective. The covenant not to sue shall apply to all successors in ownership of the property and to all persons who lease the property or who engage in operations on the property.

c. If a covenant not to sue is revoked, liability for any additional remediation shall not be applied retroactively to any person for whom the covenant remained in effect during that person's ownership, tenancy, or operation of the property.

d. A covenant not to sue and the protections it affords shall not apply to any discharge that occurs subsequent to the issuance of the no further action letter which was the basis of the issuance of the covenant, nor shall a covenant not to sue and the protections it affords relieve any person of the obligations to comply in the future with laws and regulations.

e. The covenant not to sue may be issued to any person who obtains a no further action letter as provided in subsection a. of this section. The covenant not to sue shall not provide relief from any liability, either under statutory or common law, to any person who is liable for cleanup and removal costs pursuant to subsection c. of section 8 of P.L.1976, c.141

(C.58:10-23.11g), and who does not have a defense to liability pursuant to subsection d. of that section.

C.58:10B-17.1 Commencement of civil action within three years, limitations, provision; definitions.

5. a. (1) Except where a limitations provision expressly and specifically applies to actions commenced by the State or where a longer limitations period would otherwise apply, and subject to any statutory provisions or common law rules extending limitations periods, any civil action concerning the remediation of a contaminated site or the closure of a sanitary landfill facility commenced by the State pursuant to the State's environmental laws shall be commenced within three years next after the cause of action shall have accrued.

(2) For purposes of determining whether a civil action subject to the limitations periods specified in paragraph (1) of this subsection has been commenced within time, no cause of action shall be deemed to have accrued prior to January 1, 2002 or until the contaminated site is remediated or the sanitary landfill has been properly closed, whichever is later.

b. (1) Except where a limitations provision expressly and specifically applies to actions commenced by the State or where a longer limitations period would otherwise apply, and subject to any statutory provisions or common law rules extending limitations periods, any civil action concerning the payment of compensation for damage to, or loss of, natural resources due to the discharge of a hazardous substance, commenced by the State pursuant to the State's environmental laws, shall be commenced within four years next after the cause of action shall have accrued.

(2) For purposes of determining whether a civil action subject to the limitations periods specified in paragraph (1) of this subsection has been commenced within time, no cause of action shall be deemed to have accrued prior to January 1, 2002 or until the performance of the preliminary assessment, site investigation, and remedial investigation, if necessary, of the contaminated site or the sanitary landfill facility, whichever is later.

c. As used in this section:

"State's environmental laws" means 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 "Brownfield and Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), 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; and

"State" means the State, its political subdivisions, any office, department, division, bureau, board, commission or agency of the State or one of its political subdivisions, and any public authority or public agency, including, but not limited to, the New Jersey Transit Corporation and the University of Medicine and Dentistry of New Jersey.

C.58:10-23.11g11 Immunity from liability for certain discharges.

6. Any person who has a defense to liability pursuant to paragraphs (2) and (5) of subsection d. of section 8 of P.L.1976, c.141 (C.58:10-23.11g) shall not be liable for the payment of compensation for damage to, or loss of, natural resources due to the discharge of a hazardous substance.

7. Section 2 of P.L.1991, c.387 (C.2A:14-1.2) is amended to read as follows:

C.2A:14-1.2 Civil actions commenced by the State, 10 years; "State" defined; exceptions.

2. a. Except where a limitations provision expressly and specifically applies to actions

commenced by the State or where a longer limitations period would otherwise apply, and subject to any statutory provisions or common law rules extending limitations periods, any civil action commenced by the State shall be commenced within ten years next after the cause of action shall have accrued.

b. For purposes of determining whether an action subject to the limitations period specified in subsection a. of this section has been commenced within time, no such action shall be deemed to have accrued prior to January 1, 1992.

c. As used in this act, the term "State" means the State, its political subdivisions, any office, department, division, bureau, board, commission or agency of the State or one of its political subdivisions, and any public authority or public agency, including, but not limited to, the New Jersey Transit Corporation and the University of Medicine and Dentistry of New Jersey.

The provisions of this section shall not apply to any civil action commenced by the State concerning the remediation of a contaminated site or the closure of a sanitary landfill facility, or the payment of compensation for damage to, or loss of, natural resources due to the discharge of a hazardous substance, and subject to the limitations period specified in section 5 of P.L.2001, c.154 (C.58:10B-17.1).

8. This act shall take effect immediately.

Approved July 13, 2001.

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TRENTON, NJ 08625

Office of the Governor
NEWS RELEASE

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RELEASE: July 13 , 2001

Acting Governor Donald T. DiFrancesco signed the following legislation today:

A-3154, sponsored by Senators Andrew Ciesla (R-Monmouth/Ocean), Joseph Palaia (R-Monmouth), Diane Allen (R-Burlington/Camden) and Assembly members Jeffrey Moran (R-Atlantic/Burlington/Ocean) and Anthony Impreveduto (D-Bergen/Hudson), permits persons who are licensed professional engineers or architects in New Jersey to be licensed as home inspectors, provided they are deemed qualified to do home inspections by the New Jersey Board of Architects or the State Board of Professional Engineers and Land Surveyors.

S-986, sponsored by Senators Robert Martin (R-Essex/Morris/Passaic) and Kevin O'Toole (R-Essex/Union) and Assembly members Joel Weingarten (R-Essex/Union) and Rose Marie Heck (R-Bergen), permits jointure commissions to provide counseling, inclusionary and child study team service for, but not limited to disabled pupils.

S-1736, sponsored by Senator James Cafiero (R-Cape May/Atlantic/ Cumberland) and Assembly members Scott Garrett (R-Sussex/Hunterdon/ Morris) and Connie Myers (R-Warren/Hunterdon/Mercer), exempts certain privately owned campgrounds, hotels, motels, mobile home parks and retirement communities with swimming areas other than pools from certain Department of Health and Senior Services (DHSS) regulations establishing first aid personnel and lifeguard requirements.

SCS-1783/S-1733, sponsored by Senators Jack Sinagra (R-Middlesex), James Cafiero (R-Cape May/Atlantic/Cumberland), John Lynch (D-Middlesex/Somerset/ Union) and Louis Kosco (R-Bergen) and Assembly members George Geist (R-Camden/Gloucester) and Arline Friscia (D-Middlesex), establishes a Supplemental Workforce Administrative Fund for Basic Skills within the Workforce Development Partnership Fund by redirecting a portion of the employers and employee contributions from the unemployment compensation fund to the Supplemental Workforce Administrative Fund For Basic Skills.

A-759, sponsored by Senator Norman Robertson (R-Essex/Passaic) and Assemblyman Gerald Zecker (R-Essex/Passaic), provides that a delineated area in a municipality may be determined to be in need of rehabilitation if more than half of the housing stock in the delineated area is at least 50 years old, or a majority of the water and sewer infrastructure in the delineated area is at least 50 years old and is in need of repair or substantial maintenance.

A-972, sponsored by Senators Jack Sinagra (R-Middlesex) and John Adler (D-Camden) and Assemblymen Gary Stuhltrager (R-Salem/Cumberland/Gloucester) and John Wisniewski (D-Middlesex), the Athletic Training Licensure Act, requires athletic trainers

to be licensed by, rather than just registered with, the State Board of Medical Examiners (BME) in the Division of Consumer Affairs.

A-3013, sponsored by Senators Diane Allen (R-Burlington/Camden) and Peter Inverso (D-Mercer/Middlesex) and Assemblymen Michael Arnone (R-Monmouth) and Peter Biondi (R-Morris/Somerset), requires the Director of the Division of Local Government Services in the Department of Community Affairs to conduct a study of all municipalities, counties, school districts and regional authorities and districts to determine the number and type of all interlocal services agreements between such local units entered into between August 2, 1973, the effective date of the Interlocal Services Act, and January 1, 2001.

S-1887, sponsored by Senators Martha Bark (R-Atlantic/ Burlington/Camden) and Diane Allen (R-Burlington/Camden) and Assemblyman Leonard Lance (R-Warren/Hunterdon/Mercer), provides for the protection of the assets and distributions from creditors of "Roth" and "Education" individual retirement accounts (IRA) and higher education tuition savings accounts by including these trusts in the definition of "qualifying trust" under New Jersey law. This bill makes qualifying trusts non-exempt from punitive damages awarded in a civil action arising from manslaughter or murder.

SCS-2345, sponsored by Senators Henry McNamara (R-Bergen/Passaic) and John Adler (D-Camden) and Assemblyman Steve Corodemus (R-Monmouth), gives the state additional time to pursue legal actions against those who are responsible for contaminating sites around New Jersey. As a result of this act, responsible parties, not the taxpayers, will continue to be required to pay for the cleanup and the restoration of natural resources injured by that contamination. This bill continues the New Jersey Department of Environmental Protection's authority to require restoration of natural resources injured by a hazardous discharge as part of the remediation process.