58:10B-1.1 et al

LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 1997 **CHAPTER:** 278

NJSA: 58:10B-1.1 et al ("Brownfield and Contaminated Site Remediation Act")

BILL NO: S39 (Substituted for A2724-ACS)

SPONSOR(S): McNamara and others

DATE INTRODUCED: October 3, 1996

COMMITTEE: **ASSEMBLY:** Appropriations

SENATE: Environment; Budget & Appropriations

AMENDED DURING PASSAGE: Yes Senate Committee Substitute (2R) for S39, A2250 (ACS), S1815 and S1539 enacted

DATE OF PASSAGE: **ASSEMBLY:** December 18, 1997

SENATE: December 18, 1997

DATE OF APPROVAL: January 6, 1998

FOLLOWING ARE ATTACHED IF AVAILABLE:

SPONSORS STATEMENT: Yes On each original bill

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes June 5, 1997
Yes June 12, 1997

FISCAL NOTE: Yes

VETO MESSAGE:

MESSAGE ON SIGNING: Yes Press release and prepared remarks

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

Article by primary sponsor of S39:
J/Per B97 McNamara, Henry P. "Brownfields soon to be greenfields," New Jersey Business, v. 44, no. 5, May 1998, p.64-66+ [copy enclosed]

Newspaper articles enclosed:

"Cleanup bill becomes law," 1-7-98, The Record [Bergen County].
"Factory cleanup bill law," 1-7-98, The Times [Trenton], p. A9
"Whitman lures builders to tainted sites," 1-7-98, New York Times.

1-20-00

§§1,2
C. 58:10B-1.1
& 58:10B-1.2
§§3-5,25,48,34-39
C. 58:10B-21
To 58:10B-31
§6 C. 58:10B-13.1
& Note To
58:10-23.11g
§33
C. 58:10-23.11g8a
& Note To
58:10A-21
§40 T & E
§§41,42 Approp.

P.L. 1997, CHAPTER 278, ***approved January 6, 1998***
Senate Committee Substitute ***(Second Reprint)*** for
Senate, No. 39, Assembly, No. 2250 (ACS),
Senate, Nos. 1815 and 1539

AN ACT concerning the remediation of contaminated sites, revising parts of the statutory law, and making appropriations.

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

1. (New section) 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, shall be known and may be cited as the "Brownfield and Contaminated Site Remediation Act."

2. (New section) The Legislature finds and declares that due to New Jersey's industrial history, large areas in the State's urban and suburban areas formerly used for commercial and industrial purposes are underused or abandoned; that many of these properties, often referred to as brownfields, are contaminated with hazardous substances and pose a health risk to the nearby residents and a threat to the environment; and that these sites can be a blight to the neighborhood and a financial drain on a municipality because they have no productive use, and fail to generate property taxes and jobs. The Legislature further finds that often there are legal, financial, technical, and institutional impediments to the efficient and cost-effective

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 <u>thus</u> is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1] Senate SBA committee amendments adopted June 12, 1997.
[2] Assembly AAP committee amendments adopted December 11, 1997.

cleanup of brownfield sites as well as all other contaminated sites wherever they may be. The Legislature finds and declares that the State needs to ensure that the public health and safety and the environment are protected from the risks posed by contaminated sites and that strict standards coupled with a risk based and flexible regulatory system will result in more cleanups and thus the elimination of the public's exposure to these hazardous substances and the environmental degradation that contamination causes.

The Legislature therefore declares that strict remediation standards are necessary to protect public health and safety and the environment; that these standards should be adopted based upon the risk posed by discharged hazardous substances; that [2][permanent] unrestricted[2] remedies for contaminated sites are preferable and the State must adopt policies that encourage their use; that institutional and engineering controls should be allowed only when the public health risk and environmental protection standards are met; and that in order to encourage the cleanup of contaminated sites, there must be finality in the process, the provision of financial incentives, liability protection for innocent parties who clean up, cleanup procedures that are cost effective and regulatory action that is timely and efficient.

3. (New section) a. The Department of Environmental Protection shall investigate and determine the extent of contamination of every aquifer in this State. The department shall prioritize its investigations of aquifers giving the highest priority to those aquifers underlying urban or industrial areas that are known or suspected of having large areas of contamination. This information shall be updated periodically as necessary. The information derived from the investigation shall be made available to the public by entering it into the Department of Environmental Protection's existing geographic information system, by making this information available on the system, and by making copies of any maps and data available to the public. The functions required pursuant to this section shall be considered a site remediation obligation of the State. The department may charge a reasonable fee for the reproduction of the maps and data which fee shall reflect the cost of their reproduction.

b. Upon completion of an investigation of an aquifer by the department and upon the department's determination of the extent of contamination of an aquifer, a person performing a remediation may rely upon that information for that person's submission of information to the department in the performance of a remediation.

c. The entire cost of the investigation required pursuant to this section shall be borne by the department from appropriations made to it by the Legislature specifically for this purpose. The department may not fund any part of this investigation by the imposition of a fee or charge on any person performing a remediation or upon any person

who is in need of a permit or approval from the department.

d. Nothing in this section shall be construed to require or obligate the department to reclassify the groundwater of any aquifer.

4. (New section) a. The Department of Environmental Protection shall investigate and map those areas of the State at which large areas of historic fill exist. The department shall prioritize its investigations of historic fill areas giving highest priority to those areas of the State that are known or suspected to contain historic fill. This information shall be updated periodically as necessary. The information derived from the investigation shall be made available to the public by entering it into the Department of Environmental Protection's existing geographic information system, by making this information available on the system, and by making copies of any maps and data available to the public. The functions required pursuant to this section shall be considered a site remediation obligation of the State. The department may charge a reasonable fee for the reproduction of the maps and data which fee shall reflect the cost of their reproduction.

b. Upon completion of an investigation of an area of historic fill by the department and upon the department's determination of the location of historic fill in an area, a person performing a remediation may rely upon that information for that person's performance of a remediation and selection of a remedial action pursuant to subsection h. of section 35 of P.L.1993, c.139 (C.58:10B-12).

c. The entire cost of investigation required pursuant to this section shall be borne by the department from appropriations made to it by the Legislature specifically for this purpose. The department may not fund any part of this investigation by the imposition of a fee or charge on any person performing a remediation or upon any person who is in need of a permit or approval from the department.

5. (New section) a. There is created the "Brownfields Redevelopment Task Force." The Task Force shall consist of **[2]**[a]**[2]** five representatives from State agencies and six public members. The State agency representatives shall be from each of the following State agencies: the Office of State Planning in the Department of Treasury, the Office of Neighborhood Empowerment in the Department of Community Affairs, the New Jersey Redevelopment Authority in the Department of Commerce and Economic Development, the Department of Transportation, and the Site Remediation Program in the Department of Environmental Protection. The six public members shall be appointed by the Governor with the advice and consent of the Senate. The public members shall include to the extent practicable: a representative of commercial or residential development interests, a represenative of the financial community, a representative of a public interest environmental organization, a represenative of a neighborhood

or community redevelopment organization, a representative of a labor or trade organization, and a representative of a regional planning entity.

The Office of State Planning shall provide staff to implement the functions and duties of the Task Force. The public members of the Task Force shall serve without compensation but may be reimbursed for actual expenses in the performance of their duties. The Governor shall select the [2]**[**chairman**]** chairperson[2] of the Task Force.

b. The Task Force shall prepare and update an inventory of brownfield sites in the State. In preparing the inventory, priority shall be given to those areas of the State that receive assistance from the Urban Coordinating Council or from the Office of Neighborhood Empowerment. To the extent practicable, the inventory shall include an assessment of the contaminants known or suspected to have been discharged or that are currently stored on the site, the extent of any remediation performed on the site, the site's proximity to transportation networks, and the availability of infrastructure to support the redevelopment of the site. The information gathered for the inventory shall, to the extent practicable, be made available to the public by entering it into the Department of Environmental Protection's existing geographic information system, by making this information available on the system and by making copies of any maps and data available to the public. The department may charge a reasonable fee for the reproduction of maps and data which fee shall reflect the cost of their reproduction.

c. In addition to its functions pursuant to subsection b. of this section, the Task Force shall:

(1) coordinate State policy on brownfields redevelopment, including incentives, regulatory programs, provision of infrastructure, and redevelopment planning assistance to local governments;

(2) use the inventory to prioritize sites based on their immediate economic development potential;

(3) prepare a plan of action to return these sites to productive economic use on an expedited basis;

(4) actively market sites on the inventory to prospective developers;

(5) use the inventory to provide a targeted environmental assessment of the sites, or of areas containing several brownfield sites, by the Department of Environmental Protection;

(6) consult with the Pinelands Commission concerning the remediation and redevelopment of brownfield sites located in the pinelands area as designated pursuant to section 10 of P.L.1979, c.111 (C.13:18A-11);

(7) evaluate the performance of current public incentives in encouraging the remediation of and redevelopment of brownfields; and

(8) make recommendations to the Governor and the Legislature

on means to better promote the redevelopment of brownfields, including the provision of necessary public infrastructure and methods to attract private investment in redevelopment.

d. As used in this section, "brownfield" means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.

6. (New section) a. Whenever after the effective date of P.L. , c. (now before the legislature as this bill) 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.

[2][A]**]** Except as provided in subsection e. of this section, a**[2]** 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 **[2]**[remedial activities and for any natural resource damages]**]**remediation or for any cleanup and removal costs**[2]**;

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

(a) a provision requiring the person, **[2]**or any subsequent owner, lessee, or operator**[2]** during the person's period of ownership**[2]**, tenancy,

or operation[2], to maintain those controls, conduct periodic monitoring for compliance, and submit to the department, on [2][an bi-annual] a biennial[2] 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) [2]for a remediation that involves the use of engineering controls but not for any remediation that involves the use of institutional controls only,[2] a provision barring the person or persons [2][to][2] whom the covenant not to sue benefits [2],[2] 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. [2] 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.[2]

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. [2][For any person liable for the discharge of a hazardous substance or who is in any way responsible for a hazardous substance pursuant to 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, a covenant not to sue shall not apply to liability for (1) contamination discovered subsequent to the issuance of the no further action letter but which contamination existed prior to the issuance of the no further action letter, (2) any change in a remediation standard, or (3) any contamination that has been remediated by the use of an engineering control.

e. Notwithstanding the provisions of subsection a. of this section, a covenant not to sue shall only bar a claim for natural resource damages against a person who is entitled to a defense to liability

pursuant to subsection d. of section 8 of P.L. 1976, c. 141 (C.58:10-23.11g).

f.]2 A covenant not to sue 2and the protections it affords2 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 2, 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 regulations2.

2e. 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.2

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

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

"Closing operations" means:

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

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

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

(4) the initiation of bankruptcy proceedings pursuant to Chapter 7 of the federal Bankruptcy Code, 11 U.S.C. s.701 et seq. or the filing of a plan of reorganization that provides for a liquidation pursuant to

Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. s.1101 et seq.;

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

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

"Transferring ownership or operations" means:

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

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

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

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

"Change in ownership" means:

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

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

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

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

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

"Change in ownership" shall not include:

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

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

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

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

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

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

(7) a transfer of an industrial establishment by devise or intestate succession;

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

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

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

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

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

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

"Hazardous waste" shall have the same meaning as provided in section 1 of P.L.1976, c.99 (C.13:1E-38);

"Industrial establishment" means any place of business engaged in

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

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

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

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

regulations;

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

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

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

"Remediation standards" means the combination of numeric [2][and narrative][2] standards that establish a level or concentration [2] and narrative standards,[2] to which hazardous substances or hazardous wastes must be [investigated or remediated as established] 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;

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

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

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether hazardous substances or hazardous wastes are or were present at an industrial establishment or have migrated or are migrating from the industrial

establishment, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or latent discharge of any hazardous substance or hazardous waste 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 public records;

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

"Remedial action" means those actions taken at an industrial establishment or offsite of an industrial establishment if hazardous substances or hazardous wastes have migrated or are migrating therefrom, as may be required by the department to protect public health, safety, and the environment. These actions may include the removal, treatment, containment, transportation, securing, or other engineering measures, whether [2][of a permanent nature] to an unrestricted use[2] or otherwise, designed to ensure that any discharged hazardous substances or hazardous wastes at the site or that have migrated or are migrating from the site, are remediated in compliance with the applicable [remediation] health risk or environmental standards;

"Remedial investigation" means a process to determine the nature and extent of a discharge of hazardous substances or hazardous wastes at an industrial establishment or a discharge of hazardous substances or hazardous wastes that have migrated or are migrating from the site and the problems presented by a discharge, and may include data collection, 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;

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

(cf: P.L.1993, c.139, s.3)

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

as follows:

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

b. (1) Subsequent to the submittal of the notice required pursuant to subsection a. of this section, the owner or operator of an industrial establishment shall, except as otherwise provided by P.L.1983, c.330 or P.L.1993, c.139 (C.13:1K-9.6 et al.), remediate the industrial establishment. The remediation shall be conducted in accordance with criteria, procedures, and time schedules established by the department.

(2) The owner or operator shall attach a copy of any approved negative declaration, approved remedial action workplan, no further action letter, or remediation agreement approval to the contract or agreement of sale or agreement to transfer or any option to purchase which may be entered into with respect to the transfer of ownership or operations. In the event that any sale or transfer agreements or options have been executed prior to the approval of a negative declaration, remedial action workplan, no further action letter, or remediation agreement, these documents, as relevant, shall be transmitted by the owner or operator, by certified mail, overnight delivery, or personal service, prior to the transfer of ownership or operations, to all parties to any transaction concerning the transfer of ownership or operations, including purchasers, bankruptcy trustees, mortgagees, sureties, and financiers.

(3) The preliminary assessment, site investigation, remedial investigation, and remedial action for the industrial establishment shall be performed and implemented by the owner or operator of the

industrial establishment, except that any other party may assume that responsibility pursuant to the provisions of P.L.1983, c.330.

c. The owner or operator of an industrial establishment shall, subsequent to closing operations, or of its public release of its decision to close operations, or prior to transferring ownership or operations except as otherwise provided in subsection e. of this section, as applicable, submit to the department for approval a proposed negative declaration or proposed remedial action workplan. Except as otherwise provided in section 6 of P.L.1983, c.330 (C.13:1K-11), and sections 13, 16, 17 and 18 of P.L.1993, c.139 (C.13:1K-11.2, C.13:1K-11.5, C.13:1K-11.6 and C.13:1K-11.7), the owner or operator of an industrial establishment shall not transfer ownership or operations until a negative declaration or a remedial action workplan has been approved by the department or the conditions of subsection e. of this section for remediation agreements have been met and until, in cases where a remedial action workplan is required to be approved or a remediation agreement has been approved, a remediation funding source, as required pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3), has been established.

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

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

e. The owner or operator of an industrial establishment, who has submitted a notice to the department pursuant to subsection a. of this section, may transfer ownership or operations of the industrial establishment prior to the approval of a negative declaration or remedial action workplan upon application to and approval by the department of a remediation agreement. The owner or operator requesting a remediation agreement shall submit the following documents: (1) an estimate of the cost of the remediation that is approved by the department; (2) a certification of the statutory liability

of the owner or operator pursuant to P.L.1983, c.330 to perform and to complete a remediation of the industrial establishment in the manner and time limits provided by the department in regulation and consistent with all applicable laws and regulations; however, nothing in this paragraph shall be construed to be an admission of liability, or to impose liability on the owner or operator, pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) or pursuant to any other statute or common law; (3) evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with the provisions of section 25 of P.L.1993, c.139 (C.58:10B-3); (4) a certification that the owner or operator is subject to the provisions of P.L.1983, c.330, including the liability for penalties for violating the act, defenses to liability and limitations thereon, the requirement to perform a remediation as required by the department, allowing the department access to the industrial establishment as provided in section 5 of P.L.1983, c.330 (C.13:1K-10), and the requirement to prepare and submit any document required by the department relevant to the remediation of the industrial establishment; and (5) evidence of the payment of all applicable fees required by the department.

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

The department shall adopt regulations establishing the manner in which the documents required pursuant to paragraphs (1) through (5), inclusive, of this subsection shall be submitted. The department shall approve the application for the remediation agreement upon the complete and accurate submission of the documents required to be submitted pursuant to this subsection. The regulations shall include a sample form of the certifications. Approval of a remediation agreement shall not affect an owner's or operator's right to avail itself of the provisions of section 6 of P.L.1983, c.330 (C.13:1K-11), of section 13, 14, 15, 16, 17, or 18 of P.L.1993, c.139 (C.13:1K-11.2, C.13:1K-11.3, C.13:1K-11.4, C.13:1K-11.5, C.13:1K-11.6 or C.13:1K-11.7), or of the other provisions of this section.

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

submitted to the department for its review and approval at the completion of each phase of the remediation.

g. **[**(1)**]** The soil, groundwater, and surface water remediation standard and the remedial action to be implemented on an industrial establishment shall be selected **[**in conformance with**]** by the owner or operator, and reviewed and approved by the department, based upon the policies and criteria enumerated in section 35 of P.L.1993, c.139 (C.58:10B-12).

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

h. An owner or operator of an industrial establishment may implement a soil remedial action at an industrial establishment without prior department approval of the remedial action workplan for the remediation of soil when the remedial action can reasonably be expected to be completed pursuant to standards, criteria, and time schedules established by the department, which schedules shall not exceed five years from the commencement of the implementation of the remedial action and if the owner or operator is implementing a soil remediation which meets the established minimum residential or nonresidential use soil remediation standards adopted by the department.

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

i. An owner or operator of an industrial establishment shall base **[**his**]** the decision to **[**use the nonresidential use soil remediation standards for the industrial establishment upon the criteria listed below, as applicable:

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

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

(3) The transferee of the industrial establishment has agreed to the implementation of the nonresidential use soil remediation standards;

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

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

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

The department shall, within 18 months of the effective date of P.L.1993, c.139 (C.13:1K-9.6 et al.), promulgate regulations to clearly define how the department will evaluate the application of the criteria enumerated in paragraphs (1) through (6) of this subsection; provided, however, that notwithstanding the preceding requirement, the criteria enumerated in paragraphs (1) through (4) and in paragraph (6) shall become immediately operative. Until the department promulgates those regulations, it shall impose reasonable standards and requirements upon any owner or operator deciding to use nonresidential use soil remediation standards pursuant to this subsection. Furthermore, the department shall not impose any requirement or standard with regard to the criterion enumerated in paragraph (5) that would require an owner or operator to implement residential use soil remediation standards unless the cost difference between implementing the residential standards and the nonresidential standards is a de minimis amount. For the purposes of the preceding, de minimis shall mean a cost difference not exceeding 10 percent of the cost of implementing the nonresidential standards.**]** select a remedial action based upon the standards and criteria set forth in section 35 of P.L.1993, c.139 (C.58:10B-12). When a remedial action selected by an owner or operator includes the use of an engineering or institutional controls that necessitates the recording of a notice pursuant to section 36 of P.L. 1993, c.139 (C.58:10B-13), the owner or operator shall obtain the approval of the transferee of the industrial establishment.

At any time after the effective date of P.L.1993, c.139, an owner or operator may request the department to provide a determination as to whether a proposed remedial action is consistent with the standards and criteria set forth **[**above in paragraphs (1) through (6)**]** in section 35 of P.L.1993, c.139 (C.58:10B-12). The department shall make that determination based upon the standards and criteria set forth in that section. The department shall provide any such determination within 30 calendar days of the department's receipt of the request.

j. An owner or operator proposing to implement a soil remedial action other than one which is set forth in subsection h. of this section must receive department approval prior to implementation of the remedial action.

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

l. Submissions of a preliminary assessment, site investigation, remedial investigation, remedial action workplan, and the results of a remedial action shall be in a manner and form, and shall contain any

relevant information relating to the remediation, as may be required by the department.

Upon receipt of a complete and accurate submission, the department shall review and approve or disapprove the submission in accordance with the review schedules established pursuant to section 2 of P.L.1991, c.423 (C.13:1D-106). The owner or operator shall not be required to wait for a response by the department before continuing remediation activities, except as otherwise provided in this section. Upon completion of the remediation, the plans for and results of the preliminary assessment, site investigation, remedial investigation, remedial action workplan, and remedial action and any other information required to be submitted as provided in section 35 of P.L.1993, c.139 (C.58:10B-12), that has not previously been submitted to the department, shall be submitted to the department for its review and approval.

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

The department may review and approve or disapprove every remedial action workplan, no matter when submitted, to determine, in accordance with the criteria listed in subsection g. of section 35 of P.L.1993, c.139 (C.58:10B-12) if the remedial action that has occurred or that will occur is appropriate to meet the applicable **[**remediation**]** health risk or environmental standards.

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

establishment by the issuance of a no further action letter.
(cf: P.L.1993, c.139, s.4)

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

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 **[**and Energy**]**;

"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;

[2]"Limited restricted use remediation" means any remediation that requires the continued use of institutional controls but does not require the use of an engineering control;**[2]**

"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;

[2] ["Nonpermanent remedial action" means any remedial action that requires the continued use of engineering controls in order to meet the established health risk or environmental standards;

"Permanent remedial action" means any remedial action that does not require the continued use of engineering controls in order to meet the established health risk or environmental standards. A remedial action may be considered permanent even if institutional controls are employed at the site;]

"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 [2] [of a permanent nature] to an unrestricted use [2] 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 [remediation standards] 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;

"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 [2][and narrative][2] standards that establish a level or concentration [2], and narrative standards[2] 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;

[2]"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;[2]

"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 ;

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

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

"Remediation standards" means the combination of numeric and narrative standards to which contaminants must be remediated for soil, groundwater, or surface water as provided by the department pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12).[]

[2]"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;[2]

"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.).

(cf: P.L.1993, c.139, s.23)

10. Section 24 of P.L.1993, c.139 (C.58:10B-2) is amended to read as follows:

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

b. The regulations adopted by the department pursuant to subsection a. of this section shall provide that a person performing a remediation may deviate from the strict adherence to the regulations, in a variance procedure or by another method prescribed by the department, if that person can demonstrate that the deviation and the resulting remediation would be as protective of human health, safety, and the environment, as appropriate, as the department's regulations and that the health risk standards established in subsection d. of section 35 of P.L.1993, c.139 (C.58:10B-12) and any applicable environmental standards would be met. Factors to be considered in determining if the deviation should be allowed are whether the alternative method:

(1) has been either used successfully or approved by the department in writing or similar situations;

(2) reflects current technology as documented in peer-reviewed professional journals;

(3) can be expected to achieve the same or substantially the same results or objectives as the method which it is to replace; and

(4) furthers the attainment of the goals of the specific remedial phase for which it is used.

The department shall make available to the public, and shall periodically update, a list of alternative remediation methods used successfully or approved by the department as provided in paragraph (1) of this subsection.

c. To the extent practicable and in conformance with the standards for remediations as provided in section 35 of P.L.1993, c.139 (C.58:10-12), the department shall adopt rules and regulations that allow for certain remedial actions to be undertaken in a manner prescribed by the department without having to obtain prior approval from or submit detailed documentation to the department. A person who performs a remedial action in the manner prescribed in the rules and regulations of the department, and who certifies this fact to the department, shall obtain a no further action letter from the department for that particular remedial action.

d. The department shall develop regulatory procedures that encourage the use of innovative technologies in the performance of remedial actions and other remediation activities.

e. Notwithstanding any other provisions of this section, all remediation standards and remedial actions that involve real property located in the pinelands area shall be consistent with the provisions of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), any rules and regulations adopted pursuant thereto, and with section 502 of the "National Parks and Recreation Act of 1978," 16 U.S.C.§471i.

(cf: P.L.1993, c.139, s.24)

11. Section 25 of P.L.1993, c.139 (C.58:10B-3) is amended to read as follows:

25. a. The owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), or a discharger [2][or] , a[2] person in any way responsible for a hazardous substance [2], or a person otherwise liable for cleanup and removal costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.)[2] who has been issued a directive or an order by a State agency, who has entered into an administrative consent order with a State agency, or who has been ordered by a court to clean up and remove a hazardous substance or hazardous waste discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall establish and maintain a remediation funding source in the amount necessary to pay the estimated cost of the required remediation. A person who voluntarily undertakes a remediation pursuant to a memorandum of agreement with the department, or without the department's oversight, or who performs a remediation in an environmental opportunity zone is not required to establish or maintain a remediation funding source. A person who uses an innovative technology or who, in a timely fashion, implements [2][a

permanent remedy**]** an unrestricted use remedial action or a limited restricted use remedial action[2] for all or part of a remedial action is not required to establish a remediation funding source for the cost of the remediation involving the innovative technology or permanent remedy. A person required to establish a remediation funding source pursuant to this section shall provide to the department satisfactory documentation that the requirement has been met.

The remediation funding source shall be established in an amount equal to or greater than the cost estimate of the implementation of the remediation (1) as approved by the department, (2) as provided in an administrative consent order or remediation agreement as required pursuant to subsection e. of section 4 of P.L.1983, c.330, (3) as stated in a departmental order or directive, or (4) as agreed to by a court, and shall be in effect for a term not less than the actual time necessary to perform the remediation at the site. Whenever the remediation cost estimate increases, the person required to establish the remediation funding source shall cause the amount of the remediation funding source to be increased to an amount at least equal to the new estimate. Whenever the remediation or cost estimate decreases, the person required to obtain the remediation funding source may file a written request to the department to decrease the amount in the remediation funding source. The remediation funding source may be decreased to the amount of the new estimate upon written approval by the department delivered to the person who established the remediation funding source and to the trustee or the person or institution providing the remediation trust, the environmental insurance policy, or the line of credit, as applicable. The department shall approve the request upon a finding that the remediation cost estimate decreased by the requested amount. The department shall review and respond to the request to decrease the remediation funding source within 90 days of receipt of the request.

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

of a remediation funding source for that part of the remediation funding source to be established by a grant or financial assistance from the remediation fund may be established for the purposes of this subsection by the application for a grant or financial assistance from the remediation fund and satisfactory evidence submitted to the department that the grant or financial assistance will be awarded. However, if the financial assistance or grant is denied or the department finds that the person responsible for establishing the remediation funding source did not take reasonable action to obtain the grant or financial assistance, the department shall require that the full amount of the remediation funding source be established within 14 days of the denial or finding. The remediation funding source shall be evidenced by the establishment and maintenance of (1) a remediation trust fund, (2) an environmental insurance policy, issued by an entity licensed by the Department of Insurance to transact business in the State of New Jersey, to fund the remediation, (3) a line of credit from a person or institution satisfactory to the department authorizing the person responsible for performing the remediation to borrow money, or (4) a self-guarantee, or by any combination thereof. Where it can be demonstrated that a person cannot establish and maintain a remediation funding source for the full cost of the remediation by a method specified in this subsection, that person may establish the remediation funding source for all or a portion of the remediation, by securing financial assistance from the Hazardous Discharge Site Remediation Fund as provided in section 29 of P.L.1993, c.139 (C.58:10B-7).

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

The trust fund agreement shall provide that the remediation trust fund may not be revoked or terminated by the person required to establish the remediation funding source or by the trustee without the written consent of the department. The trustee shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those

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

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

d. An environmental insurance policy shall be established pursuant to the provisions of this subsection. An originally signed duplicate of the insurance policy shall be delivered to the department by certified mail, overnight delivery, or personal service within 30 days of receipt of notice from the department that the remedial action workplan or remediation agreement, as provided in subsection e. of section 4 of P.L.1983, c.330, is approved or as specified in an administrative consent order, civil order, or order of the department, as applicable. The environmental insurance policy may not be revoked or terminated without the written consent of the department. The insurance company shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those moneys as the department authorizes, in writing, to be released. The person entitled to receive money from the environmental insurance policy shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation.

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

by the department.

A line of credit agreement shall provide that the line of credit may not be revoked or terminated by the person required to obtain the remediation funding source or the person or institution providing the line of credit without the written consent of the department. The person or institution providing the line of credit shall release to the person required to establish the remediation funding source, or to the department or transferee of the property as appropriate, only those moneys as the department authorizes, in writing, to be released. The person entitled to draw upon the line of credit shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation. Upon a determination that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement from the line of credit in the amount of the documented costs.

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

f. A person may self-guarantee a remediation funding source upon the submittal of documentation to the department demonstrating that the cost of the remediation as estimated in the remedial action workplan, in the remediation agreement as provided in subsection e. of section 4 of P.L.1983, c.330, in an administrative consent order, or as provided in a departmental or court order, would not exceed one-third of the tangible net worth of the person required to establish the remediation funding source, and that the person has a cash flow sufficient to assure the availability of sufficient moneys for the remediation during the time necessary for the remediation. Satisfactory documentation of a person's capacity to self-guarantee a remediation funding source shall consist only of a statement of income and expenses or similar statement of that person and the balance sheet or similar statement of assets and liabilities as used by that person for the fiscal year of the person making the application that ended closest in time to the date of the self-guarantee application. The self-guarantee application shall be certified as true to the best of the applicant's information, knowledge, and belief, by the chief financial, or similar officer or employee, or general partner, or principal of the person making the self-guarantee application. A person shall be deemed by the department to possess the required cash flow pursuant to this section if that person's gross receipts exceed its gross payments in that fiscal year in an amount at least equal to the estimated costs of completing the remedial action workplan schedule to be performed in

the 12 month period following the date on which the application for self-guarantee is made. In the event that a self-guarantee is required for a period of more than one year, applications for a self-guarantee shall be renewed annually pursuant to this subsection for each successive year. The department may establish requirements and reporting obligations to ensure that the person proposing to self-guarantee a remediation funding source meets the criteria for self-guaranteeing prior to the initiation of remedial action and until completion of the remediation.

g. (1) If the person required to establish the remediation funding source fails to perform the remediation as required, the department shall make a written determination of this fact. A copy of the determination by the department shall be delivered to the person required to establish the remediation funding source and, in the case of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), to any transferee of the property. Following this written determination, the department may perform the remediation in place of the person required to establish the remediation funding source. In order to finance the cost of the remediation the department may make disbursements from the remediation trust fund or the line of credit or claims upon the environmental insurance policy, as appropriate, or, if sufficient moneys are not available from those funds, from the remediation guarantee fund created pursuant to section 45 of P.L.1993, c.139 (C.58:10B-20).

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

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

or the transferee, as applicable, or except upon a determination by the department that the transferee is not adequately performing the remediation.
(cf: P.L.1993, c.139, s.25)

12. Section 26 of P.L.1993, c.139 (C.58:10B-4) is amended to read as follows:

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

b. The remediation fund shall be credited with:

(1) moneys as are appropriated by the Legislature;

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

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

(4) remediation funding source surcharges imposed pursuant to section 33 of P.L.1993, c.139 (C.58:10B-11);

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

(6) moneys made available to the authority for the purposes of the fund.
(cf: P.L.1993, c.139, s.26)

13. Section 27 of P.L.1993, c.139 (C.58:10B-5) is amended to read as follows:

27. a. (1) Financial assistance from the remediation fund **[**, made to persons other than municipal governmental entities, the New Jersey Redevelopment Authority, or to persons who voluntarily undertake a remediation,**]** may only be rendered to persons who cannot establish a remediation funding source for the full amount of a remediation. Financial assistance pursuant to this act may be rendered only for that amount of the cost of a remediation for which the person cannot establish a remediation funding source. The limitations on receiving financial assistance established in this paragraph (1) shall not limit the ability of municipal governmental entities, the New Jersey Redevelopment Authority, persons who are not required to establish a remediation funding source for the part of the remediation involving an innovative technology **[2]**or a permanent remedy**]** , an unrestricted use remedial action or a limited restricted use remedial action **[2]** ,

persons performing a remediation in an environmental opportunity zone, or persons who voluntarily perform a remediation ²,² to receive financial assistance from the fund.

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

(3) Financial assistance rendered to persons who do not have to provide financial assurance for the part of the remediation that involves an innovative technology ²[or a permanent remedy] , an unrestricted use remedial action, or a limited restricted use remedial action² may only be made for that amount of the cost of the remediation that the person cannot otherwise fund by any of the authorized methods to establish a remediation funding source.

b. Financial assistance may be rendered from the remediation fund to (1) owners or operators of industrial establishments who are required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), upon closing operations or prior to the transfer of ownership or operations of an industrial establishment, (2) persons who ²[have discharged a hazardous substance or who are in any way responsible for] are liable for the cleanup and removal costs of² a hazardous substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), and (3) persons who voluntarily [undertake the] perform a remediation of a discharge of a hazardous substance or hazardous waste [and who have not been ordered or directed to perform the remediation by the department or by a court].

c. Financial assistance and grants may be made from the remediation fund to municipal governmental entities or the New Jersey Redevelopment Authority that own or hold a tax sale certificate on real property or that have acquired real property through foreclosure or other similar means, or by voluntary conveyance for the purpose of redevelopment, and on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste [or the New Jersey Redevelopment Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.) for any such real property upon which the New Jersey Redevelopment Authority owns or holds the tax sale certificate]. Financial assistance ²and grants² may not be made to any entity listed in this subsection for any real property used by that entity for the conduct of its official business.

d. Grants may be made from the remediation fund to persons [, including] and the New Jersey Redevelopment Authority, [other than other governmental entities] who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person or the authority qualifies for an innocent party grant

pursuant to section 28 of P.L.1993, c.139 (C.58:10B-6).

e. Grants may be made from the remediation fund to qualifying persons who propose to perform a remedial action that uses an innovative technology or that would result in [2][a permanent remedy] an unrestricted use remedial action or a limited restricted use remedial action[2] .

For the purposes of this section, "person" shall not include [the New Jersey Redevelopment Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.)] any governmental entity.

(cf: P.L.1996, c.62, s.64)

14. Section 28 of P.L.1993, c.139 (C.58:10B-6) is amended to read as follows:

28. a. Except for moneys deposited in the remediation fund for specific purposes, financial assistance and grants from the remediation fund shall be rendered for the following purposes and, on an annual basis, obligated in the percentages as provided in this subsection. Upon a written joint determination by the authority and the department that [it is in the public interest] the demand for financial assistance or grants for moneys allocated in any paragraph exceeds the percentage of funds allocated for that paragraph, financial assistance and grants dedicated for the purposes and in the percentages set forth in any other paragraph [(1), (2), or (3)] of this subsection, may, for any particular year, if the demand for financial assistance or grants for moneys allocated in that paragraph is less than the percentage of funds allocated for that paragraph, be obligated to [other] the purposes set forth in [this subsection] the over allocated paragraph. The written determination shall be sent to the Senate Environment Committee, and the Assembly Agriculture and Waste Management Committee, or their successors. For the purposes of this section, "person" shall not include [the New Jersey Redevelopment Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.)] any governmental entity.

(1) At least 15% of the moneys shall be allocated for financial assistance to persons, [including] and the New Jersey Redevelopment Authority [other than other governmental entities,] established pursuant to P.L.1996, c.62 (C.55:19-20 et al.), for remediation of real property located in a qualifying municipality as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

(2) At least 10% of the moneys shall be allocated for financial assistance and grants to municipal governmental entities and the New Jersey Redevelopment Authority that [hold] owns or holds a tax sale certificate on real property or have acquired real property through foreclosure or other similar means [real property] , or by voluntary conveyance for the purpose of redevelopment, on which there has been or on which there is suspected of being a discharge of hazardous

substances or hazardous wastes [or the New Jersey Redevelopment Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.), for any such real property upon which the New Jersey Redevelopment Authority owns or holds the tax sale certificate]. Grants provided pursuant to this paragraph shall be used for performing preliminary assessments, site investigations, and remedial investigations on real property [acquired by a municipal governmental entity the New Jersey Redevelopment Authority, as the case may be, or on which the municipality the New Jersey Redevelopment Authority owns or holds a tax sale certificate,] in order to determine the existence or extent of any hazardous substance or hazardous waste contamination on those properties. A municipal governmental entity or the New Jersey Redevelopment Authority that has performed, or on which there has been performed, a preliminary assessment, site investigation [and] or remedial investigation on property [or the New Jersey Redevelopment Authority, in any case where the New Jersey Redevelopment Authority has performed the preliminary assessment, site investigation, and remedial investigation] may obtain a loan for the purpose of continuing the remediation on those properties [it owns] as necessary to comply with the applicable remediation [standards] regulations adopted by the department;

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

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

(5) At least [20%] 15% of the moneys shall be allocated for financial assistance to persons [, other than municipal governmental entities,] who are required to perform remediation activities at an industrial establishment pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), as a condition of the closure, transfer, or termination of operations at that industrial establishment;

(6) At least [20%] 15% of the moneys shall be allocated for grants to persons [, other than municipal governmental entities,] who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an

innocent party grant. A person qualifies for an innocent party grant if that person acquired the property prior to December 31, 1983, except as provided hereunder, the hazardous substance or hazardous waste that was discharged at the property was not used by the person at that site, and that person certifies that he did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered; provided, however, that **[**if the person is**]** notwithstanding any other provision of this section the New Jersey Redevelopment Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.), **[**the authority**]** shall qualify for an innocent party grant pursuant to this paragraph where the immediate predecessor in title to the authority would have qualified for but failed to apply for or receive such grant. A grant authorized pursuant to this paragraph may be for up to 50% of the remediation costs at the area of concern for which the person qualifies for an innocent party grant, except that no grant awarded pursuant to this paragraph to any person **[**including**]** or the New Jersey Redevelopment Authority may exceed $1,000,000;

(7) At least 5% of the moneys shall be allocated for **[**loans**]** financial assistance to persons **[**, other than municipal governmental entities,**]** who own and plan to remediate an environmental opportunity zone for which an exemption from real property taxes has been granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154); **[**and**]**

(8) At least 5% of the moneys shall be allocated for matching grants for up to 25% of the project costs to qualifying persons who propose to perform a remedial action that uses an innovative technology except that no grant awarded pursuant to this paragraph to any qualifying person may exceed $100,000;

(9) At least 5% of the moneys shall be allocated for matching grants for up to 25% of the project costs to qualifying persons for the implementation of a **[2]**[permanent] limited restricted use remedial action or an unrestricted use**[2]** remedial action except that no grant awarded pursuant to this paragraph to any qualifying person may exceed $100,000. The authority may use money allocated pursuant to this paragraph to provide loan guarantees to encourage financial institutions to provide loans to any person who may receive financial assistance from the fund who plans to implement a **[2]**[permanent] limited restricted use remedial action or an unrestricted use**[2]** remedial action; and

(10) Five percent of the moneys in the remediation fund shall be allocated for financial assistance or grants for any of the purposes enumerated in paragraphs (1) through **[**(7)**]** (9) of this subsection, except that where moneys in the fund are insufficient to fund all the applications in any calendar year that would otherwise qualify for financial assistance or a grant pursuant to this paragraph, the authority shall give priority to financial assistance applications that meet the

criteria enumerated in paragraph (3) of this subsection.

For the purposes of paragraphs (8) and (9) of this subsection, "qualifying persons" means any person who has a net worth of not more than $2,000,000 [2]and "project costs" means that portion of the total costs of a remediation that is specifically for the use of an innovative technology or to implement an unrestricted use remedial action or a limited restricted use remedial action, as applicable[2] .

b. Loans issued from the remediation fund shall be for a term not to exceed ten years, except that upon the transfer of ownership of any real property for which the loan was made, the unpaid balance of the loan shall become immediately payable in full. Loans to municipal governmental entities and the New Jersey Redevelopment Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.), shall bear an interest rate equal to 2 points below the Federal Discount Rate at the time of approval or at the time of loan closing, whichever is lower, except that the rate shall be no lower than 3 percent. All other loans shall bear an interest rate equal to the Federal Discount Rate at the time of approval or at the time of the loan closing, whichever is lower, except that the rate on such loans shall be no lower than five percent. Financial assistance and grants may be issued for up to 100% of the estimated applicable remediation cost, except that the cumulative maximum amount of financial assistance which may be issued to a person **[**other than a governmental entity, including the New Jersey Redevelopment Authority**]**, in any calendar year, for one or more properties, shall be $1,000,000. Financial assistance and grants to any one municipal governmental entity **[**, including**]** or the New Jersey Redevelopment Authority **[**,**]** may not exceed $2,000,000 in any calendar year. Repayments of principal and interest on the loans issued from the remediation fund shall be paid to the authority and shall be deposited into the remediation fund.

c. No person, other than **[**a municipal governmental entity, the New Jersey Redevelopment Authority**]** a qualified person planning to use an innovative technology for the cost of that technology, a qualified person planning to use a [2]**[**permanent remedy**]** limited restricted use remedial action or an unrestricted use remedial action[2] for the cost of the remedial action, a person performing a remediation in an environmental opportunity zone, or a person **[**engaging in a voluntary**]** voluntarily performing a remediation, shall be eligible for financial assistance from the remediation fund to the extent that person is capable of establishing a remediation funding source for the remediation as required pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3).

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

grants.

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

(cf: P.L.1996, c.62, s.65)

15. Section 30 of P.L.1993, c.139 (C.58:10B-8) is amended to read as follows:

30. a. The authority shall, by rule or regulation:

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

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

(3) establish a priority system for rendering financial assistance or grants for remediations identified by the department as involving an imminent and significant threat to a public water source, human health, or to a sensitive or significant ecological area pursuant to paragraph **[**(7)**]** (3) of subsection a. of section 28 of P.L.1993, c.139 (C.58:10B-6);

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

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

(6) provide that where financial assistance to a person other than a municipal governmental entity **[**,**]** or the New Jersey Redevelopment Authority is for a portion of the remediation cost, that the proceeds thereof not be disbursed to the applicant until the costs of the

remediation for which a remediation funding source has been established has been expended;

(7) adopt such other requirements as the authority shall deem necessary or appropriate in carrying out the purposes for which the Hazardous Discharge Site Remediation Fund was created.

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

(1) provide proof, as determined sufficient by the authority, that the applicant, where applicable, cannot establish a remediation funding source for all or part of the remediation costs, as required by section 25 of P.L.1993, c.139 (C.58:10B-3). The provisions of this paragraph do not apply to grants to innocent persons [2][or] , grants[2] for the use of innovative technologies [2],[2] or [2][for a permanent remedy] grants for the implementation of unrestricted use remedial actions or limited restricted use remedial actions[2] or to financial assistance or grants to municipal governmental entities or the New Jersey Redevelopment Authority; and

(2) demonstrate the ability to repay the amount of the financial assistance and interest, and, if necessary, to provide adequate collateral to secure the financial assistance amount.

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

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

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

(2) may not require financial assistance or grant conditions that interfere with the everyday normal operations of the recipient's business activities, except to the extent necessary to ensure the recipient's ability to repay the financial assistance and to preserve the value of the loan collateral; and

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

(cf: P.L.1993, c.139, s.30)

16. Section 33 of P.L.1993, c.139 (C.58:10B-11) is amended to read as follows:

33. a. There is imposed upon every person who is required to establish a remediation funding source pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3) a remediation funding source surcharge. The remediation funding source surcharge shall be in an amount equal

to 1% of the required amount of the remediation funding source required by the department to be maintained. No surcharge, however, may be imposed upon (1) that amount of the remediation funding source that is met by a self-guarantee as provided in subsection f. of section 25 of P.L.1993, c.139 (C.58:10B-3), (2) that amount of the remediation funding source that is met by financial assistance or a grant from the remediation fund, (3) any person who voluntarily **[**undertakes**]** performs a remediation **[**without being so ordered or directed by the department or by a court or**]** pursuant to an administrative consent order, **[**or**]** (4) any person who entered voluntarily into a memorandum of understanding with the department to remediate real property, as long as that person continues the remediation in a reasonable manner, or as required by law, even if subsequent to initiation of the memorandum of understanding, the person received an order by the department or entered into an administrative consent order to perform the remediation, (5) any person performing a remediation in an environmental opportunity zone, or (6) that **2**[amount] portion**2** of the cost of the remediation that is **2**specifically**2** for the use of an innovative technology or to implement a **2**[permanent remedy] limited restricted use remedial action or an unrestricted use remedial action**2**. The surcharge shall be based on the cost of remediation work remaining to be completed and shall be paid on an annual basis as long as the remediation continues and until the Department of Environmental Protection **[**and Energy**]** issues a no further action letter for the property subject to the remediation. The remediation funding source surcharge shall be due and payable within 14 days of the time of the department's approval of a remedial action workplan or signing an administrative consent order or as otherwise provided by law. The department shall collect the surcharge and shall remit all moneys collected to the Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund.

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

(cf: P.L.1993, c.139, s.33)

17. Section 35 of P.L.1993, c.139 (C.58:10B-12) is amended to read as follows:

35. a. The Department of Environmental Protection **[**and Energy**]** shall adopt minimum remediation standards for soil, groundwater, and surface water quality necessary for the remediation of contamination of real property. The remediation standards shall be developed to

ensure that the potential for harm to public health and safety and to the environment is minimized to acceptable levels, taking into consideration the location, the surroundings, the intended use of the property, the potential exposure to the discharge, and the surrounding ambient conditions, whether naturally occurring or man-made.

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

The department shall not propose or adopt remediation standards protective of the environment pursuant to this section, except standards for groundwater or surface water, until recommendations are made by the Environment Advisory Task Force created pursuant to section 37 of P.L.1993, c.139. Until the Environment Advisory Task Force issues its recommendations and the department adopts remediation standards protective of the environment as required by this section, the department shall continue to determine the need for and the application of remediation standards protective of the environment on a case-by-case basis in accordance with the guidance and regulations of the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable.

<u>The department may not require any person to perform an ecological evaluation of any area of concern that consists of an underground storage tank storing heating oil for on-site consumption in a one to four family residential building.</u>

b. In developing minimum remediation standards the department shall:

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

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

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

(4) where feasible, establish the remediation standards as numeric

or narrative standards setting forth acceptable levels or concentrations for particular contaminants [2]; and

(5) consider and utilize, in the absence of other standards used or developed by the Department of Environmental Protection and the United States Environmental Protection Agency, the toxicity factors, slope factors for carcinogens and reference doses for non-carcinogens from the United States Environmental Protection Agency's Integrated Risk Information System (IRIS)[2].

c. (1) The department shall develop [2][permanent][2] residential and nonresidential soil remediation standards that are protective of public health and safety. For contaminants that are mobile and transportable to groundwater or surface water, the [2][permanent][2] residential and nonresidential soil remediation standards shall be protective of groundwater and surface water. [Residential] [2][Permanent residential] Residential[2] soil remediation standards shall be set at levels or concentrations of contamination for real property based upon the use of that property for residential or similar uses and which will allow the unrestricted use of that property without the need of engineering devices or any institutional controls and without exceeding a health risk [level] standard greater than that provided in subsection d. of this section. [Nonresidential] [2][Permanent nonresidential] Nonresidential[2] soil remediation standards shall be set at levels or concentrations of contaminants that recognize the lower likelihood of exposure to contamination on property that will not be used for residential or similar uses , which will allow for the unrestricted use of that property for nonresidential purposes, and that can be met without the need of engineering controls. Whenever real property is remediated to a nonresidential soil remediation standard, except as otherwise provided in paragraph (3) of subsection g. of this section, the department shall require, pursuant to section 36 of P.L.1993, c.139 (C.58:10B-13), that the use of the property be restricted to nonresidential or other uses compatible with the extent of the contamination of the soil and that access to that site be restricted in a manner compatible with the allowable use of that property.

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

d. [In developing] The department shall develop minimum remediation standards for soil, groundwater, and surface water intended to be protective of public health and safety [,] taking into account the provisions of this section. In developing these minimum health risk remediation standards the department shall identify the hazards posed by a contaminant to determine whether exposure to that contaminant can cause an increase in the incidence of an adverse health

effect and whether the adverse health effect may occur in humans. The department shall set minimum soil remediation health risk standards for both residential and nonresidential uses that:

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

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

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

e. Remediation standards and other remediation requirements established pursuant to this section and regulations adopted pursuant thereto shall apply to remediation activities required pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21 et seq.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et 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. However, nothing in this subsection shall be construed to limit the authority of the department to establish discharge limits for pollutants or to prescribe penalties for violations of those limits pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), or to require the complete removal of nonhazardous solid waste pursuant to law.

f. (1) A person performing a remediation of contaminated real property, in lieu of using the established minimum **2[**permanent**]2** soil remediation standard for either residential use or nonresidential use adopted by the department pursuant to subsection c. of this section, may submit to the department a request to use an alternative residential use **2[**permanent**]2** or nonresidential use soil remediation standard. The use of an alternative soil remediation standard shall be based upon site specific factors which may include (1) physical site characteristics which may vary from those used by the department in the development of the soil remediation standards adopted pursuant to this section; or (2) a site specific risk assessment. If a person performing a remediation requests to use an alternative soil remediation standard based upon a site specific risk assessment, that

person shall demonstrate to the department that the requested deviation from the risk assessment protocol used by the department in the development of soil remediation standards pursuant to this section is consistent with the guidance and regulations for exposure assessment developed by the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable. A site specific risk assessment may consider exposure scenarios and assumptions that take into account the form of the contaminant present, natural biodegradation, fate and transport of the contaminant, [2][and][2] available toxicological data that are based upon generally accepted and peer reviewed scientific evidence or methodologies [2], and physical characteristics of the site, including, but not limited to, climatic conditions and topographic conditions. Nothing in this subsection shall be construed to authorize the use of an alternative soil remediation standard in those instances where an engineering control is the appropriate remedial action, as determined by the department, to prevent exposure to contamination[2] .

Upon a determination by the department that the requested alternative remediation standard [2]satisfies the department's regulations,[2] is protective of public health and safety, as established in subsection d. of this section, and [2]is[2] protective of the environment pursuant to subsection a. of this section, the alternative residential use or nonresidential use soil remediation standard shall be approved by the department. [2]The burden to demonstrate that the requested alternative remediation standard is protective rests with the person requesting the alternative standard and the department may require the submission of any documentation as the department determines to be necessary in order for the person to meet that burden.[2]

(2) The department may, upon its own initiative, require an alternative remediation standard for a particular contaminant for a specific real property site, in lieu of using the established minimum [2][permanent][2] residential use or nonresidential use soil remediation standard adopted by the department for a particular contaminant pursuant to this section. The department may require an alternative remediation standard pursuant to this paragraph upon a determination by the department, based on the weight of the scientific evidence, that due to specific physical site characteristics of the subject real property, [2]including, but not limited to, its proximity to surface water,[2] the use of the adopted residential use or nonresidential use soil remediation standards would not be protective [2], or would be unnecessarily overprotective,[2] of public health or safety or of the environment, as appropriate.

g. The development, selection, and implementation of any remediation standard or remedial action shall ensure that it is

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

(1) 2[Permanent and nonpermanent] Unrestricted use remedial actions, limited restricted use remedial actions and restricted use2 [remedies] remedial actions shall be allowed except that 2[permanent remedies] unrestricted use remedial actions and limited restricted use remedial actions2 shall be preferred over 2[nonpermanent remedies for] restricted use2 remedial actions. The department, however, may not disapprove the use of a 2[nonpermanent] restricted use remedial action or a limited restricted use2 remedial action so long as the selected remedial action meets the health risk standard established in subsection d. of this section, and where, as applicable, is protective of the environment. The choice of the remedial action to be implemented shall be made by the person performing the remediation 2in accordance with regulations adopted by the department2 and that choice of the remedial action shall be approved by the department if all the criteria for remedial action selection enumerated in this section 2, as applicable,2 are met. The department may not require a person to compare or investigate any alternative remedial action as part of its review of the selected remedial action.

(2) Contamination may, upon the department's approval, be left onsite at levels or concentrations that exceed the minimum soil remediation standards for residential use [or nonresidential use] if the implementation of institutional or engineering controls at that site will result in the protection of public health, safety and the environment at the health risk [level] standard established in subsection d. of this section and if the requirements established in subsections a., b., c. and d. of section 36 of P.L.1993, c.139 (C.58:10B-13) are met;

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

(4) Remediation shall not be required beyond the regional natural

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

(5) Remediation shall not be required of the owner or operator of real property for contamination coming onto the site from another property owned and operated by another person, unless the owner or operator is the person who [2]**[**has discharged the contaminant or is**]** in any way responsible for the **[**discharge**]** contaminant**]** is liable for cleanup and removal costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.)[2] ;

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

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

(8) **[**In the case of a proposed remedial action that will not meet the established minimum residential use soil remediation standards, the cost of all available permanent remedies is unreasonable, as determined by department rules designed to provide a cost-based preference for the use of permanent remedies. The department shall adopt regulations, no later than 18 months after the effective date of this act, establishing criteria and procedures for allowing a person to demonstrate that the cost of all available permanent remedies is unreasonable. Until the department adopts those regulations, it shall not require a person performing a remedial action to implement a permanent remedy, unless the cost of implementing a nonpermanent remedy is 50 percent or more than the cost of implementing a permanent remedy; provided, however, that the preceding provision shall not apply to any owner or operator of an industrial establishment who is implementing a remedial action pursuant to subsection i. of section 4 of P.L.1983, c.330;**]** The use of a remedial action for soil contamination that is determined by the department to be effective in its guidance document created pursuant to section 38 of P.L.1993, c.139 (C.58:10B-14), is presumed to be an appropriate remedial action

if it is to be implemented on a site in the manner described by the department in the guidance document [2]and applicable regulations[2] and if all of the conditions for remedy selection provided for in this section are met. The burden to prove compliance with the criteria in the guidance document is with the person performing the remediation.

(9) **[**The use of the established nonresidential soil remediation standard shall not be unreasonably disapproved by the department.**]** (Deleted by amendment P.L. , c.)

The burden to demonstrate that a remedial action is protective of public health, safety and the environment, as applicable, and has been selected in conformance with the provisions of this subsection is with the person proposing the remedial action.

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

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

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

(3) The department may not, as a condition of allowing the use of a **2[**permanent**]2** nonresidential use soil remediation standard, or the use of institutional or engineering controls, require the owner of that real property, except as provided in section 36 of P.L.1993, c.139 (C.58:10B-13), to restrict the use of that property through the filing of a deed easement, covenant, or condition.

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

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

k. Notwithstanding any other provisions of this section, all remediation standards and remedial actions that involve real property located in the Pinelands area shall be consistent with the provisions of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), any rules and regulations promulgated pursuant thereto, and with section 502 of the "National Parks and Recreation Act of 1978," 16 U.S.C. §**[**4711**]** 471i.

l. Upon the adoption of a remediation standard for a particular

contaminant in soil, groundwater, or surface water pursuant to this section, the department may amend that remediation standard only upon a finding that a new standard is necessary to maintain the health risk [levels] standards established in subsection d. of section 35 of P.L.1993, c.139 (C.58:10B-12) or to protect the environment, as applicable. The department may not amend a public health based soil remediation standard to a level that would result in a health risk [level] standard more protective than that provided for in subsection d. of section 35 of P.L.1993, c.139 (C.58:10B-12).

m. Nothing in P.L.1993, c.139 shall be construed to restrict or in any way diminish the public participation which is otherwise provided under the provisions of the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.).

n. Notwithstanding any provision of subsection a. of section 36 of P.L. 1993, c.139 (C.58:10B-13) to the contrary, the department may not require a person intending to implement a remedial action at an underground storage tank facility storing heating oil for on-site consumption at a one to four family residential dwelling to provide advance notice to a municipality prior to implementing that remedial action.

o. A person who has remediated a site pursuant to the provisions of this section, who was liable for the cleanup and removal costs of that discharge pursuant to the provisions of paragraph (1) of subsection c. of [2]section 8 of[2] P.L.1976, c.141 (C.58:10-23.11g), and who remains liable for the discharge on that site due to a possibility that a remediation standard may change, undiscovered contamination may be found, or because an engineering control was used to remediate the discharge, shall maintain with the department a current address at which that person may be contacted in the event additional remediation needs to be performed at the site. The requirement to maintain the current address shall be made part of the conditions of the no further action letter issued by the department [2][at the completion of a remediation[2].

(cf: P.L.1993, c.139, s.35)

18. Section 36 of P.L.1993, c.139 (C.58:10B-13) is amended to read as follows:

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

(1) require the establishment of any engineering or institutional controls the department determines are reasonably necessary to prevent exposure to the contaminants, require maintenance, as necessary, of those controls, and require the restriction of the use of

the property in a manner that prevents exposure;

(2) require, with the consent of the owner of the real property, the recording with the office of the county recording officer, in the county in which the property is located, a notice to inform prospective holders of an interest in the property that contamination exists on the property at a level that may statutorily restrict certain uses of or access to all or part of that property, a delineation of those restrictions, a description of all specific engineering or institutional controls at the property that exist and that shall be maintained in order to prevent exposure to contaminants remaining on the property, and the written consent to the notice by the owner of the property. The notice shall be recorded in the same manner as are deeds and other interests in real property. The department shall develop a uniform deed notice that ensures the proper filing of the deed notice. The provisions of this paragraph do not apply to restrictions on the use of surface water or groundwater;

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

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

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

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

b. If the owner of the real property does not consent to the recording of a notice pursuant to paragraph (2) of subsection a. of this section, the department shall require the use of a residential soil remediation standard in the remediation of that real property.

c. Whenever engineering or institutional controls on property as provided in subsection a. of this section are no longer required, or whenever the engineering or institutional controls are changed because of the performance of subsequent remedial activities, a change in conditions at the site, or the adoption of revised remediation standards, the department shall require that the owner or operator of

that property record with the office of the county recording officer a notice that the use of the property is no longer restricted or delineating the new restrictions. The department shall also require that the owner or operator notify, in writing, the municipality in which the property is located of the removal or change of the restrictive use conditions.

d. The owner or lessee of any real property, or any person operating a business on real property, which has been remediated to a nonresidential use soil remediation standard or on which the department has allowed engineering or institutional controls for soil, groundwater, or surface water to protect the public health, safety, or the environment, as applicable, shall maintain the engineering or institutional controls as required by the department. An owner, lessee, or operator who takes any action that results in the improper alteration or removal of engineering or institutional controls or who fails to maintain the engineering or institutional controls as required by the department, shall be subject to the penalties and actions set forth in section 22 of P.L.1976, c.141 (C.58:10-23.11u) and, where applicable, shall be liable for any additional remediation and damages pursuant to the provisions of section 8 of P.L.1976, c.141 (C.58:10-23.11g). The provisions of this subsection shall not apply if a notification received pursuant to subsection b. of this section authorizes all restrictions or controls to be removed from the subject property.

e. Notwithstanding the provisions of any other law, or any rule, regulation, or order adopted pursuant thereto to the contrary, whenever contamination at a property is remediated in compliance with any soil, or any groundwater **[**,**]** or surface water remediation standards that were in effect or approved by the department at the completion of the remediation, **[**the owner or operator of the property or person performing the remediation**]** no person, except as otherwise provided in this section, shall **[**not**]** be liable for the cost of any additional remediation that may be required by a subsequent adoption by the department of a more stringent remediation standard for a particular contaminant. Upon the adoption of a regulation that amends a remediation standard, **2**or where the adoption of a regulation would change a remediation standard which was otherwise approved by the department,**2** only a person who is liable to clean up and remove that contamination pursuant to 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, shall be liable for any additional remediation costs necessary to bring the site into compliance with the new remediation standards except that no person shall be so liable unless the difference between the new remediation standard and the level or concentration of a contaminant at the property differs by an order of magnitude **2**.**2** The department may compel a person who is liable for the additional remediation costs to perform additional remediation activities to meet the new remediation

standard except that a person may not be compelled to perform any additional remediation activities on the site if that person can demonstrate that the existing engineering or institutional controls on the site prevent exposure to the contamination and that the site remains protective of public health ²,² safety and the environment pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12). The burden to prove that a site remains protective is on the person liable for the additional remediation costs. A person liable for the additional remediation costs who is relying on engineering or institutional controls to make a site protective, shall comply with the provisions of subsections a., b., c. and d. of this section.

Nothing in the provisions of this subsection shall be construed to affect the authority of the department, pursuant to subsection f. of this section, to require additional remediation on real property where engineering ²[or institutional]² controls were implemented.

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

f. Whenever the department approves or has approved the use of engineering ²[or institutional]² controls for the remediation of soil, ²[or the use of engineering or institutional controls for the remediation of]² groundwater[,] ²,² or surface water, to protect public health, safety or the environment ²[in lieu of remediating a site to a condition that meets an established residential or non residential soil or other remediation standard]², the department [shall not] may require additional remediation of that site [unless] only if the engineering ²[or institutional]² controls no longer are protective of public health, safety, or the environment.

g. Whenever the department approves or has approved the use of engineering or institutional controls for the remediation of soil, groundwater, or surface water, to protect public health, safety or the environment, the department shall inspect that site at least once every five years in order to ensure that the engineering and institutional controls are being properly maintained and that the controls remain ²[protection] protective² of public health and safety and of the environment.

h. A property owner of a site on which a deed notice has been recorded shall notify any person who intends to excavate on the site of the nature and location of any contamination existing on the site and of any conditions or measures necessary to prevent exposure to contaminants.

(cf: P.L.1993, c.139, s.36)

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

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. , c. (now before the Legislature as this bill), 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;

"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. §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. §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;

"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 onloading 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 onloading 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.

(cf: P.L.1995, c.16, s.1)

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

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

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

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

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

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

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

b. The damages which may be recovered by the fund, without regard to fault, subject to the defenses enumerated in subsection d. of this section against the owner or operator of a major facility or vessel, shall not exceed $50,000,000.00 for each major facility or $150.00 per

gross ton for each vessel, except that such maximum limitation shall not apply and the owner or operator shall be liable, jointly and severally, for the full amount of such damages if it can be shown that such discharge was the result of (1) gross negligence or willful misconduct, within the knowledge and privity of the owner, operator or person in charge, or (2) a gross or willful violation of applicable safety, construction or operating standards or regulations. Damages which may be recovered from, or by, any other person shall be limited to those authorized by common or statutory law.

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

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

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

For the purpose of determining priority of this lien over all other claims or liens which are or have been filed against the property of an owner or operator of a refinery, storage, transfer, or pipeline facility, the lien on the facility to which the discharged hazardous substance

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

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

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

(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 **[**the effective date of P.L.1993, c.139 (C.13:1K-9.6 et al.),**]** September 14, 1993 on which there has been a discharge, shall not be **[**considered a person in any way responsible**]** liable [2]for cleanup and removal costs or for any other damages [2] 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, **[**unless**]** if that person can establish by

a preponderance of the evidence that [2]**[**all of the following**]**subparagraphs (a) through (d) apply, or if applicable, subparagraphs (a) through (e)[2] 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 [2]**[**and**]**,[2] is not in any way responsible for the hazardous substance [2], 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[2]; and

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

To establish that a person had no reason to know that any hazardous substance had been discharged for the purposes of this paragraph (2), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property. 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 **[**the effective date of P.L.1993, c.139 (C.13:1K-9.6 et al.)**]** September 14, 1993.

(e) For the purposes of this subparagraph the person must have (i) acquired the property subsequent to a [2]**[**contaminant**]** hazardous substance[2] 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. , c. (now before the legislature as this bill), 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 [2]valid[2] no further action letter [2]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. , c. (before the Legislature as this bill) and continued to comply with the conditions of that workplan,[2] and (iii) established [2][or] and[2] maintained all engineering and institutional controls as may be required pursuant 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 [2]be issued[2], upon application, [2][be issued][2] 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. , c. (before the Legislature as this bill), 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 [2][contaminant] hazardous substance,[2] at the site, if the remediation was for the entire site, and the [2][contaminent] hazardous substance[2] 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 [2][contaminent] hazardous substance, for failure to comply in the future with laws and regulations[2] , 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 [government] 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 [for the cleanup and removal costs of], 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 [2][apply]provide any liability protection[2] to any federal, State or local governmental entity which has caused or contributed to the discharge of a hazardous substance. [2]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.[2]

e. [(1) If the Department of Environmental Protection issues a no further action letter or approves a remedial action workplan after the effective date of P.L.1996, c.62 (C.55:19-20 et al.) for a site at which a discharge occurred prior to or after the effective date of P.L.1996, c.62 (C.55:19-20 et al.), then any person who is not otherwise liable for any discharge at the site which occurred prior to the department's approval of the no further action letter or remedial action workplan shall not be liable for the discharge based solely on that person becoming an owner or operator of the site of the discharge after the discharge has occurred. For the purposes of this paragraph, a site shall constitute the real property defined in the remedial action workplan or, if no remedial action workplan is required, the no further action letter. The provisions of this paragraph shall only apply when the site is located in a qualified municipality as defined pursuant to section 3 of P.L.1996, c.62 (C.55:19-22) and there is continued compliance with all of the conditions of the no further action letter, the remedial action workplan and all applicable engineering and institutional controls.

(2)] [2][The] Neither the[2] fund [2][established pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.),] nor the Sanitary Landfill Contingeny Fund established pursuant to P.L. 1981, c.306 (C.13:1E-100 et seq)[2] shall [2][not][2] be liable for any damages incurred by any person who is relieved from liability pursuant to [this] subsection d. or f. of this section [2]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[2].

[2]f. Notwithstanding any other provision of this section, a person, who owns real property acquired on or after the effective date of P.L. , c. (C.) (before the Legislature as this bill), 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 acquistion, 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. , c. (before the Legislature as this bill) 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. , c. (before the Legislature as this bill).

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.).[2]

(cf: P.L.1996, c.62, s.56)

21. Section 2 of P.L.1995, c.413 (C.54:4-3.151) is amended to read as follows:

2. The Legislature finds that there are numerous properties that are underutilized or that have been abandoned and that are not being utilized for any commercial use because of contamination that exists at those properties; that abandoned contaminated properties harm society by causing a burden on municipal services while failing to contribute to the funding of those services; that a disproportionate percentage of these properties are located in older urban municipalities given the fact that these municipalities were once the center for industrial production; that the revitalization of these properties will not only bring tax ratables to the municipality and other local governments, but will result in job creation and foster urban redevelopment; that one of the central tenets of the State Development and Redevelopment Plan is to redevelop urban areas with existing utilities and infrastructure and that the use of these now abandoned or underutilized sites for commercial purposes will make a significant contribution toward implementing the plan; that the federal "Clean Air Act" encourages the reindustrialization of urban areas as this would provide jobs near where people live thus reducing harmful air pollutants emitted from automobiles needed to travel distances to places of employment; and that it is in the economic interest of the State and the municipalities in which abandoned or underutilized contaminated properties are located to encourage the remediation of these properties so that they can be reused or fully used for commercial, residential, or other productive purposes.

(cf: P.L.1995, c.413, s.2)

22. Section 3 of P.L.1995, c.413, (C.54:4-3.152) is amended to read as follows:

3. As used in this act:

"Assessor" means the municipal tax assessor appointed pursuant to the provisions of chapter 9 of Title 40A of the New Jersey Statutes;

"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);

"Environmental opportunity zone" means any qualified real property that has been designated by the governing body as an environmental opportunity zone pursuant to section 4 of P.L.1995, c.413 (C.54:4-3.153);

[2] ["Permanent remedial action"means any remedial action that does not require the continued use of engineering controls in order to meet

the established health risk or environmental standards. A remedial action may be considered permanent even if institutional controls are employed at the site;**]**

"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;**[2]**

"Qualified real property" means any parcel of real property that is now vacant or underutilized, which is in need of a remediation due to a discharge or threatened discharge of a contaminant **[**, and which is listed in the most recent Department of Environmental Protection publication of known hazardous discharge sites in New Jersey prepared pursuant to P.L.1982, c.202 (C.58:10-23.15 et seq.)**]**;

"Remediation" 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 **[2][.] ;2**

"Remediation cost" means cost associated with the implementation of a remediation, including all direct and indirect legal, administrative and capital costs, engineering costs, and annual operation, maintence, and monitoring costs;

"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.**[2]**

(cf: P.L.1995, c.413, s.3)

23. Section 5 of P.L.1995, c.413 (C.54:4-3.154) is amended to read as follows:

5. The governing body of a municipality which has adopted an ordinance pursuant to section 4 of P.L.1995, c.413 (C.54:4-3.153), **[1]**may**]** shall**[1]**, by ordinance, provide for exemptions of real property taxes for environmental opportunity zones. The governing body shall include the following items in its enabling ordinance:

a. A property tax exemption term of ten years except that a tax exemption may be extended up to fifteen years, at the municipality's option, if the qualified real property is to be remediated with a **[2]**[permanent]** limited restricted use remedial action or an unrestricted use[2] remedial action [2]. The property tax exemption shall end if the difference between the real property taxes otherwise due and payments made in lieu of those taxes equals the total remediation cost for the qualified real property[2];

b. The application procedure for an exemption authorized under P.L.1995, c.413 (C.54:4-3.150 et seq.);

c. The method of computing payments in lieu of real property taxes pursuant to subsection b. of section 7 of P.L.1995, c.413 (C.54:4-3.156);

d. An approval method for exemption applications by the assessor or by ordinance on a per application basis; and

e. A requirement that the environmental opportunity zone will be remediated in compliance with the remediation **[**standards**]** regulations adopted by the Department of Environmental Protection pursuant to P.L.1993, c.139 (C.58:10B-1 et al.), that the owner of the property will enter into a memorandum of agreement or administrative consent order with the department to perform the remediation and will complete the remediation pursuant to the agreement or order, and that, once remediated, the environmental opportunity zone will be used for a commercial **[**or**]** , industrial, residential, or other productive purpose during the time period for which the real property tax exemption is given.

(cf: P.L.1995, c.413, s.5)

24. Section 7 of P.L. 1995, c.413 (C.54:4-3.156) is amended to read as follows:

7. a. Each approved exemption shall be evidenced by a financial agreement between the municipality and the applicant. The agreement shall be prepared by the applicant and shall contain the representations that are required by the enabling ordinance. The agreement shall provide for the applicant to annually pay to the municipality an amount in lieu of real property taxes, to be computed according to subsection b. of this section. With the approval of the governing body, the agreement may be assigned to a subsequent owner of the environmental opportunity zone.

b. Payments in lieu of real property taxes may be computed as a portion of the real property taxes otherwise due, according to the following schedule:

(1) In the first tax year following execution of a memorandum of agreement or administrative consent order, no payment in lieu of taxes otherwise due;

(2) In the second tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than 10% of taxes otherwise due;

(3) In the third tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than 20% of taxes otherwise due;

(4) In the fourth tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than 30% of taxes otherwise due;

(5) In the fifth tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than 40% of taxes otherwise due;

(6) In the sixth tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than

50% of the taxes otherwise due;

(7) In the seventh tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than 60% of the taxes otherwise due;

(8) In the eighth tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than 70% of the taxes otherwise due;

(9) In the ninth tax year following execution of a memorandum of agreement or administrative consent order, an amount not less than 80% of the taxes otherwise due;

(10) In the tenth and all subsequent tax years following execution of a memorandum of agreement or administrative consent order, the exemption shall expire and the full amount of the assessed real property taxes, taking into account the value of the real property in its remediated state, shall be due.

Where a property tax exemption has been extended because of the proposed implementation of a [2][permanent] limited restricted use remediated action or unrestricted use[2] remedial action, the municipality may provide for a different schedule for the payment in lieu of real property taxes which payments may not exceed the length of the property tax exemption.

c. For the purposes of this section, [2]only[2] the amount of "taxes otherwise due" shall be determined by using the assessed valuation of the environmental opportunity zone at the time of the approval by the assessor of the exemption, regardless of any improvement made to the environmental opportunity zone thereafter [2]and as if the designation of the environmental opportunity zone had not occurred[2].

d. Notwithstanding any other provision in P.L.1995, c.413 (C.54:4-3.150 et seq.), if at any time the governing body of the municipality finds that the memorandum of agreement for remediation of the environmental opportunity zone has been terminated at the option of the applicant, unless if an administrative consent order is issued in its place, or that any of the conditions in the ordinance as required by subsection e. of section 5 of P.L.1995, c.413 (C.54:4-3.154) are not met, the period of the property tax exemption shall end.

(cf: P.L.1995, c.413, s.7)

[2][25. Section 2 of P.L.1960, c.183 (C.40:37A-45) is amended to read as follows:

2. As used in this act, unless a different meaning clearly appears from the context:

(a) "Authority" shall mean a public body created pursuant to this act;

(b) "Bond resolution" shall have the meaning ascribed thereto in section 17 of P.L.1960, c.183 (C.40:37A-60);

(c) "Bonds" shall mean bonds, notes or other obligations issued

pursuant to this act;

(d) "Construct" and "construction" shall connote and include acts of clearance, demolition, construction, development or redevelopment, reconstruction, replacement, extension, improvement and betterment;

(e) "Cost" shall mean, in addition to the usual connotations thereof, the cost of planning, acquisition or construction of all or any part of any public facility or facilities of an authority and of all or any property, rights, easements, privileges, agreements and franchises deemed by the authority to be necessary or useful and convenient therefor or in connection therewith, including interest or discount on bonds, cost of issuance of bonds, architectural, engineering and inspection costs and legal expenses, cost of financial, professional and other estimates and advice, organization, administrative, operating and other expenses of the authority prior to and during such acquisition or construction, and all such other expenses as may be necessary or incident to the financing, acquisition, construction and completion of such public facility or facilities or part thereof and the placing of the same fully in operation or the disposition of the same, and also such provision or reserves for working capital, operating, maintenance or replacement expenses or for payment or security of principal of or interest on bonds during or after such acquisition or construction as the authority may determine, and also reimbursements to the authority or any governmental unit or person of any moneys theretofore expended for the purposes of the authority;

(f) The term "county" shall mean any county of any class of the State and shall include, without limitation, the terms "the county" and "beneficiary county" defined in this act, and the term "the county" shall mean the county which created an authority pursuant to this act;

(g) "Development project" shall mean any lands, structures, or property or facilities acquired or constructed or to be acquired or constructed by an authority for the purposes of the authority described in subsection (e) of section 11 of P.L.1960, c.183 (C.40:37A-54);

(h) "Facility charges" shall have the meaning ascribed to said term in section 14 of P.L.1960, c.183 (C.40:37A-57);

(i) "Facility revenues" shall have the meaning ascribed to said term in subsection (e) of section 20 of P.L.1960, c.183 (C.40:37A-63);

(j) "Governing body" shall mean, in the case of a county, the board of chosen freeholders, or in the case of a county operating under article 3 or 5 of the "Optional County Charter Law" (P.L.1972, c.154; C.40:41A-1 et seq.) as defined thereunder, and, in the case of a municipality, the commission, council, board or body, by whatever name it may be known, having charge of the finances of the municipality;

(k) "Governmental unit" shall mean the United States of America or the State or any county or municipality or any subdivision, department, agency, or instrumentality heretofore or hereafter created,

designated or established by or for the United States of America or the State or any county or municipality;

(l) "Local bond law" shall mean chapter 2 of Title 40A, Municipalities and Counties, of the New Jersey Statutes (N.J.S.) as amended and supplemented;

(m) "Municipality" shall mean any city, borough, village, town, or township of the State but not a county or a school district;

(n) "Person" shall mean any person, partnership, association, corporation or entity other than a nation, state, county or municipality or any subdivision, department, agency or instrumentality thereof;

(o) "Project" shall have the meaning ascribed to said term in section 17 of P.L.1960, c.183 (C.40:37A-60);

(p) "Public facility" shall mean any lands, structures, franchises, equipment, or other property or facilities acquired, constructed, owned, financed, or leased by the authority or any other governmental unit or person to accomplish any of the purposes of an authority authorized by section 11 of P.L.1960, c.183 (C.40:37A-54);

(q) "Real property" shall mean lands within or without the State, above or below water, and improvements thereof or thereon, or any riparian or other rights or interests therein;

(r) "Garbage and solid waste disposal system" shall mean the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by a county improvement authority, including incinerators, sanitary landfill facilities or other plants for the treatment and disposal of garbage, solid waste and refuse matter and all other real and personal property and rights therein and appurtenances necessary or useful and convenient for the collection and treatment or disposal in a sanitary manner of garbage, solid waste and refuse matter (but not including sewage);

(s) "Garbage, solid waste or refuse matter" shall mean garbage, refuse and other discarded materials resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including sludge, chemical waste, hazardous wastes and liquids, except for liquids which are treated in public sewage treatment plants and except for solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms;

(t) "Blighted, deteriorated or deteriorating area" may include an area determined heretofore by the municipality to be blighted in accordance with the provisions of P.L.1949, c.187, repealed by P.L.1992, c.79 (C.40:55-21.1 et seq.) and, in addition, areas which are determined by the municipality, pursuant to the same procedures as provided in said law, to be blighted, deteriorated or deteriorating because of structures or improvements which are dilapidated or

characterized by disrepair, lack of ventilation or light or sanitary facilities, faulty arrangement, location, or design, or other unhealthful or unsafe conditions;

(u) "Redevelopment" may include planning, replanning, conservation, rehabilitation, clearance, remediation, development and redevelopment; and the construction and rehabilitation and provision for construction and rehabilitation of residential, commercial, industrial, public or other structures and the grant or dedication or rededication of spaces as may be appropriate or necessary in the interest of the general welfare for streets, parks, playgrounds, or other public purposes including recreational and other facilities incidental or appurtenant thereto, in accordance with a redevelopment plan approved by the governing body of a municipality;

(v) "Redevelopment plan" shall mean a plan as it exists from time to time for the redevelopment of all or any part of a redevelopment area, which plan shall be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, conservation or rehabilitation as may be proposed to be carried out in the area of the project, zoning and planning changes, if any, land uses, maximum densities, building requirements, the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements, the need for and extent of remediation of any lands, and provision for relocation of any residents and occupants to be displaced in a manner which has been or is likely to be approved by the Department of Community Affairs pursuant to the "Relocation Assistance Law of 1967," P.L.1967, c.79 (C.52:31B-1 et seq.) and the "Relocation Assistance Act," P.L.1971, c.362 (C.20:4-1 et seq.) and rules and regulations pursuant thereto;

(w) "Redevelopment project" shall mean any undertakings and activities for the elimination, and for the prevention of the development or spread, of blighted, deteriorated, or deteriorating areas and may involve any work or undertaking pursuant to a redevelopment plan; such undertaking may include: (1) acquisition of real property and demolition, removal or rehabilitation of buildings and improvements thereon; (2) carrying out plans for a program of voluntary repair and rehabilitation of buildings or other improvements; and (3) installation, construction or reconstruction of streets, utilities, parks, playgrounds or other improvements necessary for carrying out the objectives of the redevelopment project;

(x) "Redeveloper" shall mean any person or governmental unit that shall enter into or propose to enter into a contract with an authority for the redevelopment of an area or any part thereof under the provisions of this act;

(y) "Redevelopment area" shall mean an area of a municipality

which the governing body thereof finds is a blighted area, a contaminated redevelopment site, or an area in need of rehabilitation whose redevelopment is necessary to effectuate the public purposes declared in this act. A redevelopment area may include lands, buildings, or improvements which of themselves are not detrimental to the public health, safety or welfare, but whose inclusion is found necessary, with or without change in their condition, for the effective redevelopment of the area of which they are a part;

(z) "Sludge" shall mean any solid, semisolid, or liquid waste generated from a municipal, industrial or other sewage treatment plant, water supply treatment plant, or air pollution control facility, or any other such waste having similar characteristics and effects, but shall not include effluent; **[**and **]**

(aa) "Beneficiary county" shall mean any county that has not created an authority pursuant to this act ;

(bb) "Contaminated redevelopment site" means any parcel of real property that is now vacant or underutilized, which is in need of a remediation due to a perceived or actual discharge or threatened discharge of a contaminant, and which has been so designated by the municipality in which it is located. "Contaminated redevelopment site" may only include an environmental opportunity zone designated by a municipality pursuant to P.L.1995, c.413 (C.54:4-3.150 et seq.) or an area determined to be in need of redevelopment pursuant to P.L. 1992, c.79 (C.40A:12A-1 et seq.);

(cc) "Remediation" 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;

(dd) "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) and;

(ee) "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.
(cf: P.L.1994, c.76, s.1)**]**[2]

[2]**[**26. Section 11 of P.L.1960, c.183 (C.40:37A-54) is amended to read as follows:

11. The purposes of every authority shall be (a) provision within the county or any beneficiary county of public facilities for use by the State, the county or any beneficiary county, or any municipality in any such county, or any two or more or any subdivisions, departments, agencies or instrumentalities of any of the foregoing for any of their respective governmental purposes, (b) provision within the county or any beneficiary county of public facilities for use as convention halls, or the rehabilitation, improvement or enlargement of any convention hall, including appropriate and desirable appurtenances located within the convention hall or near, adjacent to or over it within boundaries determined at the discretion of the authority, including but not limited to office facilities, commercial facilities, community service facilities, parking facilities, hotel facilities and other facilities for the accommodation and entertainment of tourists and visitors, (c) provision within the county or any beneficiary county of structures, franchises, equipment and facilities for operation of public transportation or for terminal purposes, including development and improvement of port terminal structures, facilities and equipment for public use in counties in, along or through which a navigable river flows, (d) provision within the county or any beneficiary county of structures or other facilities used or operated by the authority or any governmental unit in connection with, or relative to development and improvement of, aviation for military or civilian purposes, including research in connection therewith, and including structures or other facilities for the accommodation of passengers, (e) provision within the county or any beneficiary county of a public facility for a combination of governmental and nongovernmental uses; provided that not more than 50% of the usable space in any such facility shall be made available for nongovernmental use under a lease or other agreement by or with the authority, (f) acquisition of any real property within the county or any beneficiary county, with or without the improvements thereof or thereon or personal property appurtenant or incidental thereto, from the United States of America or any department, agency or instrumentality heretofore or hereafter created, designated or established by or for it, and the clearance, development or redevelopment, improvement, use or disposition of the acquired lands and premises in accordance with the provisions and for the purposes stated in this act, including the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of improvements on or to said lands and premises, and structures and facilities incidental to the foregoing as may be necessary, convenient

or desirable, (g) acquisition, construction, maintenance and operation of garbage and solid waste disposal systems for the purpose of collecting and disposing of garbage, solid waste or refuse matter, whether owned or operated by any person, the authority or any other governmental unit, within or without the county or any beneficiary county, (h) the improvement, furtherance and promotion of the tourist industries and recreational attractiveness of the county or any beneficiary county through the planning, acquisition, construction, improvement, maintenance and operation of facilities for the recreation and entertainment of the public, which facilities may include, without being limited to, a center for the performing and visual arts, (i) provision of loans and other financial assistance and technical assistance for the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of buildings or facilities designed to provide decent, safe and sanitary dwelling units for persons of low and moderate income in need of housing, including the acquisition of land, equipment or other real or personal properties which the authority determines to be necessary, convenient or desirable appurtenances, all in accordance with the provisions of this act, as amended and supplemented, (j) planning, initiating and carrying out redevelopment projects for the elimination, and for the prevention of the development or spread of blighted, deteriorated or deteriorating areas and the disposition, for uses in accordance with the objectives of the redevelopment project, of any property or part thereof acquired in the area of such project, (k) any combination or combinations of the foregoing or following, **[**and**]** (l) subject to the prior approval of the Local Finance Board, the planning, design, acquisition, construction, improvement, renovation, installation, maintenance and operation of facilities or any other type of real or personal property within the county for a corporation or other person organized for any one or more of the purposes described in subsection a. of N.J.S.15A:2-1 except those facilities or any other type of real or personal property which can be financed pursuant to the provisions of P.L.1972, c.29 (C.26:2I-1 et seq.) as amended, and (m) planning, initiating, promoting, financing, and coordinating necessary actions to remediate and redevelop contaminated redevelopment sites.

(cf: P.L.1994, c.110, s.1)**]**[2]

[2]**[**27. Section 12 of P.L.1960, c.183 (C.40:37A-55) is amended to read as follows:

12. Every authority shall be a public body politic and corporate constituting a political subdivision of the State established as an instrumentality exercising public and essential governmental functions to provide for the public convenience, benefit and welfare and shall have perpetual succession and, for the effectuation of its purposes, have the following additional powers:

(a) To adopt and have a common seal and to alter the same at pleasure;

(b) To sue and be sued;

(c) To acquire, hold, use and dispose of its facility charges and other revenues and other moneys;

(d) To acquire, rent, hold, use and dispose of other personal property for the purposes of the authority;

(e) Subject to the provisions of section 26 of this act, to acquire by purchase, gift, condemnation or otherwise, or lease as lessee, real property and easements or interests therein necessary or useful and convenient for the purposes of the authority, whether subject to mortgages, deeds of trust or other liens or otherwise, and to hold and to use the same, and to dispose of property so acquired no longer necessary for the purposes of the authority; provided that the authority may dispose of such property at any time to any governmental unit or person if the authority shall receive a leasehold interest in the property for such term as the authority deems appropriate to fulfill its purposes;

(f) Subject to the provisions of section 13 of this act, to lease to any governmental unit or person, all or any part of any public facility for such consideration and for such period or periods of time and upon such other terms and conditions as it may fix and agree upon;

(g) To enter into agreements to lease, as lessee, public facilities for such term and under such conditions as the authority may deem necessary and desirable to fulfill its purposes, and to agree, pursuant thereto, to be unconditionally obligated to make payments for the term of the lease, without set-off or counterclaim, whether or not the public facility is completed, operating or operable, and notwithstanding the destruction of, damage to, or suspension, interruption, interference, reduction or curtailment of the availability or output of the public facility to which the agreement applies;

(h) To extend credit or make loans to any governmental unit or person for the planning, design, acquisition, construction, equipping and furnishing of a public facility, upon the terms and conditions that the loans be secured by loan and security agreements, mortgages, leases and other instruments, the payments on which shall be sufficient to pay the principal of and interest on any bonds issued for the purpose by the authority, and upon such other terms and conditions as the authority shall deem reasonable;

(i) Subject to the provisions of section 13 of this act, to make agreements of any kind with any governmental unit or person for the use or operation of all or any part of any public facility for such consideration and for such period or periods of time and upon such other terms and conditions as it may fix and agree upon;

(j) To borrow money and issue negotiable bonds or notes or other obligations and provide for and secure the payment of any bonds and

the rights of the holders thereof, and to purchase, hold and dispose of any bonds;

(k) To apply for and to accept gifts or grants of real or personal property, money, material, labor or supplies for the purposes of the authority from any governmental unit or person, and to make and perform agreements and contracts and to do any and all things necessary or useful and convenient in connection with the procuring, acceptance or disposition of such gifts or grants;

(l) To determine the location, type and character of any public facility and all other matters in connection with all or any part of any public facility which it is authorized to own, construct, establish, effectuate or control;

(m) To make and enforce bylaws or rules and regulations for the management and regulation of its business and affairs and for the use, maintenance and operation of any public facility, and to amend the same;

(n) To do and perform any acts and things authorized by this act under, through or by means of its own officers, agents and employees, or by contract with any governmental unit or person;

(o) To acquire, purchase, construct, lease, operate, maintain and undertake any project and to fix and collect facility charges for the use thereof;

(p) To mortgage, pledge or assign or otherwise encumber all or any portion of its revenues and other income, real and personal property, projects and facilities for the purpose of securing its bonds, notes and other obligations or otherwise in furtherance of the purpose of this act;

(q) To extend credit or make loans to redevelopers for the planning, designing, acquiring, constructing, reconstructing, improving, remediation, equipping and furnishing any redevelopment project or redevelopment work;

(r) To conduct examinations and investigations, hear testimony and take proof, under oath at public or private hearings of any material matter, require the attendance of witnesses and the production of books and papers and issue commissions for the examination of witnesses who are out of the State, unable to attend, or excused from attendance;

(s) To authorize a committee designated by it consisting of one or more members, or counsel, or any officer or employee to conduct any such investigation or examination, in which case such committee, counsel, officer or employee shall have power to administer oaths, take affidavits and issue **[**subpenas**]** subpoenas or commissions; **[**and**]**

(t) To enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the authority or to carry out any power expressly given in this act subject to P.L.1971,

c.198, "Local Public Contracts Law" (C.40A:11-1 et seq.) ; and

(u) To conduct and coordinate public outreach efforts to inform the public of the health and environmental risks, as well as the economic benefits, of the remediation and redevelopment of contaminated redevelopment sites.

(cf: P.L.1982, c. 113, s. 8)**]**[2]

[2]**[**28. (New section) For purposes of the redevelopment of contaminated redevelopment areas, and subject to the provisions of this act, a county improvement authority may:

a. Acquire or contract to acquire from any person, firm or corporation, public or private, by contribution, gift, grant, bequest, devise, purchase, condemnation or otherwise, real or personal property or any interest therein, including such property as it may deem necessary or proper, although temporarily not required for such purposes, in a redevelopment area and in any area designated by the municipal governing body as necessary for carrying out the relocation of the residents, industry and commerce displaced from a redevelopment area;

b. Demolish, remove or rehabilitate buildings or other improvements in any area acquired and install, construct or reconstruct streets, facilities, utilities and site improvements essential to the preparation of sites for use in accordance with the redevelopment plan;

c. Relocate or arrange for the relocation of residents and occupants of an area;

d. Dispose of land so acquired for the uses specified in the redevelopment plan as determined by it to any person, firm, or corporation or to any public agency by sale, lease or exchange;

e. Request the municipal planning board, if any, to recommend, or request the municipal governing body pursuant to existing law to designate, areas in need of redevelopment or as environmental opportunity zones and to make recommendations for such development;

f. Study the recommendations of the municipal planning board for redevelopment of any area and to make its own investigations and recommendations as to current trends in the municipality, blighted areas and blighting factor, to the governing body of the municipality thereon;

g. Publish and disseminate information;

h. Prepare or arrange by contract for preparation of plans by registered architects or licensed professional engineers or planners for the carrying out of the redevelopment projects;

i. Arrange or contract with public agencies or redevelopers for the planning, replanning, conservation, rehabilitation, construction, or undertaking of any project, or redevelopment work, or any part

thereof, to provide as part of any such arrangement or contract for extension of credit or making of loans to redevelopers to finance any project or redevelopment work, and to arrange or contract with public agencies for the opening, grading or closing of streets, roads, roadways, alleys, or other places or for the furnishing of facilities or for the acquisition by such agency of property options or property rights or for the furnishing of property or services in connection with a redevelopment area;

j. Arrange or contract with a public agency, to the extent that it is within the scope of that agency's functions, to cause the services customarily provided by such other agency to be rendered for the benefit of the occupants of any redevelopment area, and to have such other agency provide and maintain parks, recreation centers, schools, sewerage, transportation, water and other municipal facilities adjacent to or in connection with redevelopment areas;

k. Enter upon any building or property in any redevelopment area in order to conduct investigations or make surveys, soundings or test borings necessary to carry out the purposes of this act;

l . Arrange or contract with a public agency for the relocation of residents, industry or commerce displaced from a redevelopment area;

m. Make (1) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements; and (2) plans for the enforcement of laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements;

n. Develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of blight; and

o. To finance by mortgage loans or otherwise the construction or establishment of retail food outlets and to make temporary loans or advances in anticipation of permanent loans.**]**[2]

[2]25. (New Section) The Department of Environmental Protection shall:

(1) Prepare materials for dissemination to the public that explain the environmental and health risks associated with site remediations in general and which are designed to assist local governments and the public in assessing the risks associated with particular site remediation projects;

(2) Serve as an informational resource for county improvement authorities who are involved in remediating and redeveloping contaminated redevelopment areas and for municipalities and residents of this State who may be impacted by the remediation or redevelopment of contaminated real property regardless of who is undertaking the remediation or redevelopment;

(3) Work with residents and municipalities to form neighborhood informational groups whose purpose is to research, understand and disseminate information in neighborhoods concerning the public health and environmental risks associated with site remediations and redevelopment, as well as the economic benefits to be gained; and

(4) Make recommendations to the Legislature and the Governor in order to improve the public understanding, perception and risk associated with site remediations in the State.[2]

[2]26. Section 12 of P.L.1970, c.33 (C.13:1D-9) is amended to read as follows:

12. The department shall formulate comprehensive policies for the conservation of the natural resources of the State, the promotion of environmental protection and the prevention of pollution of the environment of the State. The department shall in addition to the powers and duties vested in it by this act or by any other law have the power to:

a. Conduct and supervise research programs for the purpose of determining the causes, effects and hazards to the environment and its ecology;

b. Conduct and supervise Statewide programs of education, including the preparation and distribution of information relating to conservation, environmental protection and ecology;

c. Require the registration of persons engaged in operations which may result in pollution of the environment and the filing of reports by them containing such information as the department may prescribe to be filed relative to pollution of the environment, all in accordance with applicable codes, rules or regulations established by the department;

d. Enter and inspect any building or place for the purpose of investigating an actual or suspected source of pollution of the environment and ascertaining compliance or noncompliance with any codes, rules and regulations of the department. Any information relating to secret processes concerning methods of manufacture or production, obtained in the course of such inspection, investigation or determination, shall be kept confidential, except this information shall be available to the department for use, when relevant, in any administrative or judicial proceedings undertaken to administer, implement, and enforce State environmental law, but shall remain subject only to those confidentiality protections otherwise afforded by federal law and by the specific State environmental laws and regulations that the department is administering, implementing and enforcing in that particular case or instance. In addition, this information shall be available upon request to the United States Government for use in administering, implementing, and enforcing federal environmental law, but shall remain subject to the confidentiality protection afforded by federal law. If samples are

taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person suspected of causing pollution of the environment;

e. Receive or initiate complaints of pollution of the environment, including thermal pollution, hold hearings in connection therewith and institute legal proceedings for the prevention of pollution of the environment and abatement of nuisances in connection therewith and shall have the authority to seek and obtain injunctive relief and the recovery of fines and penalties in summary proceedings in the Superior Court;

f. Prepare, administer and supervise Statewide, regional and local programs of conservation and environmental protection, giving due regard for the ecology of the varied areas of the State and the relationship thereof to the environment, and in connection therewith prepare and make available to appropriate agencies in the State technical information concerning conservation and environmental protection, cooperate with the Commissioner of Health in the preparation and distribution of environmental protection and health bulletins for the purpose of educating the public, and cooperate with the Commissioner of Health in the preparation of a program of environmental protection;

g. Encourage, direct and aid in coordinating State, regional and local plans and programs concerning conservation and environmental protection in accordance with a unified Statewide plan which shall be formulated, approved and supervised by the department. In reviewing such plans and programs and in determining conditions under which such plans may be approved, the department shall give due consideration to the development of a comprehensive ecological and environmental plan in order to be assured insofar as is practicable that all proposed plans and programs shall conform to reasonably contemplated conservation and environmental protection plans for the State and the varied areas thereof;

h. Administer or supervise programs of conservation and environmental protection, prescribe the minimum qualifications of all persons engaged in official environmental protection work, and encourage and aid in coordinating local environmental protection services;

i. Establish and maintain adequate bacteriological, radiological and chemical laboratories with such expert assistance and such facilities as are necessary for routine examinations and analyses, and for original investigations and research in matters affecting the environment and ecology;

j. Administer or supervise a program of industrial planning for environmental protection; encourage industrial plants in the State to undertake environmental and ecological engineering programs; and cooperate with the State Departments of Health, Labor, and

Commerce and Economic Development in formulating rules and regulations concerning industrial sanitary conditions;

k. Supervise sanitary engineering facilities and projects within the State, authority for which is now or may hereafter be vested by law in the department, and shall, in the exercise of such supervision, make and enforce rules and regulations concerning plans and specifications, or either, for the construction, improvement, alteration or operation of all public water supplies, all public bathing places, landfill operations and of sewerage systems and disposal plants for treatment of sewage, wastes and other deleterious matter, liquid, solid or gaseous, require all such plans or specifications, or either, to be first approved by it before any work thereunder shall be commenced, inspect all such projects during the progress thereof and enforce compliance with such approved plans and specifications;

l. Undertake programs of research and development for the purpose of determining the most efficient, sanitary and economical ways of collecting, disposing or utilizing of solid waste;

m. Construct and operate, on an experimental basis, incinerators or other facilities for the disposal of solid waste, provide the various municipalities and counties of this State, the Board of Public Utilities, and the Division of Local Government Services in the Department of Community Affairs with statistical data on costs and methods of solid waste collection, disposal and utilization;

n. Enforce the State air pollution, water pollution, conservation, environmental protection, waste and refuse disposal laws, rules and regulations, including the making and signing of a complaint and summons for their violation by serving the summons upon the violator and thereafter filing the complaint promptly with a court having jurisdiction;

o. Acquire by purchase, grant, contract or condemnation, title to real property, for the purpose of demonstrating new methods and techniques for the collection or disposal of solid waste;

p. Purchase, operate and maintain, pursuant to the provisions of this act, any facility, site, laboratory, equipment or machinery necessary to the performance of its duties pursuant to this act;

q. Contract with any other public agency or corporation incorporated under the laws of this or any other state for the performance of any function under this act;

r. With the approval of the Governor, cooperate with, apply for, receive and expend funds from, the federal government, the State Government, or any county or municipal government or from any public or private sources for any of the objects of this act;

s. Make annual and such other reports as it may deem proper to the Governor and the Legislature, evaluating the demonstrations conducted during each calendar year;

t. Keep complete and accurate minutes of all hearings held before

the commissioner or any member of the department pursuant to the provisions of this act. All such minutes shall be retained in a permanent record, and shall be available for public inspection at all times during the office hours of the department;

u. Require any person subject to a lawful order of the department, which provides for a period of time during which such person subject to the order is permitted to correct a violation, to post a performance bond or other security with the department in such form and amount as shall be determined by the department. Such bond need not be for the full amount of the estimated cost to correct the violation but may be in such amount as will tend to insure good faith compliance with said order. The department shall not require such a bond or security from any public body, agency or authority. In the event of a failure to meet the schedule prescribed by the department, the sum named in the bond or other security shall be forfeited unless the department shall find that the failure is excusable in whole or in part for good cause shown, in which case the department shall determine what amount of said bond or security, if any, is a reasonable forfeiture under the circumstances. Any amount so forfeited shall be utilized by the department for the correction of the violation or violations, or for any other action required to insure compliance with the order ; and

v. Encourage and aid in coordinating State, regional and local plans, efforts and programs concerning the remediation and reuse of former industrial or commercial properties that are currently underutilized or abandoned and at which there has been, or is perceived to have been, a discharge, or threat of a discharge, of a contaminant. For the purposes of this subsection, "underutilized property" shall not include properties undergoing a reasonably timely remediation or redevelopment process.[2]

(cf: P.L.1984, c.5, s.1)

[2]27. Section 2 of P.L.1976, c.141 (C.58:10-23.11a) is amended to read as follows:

2. The Legislature finds and declares: that New Jersey's lands and waters constitute a unique and delicately balanced resource; that the protection and preservation of these lands and waters promote the health, safety and welfare of the people of this State; that the tourist and recreation industry dependent on clean waters and beaches is vital to the economy of this State; that the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction; and that the storage and transfer of petroleum products and other hazardous substances between vessels, between facilities and vessels, and between facilities, whether onshore or offshore, is a hazardous undertaking and imposes risk of damage to persons and property within this State.

The Legislature finds and declares that the discharge of petroleum

products and other hazardous substances within or outside the jurisdiction of this State constitutes a threat to the economy and environment of this State. The Legislature intends by the passage of this act to exercise the powers of this State to control the transfer and storage of hazardous substances and to provide liability for damage sustained within this State as a result of any discharge of said substances, by requiring the prompt containment and removal of such pollution and substances, and to provide a fund for swift and adequate compensation to resort businesses and other persons damaged by such discharges, and to provide for the defense and indemnification of certain persons under contract with the State for claims or actions resulting from the provision of services or work to mitigate or clean up a release or discharge of hazardous substances.

The Legislature further finds and declares that many former industrial sites in the State remain vacant or underutilized in part because they have been contaminated by a discharge of a hazardous substance; that these properties constitute an economic drain on the State and the municipalities in which they exist; that it is in the public interest to have these properties cleaned up sufficiently so that they can be safely returned to productive use; and that it should be a function of the Department of Environmental Protection to facilitate and coordinate activities and functions designed to clean up contaminated sites in this State.[2]

(cf: P.L.1991, c.373, s.12)

[2]28. Section 7 of P.L.1976, c.141 (C.58:10-23.11f) is amended to read as follows:

7. a. (1) Whenever any hazardous substance is discharged, the department may, in its discretion, act to clean up and remove or arrange for the cleanup and removal of **[**such**]** the discharge or may direct the discharger to clean up and remove, or arrange for the cleanup and removal of, **[**such**]** the discharge. If the discharge occurs at any hazardous waste facility or solid waste **[**disposal**]** facility, the department may order the hazardous waste facility or solid waste facility closed for the duration of the cleanup and removal operations. The department may monitor the discharger's compliance with any such directive. Any discharger who fails to comply with such a directive shall be liable to the department in an amount equal to three times the cost of such cleanup and removal, and shall be subject to the revocation or suspension of any license issued or permit **[**he holds**]** held authorizing **[**him**]** that person to operate a hazardous waste facility or solid waste **[**disposal**]** facility.

(2) Whenever one or more dischargers or persons cleans up and removes a discharge of a hazardous substance, those dischargers and persons shall have a right of contribution against all other dischargers and persons in any way responsible for a discharged hazardous

substance or other persons who are liable for the cost of the cleanup and removal of that discharge of a hazardous substance. In an action for contribution, the contribution plaintiffs need prove only that a discharge occurred for which the contribution defendant or defendants are liable pursuant to the provisions of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), and the contribution defendant shall have only the defenses to liability available to parties pursuant to subsection d. of section 8 of P.L.1976, c.141 (C.58:10-23.11g). In resolving contribution claims, a court may allocate the costs of cleanup and removal among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall affect the right of any party to seek contribution pursuant to any other statute or under common law.

(3) **[**The department may, in its sole discretion, when it will expedite the cleanup and removal of any discharged hazardous substance, and when the department determines that it is in the public interest, authorize parties who have entered into an agreement with the department to clean up and remove or arrange for the cleanup and removal of a hazardous substance and who seek contribution, to collect treble damages from any contribution defendant who has failed or refused to comply with any directive, was named on the directive, and who is subject to contribution pursuant to this subsection. The treble damages shall be based on the amount of contribution owed by a contribution defendant, which share of contribution shall be determined by the court. A contribution defendant from whom treble damages is sought in a contribution action shall not be assessed treble damages by any court where the contribution defendant, for good cause shown, failed or refused to enter the settlement agreement with the department or with the contribution plantiffs or where principles of fundamental fairness will be violated. One third of an award of treble damages in a contribution action pursuant to this paragraph shall be paid to the department, which sum shall be deposited in the New Jersey Spill Compensation Fund. The other two thirds of the treble damages award shall be shared by the contribution plaintiffs in the proportion of the responsibility for the cost of the cleanup and removal that the contribution plaintiffs have agreed to with the department or in an amount as has been agreed to by those parties. Nothing in this subsection affects the rights of any party to seek contribution pursuant to any other statute or under common law.**]**

In an action for contribution taken pursuant to this subsection, a contribution plaintiff may file a claim with the court for treble damages. A contribution plaintiff may be granted an award of treble damages by the court from one or more contribution defendants only upon a finding by the court that: (a) the contribution defendant is a person who was named on or subject to a directive issued by the department, who failed or refused to comply with such a directive, and

who is subject to contribution pursuant to this subsection; (b) the contribution plaintiff gave 30 days notice to the contribution defendant of the plaintiff's intention to seek treble damages pursuant to this subsection and gave the contribution defendant an opportunity to participate in the cleanup; (c) the contribution defendant failed or refused to enter into a settlement agreement with the contribution plaintiff; and (d) the contribution plaintiff entered into an agreement with the department to remediate the site. Notwithstanding the foregoing requirements, any authorization to seek treble damages made by the department prior to the effective date of P.L. , c. (pending in the Legislature as this bill) shall remain in effect, provided that the department or the contribution plaintiff gave notice to the contribution defendant of the plaintiff's request to the department for authorization to seek treble damages.

A contribution defendant from whom treble damages is sought in a contribution action shall not be assessed treble damages by any court where the contribution defendant, for good cause shown, failed or refused to enter the settlement agreement with the contribution plaintiff or where principles of fundamental fairness will be violated. One third of an award of treble damages in a contribution action pursuant to this paragraph shall be paid to the department, which sum shall be deposited in the New Jersey Spill Compensation Fund. The other two thirds of the treble damages award shall be shared by the contribution plaintiffs in the proportion of the responsibility for the cost of the cleanup and removal that the contribution plaintiffs have agreed to with the department or in an amount as has been agreed to by those parties.

Cleanup and removal of hazardous substances and actions to minimize damage from discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan for cleanup and removal of oil and hazardous substances established pursuant to section 311(c)(2) of the federal Water Pollution Control Act Amendments of 1972 (Pub.L.92-500, 33 U.S.C. s. 1251 et seq.).

Whenever the department acts to clean up and remove a discharge or contracts to secure prospective cleanup and removal services, it is authorized to draw upon the money available in the fund. Such money shall be used to pay promptly for all cleanup and removal costs incurred by the department in cleaning up, in removing or in minimizing damage caused by such discharge.

Nothing in this section is intended to preclude removal and cleanup operations by any person threatened by such discharges, provided such persons coordinate and obtain approval for such actions with ongoing State or federal operations. No action taken by any person to contain or clean up and remove a discharge shall be construed as an admission of liability for said discharge. No person who renders assistance in containing or cleaning up and removing a discharge shall be liable for

any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance, except for acts or omissions of gross negligence or willful misconduct. In the course of cleanup or removal operations, no person shall discharge any detergent into the waters of this State without prior authorization of the commissioner.

b. Notwithstanding any other provisions of P.L.1976, c.141 (C.58:10-23.11 et seq.), the department, subject to the approval of the administrator with regard to the availability of funds therefor, or a local unit as a part of an emergency response action and with the approval of the department, may clean up and remove or arrange for the cleanup and removal of any hazardous substance which:

(1) Has not been discharged from a grounded or disabled vessel, if the department determines that such cleanup and removal is necessary to prevent an imminent discharge of such hazardous substance; or

(2) Has not been discharged, if the department determines that such substance is not satisfactorily stored or contained and said substance possesses any one or more of the following characteristics:

(a) Explosiveness;

(b) High flammability;

(c) Radioactivity;

(d) Chemical properties which in combination with any discharged hazardous substance at the same storage facility would create a substantial risk of imminent damage to public health or safety or an imminent and severe damage to the environment;

(e) Is stored in a container from which its discharge is imminent as a result of contact with a hazardous substance which has already been discharged and such additional discharge would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment; or

(f) High toxicity and is stored or being transported in a container or motor vehicle, truck, rail car or other mechanized conveyance from which its discharge is imminent as a result of the significant deterioration or the precarious location of the container, motor vehicle, truck, rail car or other mechanized conveyance, and such discharge would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment; or

(3) Has been discharged prior to the effective date of P.L.1976, c.141.

c. If and to the extent that he determines that funds are available, the administrator shall approve and make payments for any cleanup and removal costs incurred by the department for the cleanup and removal of a hazardous substance other than petroleum as authorized by subsection b. of this section; provided that in determining the

availability of funds, the administrator shall not include as available funds revenues realized or to be realized from the tax on the transfer of petroleum, to the extent that such revenues result from a tax levied at a rate in excess of $0.01 per barrel, pursuant to subsection b. of section 9 of P.L.1976, c.141 (C.58:10-23.11h), unless the administrator determines that the sum of claims paid by the fund on behalf of petroleum discharges or cleanup and removals plus pending reasonable claims against the fund on behalf of petroleum discharges or cleanup and removals is greater than 30% of the sum of all claims paid by the fund plus all pending reasonable claims against the fund.

d. The administrator may only approve and make payments for any cleanup and removal costs incurred by the department for the cleanup and removal of a hazardous substance discharged prior to the effective date of P.L.1976, c.141, pursuant to subsection b. of this section, if, and to the extent that, he determines that adequate funds from another source are not or will not be available; and provided further, with regard to the cleanup and removal costs incurred for discharges which occurred prior to the effective date of P.L.1976, c.141, the administrator may not during any one-year period pay more than $18,000,000 in total or more than $3,000,000 for any discharge or related set or series of discharges.

e. Notwithstanding any other provisions of P.L.1976, c.141, the administrator, after considering, among any other relevant factors, the department's priorities for spending funds pursuant to P.L.1976, c.141, and within the limits of available funds, shall make payments for the restoration or replacement of, or connection to an alternative water supply for, any private residential well destroyed, contaminated, or impaired as a result of a discharge prior to the effective date of P.L.1976, c.141; provided, however, total payments for said purpose shall not exceed $500,000 for the period between the effective date of this subsection e. and January 1, 1983, and in any calendar year thereafter.

f. Any expenditures made by the administrator pursuant to this act shall constitute, in each instance, a debt of the discharger to the fund. The debt shall constitute a lien on all property owned by the discharger when a notice of lien, incorporating a description of the property of the discharger subject to the cleanup and removal and an identification of the amount of 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 discharger 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 discharger, whether or not the discharger is insolvent.

The notice of lien filed pursuant to this subsection which affects

the property of a discharger subject to the cleanup and removal of a discharge shall create a lien with priority over all other claims or liens which are or have been filed against the property, except if the property comprises six dwelling units or less and is used exclusively for residential purposes, this notice of lien shall not affect any valid lien, right or interest in the property filed in accordance with established procedure prior to the filing of this notice of lien. The notice of lien filed pursuant to this subsection which affects any property of a discharger, other than the property subject to the cleanup and removal, shall have priority from the day of the filing of the notice of the lien over all other 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 subsection.

g. In the event a vessel discharges a hazardous substance into the waters of the State, the cleanup and removal and related costs resulting from that discharge that constitute a maritime lien on the discharging vessel pursuant to 33 U.S.C. s. 1321 or any other law, may be recovered by the Department of Environmental Protection in an action in rem brought in the district court of the United States. An impoundment of a vessel resulting from this action shall continue until:

(1) the claim against the owner or operator of the vessel for the cleanup and removal and related costs of the discharge is satisfied;

(2) the owner or operator of the vessel, or a representative of the owner or operator, provides evidence of financial responsibility as provided in section 2 of P.L.1991, c.58 (C.58:10-23.11g2) and satisfactorily guarantees that these costs will be paid; or

(3) the impoundment is otherwise vacated by a court order. The remedy provided in this subsection is in addition to any other remedy or enforcement power that the department may have under any other law.

Any action brought by the State pursuant to this subsection and any impoundment of a vessel resulting therefrom shall not subject the State to be in any way liable for a subsequent or continued discharge of a hazardous substance from that vessel.[2]

(cf: P.L.1991, c.373, s.14)

29. Section 1 of P.L.1993, c.112 (C.58:10-23.11g4) is amended to read as follows:

1. For purposes of sections 1 through 5 of **[**this act**]** P.L.1993, c.112 (C.58:10-23.11g4 through 58:10-23.11g8):

"Active participation in the management" or "participation in the management" means actual participation in the management or operational affairs by the holder of the security interest and shall not include the mere capacity, or ability to influence, or the unexercised right to control vessel **[**or**]** , facility , or underground storage tank

facility operations.

(1) A holder of a security interest shall be considered to be in active participation in the management, while the borrower is still in possession, only if the holder either:

(a) exercises decision making control over the borrower's environmental compliance, such that the holder has undertaken responsibility for the borrower's waste disposal or hazardous substance handling practices; or

(b) exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise with respect to:

(i) environmental compliance; or

(ii) all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise other than environmental compliance. Operational aspects of the enterprise include functions such as that of facility manager, underground storage tank facility manager, or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative aspects include functions such as that of credit manager, accounts payable or receivable manager, or both, personnel manager, controller, chief financial officer, or similar functions.

(2) No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management. A prospective holder who undertakes or requires an environmental inspection of the vessel **[**or**]** , facility, or underground storage tank facility in which indicia of ownership are to be held, or requires a prospective borrower to clean up a vessel **[**or**]**, facility , or underground storage tank facility or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the vessel's **[**or**]**, facility's, or underground storage tank facility's management, provided however, that a holder shall not be required to conduct or require an inspection to qualify for the protection for holders granted pursuant to sections 1 through 5 of **[**this act**]** P.L.1993, c.112 (C.58:10-23.11g4 through 58:10-23.11g8), and the liability of a holder shall not be based on or affected by the holder not conducting or not requiring an inspection.

(3) Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of sections 1 through 5 of **[**this act**]** P.L.1993, c.112 (C.58:10-23.11g4 through 58:10-23.11g8). The authority for the holder to make such actions may, but need not, be contained in contractual or other documents specifying requirements

for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and work out activities cover and include all activities up to foreclosure and its equivalents.

(a) A holder who engages in policing activities prior to foreclosure shall remain within the exemption provided that the holder does not by such actions participate in the management of the vessel **[**or**]**, facility, or underground storage tank facility. Such actions include, but are not limited to, requiring the borrower to clean up the vessel **[**or**]**, facility, or underground storage tank facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, State, and local environmental and other laws, rules and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the vessel **[**or**]**, facility, or underground storage tank facility (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial conditions during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations or promises from the borrower).

(b) A holder who engages in work out activities prior to foreclosure and its equivalents shall remain within the exemption provided that the holder does not by such action participate in the management of the vessel **[**or**]**, facility, or underground storage tank facility. For purposes of this act, "work out" refers to those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to: prevent, cure, or mitigate a default by the borrower or obligor; or preserve or prevent the diminution of the value of the security. Work out activities include, but are not limited to: restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations or promises from the borrower.

(4) A holder does not participate in the management of a vessel **[**or**]**, facility, or underground storage tank facility by making any response or performing any response action or undertaking any cleanup or removal or similar action under the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," Pub.L. 96-510 (42 U.S.C. §9601 et seq.), the "Spill Compensation and

Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), P.L.1986, c.102 (C.58:10A-21 et seq.), or any other State or federal environmental law or regulation.

"Date of foreclosure" means the date on which the holder obtains legal or equitable title to the vessel or facility pursuant to or incident to foreclosure.

"Fair consideration" means the value of the security interest when calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the cases of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of property subject to a lease financing transaction) pursuant to foreclosure and its equivalents, plus any unpaid interest, rent or penalties (whether arising before or after foreclosure and its equivalents), plus all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure and its equivalents, retention, maintaining the business activities of the enterprise, preserving, protecting and preparing the vessel **[**or**]**, facility, or underground storage tank facility prior to sale, re-lease of property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee) or other disposition, plus response costs incurred under applicable federal or State environmental cleanup laws or regulations, or at the direction of an on-scene coordinator, less any amounts received by the holder in connection with any partial disposition of the property, net revenues received as a result of maintaining the business activities of the enterprise, and any amounts paid by the borrower subsequent to the acquisition of full title (or possession in the case of property subject to a lease financing transaction) pursuant to foreclosure and its equivalents. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this definition.

"Foreclosure" or "foreclosure and its equivalents" means purchase at foreclosure sale; acquisition or assignment of title in lieu of foreclosure; termination of a lease or other repossession; acquisition of a right to title or possession; an agreement in satisfaction of the obligation; or any other form or informal manner (whether pursuant to law or under warranties, covenants, conditions, representations or promises from the borrower) by which the holder acquires title to or possession of the secured property.

"Holder" is a person who maintains indicia of ownership primarily to protect a security interest. A holder includes the initial holder (such as a loan originator), any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest

on the secondary market), a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest, or a receiver or other person who acts on behalf or for the benefit of a holder.

"Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title to real or personal property acquired incident to foreclosure and its equivalents. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

"Primarily to protect a security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation but does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as a protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reasons why any ownership indicia are held shall be as protection for a security interest.

"Security interest" means an interest in a vessel or facility created or established for the purpose of securing a loan or other obligation. Security interests include, but are not limited to, mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trusts receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in a vessel or facility for the purpose of securing a loan or other obligation.

"Underground storage tank" shall have the same meaning as set forth in section 2 of P.L. 1986, c.102 (C.58:10A-22).

"Underground storage tank facility" shall mean one or more underground storage tanks.

(cf: P.L.1993,c.112,s.1)

30. Section 2 of P.L.1993, c.112 (58:10-23.11g5) is amended to read as follows:

2. A person who maintains indicia of ownership of a vessel **[**or**]**,

facility, or underground storage tank facility primarily to protect a security interest in a vessel [or], facility, or underground storage tank facility and who does not participate in the management of the vessel or facility or underground storage tank facility is not deemed to be an owner or operator of the vessel [or], facility, or underground storage tank facility, shall not be deemed the discharger or responsible party for a discharge from the vessel [or], facility, or underground storage tank facility and shall not be liable for cleanup costs or damages resulting from discharges from the vessel or facility pursuant to sections 8, 18, and 22 of P.L.1976, c.141 (C.58:10-23.11g, 58:10-23.11q and 58:10-23.11u) [or] , section 2 of P.L.1990, c.75 (C.58:10-23.11u1), or section 8 of P.L.1986, c.102 (C.58:10A-28) except to the extent that liability may still apply to holders after foreclosure as set forth in section 3 of [this act] P.L. 1993, c.112 (C.58:10-23.11g6).

(cf: P.L.1993,c.112,s.2)

31. Section 3 of P.L.1993, c.112 (C.58:10-23.11g6) is amended to read as follows:

3. The indicia of ownership, held after foreclosure, continue to be maintained primarily as a protection for a security interest provided that the holder did not participate in management prior to foreclosure and that the holder undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee) or otherwise divest itself of the vessel [or], facility, or underground storage tank facility in a reasonably expeditious manner in accordance with the means and procedures specified in this section. Such a holder may liquidate, maintain business operations, undertake environmental response actions pursuant to State and federal law, and take measures to preserve, protect or prepare the secured asset prior to sale or other disposition, without losing status as a person who maintains indicia of ownership primarily to protect a security pursuant to section 2 of [this act] P.L. 1993, c.112 (C.58:10-23.11g5).

a. For purposes of establishing that a holder is seeking to sell, re-lease property held pursuant to a new lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest a vessel [or], facility, or underground storage tank facility in a reasonably expeditious manner, the holder may use whatever commercially reasonable means are relevant or appropriate with respect to the vessel [or], facility, or underground storage tank facility, or may employ the means specified in this section.

b. (1) A holder that outbids, rejects or fails to act upon a written bona fide, firm offer of fair consideration within 90 days of receipt of the offer, and which offer is received at any time after six months following the date of foreclosure, shall not be deemed to be using a

commercially reasonable means for the purpose of this section. A "written bona fide, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed vessel **[**or**]**, facility, , or underground storage tank facility, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this subsection, the six-month period begins to run from the time that the holder acquires a marketable title, provided that the holder, after the expiration of any redemption or other waiting period provided by law, was acting diligently to acquire marketable title.

(2) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the vessel **[**or**]**, facility, or underground storage tank facility within the 90-day period, establishes that the ownership indicia in the secured property are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or State law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

c. A holder establishes that it is proceeding in a commercially reasonable manner after foreclosure by, within 12 months following foreclosure, listing the vessel **[**or**]**, facility, or underground storage tank facility with a broker, dealer, or agent who deals with the type of property in question, or by advertising the vessel **[**or**]**, facility, or underground storage tank facility as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the vessel **[**or**]**, facility, or underground storage tank facility in question, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, State, or local rules of court for publication required by court order or rules of civil procedure) covering the area where the property is located. For purposes of this subsection, the 12-month period begins to run from the time that the holder acquires marketable title, provided that the holder, after the expiration of any redemption or other waiting period provided by law, was acting diligently to acquire marketable title.

d. A holder shall sell, re-lease the property held pursuant to a new lease financing transaction, or otherwise divest such vessel **[**or**]**, facility, or underground storage tank facility in a reasonably expeditious manner, but not later than five years after the date of foreclosure, except that a holder may continue to hold the property for a time period longer than five years without losing status as a person who maintains indicia of ownership primarily to protect a security interest if (1) the holder has made a good faith effort to sell, re-lease or otherwise divest itself of the property using commercially reasonable means or other procedures prescribed by this act; (2) the holder has obtained any approvals required pursuant to applicable

federal or State banking or other lending laws to continue its possession of the property; and (3) the holder has exercised reasonable custodial care to prevent or mitigate any new discharges from the vessel **[**or**]**, facility, or underground storage tank facility that could substantially diminish the market value of the property.

e. (1) The exemption granted to holders pursuant to this section shall not apply to the liability for any new discharge from the vessel **[**or**]**, facility, or underground storage tank facility, occurring after the date of foreclosure, that is caused by acts or omissions of the holder which can be shown, based on a preponderance of the evidence, to have been negligent. In the event a property has both preexisting and new discharges, the liability, if any, allocable to the holder pursuant to this subsection shall be limited to those cleanup costs or damages that relate directly to the new discharge. In the event there is a substantial commingling of a new discharge with a preexisting discharge, the liability, if any, allocable to the holder pursuant to this subsection shall be limited to the cleanup costs or damages in excess of those cleanup costs or damages relating to the preexisting discharge.

In order to establish that a discharge occurred or began prior to the date of foreclosure, a holder may perform, but shall not be required to perform, an environmental audit, in accordance with any applicable Department of Environmental Protection **[**and Energy**]** regulations and guidelines, to identify such discharges at the vessel **[**or**]** , facility, or underground storage tank facility. Upon receipt of a complete audit from the holder, the Department of Environmental Protection **[**and Energy**]** shall, within 90 days of its receipt of the audit, review the audit and transmit its findings to the holder. The Department of Environmental Protection **[**and Energy**]** may charge reasonable fees and adopt any additional regulations necessary to provide guidelines for the submission and review of such audits.

(2) Nothing in this subsection shall be deemed to impose liability for a new discharge from the vessel **[**or**]**, facility, or underground storage tank facility that is authorized pursuant to a federal or State permit or cleanup procedure.

(3) The exemption granted to holders of indicia of ownership to protect a security interest shall not apply to liability, if any, pursuant to applicable law and regulation, for arranging for the offsite disposal or treatment of a hazardous substance or by accepting for transportation and disposing of a hazardous substance at an offsite facility selected by the holder.

f. (1) A holder who acquires an underground storage tank continues to hold the exemption granted to holders pursuant to this section if there is an operator of the underground storage tank, other than the holder, who is in control of the underground storage tank or has responsibility for compliance with applicable federal and State requirements.

(2) If an operator does not exist, a holder continues to maintain the exemption from liability granted to holders pursuant to this section if the holder: (i) empties all underground storage tanks within 60 days after foreclosure or within 60 days after the effective date of P.L. , c. (now in the Legislature as this bill), whichever is later, so that no more than one inch of residue, or .3 percent by weight of the total capacity of the underground storage tank remains in the underground storage tank, leaves vent lines open and functioning, and caps and secures all other lines, pumps, manways, and ancillary equipment; (ii) empties those underground storage tanks that are discovered after foreclosure within 60 days of discovery or within 60 days of the effective date of P.L. , c. (now in the Legislature as this bill), whichever is later, so that no more than one inch of residue, or .3 percent by weight of the total capacity of the underground storage tank remains in the system, leaves vent lines open and functioning, and caps and secures all other lines, pumps, manways, and ancillary equipment; and (iii) permanently closes the underground storage tank pursuant to the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.) or temporarily closes the underground storage tank.

g. An underground storage tank may be temporarily closed until a subsequent purchaser has acquired marketable title to the underground storage tank. When a subsequent purchaser acquires marketable title to the facility, the purchaser shall operate the underground storage tank in accordance with applicable State and federal laws or shall permanently close or remove the underground storage tank in accordance with the provisions of P.L.1986. c.102 (C.58:10A-21 et seq.).

For the purposes of this section, an underground storage tank shall be considered temporarily closed if a holder installs or continues to operate and maintain corrosion protection and reports suspected releases to the Department of Environmental Protection. If the underground storage tank has not been upgraded to comply with the provisions of P.L.1986, c.102 and the applicable federal law or does not comply with the standards for new underground storage tanks pursuant to State and federal law except for spill and overfill protection, and is temporarily closed for 12 months or more, the holder shall conduct a site investigation in accordance with rules and regulations adopted by the department.

(cf: P.L.1993, c.112, s.3)

32. Section 4 of P.L.1993, c.112 (C.58:10-23.11g7) is amended to read as follows:

4. a. Nothing in sections 1 through 5 of **[**this act**]** P.L. 1993, c.112 (C.58:10-23.11g4 through 58:10-23.11g8) shall be deemed to prohibit or limit the rights of the Department of Environmental Protection **[**and Energy**]** to clean up a property or to obtain a lien on

the property of a discharger or holder in order to recover cleanup costs pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f). Any recovery of cleanup costs from a holder pursuant to a lien obtained by the Department of Environmental Protection **[**and Energy**]** shall be limited to the actual financial benefit conferred on such holder by a cleanup or removal action, and shall not exceed the amount realized by the holder on the sale or other disposition of the property.

b. Nothing in sections 1 through 5 of **[**this act**]** P.L. 1993, c. 112 (C.58:10-23.11g4 through 58:10-23.11g8) shall be deemed to prohibit or limit the rights of the Department of Environmental Protection **[**and Energy**]**, pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f), to direct the holder to take any emergency response actions, including closure of the vessel **[**or**]**, facility, or underground storage tank facility, necessary to prevent, contain or mitigate a continuing or new discharge that poses an immediate threat to the environment or to the public health, safety or welfare.

c. (1) If a holder forecloses on a vessel **[**or**]**, facility, or underground storage tank facility at which it has actual knowledge a discharge occurred or began prior to the date of foreclosure, the holder shall, within 30 days of the date of foreclosure, notify the Department of Environmental Protection **[**and Energy**]** that foreclosure has occurred. Any person who fails to give notice required pursuant to this subsection or knowingly gives or causes to be given false information in any such report, shall be subject to a civil penalty not to exceed $25,000. A court, in determining the amount of the penalty to be imposed, shall consider, among other relevant factors, the amount of any damages caused by the failure to give timely notice and whether the failure to notify was inadvertent or intentional.

(2) The holder shall immediately notify the Department of Environmental Protection **[**and Energy**]** of any new discharge, of which it has actual knowledge, occurring after the date of foreclosure, from the vessel **[**or**]**, facility, or underground storage tank facility. Any person who fails to give notice required pursuant to this subsection or knowingly gives or causes to be given any false information in any such report, shall be subject to a civil penalty not to exceed $10,000 per day for each violation. A court, in determining the amount of the penalty to be imposed and the appropriateness of imposing multiple penalties for a continuing offense, shall consider, among other relevant factors, the amount of any damages caused by the failure to give timely notice and whether the failure to notify was inadvertent or intentional.

(3) Any penalty incurred under this section may be recovered with costs in a summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq., in the Superior Court or a municipal court. Failure to give any required notice pursuant to this subsection

shall not cause the holder to lose its status as a person who maintains indicia of ownership primarily to protect a security interest.
(cf: P.L.1993, c.112, s.4)

33. (New section) A holder of an interest in an underground storage tank shall not be required to comply with the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.) unless the holder loses the exemption under P.L.1993, c.112 (C.58:10-23.11g4 et seq.).

34. (New section) As used in sections 34 through 39 of P.L. , c. (C.)(now before the Legislature as this bill):

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

"Developer" means any person that enters or proposes to enter into a redevelopment agreement with the State pursuant to the provisions of section 35 of P.L. , c. (C.)(pending in the Legislature as this bill).

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Project" or "redevelopment project" means a specific work or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, undertaken by a developer within an area of land whereon a contaminated site is located, under a redevelopment agreement with the State pursuant to section 35 of P.L. , c. (C.) (pending in the Legislature as this bill).

"Redevelopment agreement" means an agreement between the State and a developer under which the developer agrees to perform any work or undertaking necessary for the remediation of the contaminated site located at the site of the redevelopment project, and for the clearance, development or redevelopment, construction or rehabilitation of any structure or improvement of commercial, industrial or public structures or improvements within an area of land whereon a contaminated site is located pursuant to section 35 of P.L. , c. (C.) (pending in the Legislature as this bill), and the State agrees that the developer shall be eligible for the reimbursement of up to 75% of the costs of remediation of the contaminated site from the fund established pursuant to section 38 of P.L. c. (C.) (pending in the Legislature as this bill) as authorized pursuant to section 36 of P.L. , c. (C.)(pending in the Legislature as this bill).

"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, as those terms are defined in section 23 of P.L.1993, c.139 (C.58:10B-1).

"Remediation costs" means all reasonable costs associated with the remediation of a contaminated site except that "remediation costs" shall not include any costs incurred in financing the remediation.

35. (New section) a. The provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary notwithstanding, any developer may enter into a redevelopment agreement with the State pursuant to the provisions of this section. The State may not enter into a redevelopment agreement with a developer who is liable, pursuant to paragraph (1) of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), for the contamination at the site proposed to be in the redevelopment agreement.

The decision whether or not to enter into a redevelopment agreement is solely within the discretion of the Commissioner of Commerce and Economic Development [1]and the State Treasurer[1] and [1][nothing] both must agree to enter into the redevelopment agreement. Nothing[1] in P.L. , c. (C.)(now before the Legislature as this bill) may be construed to compel the commissioner [1]and the State Treasurer[1] to enter into any redevelopment agreement.

The Commissioner of Commerce and Economic Development in consultation with the State Treasurer shall negotiate the terms and conditions of any redevelopment agreement on behalf of the State. The redevelopment agreement shall specify the amount of the reimbursement to be awarded the developer, the frequency of payments and the length of time in which that reimbursement shall be granted. In no event shall the amount of the reimbursement, when taken together with the property tax exemption received pursuant to the "Environmental Opportunity Zone Act," P.L.1995, c.413 (C.54:4-3.151), less any in lieu of tax payments made pursuant to that act, or any other State, local, or federal tax incentive [1]or grant[1] to remediate a site, exceed [1]75% of[1] the total cost of the remediation.

[1]The comissioner and the State Treasurer may only enter into a redevelopment agreement if they make a finding that the State tax revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the developer. This finding may be made by an estimation based upon the professional judgment of the commissioner and the State Treasurer.

The percentage of each payment to be made to the developer pursuant to the redevelopment agreement shall be conditioned on the occupancy rate of the buildings or other work areas located on the

property. The redevelopment agreement shall provide for the payments made in order to reimburse the developer to be in the same percentages as the occupancy rate at the site except that upon the attainment of a 90% occupancy rate, the developer shall be entitled to the entire amount of each payment toward the reimbursement as set forth in the redevelopment agreement. The redevelopment agreement shall provide for the frequency of the director's finding of the occupancy rate during the payment schedule.[1]

b. In deciding whether or not to enter into a redevelopment agreement and in negotiating a redevelopment agreement with a developer, the commissioner shall consider the following factors:

(1) the economic feasibility of the redevelopment project;

(2) the extent of economic and related social distress in the municipality and the area to be affected by the redevelopment project;

(3) the degree to which the redevelopment project will advance State, regional and local development and planning strategies;

(4) the likelihood that the redevelopment project shall [1],[1] upon completion [1],[1] be capable of generating [1][sufficient][1] new tax revenue [1]in an amount in excess of the amount necessary[1] to reimburse the developer for the remediation costs incurred [1]as provided in the redevelopment agreement[1];

(5) the relationship of the redevelopment project to a comprehensive local development strategy, including other major projects undertaken within the municipality;

(6) the need of the redevelopment agreement to the viability of the redevelopment project; and

(7) the degree to which the redevelopment project enhances and promotes job creation and economic development.

36. (New section) a. The provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary notwithstanding, any developer that enters into a redevelopment agreement pursuant to section 35 of P.L. , c. (C.) (pending in the Legislature as this bill), may be eligible for reimbursement of up to 75% of the costs of the remediation of the subject real property pursuant to the provisions of this section upon the commencement of a business operation within a redevelopment project.

b. To be eligible for reimbursement of the costs of remediation, a developer shall submit an application, in writing, to the director for review and certification of the reimbursement. The director shall review the request for the reimbursement upon receipt of an application therefor, and shall approve or deny the application for certification on a timely basis. [1]The director shall also make a finding of the occupancy rate of the property subject to the redevelopment agreement in the frequency set forth in the redevlopment agreement as provided in section 35 of P.L. , c. (C.) (in the Legislature as this

bill).[1]

The director shall certify a developer to be eligible for the reimbursement if the director [1]**[**shall find**]** finds[1] that:

(1) a place of business is located in the area subject to the redevelopment agreement that has generated new tax revenues;

(2) [1]**[**the additional tax revenue that was generated on that site is sufficient to pay monies into the fund to provide for the negotiated reimbursement;

(3)**]**[1] the developer had entered into a memorandum of agreement with the Commissioner of Environmental Protection, after the developer entered into the redevelopment agreement, for the remediation of contamination located on the site of the redevelopment project pursuant to section 37 of P.L. , c. (C.) (pending in the Legislature as this bill) and the developer is in compliance with the memorandum of agreement; and

[1]**[**(4)**]** (3)[1] the costs of the remediation were actually and reasonably incurred. In making this finding the director may consult with the Department of Environment Protection.

c. When filing an application for certification for a reimbursement pursuant to this section, the developer shall submit to the director a certification of the total remediation costs incurred by the developer for the remediation of the subject property located at the site of the redevelopment project as provided in the redevelopment agreement [1], information concerning the occupancy rate of the buildings or other work areas located on the property subject to the redevelopment agreement, and such other information as the director deems necessary in order to make the certifications and findings pursuant to this section[1].

37. (New section) a. To qualify for the certification of reimbursement of the remediation costs authorized pursuant to section 36 of P.L. , c. (C.) (pending in the Legislature as this bill), a developer shall enter into a memorandum of agreement with the Commissioner of Environmental Protection for the remediation of the site of the redevelopment project.

b. Under the memorandum of agreement, the developer shall agree to perform and complete any remediation activity as may be required by the Department of Environmental Protection to ensure the remediation is conducted pursuant to the regulations adopted by the Department of Environmental Protection pursuant to P.L.1993, c.139 (C.58:10B-1 et seq.).

c. After the developer has entered into a memorandum of agreement with the Commissioner of Environmental Protection, the commissioner shall submit a copy thereof to the developer, the clerk of the municipality in which the subject property is located, the Commissioner of the Department of Commerce and Economic

Development, and the director.

38. (New section) a. There is created in the Department of Treasury a special fund to be known as the Brownfield Site Reimbursement Fund. Moneys in the fund shall be dedicated to the purpose of reimbursing a developer who enters into a redevelopment agreement pursuant to section 35 of P.L. c. (C.) (pending in the Legislature as this bill) and is certified for reimbursement pursuant to section 36 of P.L. c. (C.) (pending in the Legislature as this bill). A special account within the fund shall be created for each developer upon approval of a certification pursuant to section 36 of P.L. , c. (C.) (pending in the Legislature as this bill). The Legislature shall annually appropriate the entire balance of the fund for the purposes of reimbursement of remediation costs as provided in section 39 of P.L. , c. (C.) (pending in the Legislature as this bill).

b. The fund shall be credited with an amount [1]from the General Fund[1], determined sufficient by the Commissioner of Commerce and Economic Development, to provide the negotiated reimbursement to the developer. [1][The fund shall be credited, as necessary, with monies that are paid or that are the equivalent to the new taxes derived from the operation of business activities on the site.][1] Monies credited to the fund shall be an amount that equals the percent of the remediation costs expected to be reimbursed pursuant to the redevelopment agreement. [1][Revenues] In estimating the amount of new State taxes that is anticipated to be derived from a redevelopment project pursuant to section 35 of P.L. , c. (C.)(now before the Legislature as this bill), the Commissioner of Commerce and Economic Development and the State Treasurer shall consider taxes[1] from the following [1][taxes may be used to calculate the amount of monies that needs to be credited to the fund][1]: the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), "The Savings Institution Tax Act," P.L.1973, c.31 (C.54:10D-1 et seq.), the tax imposed on marine insurance companies pursuant to R.S.54:16-1 et seq., the tax imposed on fire insurance companies pursuant to R.S.54:17-4 et al., the tax imposed on insurers generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), the public utility franchise tax, public utilities gross receipts tax and public utility excise tax imposed pursuant to P.L.1940, c.4, and P.L.1940, c.5 (C.54:30A-16 et seq. and C.54:30A-49 et seq.), that is a taxpayer in respect of net profits from business, a distributive share of partnership income, or a prorata share of S corporation income under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or who is required to collect the tax

pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

39. (New section) a. The State Treasurer shall reimburse the developer the amount of the remediation costs agreed upon in the redevelopment agreement [1], and as provided in sections 35 and 36 of P.L. , c. (C.)(now before the Legislature as this bill)[1] upon issuance of the certification by the director pursuant to section 36 of P.L. , c. (C.) (pending in the Legislature as this bill). The developer shall be entitled to periodic payments from the fund in an amount, in the frequency, and over the time period as provided in the redevelopment agreement. [2]Notwithstanding any other provision of sections 34 through 39 of P.L. ,c. (C.)(before the Legislature ast this bill), the State Treasurer may not reimburse the developer any amount of the remediation costs from the fund until the State Treasurer is satisfied that the anticipated tax revenues from the redevelopment project have been realized by the State in an amount sufficient to pay for the cost of the reimubursements.[2]

b. A developer shall submit to the director updated remediation costs actually incurred by the developer for the remediation of the contaminated property located at the site of the redevelopment project as provided in the redevelopment agreement. The reimbursement authorized pursuant to this section shall continue until such time as the aggregate dollar amount of the agreed upon reimbursement. To remain entitled to the reimbursement authorized pursuant to this section, the developer shall perform and complete all remediation activities as may be required pursuant to the memorandum of agreement entered into with the Commissioner of Environmental Protection pursuant to section 37 of P.L. , c. (C.)(pending in the Legislature as this bill). The Department of Environmental Protection may review the remediation costs incurred by the developer to determine if they are reasonable.

40. (New Section) a. There is established a Legislative Underground Storage Tank Remediation Task Force. The task force shall consist of seven members as follows: one member of the Senate to be appointed by the Senate President; one member of the General Assembly to be appointed by the Speaker of the General Assembly; the Commissioner of Environmental Protection or a designee; an environmental consultant with a degree in hydrogeology and experience in petroleum underground storage tank remediations to be appointed by the Senate President; a representative of an environmental interest group to be appointed by the Senate President; a small business representative who owns or operates an underground storage tank to be appointed by the Speaker of the General Assembly; and a representative from a major oil company to be appointed by the

Speaker of the General Assembly.

The chairman of the task force shall be jointly appointed by the Senate President and the Speaker of the General Assembly. Vacancies shall be filled in the same manner as the original appointments are made.

b. The task force shall evaluate the use of expanded risk based decision making that allows for alternative remediation standards and natural attenuation in all environmental media at petroleum underground storage tank discharge sites; [2]consider the use of standard probablistic approaches in the development of minimum remediation standards;[2] examine and evaluate the State policy's that are preventing the development and use of alternative remediation standards for soil and groundwater and the implementation of the Risk Based Corrective Action decision making process decribed in ASTM standard 1739-95.

Within six months of the first meeting, the task force shall prepare a written report to the Legislature and the Chairman of the Senate Environment Committee, and the Assembly Agriculture and Waste Management Committee or their successor committees. The report shall include a comparison of the department's process for remediating petroleum underground storage tanks with the process recommended in the the Risk Based Corrective Action decision making process decribed in ASTM standard 1739-95 or that used by other states, an examination of the process that could be used to develop alternative remediation standards, a review and discussion of any policy changes necessary in order to allow for natural attenuation in all environmental media; together with any recommendations for further legislative remedies regarding expanded risk based decision making at petroleum underground storage tank discharge sites.

(3) The task force shall convene its first meeting within sixty days of the effective date of P.L.1997, c. (now in the Legislature as this bill).

41. There is appropriated to the Department of Environmental Protection from the "1996 Environmental Cleanup Fund" created pursuant to section 19 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond of 1996," P.L.1996, c.70, the sum of $3,000,000 for the investigations, determinations, and data collection and entry into the geographic information system as provided in section 3 of this act.

42. There is appropriated to the Department of Environmental Protection from the "1996 Environmental Cleanup Fund" created pursuant to section 19 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware

Bay Area Economic Development Bond of 1996," P.L.1996, c.70, the sum of $2,000,000 for the data collection and entry into the geographic information system as provided in section 4 of this act.

43. Section 14 of P.L.1993, c.139 (C.3:1K-11.3) is amended to read as follows:

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

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

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

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

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

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

(6) a proposed negative declaration, if applicable.

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

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

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

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

(cf: P.L.1993, c.139, s.14)

[1]44. Section 43 of P.L.1993, c.139 (C.58:10B-19) is amended to read as follows:

43. The owner or operator of an industrial establishment who has submitted a notice to the department pursuant to subsection a. of section 4 of P.L.1983, c.330 (C.13:1K-9), or any person who has discharged a hazardous substance or is liable for the remediation of that discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), or any person who has been directed to or has entered into an agreement with the department to remediate a discharge, may implement an interim response action prior to departmental approval of that action. The interim response action may be implemented when the expeditious temporary or partial remediation of a discharged hazardous substance or hazardous waste is necessary to contain or stabilize a discharge prior to implementation of an approved remedial action workplan in order to prevent, minimize, or mitigate damage to public health or safety or to the environment which may otherwise result from a discharge. The interim response action shall be implemented in compliance with the procedures and standards established by the department. The department may require submission of a notice of intent to implement an interim response action, what those actions will be, and may require, subsequent to completion of the interim response action, a report detailing the actions taken and a certification that the interim response action was implemented in accordance with all applicable laws and regulations. The department shall review these

submissions to verify whether the interim response action was implemented in accordance with applicable laws and regulations. The department shall not require that additional remediation be undertaken at an area of concern subject to the interim response action except in instances when further remediation is necessary to bring that area of concern into compliance with the applicable remediation **[**standards**]** regulations.

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

(cf: P.L.1993, c.139, s.43)

[1]45. Section 6 of P.L.1993, c.112 (C.58:10-23.11g9) is amended to read as follows:

6. In the event of the discharge of a hazardous substance from a vessel **[**or**]** , facility, or underground storage tank facility, which vessel **[**or**]** , facility , or underground storage tank facility is all or part of a trust, receivership estate, guardianship estate or estate of a deceased person, only the assets of the trust or estate, or assets of any discharger other than the fiduciary of such trust or estate, shall be subject to the obligation to pay for the cleanup of the discharge as set forth in the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.) or subject to any obligations imposed pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.).[1]

(cf: P.L.1993, c.112, s.6)

[2]46. Section 20 of P.L.1993, c.139 (C.13:1K-11.9) is amended to read as follows:

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

b. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, the person that remediates the industrial establishment shall provide copies to the other person of all submissions to the department concerning the remediation.

c. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, and there has been a failure to comply with the provisions of P.L.1983, c.330, the landlord or the tenant may petition the department, in writing, to first

compel that party who is responsible pursuant to the provisions of the lease, to comply with the requirements of P.L.1983, c.330. **[**The petition shall include a copy of the signed lease between the landlord and the tenant.**]** The department shall develop a form for a petition made pursuant to this section, and shall establish a list of documents required to be submitted with the petition which shall include, but not be limited to: (1) a copy of the notice required pursuant to subsection a. of section 4 of P.L.1983, c.330 (C.13:1K-9); (2) the names and addresses of the landlord and the tenant; (3) a copy of the signed lease between the landlord and the tenant; (4) a certification by the petitioner that includes the relevant facts concerning noncompliance with the act; and (5) any other documents the department deems relevant. The department shall make a determination that the provisions of the lease are unclear within 30 days of receipt of a complete petition. Upon a determination by the department that the provisions of the lease are unclear as it relates to the responsibility of either party to comply with the provisions of P.L.1983, c.330, or upon the failure by the person responsible pursuant to the provisions of the lease to comply, the department may compel compliance by all persons subject to the requirements of P.L.1983, c.330 for the industrial establishment.**[2]**

(cf: P.L.1993, c.139, s.20)

[2]47. Section 8 of P.L.1983, c.330 (C.13:1K-13) is amended to read as follows:

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

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

shall be collected in a civil action by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). Any officer or management official of an industrial establishment who knowingly directs or authorizes the violation of any provisions of this act shall be personally liable for the penalties established in this subsection.[2]
(cf: P.L.1993, c.139, s.12)

[2]48. (New section) Pursuant to section 941 of the federal "Taxpayer Relief Act of 1997," Pub. L. 105-34, the Governor shall designate the Department of Environmental Protection as the appropriate State environmental agency to issue statements that an area is within a targeted area and that there has been a release, or threat of release, or disposal of any hazardous substance at or on that area. For the purposes of this section "targeted area" and "hazardous substance" shall have the meanings given to them in the federal act.[2]

[1][43.][2][46.[1]] 49.[2] This act shall take effect immediately.

Makes various changes in the law in order to facilitate the remediation of contaminated real property; appropriates $5 million.

c.139 (C.58:10B-1 et al.), that the owner of the property will enter into a memorandum of agreement or administrative consent order with the department to perform the remediation and will complete the remediation pursuant to the agreement or order, and that, once remediated, the environmental opportunity zone will be used for a commercial [or] , industrial, residential, or other productive purpose during the time period for which the real property tax exemption is given.

(cf: P.L.1995, c.413, s.5)

26. This act shall take effect immediately.

STATEMENT

This bill, the "Brownfields Revitalization and Remediation Act," is intended to remove the last of the barriers to the development of older, contaminated industrial sites. These sites, commonly known as "brownfields," are located in most municipalities although they are predominant in urban and older suburban areas. Because these sites are either vacant or underutilized, their full economic potential is not realized and they remain wasted resources.

The remediation and redevelopment of brownfields will promote economic redevelopment, create jobs, protect the public health and environment, and supply needed tax revenue to many distressed urban areas. However, despite the fact that the Legislature enacted a comprehensive reform of the State's site remediation laws in 1993 (P.L.1993, c.139), experience in the last three years has shown a need to do even more. This bill addresses the remaining pieces of the brownfield puzzle and should lead to more remediations being performed and to more abandoned properties being brought back into productive use.

This bill addresses the four major policy areas concerning brownfield remediation and redevelopment that involve environmental policy. These policy areas are technical, legal liability, financial, and institutional. Of course, many brownfields remain vacant or underutilized because of economic and other factors beyond the control of the State. However, a good many of these brownfield sites can be made economically viable just by the mere elimination of certain legal impediments and by offering some incentives.

Technical Policy Issues

D*efinition change of permanent remedy* - Under existing law a preference is given for remedial actions that involve a residential soil cleanup. This preference may be imposed by the Department of

Environmental Protection (DEP) if the cost of a residential remedy is a certain percentage of the cost of a nonpermanent remedy. This bill recognizes that soil remediation standards that meet a nonresidential standard are appropriate and safe for industrial and commercial properties and that there is no reason why a residential soil remedy should be preferred in those instances. The bill thus creates a definition of a permanent remedy, which would still have a preference, that would include both residential and nonresidential soil remediations where appropriate.

Permit by rule - The bill provides that the DEP should adopt regulations whereby certain minor site remediations may be performed and approved without the need to get preapproval or send extensive documents to the DEP for review.

Presumptive remedies - The law presently requires the DEP to list certain remedial actions that the DEP deems to be effective. The bill provides that a person can use any of these remedies without needing further departmental approval of that choice.

Innovative technologies - The bill contains several provisions designed to encourage the use of innovative technologies, including the elimination of the requirement to post financial assurance, the provision of 25% matching grants, expedited review, and other regulatory changes.

Historic fill - Although the law already contains a provision providing that the presumptive remedy for historic fill is capping, recent regulatory proposals of the DEP may have the effect of negating the intent of the law. The bill provides that no regulation shall have the effect of shifting the burden the presumption places on the DEP and that there is no date before which fill must have been placed on the land in order to be considered "historic".

Environmental Advisory Task Force - This task force was established by law in 1993 to determine if and how soil site remediation standards should be adopted that are protective of the environment. To date, the members of the task force to be appointed by the Governor have not been selected. The bill would change the Governor's appointments to be legislative appointments and would make it easier for the task force to convene.

Surface and subsurface soil standards - Under existing regulatory practice no distinction is made between the remediation standards for surface soil and subsurface soil. If a contaminant is in the soil the remediation standard can be based on either its potential impact to groundwater or its health impact if a person is exposed to it. Because many contaminants do not impact groundwater because they do not leach it is questionable if those types of contaminants in the subsurface soil should be remediated based solely upon human exposure criteria. The bill makes a distinction between surface soil (top ten feet) and subsurface soil (below ten feet) so that subsurface soil contamination

will only have to be remediated if there is a potential impact to groundwater or surface water.

Legal Liability

Purchaser protection from additional liability - Earlier this year, the Legislature enacted certain provisions of law to limit the liability of an innocent person who acquires land which was contaminated but is later remediated. That limit on liability, however, only applied to properties in qualified municipalities. This bill expands these protections to all properties in the State. Additionally, the bill expands and clarifies the liability protections of purchasers so that if a purchaser unknowingly acquires contaminated property after performing a proper investigation or knowingly acquires contaminated property and performs the required remediation, the purchaser would not be liable to the State or to any other person, under the Spill Act or under common law, for the discharged contamination even if additional contamination is discovered or if standards change.

Covenants not to sue - The bill provides that whenever the DEP issues a no further action letter for a remediation it shall also issue a covenant not to sue. The covenant basically spells out the limits on legal liability that exist once a site is remediated. The covenant protects the person performing the remediation from further cleanup liability to the State so long any engineering and institutional controls are maintained. The covenant does not protect the discharger or other liable parties for undiscovered contamination or for changes in the remediation standards by an order of magnitude.

Letters of no association - A person who can demonstrate to the DEP that he has a defense to liability under the innocent purchaser defenses of the Spill Compensation and Control Act, will be given a letter of no association. The letter will indicate that the person has met the initial burden proving that he is not liable for any contamination on the property. The letter of no association is prima facie evidence that the person is not liable for remediation costs in any contribution action.

Public entity liability - Although the law generally provides that public entities are not liable for existing contamination on land they acquire through actions such as a tax lien or foreclosure, a public entity may be liable for knowingly and voluntarily acquiring contaminated property, even if for a public purpose such as redevelopment. The bill amends the law to limit public entity liability for contaminated property they acquire by any means.

Financial Issues

Limitation on fees - The bill provides that cleanup and removal

costs under the Spill Compensation and Control Act are not to include administrative indirect and fringe benefit costs. This will have the effect of lowering the fees assessed by the DEP to review a remediation and thus the cost for a person to perform a remediation. Over the past several years the fees for site remediation reviews have increased exponentially as more indirect and unrelated costs are being recouped by the imposition of fees.

Environmental Opportunity Zone Act expansion - Last session, the Legislature enacted the Environmental Opportunity Zone Act in order to encourage the remediation of contaminated industrial sites by offering limited property tax exemptions. That law only applied to properties that were to be used for industrial or commercial purposes. Because many former contaminated industrial properties are located in areas that no longer make them suitable for industrial or commercial purposes, the bill expands the law so that the properties may also be used for residential or other productive uses.

Hazardous Discharge Site Remediation Fund flexibility - Under existing law, the Economic Development Authority has limited discretion to move available moneys in the fund from one dedicated category to another. The bill would give the EDA more authority to shift moneys from any category to any other.

Institutional Issues

DEP mission - The duties of the DEP under the Spill Compensation and Control Act have been broadened to include coordination and facilitating the remediation and redevelopment of brownfields.

Community involvement and risk communication - A Brownfields Environmental Risk Communication Council is established as a Statewide entity designed to help local governmental entities and community groups understand the risks and benefits of brownfield remediation and redevelopment.

Makes various changes in the law to address technical, liability, financial, and institutional issues involving site remediation.

standards, the standards approved by the department for the property at the time of remediation, [the owner or operator of the property or person performing the remediation,] no person except as otherwise provided in this section, shall [not] be liable for the cost of any additional remediation that may be required [by] upon a subsequent adoption by the department of a more stringent remediation standard for a particular contaminant or upon the subsequent discovery of contamination that existed on the property at the time of the remediation. [Upon the adoption of a regulation that amends a remediation standard, only a person who is liable to clean up and remove that contamination pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g) shall be liable for any additional remediation costs necessary to bring the site into compliance with the new remediation standards except that no person shall be so liable unless the difference between the new remediation standard and the level or concentration of a contaminant at the property differs by an order of magnitude.]

Nothing in the provisions of this subsection shall be construed to limit the liability of any person who is liable to remediate the contamination and at the time of the remediation knows of contamination existing on the property and fails to remediate or disclose it.

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

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

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

(cf: P.L.1993, c.139, s.36)

3. This act shall take effect immediately.

STATEMENT

This bill would amend the law concerning the liability for the cleanup and removal of hazardous substances. Section 1 of the bill

would amend the "Spill Compensation and Control Act" to limit the liability of certain owners or operators of property that has been remediated. If the Department of Environmental Protection has issued a no further action letter for the property, and any institutional or engineering controls required in the remedial action workplan are maintained, then any person who is not otherwise liable for a discharge that occurred before becoming an owner or operator of the site, shall not be liable for cleanup and removal costs or for any damages to any person resulting from the discharge based solely on that person becoming an owner or operator of the site. This provision would apply if the discharge occurs before, on or after the bill's enactment. Section 2 of the bill would amend P.L.1993, c.139 to limit the liability of any person for remediation costs for any additional remediation that may be required because of the adoption of a more stringent remediation standard than the one in effect at the time of the cleanup, or by the subsequent discovery of contamination that existed at the time of the remediation. The bill would not limit the liability of any person otherwise liable for the subsequent discovery of contamination if at the time of the remediation the person knew of the contamination and failed to remediate or disclose its existence.

Limits liability for hazardous substances in certain circumstances.

access to the industrial establishment and to offsite areas under the owner's or operator's control to inspect the premises, review records, and to take soil, groundwater, or other samples or measurements as deemed necessary by the department to verify the results of any submission made to the department and to verify the owner's or operator's compliance with the requirements of this act.
(cf: P.L. 1993, c.139, s.10)

40. There is appropriated to the Department of Environmental Protection from the "1996 Environmental Cleanup Fund" created pursuant to section 19 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond of 1996," P.L.1996, c.70, the sum of $5,000,000 for the investigations, determinations, and data entry as provided for in that section.

41. There is appropriated to the Department of Environmental Protection from the "1996 Environmental Cleanup Fund" created pursuant to section 19 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond of 1996," P.L.1996, c.70, the sum of $3,000,000 for the data collection and entry into the geographic information system as required by that section.

42. This act shall take effect immediately.

STATEMENT

The intent of this bill, the "Brownfields Redevelopment Act," is to remove impediments in the law, and to create incentives, in order to promote, streamline, expedite and facilitate the cleanup and reuse of New Jersey's older industrial sites. The redevelopment of these industrial sites will help protect the public health and environment, conserve open space, improve the economy, create jobs and revitalize our cities and neighborhoods.

Because New Jersey is an older, industrial state, it has many properties formerly used for industrial or commercial purposes but which are, today, either abandoned or underutilized. Many of these properties are contaminated with hazardous substances or at least suspected of being contaminated. Most of these properties are located in the State's urban areas. These former industrial sites, often referred to as "brownfields," can be a blight to a neighborhood and a financial drain to a municipality. They can pose environmental risks due to their uncontrolled environmental condition and a safety hazard for children. The remediation and redevelopment of these sites would

protect the health of New Jersey's citizens and the environment, create jobs, restore neighborhoods and increase tax revenues on both the State and local levels.

The need to revitalize brownfields and bring them back to productive use is obvious and has been recognized for some time at both the State and national levels. However, many impediments to brownfield remediation and redevelopment exist. Although many sites may be difficult to redevelop due to economic and other factors beyond the State's control, many of these brownfield sites have great economic potential. They remain abandoned or underutilized, however, because of the unknown or uncertain costs of and degree of liability in performing an environmental cleanup. These factors often make the difference between a viable redevelopment project and an abandoned site.

New Jersey began the process of facilitating the remediation and redevelopment of brownfields in 1993 when the Legislature enacted a comprehensive reform of its site remediation laws. Three years experience with that reform measure and the legislative actions and experiences of several other states have demonstrated that more changes are needed in order to facilitate brownfield redevelopment.

There are four general areas that need to be addressed in order to facilitate brownfields remediation and redevelopment. These areas include technical, legal, financial and institutional policies. This bill addresses each of these areas in a comprehensive manner in order to fully address the problems posed.

Technical Policy Issues

Elimination of preference for residential soil remediations - Under present law, there is a preference for the performance of a soil remediation to residential limits. This preference exists even if the property is to be used for industrial or commercial purposes, although a cost limitation does exist. Additionally, many people have argued that engineering solutions, such as capping, together with institutional controls, are as safe as residential remediations. The draft bill eliminates the preference and allows a person to select the remedial action to implement, provided health standards and Department of Environmental Protection regulations are met. In order to ensure that the remedy will work, and continue to work, the DEP is required to inspect at least once every five years each site that uses engineering or institutional controls.

Regulatory flexibility - The bill contains provisons amending selected portions of ISRA and the Hazardous Discharge Site Remediation Act to require the DEP's prescriptive, overly-burdensome regulations to be issued as guidance documents. Doing so would retain the flexibility necessary to focus on the nature and extent of

required investigations to ensure the selected remedy is protective of human health and the environment. The DEP would still be required to adopt regulations regarding minimum remediation standards for surface and subsurface soils, groundwater and surface water quality, as well as oversight regulations.

Permit by rule - The bill provides that the DEP should develop guidance allowing site remediations to be performed and approved without requiring extensive document review or preapproval.

Aquifer delineation - Under existing law and practice of the DEP, aquifers that are contaminated and not used as a drinking water resource can be classified as such and the DEP will allow contamination in the aquifer to be remediated through natural attenuation (e.g., the natural breakdown of contaminants over time). This process would save a person performing the remediation substantial sums of money over requiring the person to pump and treat the groundwater. However, it is difficult and costly for a person to prove to the DEP that any particular aquifer meets the criteria for the designation. This is especially so for small businesses and landowners performing relatively minor remediations. The bill requires the DEP to investigate and determine which aquifers meet this standard and to plot those aquifers on the geographic information system. Five million dollars from the site remediation bond act to be on the ballot in November will be used for this purpose. The bill also codifies the natural attenuation policy of the DEP.

Presumptive remedies - The law presently requires the DEP to list certain remedial actions that the DEP deems to be effective. The bill provides that a person using any of these remedies shall be assumed to have demonstrated the technical performance and reliability of the remedial action. The presumptive remedies shall be historically acceptable technologies for similar sites and contaminants and are to be based on historical patterns of remedy selection and the department's scientific and technical evaluation of performance data.

Innovative technologies - The bill contains several provisions designed to encourage the use of innovative technologies, including the elimination of the requirement to post financial assurance, the provision of 25% matching grants, expedited review and other regulatory changes.

Historic fill - Although the law already contains a provision providing that the presumptive remedy for historic fill is capping, recent regulatory proposals of the DEP may have the effect of negating the intent of the law. The bill provides that no regulation, guidance or rule shall have the effect of shifting the burden the presumption places on the DEP and that there is no date before which the fill must have been placed on the land in order to be considered "historic."

Reports and regulations - Several reports and regulations required

in P.L.1993, c.139 have not yet been issued or adopted. These include the liability report to be issued by the DEP, the risk report to be issued by a special commission and the remediation standards, technical rules and large contaminated area regulations to be issued by the DEP. The bill provides new time limits for the issuance of these reports, guidance and regulations. If they are not issued by the set date, the relevant General Assembly and Senate committees are instructed to hold a joint public hearing to determine why the report, guidance or regulations were not issued.

Environmental Advisory Task Force - This task force was established by law in 1993 to determine if and how soil site remediation standards should be adopted that are protective of the environment. To date, the members of the task force to be appointed by the Governor have not been selected. The bill would eliminate the Governor's appointments if not selected in a defined period of time and would make it easier for the task force to convene.

Surface and subsurface soil standards - Under existing regulatory practice, no distinction is made between the remediation standards for surface soil and subsurface soil. If a contaminant is in the soil, the remediation standard can be based on either its potential impact to groundwater or the health impact on a person exposed to it. Because contaminants that leach do not impact groundwater, it is questionable if they should be remediated based solely upon human exposure criteria. The bill makes a distinction between surface soil (top two feet) and subsurface soil (below two feet) so that subsurface soil contamination will only have to be remediated if there is a potential impact to groundwater or surface water.

Legal Liability

Limited remediation requirements for purchasers - Often the extensive, and unknown, cost of a remediation makes the redevelopment of many properties economically unfeasible. In order to lower these costs, the bill would limit the extent of a remediation that a person buying contaminated property would have to perform if the person decides to develop or utilize the site. The purchaser would only be required to perform surface soil remediations, use engineering or institutional controls, remove sources of contamination that pose imminent threats and maintain any controls in place. The purchaser would not be liable for groundwater contamination, changes in remediation standards or undiscovered contamination. Once the purchaser performs this limited remediation to make the property safe for its intended use, the purchaser would have no further remediation liability under the law.

Purchaser protection from additional liability - Earlier this year, the Legislature enacted certain provisions of law to limit the liability

of an innocent person who acquires land which was contaminated but is later remediated. That limit on liability, however, only applied to properties in qualified municipalities. This bill expands these protections to all properties in the State. Additionally, the bill expands and clarifies the liability protections of purchasers so that if a purchaser unknowingly acquires contaminated property after performing a proper investigation or knowingly acquires contaminated property and performs the required remediation, the purchaser would not be liable to the State or to any other person, under the Spill Compensation and Control Act or under common law, for the discharged contamination, even if additional contamination is discovered or the standards change.

Covenants not to sue - The bill provides that whenever the DEP issues a no further action letter for a remediation, it shall also issue a covenant not to sue. The covenant basically spells out the limits on legal liability that exist once a site is remediated. The covenant protects the person performing the remediation from further cleanup liability to the State provided any engineering and institutional controls are maintained. The covenant does not protect the discharger or other liable parties for undiscovered contamination.

Letters of no association - A person who can demonstrate to the DEP that he has a defense to liability under the innocent purchaser defenses of the Spill Compensation and Control Act will be issued a letter of no association. The letter will indicate that the person has met the initial burden proving that he is not liable for any contamination on the property. The letter of no association is prima facie evidence that the person is not liable for remediation costs in any contribution action.

Public entity liability - Although the law generally provides that public entities are not liable for existing contamination on land they acquire through actions such as a tax lien or foreclosure, a public entity may be liable for knowingly and voluntarily acquiring contaminated property, even if for a public purpose such as redevelopment. The bill amends the law to limit public entity liability for contaminated property acquired by any means, with the exception of those engaged in a reasonably timely remediation or redevelopment process.

Contribution treble damage awards - The bill would amend the "Spill Compensation and Control Act," (Spill Act") P.L.1976, c.141 (C.58:10-23.11 et seq.) to delete the provision which authorizes the Department of Environmental Protection to authorize a person who cleans up or removes a hazardous discharge to seek treble damages from any other person liable for the discharge, but who is not involved in the cleanup.

Until 1991, the Spill Act provided that if the DEP ordered a party liable for a hazardous discharge to clean up and remove the discharge,

and the party refused, thus requiring the expenditure of moneys from the Spill Compensation Fund to conduct the cleanup and removal, the DEP would seek damages from the responsible party in an amount equal to three times the amount (treble damages) expended by the DEP for the cleanup and removal. In 1991, the Spill Act was amended to enable private responsible parties performing a cleanup to seek treble damages from other responsible parties. As a result of that 1991 amendment, the Spill Act currently provides that any person seeking treble damages (the contribution plaintiff) from another discharger (the contribution defendant) must be authorized to do so by the DEP, and further provides that one-third of the amount of any treble damages recovered must be paid to the DEP for deposit in the Spill Compensation Fund. This bill would remove this authorization, thus allowing the DEP to seek treble damages under the Spill Act.

Financial Issues

Limitation on fees - The bill provides that cleanup and removal costs under the Spill Compensation and Control Act are not to include administrative, indirect and fringe benefit costs. This will have the effect of lowering the fees assessed by the DEP to review a remediation, thus reducing the cost for a person to perform a remediation. Over the past several years, the fees for site remediation reviews have increased exponentially as more indirect and unrelated costs are being recouped by the imposition of fees.

Environmental Opportunity Zone Act expansion - Last session, the Legislature enacted the Environmental Opportunity Zone Act in order to encourage the remediation of contaminated industrial sites by offering limited property tax exemptions. That law only applied to properties that were to be used for industrial or commercial purposes. Because many former contaminated industrial properties are located in areas that no longer make them suitable for industrial or commercial purposes, the bill expands the law so that the properties may also be used for residential or other productive uses.

Sales tax exemptions - The bill establishes a program whereby a person can recover 75% of remediation costs incurred. The reimbursement would be funded from the dedication of 50% of the sales tax collected from any new retail establishment built on the formerly contaminated property. State approval would be needed before a property could qualify for this benefit.

Hazardous Discharge Site Remediation Fund flexibility - Under existing law, the Economic Development Authority has limited discretion to move available moneys in the fund from one dedicated category to another. The bill would give the EDA more authority to shift moneys from one category to another.

Institutional Issues

Geographic information system - Economic data will be entered into the GIS system in order to facilitate decisions concerning the redevelopment of brownfields. Three million dollars from the site remediation bond act to be voted upon in November is appropriated for this purpose.

DEP mission - The mission of the DEP, as well as its duties under the Spill Act, have been broadened to include coordination and facilitation of remediating and redeveloping the brownfields. To assist in this effort, a special office is established in the DEP to facilitate and expedite the investigation and remediation of selected brownfields sites.

Community involvement and risk communication - A Brownfields Environmental Risk Communication Council is established as a Statewide entity designed to help local governmental entities and community groups understand the risks and benefits of brownfield remediation and redevelopment.

Makes various changes in the law in order to facilitate the remediation of contaminated real property; makes an appropriation.

as the case may be, from the Brownfield and Municipal Landfill Closure and Remediation Fund upon approval of certification of the reimbursement pursuant to section 4 of P.L.1996, c.124 (C.13:1E-116.4). The developer shall be entitled to periodic payments from the fund in an amount equal to one half of the taxes due and payable pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) from any person required to collect the tax at the site of a redevelopment project which is subject to a redevelopment agreement between the developer and the State pursuant to section 3 of P.L.1996, c.124 (C.13:1E-116.3). Payments from the fund shall be made to a developer at the same frequency in which the payments are made to the State from the persons required to collect the tax. Payments to the developer shall be made within 15 days of receipt by the State of the taxes.

b. A developer shall submit to the director updated closure and remediation costs actually incurred by the developer for the closure or remediation of the municipal solid waste landfill or the remediation of an eligible brownfield site, as the case may be, located at the site of the redevelopment project as provided in the redevelopment agreement. The reimbursement authorized pursuant to this section shall continue until such time as the aggregate dollar amount of the reimbursement equals 75% of the dollar amount of the closure and remediation costs or 75% of the dollar amount of the remediation costs of an eligible brownfield site actually incurred by the developer, as certified to the director by the developer. To remain entitled to the reimbursement authorized pursuant to this section, the developer shall perform and complete all closure and remediation activities during the closure and post-closure periods as may be required pursuant to the memorandum of agreement entered into with the Commissioner of Environmental Protection pursuant to section 5 of P.L.1996, c.124 (C.13:1E-116.5). The Department of Environmental Protection may review the closure and remediation costs incurred by the developer to determine if they are reasonable.

(cf: P.L.1996, c.124, s.7)

7. This act shall take effect immediately.

STATEMENT

This bill would expand the "Municipal Landfill Site Closure, Remediation and Redevelopment Act" to apply its provisions to brownfield sites in qualifying municipalities. Under the bill, a developer who enters into an agreement with the State to redevelop an eligible brownfield site would be entitled to reimbursement of 75% of the costs of remediation from one-half of the sales taxes generated at

the site. An eligible brownfield site is a former industrial or commercial property in a qualifying municipality as defined pursuant to section 3 of P.L.1982, c.303 (C.52:27H-62) that is currently underutilized or abandoned and at which there has been, or there is perceived to have been, a discharge, or threat of a discharge, of a hazardous substance.

Authorizes partial reimbursement for remediation costs of certain brownfield sites.

STATEMENT

The intent of this bill, the "Brownfields Cleanup Act," is to remove impediments in the law, and to create incentives, in order to promote and facilitate the cleanup and reuse of New Jersey's older industrial sites. The redevelopment of these industrial sites will help protect the public health and environment, conserve open space, improve the economy, create jobs, and revitalize our cities and neighborhoods.

Because New Jersey is an older, industrial state, it has many properties that were formerly used for industrial or commercial purposes but which are, today, either abandoned or underutilized. Many of these properties are contaminated with hazardous substances or at least suspected of being contaminated. Most of these properties are located in the State's urban areas. These former industrial sites, often referred to as "brownfields," can be a blight to a neighborhood and a financial drain to a municipality. They can pose environmental risks due to their uncontrolled environmental condition and a safety hazard for children. Were these sites to be remediated and redeveloped the health of New Jersey's citizens and of the environment would be protected, jobs would be created, neighborhoods would be restored, and tax revenues on both the State and local levels would be increased.

The need to clean up brownfields and bring them back to productive use is obvious and has been recognized for some time at both the state and national levels. However, there exists many impediments to brownfield remediation and redevelopment. Although many sites may be difficult to redevelop due to economic and other factors that are beyond the State's control, many of these brownfield sites have great economic potential. They remain vacant or underutilized, however, because of the uncertainties involving the high or unknown cost and liability in performing an environmental cleanup. These environmental factors often make the difference between a viable redevelopment project and a vacant site.

New Jersey began the process of facilitating the remediation and redevelopment of brownfields in 1993 when the Legislature enacted a comprehensive reform of its site remediation laws. Three years experience with that reform measure and the legislative actions and experiences of several other states have demonstrated that more changes are needed in order to facilitate brownfield redevelopment.

There are four general areas that need to be addressed in order to facilitate brownfield remediation and redevelopment. These areas include technical, legal, financial, and institutional policies. This bill addresses each of these areas in a comprehensive manner in order to fully address the problems posed.

Technical Policy Issues

Elimination of preference for residential soil remediations - Under present law there is a preference for the performance of a soil remediation to residential limits. This preference exists even if the property is to be used for industrial or commercial purposes, although a cost limitation does exist. Additionally, many people have argued that engineering solutions, such as capping, together with institutional controls are as safe as residential remediations. The draft bill eliminates the preference and allows a person to select whatever remedial action that person wants to implement so long as the health standards are met and the remedy will meet all of the Department of Environmental Protection's regulations. In order to ensure that the remedy will work, and continue to work, the DEP is required to inspect at least once every five years each site that uses engineering or institutional controls.

Regulatory flexibility - The bill contains a provision that states that the DEP's regulations should consist of general guidelines and that a person may deviate from the strict adherence to the regulations if that person can demonstrate that the deviation would be as protective of human health and the environment.

Permit by rule - The bill provides that the DEP should adopt regulations whereby certain minor site remediations may be performed and approved without the need to get preapproval or send extensive documents to the DEP for review.

Aquifer delineation - Under existing law and practice of the DEP, aquifers that are contaminated and not used as a drinking water resource can be classified as such and the DEP will allow contamination in the aquifer to be remediated through natural attenuation (e.g. the natural breakdown of contaminants over time). This process would save a person performing the remediation substantial sums of money when compared to a requirement to pump and treat the groundwater. However, it is difficult and costly for a person to prove to the DEP that any particular aquifer meets the criteria for the designation. This is especially so for small businesses and landowners performing relatively minor remediations. The bill requires the DEP to investigate and determine which aquifers meet the standard and to plot those aquifers on the geographic information system. Five million dollars from the site remediation bond act to be on the ballot in November will be used for this purpose. The bill also codifies the natural attenuation policy of the DEP.

Presumptive remedies - The law presently requires the DEP to list certain remedial actions that the DEP deems to be effective. The bill provides that a person can use any of these remedies without needing further departmental approval of that choice.

Innovative technologies - The bill contains several provisions

designed to encourage the use of innovative technologies, including the elimination of the requirement to post financial assurance, the provision of 25% matching grants, expedited review, and other regulatory changes.

Historic fill - Although the law already contains a provision providing that the presumptive remedy for historic fill is capping, recent regulatory proposals of the DEP may have the effect of negating the intent of the law. The bill provides that no regulation shall have the effect of shifting the burden the presumption places on the DEP and that there is no date before which fill must have been placed on the land in order to be considered "historic".

Reports and regulations - Several reports and regulations required in P.L.1993, c.139, have not yet been issued or adopted. These include the liability report to be issued by the DEP, the risk report to be issued by a special commission, and the remediation standards, technical rules, and large contaminated area regulations to be issued by the DEP. The bill provides new time limits for the issuance of these reports and regulations. If they are not issued by the set date, the relevant General Assembly and Senate committees are instructed to hold a joint public hearing to determine why the report or regulations were not issued.

Environmental Advisory Task Force - This task force was established by law in 1993 to determine if and how soil site remediation standards should be adopted that are protective of the environment. To date, the members of the task force to be appointed by the Governor have not been selected. The bill would eliminate the Governor's appointments if not selected in a defined period of time and would make it easier for the task force to convene.

Surface and subsurface soil standards - Under existing regulatory practice no distinction is made between the remediation standards for surface soil and subsurface soil. If a contaminant is in the soil the remediation standard can be based on either its potential impact to groundwater or its health impact if a person is exposed to it. Because many contaminants do not impact groundwater because they do not leach it is questionable if those types of contaminants in the subsurface soil should be remediated based solely upon human exposure criteria. The bill makes a distinction between surface soil (top ten feet) and subsurface soil (below ten feet) so that subsurface soil contamination will only have to be remediated if there is a potential impact to groundwater or surface water.

Legal Liability

Limited remediation requirements for purchasers - Often the extensive, and unknown, cost of a remediation makes the redevelopment of many properties uneconomic. In order to lower

these costs, the bill would limit the extent of a remediation that a person buying contaminated property would have to perform. The purchaser would only be liable to perform surface soil remediations, or use engineering or institutional controls, remove sources of contamination that pose imminent threats, and maintain any controls in place. The purchaser would not be liable for groundwater contamination, for changes in remediation standards, or for undiscovered contamination. Once the purchaser performs this limited remediation to make the property safe for its intended use, the purchaser would have no further remediation liability under the law.

Purchaser protection from additional liability - Earlier this year, the Legislature enacted certain provisions of law to limit the liability of an innocent person who acquires land which was contaminated but is later remediated. That limit on liability, however, only applied to properties in qualified municipalities. This bill expands these protections to all properties in the State. Additionally, the bill expands and clarifies the liability protections of purchasers so that if a purchaser unknowingly acquires contaminated property after performing a proper investigation or knowingly acquires contaminated property and performs the required remediation, the purchaser would not be liable to the State or to any other person, under the Spill Compensation and Control Act or under common law, for the discharged contamination even if additional contamination is discovered or if the standards change.

Covenants not to sue - The bill provides that whenever the DEP issues a no further action letter for a remediation it shall also issue a covenant not to sue. The covenant basically spells out the limits on legal liability that exist once a site is remediated. The covenant protects the person performing the remediation from further cleanup liability to the State so long any engineering and institutional controls are maintained. The covenant does not protect the discharger or other liable parties for undiscovered contamination or for changes in the remediation standards by an order of magnitude.

Letters of no association - A person who can demonstrate to the DEP that he has a defense to liability under the innocent purchaser defenses of the Spill Compensation and Control Act, will be given a letter of no association. The letter will indicate that the person has met the initial burden proving that he is not liable for any contamination on the property. The letter of no association is prima facie evidence that the person is not liable for remediation costs in any contribution action.

Public entity liability - Although the law generally provides that public entities are not liable for existing contamination on land they acquire through actions such as a tax lien or foreclosure, a public entity may be liable for knowingly and voluntarily acquiring contaminated property, even if for a public purpose such as

redevelopment. The bill amends the law to limit public entity liability for contaminated property they acquire by any means.

Contribution treble damage awards - The bill eliminates the DEP's role in allocating treble damages in contribution claims. The imposition of treble damages will be left for the court to award.

Financial Issues

Limitation on fees - The bill provides that cleanup and removal costs under the Spill Compensation and Control Act are not to include administrative indirect and fringe benefit costs. This will have the effect of lowering the fees assessed by the DEP to review a remediation and thus the cost for a person to perform a remediation. Over the past several years the fees for site remediation reviews have increased exponentially as more indirect and unrelated costs are being recouped by the imposition of fees.

Environmental Opportunity Zone Act expansion - Last session, the Legislature enacted the Environmental Opportunity Zone Act in order to encourage the remediation of contaminated industrial sites by offering limited property tax exemptions. That law only applied to properties that were to be used for industrial or commercial purposes. Because many former contaminated industrial properties are located in areas that no longer make them suitable for industrial or commercial purposes, the bill expands the law so that the properties may also be used for residential or other productive uses.

Sales tax exemptions - The bill establishes a program whereby a person can recover 75% of remediation costs incurred. The reimbursement would be funded from the dedication of 50% of the sales tax to be collected at any new retail establishments built on the formerly contaminated property. State approval is needed before a property qualifies for this benefit.

Hazardous Discharge Site Remediation Fund flexibility - Under existing law, the Economic Development Authority has limited discretion to move available moneys in the fund from one dedicated category to another. The bill would give the EDA more authority to shift moneys from any category to any other.

Institutional Issues

County Improvement Authorities - County Improvement Authorities are given an expanded and defined role to help coordinate, fund, and market the remediation and redevelopment of contaminated sites. The authorities are also made eligible for financial assistance from the Hazardous Discharge Site Remediation Fund.

Geographic information system - Economic data will be entered into the GIS system in order to facilitate decisions concerning the

redevelopment of brownfields. Three million dollars from the site remediation bond act to be voted upon in November is appropriated for this purpose.

DEP mission - The mission of the DEP as well as its duties under the Spill Compensation and Control Act have been broadened to include coordination and facilitating the remediation and redevelopment of brownfields.

Community involvement and risk communication - A Brownfields Environmental Risk Communication Council is established as a Statewide entity designed to help local governmental entities and community groups understand the risks and benefits of brownfield remediation and redevelopment.

Makes various changes in the law in order to facilitate the remediation of contaminated real property; makes an appropriation.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 39, ASSEMBLY, No. 2250 ACS, SENATE, Nos. 1815 and 1539

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 11, 1997

The Assembly Appropriations Committee reports favorably Senate Bill No. 39/A2250ACS/S1815/1539 ACS (1R), with committee amendments.

The SCS for Senate Bill No. 39/A2250ACS/S1815/1539 (1R), as amended, the "Brownfields and Contaminated Site Remediation Act," is intended to remove impediments in the law and create incentives to promote and facilitate the cleanup and reuse of New Jersey's older industrial sites. The redevelopment of these industrial sites, often referred to as "brownfields," will help protect the public health and environment, conserve open space, improve the economy, create jobs, and revitalize our cities and neighborhoods.

New Jersey began the process of facilitating the remediation and redevelopment of brownfields in 1993 when the Legislature enacted a comprehensive reform of its site remediation laws. Three years experience with that reform measure and the legislative actions and experiences of several other states have demonstrated that more changes are needed in order to further facilitate brownfield redevelopment.

This bill was crafted with three predominant policy goals. First, the bill is intended to result in more remediations being performed and brownfields being redeveloped. The achievement of this goal will protect the environment, alleviate local property tax burdens, create jobs, and improve the economy. Second, the bill will not lessen any environmental or health standard. The strict standards set in the 1993 legislation and enforced by the Department of Environmental Protection (DEP) will remain in place. Finally, the persons responsible for the discharge will not be given any relief from liability. Only those "innocent" purchasers who either unknowingly buy contaminated property or who clean up a contaminated property that they have

purchased will be given any liability protections.

For a detailed statement of the provisions of the committee substitute as it was referred to the Appropriations Committee see the committee statement of the Senate Environment Committee dated June 5, 1997.

As amended by this committee, the bill is identical to the Assembly Committee Substitute for Assembly Bill No.2724 (1R) reported by this committee.

FISCAL IMPACT:

The bill offers financial incentives in the form of 25 percent matching grants or loan guarantees from the Hazardous Discharge Site Remediation Fund, as administered by the New Jersey Economic Development Authority (EDA), to support the implementation of unrestricted or limited restricted remedies. Such matching grants or loans are also available to persons who propose to use an innovative technology for a remedial action, provided that person has assets of less than $2.0 million. The Office of Legislative Services has estimated that the matching grant and loan programs will have no fiscal impact on the State budget because these costs will be covered by the monies already contained in the Hazardous Discharge Site Remediation Fund. Most of these funds are derived from previously appropriated bond funds, loan repayments, and other non-State funding sources.

The bill directs the DEP to investigate and determine the extent of contamination in the State's aquifers and make the results public through its inclusion in the State Geographic Information System. An appropriation of $3.0 million from the 1996 Environmental Cleanup Fund, which is funded from bond monies approved in November, 1996 (P.L.1996, c.70), is appropriated for this purpose. In addition, $2.0 million from this funding source is provided to the DEP to support an investigation and mapping project concerning known areas of historic fill. The availability of data generated from both studies is intended to lower the costs of performing brownfields remediations by private parties.

The bill limits public entity liability for contaminated property that is acquired by any means and extends this immunity from liability to third party suits. The OLS has estimated that municipalities, counties and public improvement authorities will benefit from this provision by enabling them to acquire more brownfields property without the threat of such liabilities or potential lawsuits

The bill extends the 10-year property tax exemption under the Environmental Opportunity Zone Act (P.L.1995, c.413) to 15 years if an unrestricted or limited restricted remedial action is used for brownfields sites within those zones. The bill expands the exemption to sites redeveloped for residential use.

The bill provides that cleanup and removal costs assessed by the DEP under the Spill Compensation and Control Act are not to include administrative indirect costs unless the costs are being assessed in a

cost recovery action.

The bill provides that the Commissioner of the Department of Commerce and Economic Development (DCED) can enter into a redevelopment agreement with the brownfield site developer if new taxes are to be realized from the redevelopment to reimburse the developer for up to 75 percent of the costs of the remediation. The potential net tax revenue gain from such projects cannot be estimated because the DCED commissioner is given broad discretion in deciding the terms and conditions of such agreements.

The bill creates a Brownfields Redevelopment Task Force to plan and coordinate brownfields issues and a Legislative Underground Storage Tank Remediation Task Force to study the policy implications of implementing a risk-based corrective action program for petroleum releases. The Brownfields Task Force would be funded by a $250,000 appropriation that is included in the recommended FY 1998 budget for the Office of State Planning. The $5.0 million in combined appropriations for the two studies required are also supported by bonds and thus will not affect the State budget until debt service payments for these funds are initiated sometime in the future. It should be noted that in addition to alleviating some of the costs for persons performing brownfields remediations, the generation of data from these task forces may also help to lower the costs for State-funded site remediations.

The OLS has estimated that the exclusion of administrative indirect costs that are currently assessed under the Spill Compensation and Control Act will have the effect of lowering the fees assessed by the DEP to review a remediation, thereby lowering the cost of a remediation; however, the General Fund will receive less revenue from this source, requiring a greater proportion of State funds to support DEP staff operations in this area.

COMMITTEE AMENDMENTS:

The committee made substantial amendments to the bill. These amendments are listed as follows:

(1) Provisions that would have expanded the role of county improvement authorities were deleted;

(2) The DEP is required to perform certain risk communication functions in order to properly explain the risks posed by site remediations;

(3) The general powers of the DEP were expanded to require the department to encourage and aid in brownfield redevelopment;

(4) The Spill Compensation and Control Act's findings and declarations section was amended to declare that the facilitation and coordination of the cleanup of industrial sites is a public policy function of the DEP;

(5) New definitions for "unrestricted use remedial actions," "restricted use remedial actions," and "limited restricted use remedial actions" were created to replace the definitions "permanent remedial

action" and "nonpermanent remedial action";

(6) The covenant not to sue provisions were amended to provide that the covenant is to afford no liability protections to persons who are liable under the "Spill Compensation and Control Act" to clean up and remove a discharged hazardous substance. The committee substitute had listed certain exemptions from the covenants protections for these responsible parties but rather than list individual exemptions, the committee amendments created a broad exemption for responsible parties from the protections of the covenant not to sue;

(7) The Legislative Underground Storage Tank Remediation Task Force created in section 40 of the bill is required to study and add to its report an evaluation of the use of standard probabilistic approaches in the development of minimum remediation standards;

(8) Certain changes to the provisions concerning the performance of an alternative risk assessment for a contaminated site were made;

(9) Amendments to the liability provisions (C.58:10-23.11g) of the "Spill Compensation and Control Act" were made. These changes include clarifying provisions to the "innocent purchaser" provisions to ensure that a proper remediation will be performed. Additionally, a provision was added that a governmental entity that condemns or takes by eminent domain a property undergoing a timely cleanup will not receive the liability protections that would otherwise be afforded governmental entities that take title to contaminated property. The amendments add additional protections for persons who acquire contaminated property from liability to third parties. To obtain these third party liability protections, which take effect upon acquisition of the property, the purchaser must enter into an agreement with the DEP and remediate the property in a timely fashion;

(10) The provisions allowing redevelopment agreements for the reimbursement of a portion of the remediation costs were amended to ensure that no money will be reimbursed until the State Treasurer is satisfied that the State has received adequate tax revenues from the redevelopment project to pay for the reimbursements;

(11) The amendments provide for procedures when a landlord or tenant petitions DEP to compel compliance with the "Industrial Site Recovery Act" pursuant to N.J.S.A.13:1K-11.9;

(12) The amendments provide the Superior Court with jurisdiction for actions to void a transfer pursuant to N.J.S.A.13:1K-13;

(13) The DEP is designated as the agency to designate brownfields for the purposes of the federal "Taxpayer Relief Act of 1997;"

(14) The "Environmental Opportunity Zone Act" was amended to specify the remediation costs recoverable by the property tax exemption and to provide that once those costs are recovered, the property tax exemption will end; and

(15) Various other technical changes were made to the bill to ensure that its intent is clearly stated.

ASSEMBLY AGRICULTURE AND WASTE MANAGEMENT COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 2250

STATE OF NEW JERSEY

DATED: NOVEMBER 7, 1996

The Assembly Agriculture and Waste Management Committee favorably reports an Assembly Committee Substitute for Assembly Bill No. 2250.

The committee substitute would limit the liability for innocent purchasers of contaminated property. First, the committee substitute would clarify existing law concerning the liability of purchasers of contaminated property. In 1993, the Legislature amended the law to provide a defense to liability for any purchase subsequent to the law's effective date, for any person who acquires contaminated property after a discharge occurs, performs all appropriate inquiry, and does not know and has no reason to know that a discharge had occurred. The committee substitute would clarify that for those purchases after the 1993 law's effective date, a purchaser who acquires contaminated property and knew or should have known of the contamination would be liable for the cleanup and removal costs.

The committee substitute would also limit the liability of innocent purchasers of property on which there has been a discharge under certain circumstances. These defenses to liability would be applicable to purchasers of property no matter when it is acquired as long as the enumerated conditions are met. Earlier this year, the Legislature enacted certain provisions of law to limit the liability of an innocent person who acquires land which was once contaminated but is remediated. That limit on liability, however, only applied to properties in qualified municipalities. The committee substitute expands these protections to all properties in the State. Additionally, the committee substitute expands and clarifies the liability protections of purchasers so that if a purchaser unknowingly acquires contaminated property after performing a proper investigation or knowingly acquires contaminated property and performs the required remediation, the purchaser would not be liable to the State or to any other person, under the Spill Compensation and Control Act or under common law, for any additional cleanup or for any other damages even if additional contamination is discovered or if the standards change. Finally, in

order to encourage redevelopment of contaminated properties and lower the costs of remediation, the committee substitute would limit the extent of a remediation that a person buying contaminated property would have to perform. The purchaser would only be liable to perform surface soil remediations, or use engineering or institutional controls, remove sources of contamination that pose imminent threats, and maintain any controls in place. The purchaser would not be liable for groundwater contamination, for changes in remediation standards, or for undiscovered contamination. Once the innocent purchaser performs this limited remediation to make the property safe for its intended use, he would have no further liability under the law.

The committee substitute would limit the liability of any person for any additional remediation costs if the department adopts a more stringent remediation standard. Further, if contamination is subsequently discovered that existed at the time of a remediation, only the discharger, or a person who is liable and who knew of the contamination and failed to disclose it at the time of the remediation would be liable for additional remediation.

The committee substitute would require the DEP to issue a letter of no association to a person who can demonstrate to the DEP that he has a defense to liability under the innocent purchaser defenses of the Spill Compensation and Control Act. The letter will indicate that the person has met the initial burden proving that he is not liable for any contamination on the property. The letter of no association is prima facie evidence that the person is not liable for remediation costs in any contribution action.

Finally, the committee substitute limits the liability of governmental entities under certain circumstances. Although the existing law generally provides that governmental entities are not liable for contamination on land they acquire through actions such as a tax lien or foreclosure, a governmental entity may be liable for knowingly and voluntarily acquiring contaminated property, even if it is acquired for a public purpose such as redevelopment. The committee substitute would amend the law to limit governmental entity liability for contaminated property they acquire by any means if the purpose of the acquisition was redevelopment.

ASSEMBLY AGRICULTURE AND WASTE MANAGEMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2724

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 16, 1997

The Assembly Agriculture and Waste Management Committee favorably reports Assembly Bill No. 2724 with committee amendments.

The intent of this bill, the "Brownfields Redevelopment Act," is to revise the law, and to create incentives, in order to promote, streamline, expedite and facilitate the cleanup and reuse of New Jersey's older industrial sites. The redevelopment of these industrial sites will help protect the public health and environment, conserve open space, improve the economy, create jobs and revitalize our cities and neighborhoods.

New Jersey has many properties formerly used for industrial or commercial purposes but which are, today, either abandoned or underutilized. Many of these properties are contaminated with hazardous substances or at least suspected of being contaminated. Most of these properties are located in the State's urban areas. These former industrial sites, are often referred to as "brownfields."

As amended, this bill addresses four general areas that need to be addressed in order to facilitate brownfields remediation and redevelopment. These areas include technical, legal, financial and institutional policies.

Technical Policy Issues

Elimination of preference for residential soil remediations and remedy selection choice - Under present law, there is a preference for the performance of a soil remediation to residential limits as opposed to nonresidential limits or the use of engineering controls. This preference exists even if the property is to be used for industrial or commercial purposes, although a cost limitation does exist. This bill eliminates the preference and allows a person to select the remedial action to implement, provided health standards and Department of Environmental Protection (DEP) regulations are met. In order to

ensure that the remedy will be effective, and continue to be effective, the DEP is required to inspect at least once every five years each site that uses engineering or institutional controls.

Permit by rule - The bill provides that the DEP should develop guidance allowing site remediations to be performed and approved without requiring extensive document review or preapproval.

Aquifer delineation - Under existing law and practice of the DEP, aquifers that are contaminated and not used as a drinking water resource can be classified as such and the DEP will allow contamination in the aquifer to be remediated through natural attenuation (e.g., the natural breakdown of contaminants over time). The bill requires the DEP to investigate and determine which aquifers meet this standard and to plot those aquifers on the geographic information system (GIS). Five million dollars of $70 million designated for site remediation purposes from the bond act approved by the voters in November, 1996 (P.L.1996, c.70) will be used for this purpose. The bill also requires the DEP to develop remediation policies that allow for the natural attenuation of groundwater.

Presumptive remedies - The law presently requires the DEP to list certain remedial actions that the DEP deems to be effective. The bill provides that a person using any of these remedies shall be assumed to have demonstrated the technical performance and reliability of the remedial action. The presumptive remedies shall be historically acceptable technologies for similar sites and contaminants and are to be based on historical patterns of remedy selection and the department's scientific and technical evaluation of performance data.

Innovative technologies - The bill contains several provisions designed to encourage the use of innovative technologies, including the elimination of the requirement to post financial assurance, the provision of 25% matching grants, expedited review and other regulatory changes.

Historic fill - Although the law already contains a provision providing that the presumptive remedy for historic fill is capping, recent regulatory proposals of the DEP may have the effect of negating the intent of the law. The bill provides that no regulation, guidance or rule shall have the effect of shifting the burden the presumption places on the DEP and that there is no date before which the fill must have been placed on the land in order to be considered "historic."

Reports and regulations - Several reports and regulations required in P.L.1993, c.139 have not yet been issued or adopted. These include the liability report to be issued by the DEP, the risk report to be issued by a special commission and the remediation standards, technical rules and large contaminated area regulations to be issued by the DEP. The bill provides new time limits for the issuance of these reports, guidance and regulations. If they are not issued by the set date, the relevant General Assembly and Senate committees are instructed to hold a joint

public hearing to determine why the report, guidance or regulations were not issued.

Environmental Advisory Task Force - This task force was established by law in 1993 to determine if and how soil site remediation standards should be adopted that are protective of the environment. To date, some members of the task force to be appointed by the Governor have not been selected. The bill would eliminate the Governor's appointments if not selected in a defined period of time and would make it easier for the task force to convene.

Legal Liability

Limited remediation requirements for purchasers - The bill would provide liability protections for a person buying contaminated property as follows:

Any person who purchases property on or after September 14, 1993 on which there has been a discharge prior to the acquisition, who knew or should have known about the discharge, would be liable for the cleanup costs;

Any person who purchases property on or after September 14, 1993 on which there has been a discharge would not be liable to the State or to any other person for the discharged hazardous substance if the person can demonstrate by a preponderance of the evidence that the person acquired the property after the discharge, did not discharge the hazardous substance or is not in any way responsible for the hazardous substance, gave notice to the department of the discharge upon actual discovery, and the person satisfies one of the four following conditions as follows:

(1) at the time of acquisition they did not know or had no reason to know of the discharge,

(2) they acquired it by devise or succession,

(3) if the DEP issues a no further action letter for the site prior to the person becoming an owner or operator at the site and any institutional or engineering controls are maintained, then any person who is not otherwise liable for the discharge which occurred prior to the approval of the no further action letter shall not be liable for the cleanup of the discharge or for damages to any other person based solely on that person becoming an owner or operator of the site after the effective date of this bill, or

(4) at any site at which a discharge has occurred and at which the DEP has not issued a no further action letter, any person not other liable for a discharge that occurred prior to his ownership of the property, shall not be liable for the cleanup based solely on the person becoming an owner or operator after the effective date of this bill, if the person remediates any immediate, direct or imminent threat to acceptable levels based on the intended use of the site. To the extent that the person seeks to develop the site, the person is responsible for

obtaining a no further action letter consistent with the intended use of the site. A person who receives a no further action letter pursuant to this provision would not be liable for any changes in a remediation standard or for the subsequent discovery of a contaminant that was discharged prior to the person acquiring the property.

The bill also provides that notwithstanding any other provision of law to the contrary, the owner or operator of any property acquired after the effective date of this bill shall not be liable for any actions, claims or damages for on-site contamination, off-site contamination, or third party actions arising from contamination existing at the property prior to the the owner or operator taking title to the property or commencing operations on the property and which was not caused by that person.

Covenants not to sue - The bill provides that whenever the DEP issues a no further action letter for a remediation, it shall also issue a covenant not to sue. The covenant describes the limits on legal liability that exist once a site is remediated. The covenant protects the person performing the remediation from further cleanup liability to the State provided any engineering and institutional controls are maintained. The covenant does not protect the discharger or other liable parties for undiscovered contamination.

Public entity liability - Although the law generally provides that public entities are not liable for existing contamination on land they acquire through actions such as a tax lien or foreclosure, a public entity may be liable for knowingly and voluntarily acquiring contaminated property, even if for a public purpose such as redevelopment. The bill amends the law to limit public entity liability for contaminated property acquired by any means, with the exception of those engaged in a reasonably timely remediation or redevelopment process. The bill would establish a process whereby a person can go to court to collect treble damages in a contribution action.

Contribution treble damage awards - The bill would amend the "Spill Compensation and Control Act," ("Spill Act") P.L.1976, c.141 (C.58:10-23.11 et seq.) to delete the provision which requires the Department of Environmental Protection to authorize a person who cleans up or removes a hazardous discharge to seek treble damages from any other person liable for the discharge, but who is not involved in the cleanup.

Until 1991, the Spill Act provided that if the DEP ordered a party liable for a hazardous discharge to clean up and remove the discharge, and the party refused, thus requiring the expenditure of moneys from the Spill Compensation Fund to conduct the cleanup and removal, the DEP would seek damages from the responsible party in an amount equal to three times the amount (treble damages) expended by the DEP for the cleanup and removal. In 1991, the Spill Act was amended to enable private responsible parties performing a cleanup to seek treble damages from other responsible parties. As a result of that

1991 amendment, the Spill Act currently provides that any person seeking treble damages (the contribution plaintiff) from another discharger (the contribution defendant) must be authorized to do so by the DEP, and further provides that one-third of the amount of any treble damages recovered must be paid to the DEP for deposit in the Spill Compensation Fund. This bill would remove this requirement to obtain DEP authorization, thus allowing a contribution plaintiff to seek treble damages under the Spill Act.

Financial Issues

Limitation on fees - The bill provides that cleanup and removal costs under the Spill Compensation and Control Act are not to include indirect costs. This will have the effect of lowering the fees assessed by the DEP to review a remediation, thus reducing the cost for a person to perform a remediation.

Environmental Opportunity Zone Act expansion - Last session, the Legislature enacted the Environmental Opportunity Zone Act in order to encourage the remediation of contaminated industrial sites by offering limited property tax exemptions. That law only applied to properties that were to be used for industrial or commercial purposes. Because many former contaminated industrial properties are located in areas that no longer make them suitable for industrial or commercial purposes, the bill expands the law so that the properties may also be used for residential or other productive uses.

Sales tax exemptions - The bill establishes a program whereby a person can recover 75% of remediation costs incurred. The reimbursement would be funded from the dedication of 50% of the sales tax collected from any new retail establishment built on the formerly contaminated property. State approval would be needed before a property could qualify for this benefit.

Hazardous Discharge Site Remediation Fund flexibility - Under existing law, the Economic Development Authority has limited discretion to move available moneys in the fund from one dedicated category to another. The bill would give the EDA more authority to shift moneys from one category to another.

Institutional Issues

DEP mission - The mission of the DEP, as well as its duties under the Spill Act, have been broadened to include coordination and facilitation of remediating and redeveloping the brownfields.

The "Brownfields Redevelopment Task Force" - The bill would create a task force, consisting of State officials and private sector representatives. The Task Force would inventory brownfields, coordinate State policy relating to their remediation and redevelopment, create a plan of action to bring these sites back to

productive use, target State resources to assess the contamination at these sites, actively market these sites for redevelopment, evaluate the performance of current public incentives for brownfield redevelopment, and make recommendations to the Governor and Legislature.

COMMITTEE AMENDMENTS

The committee amended the bill to remove a distinction between surface soil (top two feet) and subsurface soil (below two feet) which would have provided that subsurface soil contamination would only have to be remediated if a potential impact to groundwater or surface water exists.

The committee amendments delete a provision which would have established a Brownfields Environmental Risk Communication Council. The DEP is assigned the duties that would have been assigned to the council. The committee amendments establish a Brownfields Redevelopment Task Force, directed to prepare and update an inventory of brownfield sites in the State and to coordinate State brownfields redevelopment policy. The amendments delete a provision that would have established a separate office in the DEP to facilitate and expedite the investigation and remediation of selected brownfields sites. The DEP will handle these duties without a separate office.

The committee also amended the bill to:

(1) change the provision in the "Spill Compensation and Control Act" to establish a process whereby a plaintiff may seek contribution and treble damages in court from other responsible parties;

(2) make certain changes to the provisions regarding the covenant not to sue;

(3) delete provisions requiring the DEP to issue letters of no association;

(4) delete references in the bill regarding DEP guidance documents and retain references to DEP regulations;

(5) change the department's authority with respect to regulations governing remediation;

(6) add definitions for restricted and unrestricted remedies and state a policy preference for unrestricted remedies;

(7) prevent the department from requiring a person performing a remediation of an underground heating oil tank at a one to four family residence to notify the municipality prior to implementing a remedial action;

(8) require a property owner on which a deed notice has been recorded to notify any person excavating of the nature and location of any contamination on the site and any conditions or measures that may be required to prevent exposure to contaminants;

(9) add language to assure that remediations are performed

consistent with the requirements of the "Pinelands Protection Act;" and

(10) make other various changes to the bill.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2724

STATE OF NEW JERSEY

DATED: DECEMBER 11, 1997

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2724.

This Assembly Committee Substitute for Assembly Bill No. 2724, the "Brownfields and Contaminated Site Remediation Act," removes impediments in current law and creates incentives in order to promote and facilitate the cleanup and reuse of New Jersey's older industrial sites. The redevelopment of these industrial sites, often referred to as "brownfields" will help protect the public health and environment, conserve open space, improve the economy, create jobs, and revitalize our cities and neighborhoods.

This substitute was crafted with three predominant policy goals. First, the substitute is intended to result in more remediations being performed and brownfields being redeveloped. Second, the substitute will not lessen any environmental or health standard. The strict standards set in the 1993 legislation and enforced by the Department of Environmental Protection DEP will remain in place. Finally, the persons responsible for the discharge will not be given any relief from liability. Only those "innocent" parties who either unknowingly buy contaminated property or who clean up a contaminated property that they have purchased will be given any liability protections.

There are four general areas that need to be addressed in order to facilitate brownfield remediation and redevelopment. These areas include technical, legal, financial, and institutional policies. This committee substitute addresses each of these areas in a comprehensive manner in order to fully address the problems posed.

The substitute bill reported by this committee is identical to the SCS for Senate Bill No. 39/A2250ACS/S-1815/1539 (1R), as amended and reported by this committee.

FISCAL IMPACT:

The substitute offers financial incentives in the form of 25 percent matching grants or loan guarantees from the Hazardous Discharge Site Remediation Fund, as administered by the New Jersey Economic Development Authority (EDA), to support the implementation of unrestricted or limited restricted remedies. Such matching grants or

loans are also available to persons who propose to use an innovative technology for a remedial action, provided that person has assets of less than $2.0 million. The Office of Legislative Services has estimated that the matching grant and loan programs will have no fiscal impact on the State budget because these costs will be covered by the monies already contained in the Hazardous Discharge Site Remediation Fund. Most of these funds are derived from previously appropriated bond funds, loan repayments, and other non-State funding sources.

The substitute directs the (DEP) to investigate and determine the extent of contamination in the State's aquifers and make the results public through its inclusion in the State Geographic Information System. An appropriation of $3.0 million from the 1996 Environmental Cleanup Fund, which is funded from bond monies approved in November, 1996 (P.L.1996, c.70), is appropriated for this purpose. In addition, $2.0 million from this funding source is provided to the DEP to support an investigation and mapping project concerning known areas of historic fill. The availability of data generated from both studies is intended to lower the costs of performing brownfields remediations by private parties.

The substitute limits public entity liability for contaminated property that is acquired by any means and extends this immunity from liability to third party suits. The OLS has estimated that municipalities, counties and public improvement authorities will benefit from this provision by enabling them to acquire more brownfields property without the threat of such liabilities or potential lawsuits

The substitute extends the 10-year property tax exemption under the Environmental Opportunity Zone Act (P.L.1995, c.413) to 15 years if an unrestricted or limited restricted remedial action is used for brownfields sites within those zones. The substitute expands the exemption to sites redeveloped for residential use.

The substitute provides that cleanup and removal costs assessed by the DEP under the Spill Compensation and Control Act are not to include administrative indirect costs unless the costs are being assessed in a cost recovery action.

The substitute provides that the Commissioner of the Department of Commerce and Economic Development (DCED) can enter into a redevelopment agreement with the brownfield site developer if new taxes are to be realized from the redevelopment to reimburse the developer for up to 75 percent of the costs of the remediation. The potential net tax revenue gain from such projects cannot be estimated because the DCED commissioner is given broad discretion in deciding the terms and conditions of such agreements.

The substitute creates a Brownfields Redevelopment Task Force to plan and coordinate brownfields issues and a Legislative Underground Storage Tank Remediation Task Force to study the policy implications of implementing a risk-based corrective action program for petroleum releases. The Brownfields Task Force would be funded by a $250,000 appropriation that is included in the

recommended FY 1998 budget for the Office of State Planning. The $5.0 million in combined appropriations for the two studies required are also supported by bonds and thus will not affect the State budget until debt service payments for these funds are initiated sometime in the future. It should be noted that in addition to alleviating some of the costs for persons performing brownfields remediations, the generation of data from these task forces may also help to lower the costs for State-funded site remediations.

The OLS has estimated that the exclusion of administrative indirect costs that are currently assessed under the Spill Compensation and Control Act will have the effect of lowering the fees assessed by the DEP to review a remediation, thereby lowering the cost of a remediation; however, the General Fund will receive less revenue from this source, requiring a greater proportion of State funds to support DEP staff operations in this area.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 39, ASSEMBLY, No. 2250 ACS,

SENATE, Nos. 1815 and 1539

STATE OF NEW JERSEY

DATED: JUNE 5, 1997

The Senate Environment Committee favorably reports a committee substitute for Senate Bill No. 39, Assembly Bill No. 2250 ACS, Senate Bill Nos. 1815 and 1539.

The intent of this committee substitute, the "Brownfields and Contaminated Site Remediation Act," is to remove impediments in the law, and to create incentives, in order to promote and facilitate the cleanup and reuse of New Jersey's older industrial sites. The redevelopment of these industrial sites, often referred to as "brownfields" will help protect the public health and environment, conserve open space, improve the economy, create jobs, and revitalize our cities and neighborhoods.

New Jersey began the process of facilitating the remediation and redevelopment of brownfields in 1993 when the Legislature enacted a comprehensive reform of its site remediation laws. Three years experience with that reform measure and the legislative actions and experiences of several other states have demonstrated that more changes are needed in order to further facilitate brownfield redevelopment.

This committee substitute was crafted with three predominant policy goals. First, the committee substitute is intended to result in more remediations being performed and brownfields being redeveloped. The achievement of this goal will protect the environment, alleviate local property tax burdens, create jobs, and improve the economy. Second, the committee substitute will not lessen any environmental or health standard. The strict standards set in the 1993 legislation and enforced by the Department of Environmental Protection (DEP) will remain in place. Finally, the persons responsible for the discharge will not be given any relief from liability. Only those "innocent" purchasers who either unknowingly buy contaminated property or who clean up a contaminated property that they have purchased will be given any liability protections.

There are four general areas that need to be addressed in order to facilitate brownfield remediation and redevelopment. These areas

include technical, legal, financial, and institutional policies. This committee substitute addresses each of these areas in a comprehensive manner in order to fully address the problems posed.

Technical Policy Issues

Allowing the person performing the remediation to select the remedial action to be implemented and providing incentives for the performance of permanent remedies - Under present law there is a preference for the performance of a permanent remediation. This preference is not changing. However, the existing legal mechanism to compel permanent cleanups, by requiring a cost test comparing permanent and nonpermanent remedies, has not worked. This committee substitute would eliminate this test and allow persons performing remediations to select the remedial action to to be performed. The preference for permanence would be supported by a series of liability protections and financial incentives that are designed to result in the voluntary performance of more permanent remedies. If a person decides to implement a remedial action that involves engineering solutions, such as capping, together with institutional controls, the department would continue its role to oversee and approve these actions to ensure that they meet the State's strict health and environmental standards. Further, the person proposing a remedy has the burden of showing that it is effective. In order to ensure that the remedy works, and continues to work, the DEP is required to inspect each site that uses engineering or institutional controls at least once every five years.

Regulatory flexibility - The committee substitute contains a provision that requires the DEP's regulations to provide a mechanism for a person to deviate from the strict adherence to the regulations if that person can demonstrate that the deviation would be as protective of human health and the environment. The department would determine the situations when the deviation would be appropriate. The deviation would be, at the department's discretion, either in a variance procedure or by another method determined by the department. Additionally, the committee substitute requires that the department's remediation regulations be result oriented, risk based, and flexible.

Definition of permanent remedy - Under current law the only soil remediation that is considered to be permanent is one performed to a residential standard. This committee substitute would expand the definition of a permanent remedy to include soil remediations that have met the nonresidential standards. As long as these sites continue to be used for industrial or commercial purposes, a condition that is imposed by law, there are no further restrictions on the use of those sites and for all intents and purposes these remediations are permanent.

Permit by rule - The committee substitute provides that the DEP may adopt regulations whereby certain minor site remediations may be

performed and approved without the need for preapproval or the submission of extensive documents to the DEP for review.

Aquifer contamination delineation - The committee substitute requires the DEP to investigate and determine the extent of contamination in the State's aquifers and to enter this information on the geographic information system. The bill appropriates $3 million in bond funds from the 1996 bond act earmarked for site remediation purposes. The information derived from the investigation may be used by persons performing remediations. The committee substitute is specific, however, that the department will not be compelled to reclassify any aquifer as a result to the information that is learned.

Presumptive remedies - The law presently requires the DEP to list certain remedial actions that the DEP deems to be effective. The committee substitute provides that a person can use any of these remedies without needing further departmental approval of that choice.

Innovative technologies - The committee substitute contains several provisions designed to encourage the use of innovative technologies, including the elimination of the requirement to post financial assurance, the provision of 25% matching grants, and other regulatory changes.

Historic fill - Although the law already contains a provision providing that the presumptive remedy for historic fill is capping, previous regulatory proposals of the DEP could have had the effect of negating the intent of the law. The committee substitute provides that no regulation of the DEP may be adopted that has the effect of shifting the burden the presumption places on the DEP. The committee substitute also provides that the date fill material is placed on land is irrelevant for it to be considered "historic". Additionally, because each person who is performing a remediation has the burden to prove that historic fill exists on that person's property, often a costly and time consuming endeavor, the committee substitute requires the department to investigate and map known areas of historic fill. The committee substitute appropriates for this study $2 million dollars from the 1996 bond act from funds earmarked for site remediation purposes. The information derived from the investigation may be used by persons performing remediations.

Elimination of the requirement for ecological evaluations at residential heating oil underground storage tank sites - Under recently adopted regulations, all sites undergoing a remediation must perform a baseline ecological evaluation to determine if there is the potential that the discharge may have caused any damages to natural resources. These assessments are to be used for the possible assessment of ecological damages. Because the size of residential tanks and because heating oil is generally not considered a substance that could have an ecological impact as defined by the department, there is no need to require the owners of these residential tanks to perform these evaluations. This provision only applies to tanks used

for one to four family residential buildings.

Notification before excavation - The committee substitute requires that a person who has engineering or institutional controls on his property as a result of a remediation notify any person proposing to perform an excavation on his property about the contamination that exists and methods to avoid exposure.

Elimination of homeowner UST notice prior to a remedial action being commenced - Recently adopted regulations of the DEP require that before anyone may implement a remedial action 45 days notice must be given to a municipality. The committee substitute prohibits the department from requiring any such notification to a municipality if the remedial action is to be performed on an underground storage tank storing petroleum located at a one to four family residential dwelling. This provision is not intended to preempt local ordinances that may require notification.

Legal Liability

Purchaser protection from additional liability - Earlier this session, the Legislature enacted certain provisions of law to limit the liability of an innocent person who acquires land which was contaminated but is later remediated. That limit on liability, however, only applied to properties in qualified municipalities. This committee substitute expands these protections to all properties in the State. Additionally, the committee substitute expands and clarifies the liability protections of purchasers so that if a purchaser unknowingly acquires contaminated property after performing a proper investigation or knowingly acquires contaminated property and performs the required remediation, the purchaser would not be liable to the State or to any other person, under the Spill Compensation and Control Act or under common law, for the discharged contamination even if additional contamination is discovered or if the standards change. Because the purchaser is provided with a defense to liability in the statute, any tenants or operators who use the land will also benefit from these protections.

Covenants not to sue - The committee substitute provides that whenever the DEP issues a no further action letter for a remediation it shall also issue a covenant not to sue. The covenant spells out the limits of legal liability that exist once a site is remediated. The covenant protects the person performing the remediation from further cleanup liability to the State if a permanent remedy is employed or so long any engineering and institutional controls that may be required are maintained. The covenant does not protect the discharger or other liable parties for undiscovered contamination or for changes in the remediation standards by an order of magnitude. The covenant would protect subsequent purchasers as well as tenants and operators on the property. If engineering or institutional controls are to be used, the person who owns the property has the burden of maintaining those

controls. The covenant would be revoked if the conditions upon which it were issued were violated. However, if the covenant is revoked, only the current property owner or operator and the original responsible parties would be liable for any additional contamination. Additionally, the covenant would protect "innocent" property owners, those who were not liable for original discharge, from liability for any natural resource damages.

Public entity liability - Although the law generally provides that public entities are not liable for existing contamination on land they acquire through actions such as a tax lien or foreclosure, a public entity may be liable for knowingly and voluntarily acquiring contaminated property, even if for a public purpose such as redevelopment. The committee substitute amends the law to limit public entity liability for contaminated property they acquire by any means. The committee substitute also extends this immunity from liability to third party suits.

Immunity for holders of security interests for discharges from underground storage tanks - The committee substitute clarifies the law by explicitly providing that persons who hold security interests in property on which there is an underground storage tank will not be liable for discharges for that tank. Additionally, the holder of the security interest would be required, in certain circumstances, to perform a temporary closure of that tank in order to prevent any discharge from occurring.

Requirement that a responsible person perform a remediation when standards change and the site is no longer safe to use - Under existing law a person who is liable for a discharge is liable for any subsequent change in the standard after a remediation has occurred. The committee substitute provides that if the standards change and the condition of the site is such that it is no longer protective of human health or the environment, that the responsible party would be liable for any necessary additional remediation. If, however, the site is safe because the contamination is under a building, a cap, or other such condition exists, the responsible party would only be liable for filing the required notices to restrict the use of that property as is required by law.

Maintenance of discharger address with the department - The committee substitute provides that a discharger or other responsible party who remediates a site shall maintain their address with the Department of Environmental Protection in the event additional remedial work needs to be done.

Financial Issues

Incentives for permanent remedies - The committee substitute provides several incentives for persons who perform permanent remedies. The incentives are the availability of 25% matching grants, up to $100,000, for the implementation of a permanent remedy if a

person has less than $2 million in assets; the elimination of the requirement to post a remediation funding source for permanent remedies; and the allowance of up to 15 year property tax exemptions in environmental opportunity zones if a permanent remedy is to be employed. Additionally, liability protections are substantially greater for those persons who perform permanent remedies and in the case of a permanent soil remediation, no deed notice is required.

Limitation on fees - The committee substitute provides that cleanup and removal costs under the Spill Compensation and Control Act are not to include administrative indirect costs unless the costs are being assessed in a cost recovery action. This will have the effect of lowering the fees assessed by the DEP to review a remediation and thus the cost for a person to perform a remediation. Over the past several years the fees for site remediation reviews have increased exponentially as more indirect and unrelated costs are being recouped by the imposition of fees.

Environmental Opportunity Zone Act expansion - Last session, the Legislature enacted the Environmental Opportunity Zone Act in order to encourage the remediation of contaminated industrial sites by offering limited property tax exemptions. That law only applied to properties that were to be used for industrial or commercial purposes. Because many former contaminated industrial properties are located in areas that no longer make them suitable for industrial or commercial purposes, the committee substitute expands the law so that the properties may also be used for residential or other productive uses.

Hazardous Discharge Site Remediation Fund flexibility - Under existing law, the Economic Development Authority has limited discretion to move available moneys in the fund from one dedicated category to another. The committee substitute would give the EDA more authority to shift moneys from one category to another when the demand warrants it.

Incentives for innovative technologies - The committee substitute provides that persons who propose to use an innovative technology for a remedial action may receive a 25% matching grant, up to $100,000, if that person has assets of less than $2 million. Additionally, no remediation funding source would be required for innovative technology remedial action. The DEP is also required to formulate regulations that encourage the use of innovative technologies.

Reimbursements for remediations from additional taxes - The committee substitute provides that where new taxes are to be realized from the redevelopment of a brownfield site, the Commissioner of Commerce and Economic Development can enter into a redevelopment agreement with the site developer to reimburse the developer for up to 75% of the costs of the remediation. The Commissioner is given broad discretion in deciding whether or not to enter into these agreements and what the conditions in the agreements should be.

Institutional Issues

The creation of the "Brownfields Redevelopment Task Force" - The committee substitute would create a task force, consisting of State officials and private sector representatives. The Tank Force would inventory brownfields, coordinate State policy relating to their remediation and redevelopment, create a plan of action to bring these sites back to productive use, target State resources to assess the contamination at these sites, actively market these sites for redevelopment, evaluate the performance of current public incentives for brownfield redevelopment, and make recommendations to the Governor and Legislature.

County Improvement Authorities - County Improvement Authorities are given an expanded and defined role to help coordinate, fund, and market the remediation and redevelopment of contaminated sites.

Findings and declarations - The committee substitute adds findings and declarations to the law that promote changes in the way State government has responded to brownfields and to establish more efficient, cost effective, flexible, timely, and risk based regulatory decision making.

Risk based corrective action legislative study commission - The committee substitute requires that a legislative study commission be formed to study the policy implications of New Jersey implementing a risk based corrective action program for petroleum releases. The study commission will issue its report and recommendations within six months of its first meeting.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 39, ASSEMBLY, No. 2250 ACS, SENATE, Nos. 1815 and 1539

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 12, 1997

The Senate Budget and Appropriations Committee reports favorably the Senate Committee Substitute for Senate Bill No. 39, Assembly Bill No. 2250 ACS, Senate Bill Nos. 1815 and 1539 with amendments.

This bill, the "Brownfields and Contaminated Site Remediation Act," removes impediments in current law and creates incentives in order to promote and facilitate the cleanup and reuse of New Jersey's older industrial sites. The redevelopment of these industrial sites, often referred to as "brownfields" will help protect the public health and environment, conserve open space, improve the economy, create jobs, and revitalize our cities and neighborhoods.

This bill was crafted with three predominant policy goals. First, the bill is intended to result in more remediations being performed and brownfields being redeveloped. Second, the bill will not lessen any environmental or health standard. The strict standards set in the 1993 legislation and enforced by the Department of Environmental Protection (DEP) will remain in place. Finally, the persons responsible for the discharge will not be given any relief from liability. Only those "innocent" parties who either unknowingly buy contaminated property or who clean up a contaminated property that they have purchased will be given any liability protections.

There are four general areas that need to be addressed in order to facilitate brownfield remediation and redevelopment. These areas include technical, legal, financial, and institutional policies. This committee substitute addresses each of these areas in a comprehensive manner in order to fully address the problems posed.

For a comprehensive and detailed discussion of technical, legal, financial and institutional policies in the bill, the Senate Environment Committee's statement for this bill, dated June 5, 1997, should be consulted.

COMMITTEE AMENDMENTS:

The committee amended the bill at the request of the sponsor to: require a municipality to provide for an exemption of real property taxes in an environmental opportunity zone under certain circumstances; require both the Commissioner of Commerce and Economic Development and the State Treasurer to agree to enter into a redevelopment agreement; limit the amount of reimbursement made through property tax exemptions and State, local or federal tax incentives or grants to a maximum of 75% of the cost of remediation; permit redevelopment agreements only if there is a finding that the State tax revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the developer; permit the finding to be made by an estimate based upon the professional judgment of the commissioner and the State Treasurer; condition the percentage of each payment to be made to the developer pursuant to the redevelopment agreement on the occupancy rate of the buildings or other work areas located on the property; permit the Commissioner of Commerce and Economic Development and the State Treasurer to estimate the amount of monies to be credited annually to the Brownfield Site Reimbursement Fund; and make technical amendments to correct wording in current law.

FISCAL IMPACT:

The bill contains the following provisions that may have fiscal impacts on public entities: First, financial incentives would be offered in the form of 25 percent matching grants or loan guarantees from the Hazardous Discharge Site Remediation Fund, as administered by the New Jersey Economic Development Authority (EDA), to support the implementation of permanent remedies. Such matching grants or loans would also be available to persons who propose to use an innovative technology for a remedial action, provided that person has assets of less than $2.0 million.

Second, the bill directs the Department of Environmental Protection (DEP) to investigate and determine the extent of contamination in the State's aquifers and make the results public through its inclusion in the State Geographic Information System. An appropriation of $3.0 million from the 1996 Environmental Cleanup Fund, which is funded from bond monies approved in November, 1996 (P.L. 1996, c.70), is appropriated for this purpose. In addition, $2.0 million from this funding source is provided to the DEP to support an investigation and mapping project concerning known areas of historic fill. The availability of data generated from both studies is intended to lower the costs of performing brownfields remediations by private parties.

Third, the bill amends current law to limit public entity liability for contaminated property that is acquired by any means. This provision also extends this immunity from liability to third party suits.

Fourth, the 10-year property tax exemptions provided under the

Environmental Opportunity Zone Act (P.L.1995, c.413) would be extended to 15 years if a permanent remediation remedy is employed for brownfields sites within those zones. This provision is also expanded to allow for such tax benefits when a site is redeveloped for residential use.

Fifth, the bill provides that cleanup and removal costs assessed by the DEP under the Spill Compensation and Control Act are not to include administrative indirect costs unless the costs are being assessed in a cost recovery action.

Sixth, the bill provides that where new taxes are to be realized from the redevelopment of a brownfields site, the Commissioner of the Department of Commerce and Economic Development (DCED) can enter into a redevelopment agreement with the site developer to reimburse the developer for up to 75 percent of the costs of the remediation. Reimbursement funding could be derived from various taxes generated from new businesses developed on these sites.

Finally, the bill creates a Brownfields Redevelopment Task Force to plan and coordinate brownfields issues, and a Legislative Underground Storage Tank Remediation Task Force to study the policy implications of implementing a risk-based corrective action program for petroleum releases. The Brownfields Task Force would be funded by a $250,000 appropriation that is included in the recommended FY 1998 budget for the Office of State Planning (if adopted).

The Office of Legislative Services estimates that the matching grant and loan programs proposed by the bill will have no fiscal impact on the State budget or the General Fund, since these costs will be covered by the monies already contained in the Hazardous Discharge Site Remediation Fund. Most of these funds are derived from previously appropriated bond funds, loan repayments, and other non-State funding sources.

Likewise, the $5.0 million in combined appropriations for the two task forces established are also supported by bonds and thus will not affect the State budget until debt service payments for these funds are initiated sometime in the future.

Regarding the proposed amendment to limit public entity liability for contaminated property that is acquired by any means, as well as extending this immunity from liability to third party suits, the OLS estimates that municipalities, counties and public improvement authorities will benefit from this provision by enabling them to acquire more brownfields property without the threat of such liabilities or potential lawsuits.

The OLS contends that the exclusion of administrative indirect costs that are currently assessed under the Spill Compensation and Control Act will have the effect of lowering the fees assessed by the DEP to review a remediation, thereby lowering the cost for a person to perform a remediation. Conversely, the General Fund will receive less revenue from this source, thereby requiring a greater proportion

of State funds to support DEP staff operations in this area. Estimates of potential revenue loss cannot be ascertained at this time.

Concerning the reimbursement of new taxes to be realized from the redevelopment of a brownfields site, the potential net tax revenue gain from such projects cannot be estimated since the DCED commissioner is given broad discretion in deciding the terms and conditions of such agreements. Although similar legislation was enacted last year (P.L. 1996, c.124) that provided for remediation cost reimbursement to developers of landfills, no comparative tax revenue data has yet been generated.

Last, the OLS estimates the legislative task force established by the bill may incur some costs that cannot be totally borne by the participating public agencies or the private participants. While final costs cannot be estimated until the study parameters are developed, the actual efforts of the task force may be limited by the amount of time and resources that can be donated by the participants if additional funding is indeed needed but not provided.

LEGISLATIVE FISCAL ESTIMATE TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 39, ASSEMBLY, No. 2250 ACS, SENATE, Nos. 1815 and 1539**

STATE OF NEW JERSEY

DATED: JUNE 16, 1997

Senate Committee Substitute for Senate Bill No. 39 of 1996, Assembly Bill No. 2250 (ACS) of 1996, Senate Bill No. 1815 of 1997 and Senate Bill No. 1539 of 1996, the "Brownfields and Contaminated Site Remediation Act," is primarily designed to remove legal, financial, technical and institutional impediments in current State laws and regulations, and to create incentives, in order to promote and facilitate the cleanup and reuse of the State's contaminated sites. The committee substitute particularly addresses New Jersey's older industrial sites, often referred to as "brownfields."

The committee substitute was crafted with three predominant policy goals. First, it is intended to result in more remediations being performed so more brownfield sites can be redeveloped. Second, the committee substitute does not lessen any environmental or health standards, particularly those that were enacted by P.L.1993, c.139, the primary legislation this bill amends and supplements. Last, the persons responsible for the contamination being cleaned up will not be given any relief from liability. Only those "innocent" purchasers who either unknowingly buy contaminated property, or who clean up a contaminated property that they have purchased, or who buy previously cleaned property will be given any liability protections.

The committee substitute contains the following provisions that may have fiscal impacts on public entities: First, persons performing remediations would be allowed to select the remedial action to be undertaken. Since State law encourages permanent remediation of such sites, financial incentives would be offered in the form of 25 percent matching grants or loan guarantees from the Hazardous Discharge Site Remediation Fund, as administered by the New Jersey Economic Development Authority (EDA), to support the implementation of permanent remedies. Such matching grants or loans would also be available to persons who propose to use an innovative technology for a remedial action, provided that person has assets of less than $2.0 million.

Second, the committee substitute directs the Department of Environmental Protection (DEP) to investigate and determine the extent of contamination in the State's aquifers and make the results public through its inclusion in the State Geographic Information System. An appropriation of $3.0 million from the 1996

Environmental Cleanup Fund, which is funded from bond monies approved in November, 1996 (P.L.1996, c.70), is appropriated for this purpose. In addition, $2.0 million from this funding source is provided to the DEP to support an investigation and mapping project concerning known areas of historic fill. The availability of data generated from both studies is intended to lower the costs of performing brownfields remediations by private parties.

Third, the committee substitute changes the law that generally provides that public entities are not liable for existing contamination on land they acquire through actions such as a tax lien or foreclosure; a public entity may still be liable, however, for knowingly and voluntarily acquiring contaminated property, even if for a public purpose such as redevelopment. This law is amended to limit public entity liability for contaminated property that is acquired by any means. This provision also extends this immunity from liability to third party suits.

Fourth, the 10-year property tax exemptions provided under the Environmental Opportunity Zone Act (P.L.1995, c.413) would be extended to 15 years if a permanent remediation remedy is employed for brownfields sites within those zones. This provision is also expanded to allow for such tax benefits when a site is redeveloped for residential use.

Fifth, the committee substitute provides that cleanup and removal costs assessed by the DEP under the Spill Compensation and Control Act are not to include administrative indirect costs unless the costs are being assessed in a cost recovery action.

Sixth, the committee substitute provides that where new taxes are to be realized from the redevelopment of a brownfields site, the Commissioner of the Department of Commerce and Economic Development (DCED) can enter into a redevelopment agreement with the site developer to reimburse the developer for up to 75 percent of the costs of the remediation. Reimbursement funding could be derived from various taxes generated from new businesses developed on these sites.

Finally, the committee substitute creates a Brownfields Redevelopment Task Force to plan and coordinate brownfields issues, and a Legislative Underground Storage Tank Remediation Task Force to study the policy implications of implementing a risk-based corrective action program for petroleum releases. The Brownfields Task Force would be funded by a $250,000 appropriation that is included in the recommended FY 1998 budget for the Office of State Planning (if adopted).

The Office of Legislative Services estimates that the matching grant and loan programs proposed by the committee substitute will have no fiscal impact on the State budget or the General Fund, since these costs will be covered by the monies already contained in the

Hazardous Discharge Site Remediation Fund. Most of these funds are derived from previously appropriated bond funds, loan repayments, and other non-State funding sources.

Likewise, the $5.0 million in combined appropriations for the two task forces established are also supported by bonds and thus will not affect the State budget until debt service payments for these funds are initiated sometime in the future. It should be noted that in addition to alleviating some of the costs for persons performing brownfields remediations, the generation of data from these task forces may also help to lower the costs for State-funded site remediations.

Regarding the proposed amendment to limit public entity liability for contaminated property that is acquired by any means, as well as extending this immunity from liability to third party suits, the OLS estimates that municipalities, counties and public improvement authorities will benefit from this provision by enabling them to acquire more brownfields property without the threat of such liabilities or potential lawsuits.

The OLS contends that the exclusion of administrative indirect costs that are currently assessed under the Spill Compensation and Control Act will have the effect of lowering the fees assessed by the DEP to review a remediation, thereby lowering the cost for a person to perform a remediation. Conversely, the General Fund will receive less revenue from this source, thereby requiring a greater proportion of State funds to support DEP staff operations in this area. Estimates of potential revenue loss cannot be ascertained at this time.

Concerning the reimbursement of new taxes to be realized from the redevelopment of a brownfields site, the potential net tax revenue gain from such projects cannot be estimated since the DCED commissioner is given broad discretion in deciding the terms and conditions of such agreements. Although similar legislation was enacted last year (P.L.1996, c.124) that provided for remediation cost reimbursement to developers of landfills, no comparative tax revenue data have yet been generated.

Last, the OLS estimates the legislative task force established by the committee substitute may incur some costs that cannot be totally borne by the participating public agencies or the private participants. While final costs cannot be estimated until the study parameters are developed, the actual efforts of the task force may be limited by the amount of time and resources that can be donated by the participants if additional funding is indeed needed but not provided.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

OFFICE OF THE GOVERNOR
NEWS RELEASE

CN-004 **TRENTON, NJ 08625**

CONTACT: PETE MCDONOUGH **RELEASE:** TUESDAY
609-777-2600 January 6, 1998

GOVERNOR SIGNS LAW CREATING INCENTIVES FOR REDEVELOPMENT OF VACANT INDUSTRIAL SITES

Gov. Christie Whitman today enacted a program to spur redevelopment and renewal of the state's urban centers when she signed legislation that provides incentives for the expedited cleanup of former industrial or commercial property known as "brownfields."

"Whenever we speak of New Jersey's cities, we recall their proud history as bustling centers of commerce and culture," said Gov. Whitman. "This legislation provides powerful new tools to spur the redevelopment of former industrial sites. The brownfields program will go a long way to strengthen our cities and ensure that they continue on the road to economic prosperity."

"This new program will support our State Plan. It will encourage the use of existing infrastructure to help ease industrial and commercial expansion in our suburbs and will ensure more open space for our future generations," said Gov. Whitman.

"Once redeveloped, former industrial sites can be returned to productive use – providing for increased economic activity and municipal tax revenue, new housing or community services," said the Governor.

The Governor signed the legislation at the former ALCOA factory site in Edgewater which is being remediated and redeveloped into a 460-unit luxury apartment complex. The ALCOA site has been dormant for 20 years. Currently, crews are working to complete the demolition of the ALCOA factory infrastructure.

The legislation, S-39, was sponsored by Senator Henry McNamara (R-Bergen/ Passaic) and Assembly Member Richard Bagger (R-Middlesex/Morris/Somerset/ Union) and Assembly Majority Leader Paul DiGaetano (R-Bergen/Essex/Passaic) and Assembly Minority Leader Joseph Doria (D-Hudson).

The law includes the following provisions aimed at encouraging redevelopment of existing industrial or commercial property:

- Innocent Purchaser Protection -- provides a purchaser who investigates and remediates property with a liability exemption from the Spill Compensation and Control Act. The exemption will apply only to purchasers who complete the remediation of the property.

- Covenant not-to-sue – the Department of Environmental Protection (DEP) will agree in writing not to sue a developer once the property is remediated.

- Development of Presumptive Remedies – the DEP will develop protective redevelopment remedies that may be implemented without prior DEP approval – helping to expedite redevelopment.

- Tax incentives -- reimbursement for up to 75 percent of the cost of remediation of contaminated sites from newly generated revenues.

- Incentives for Innovative Technology – adds incentives for those who use innovative technology by eliminating the requirement that developers post financial assurances and dedicates five percent of Hazardous Discharge Site Remediation Fund (HDSRF) grants for those utilizing innovative technologies.

- Enhanced Information for Geographic Information System (GIS) – requires DEP to study contamination of state aquifers and investigate and map large areas of historic fill. The information would be accessible through the GIS program.

- Lender Liability for Storage Tanks – amends liability law to exempt lenders from liability for underground storage tanks provided that action is taken to empty and close the tanks.

- Environmental Opportunity Zone Amendment – permits residential or other "productive" development in EOZ. Current law allows only industrial or commercial reuse.

The legislation signed today compliments urban redevelopment programs initiated by the Governor including the New Jersey Redevelopment Authority, the Fund for Community Economic Development, Urban Coordinating Council and the Office of Neighborhood Assistance. The Governor has expanded the state's Urban Enterprise Zone program from 20 to 27 neighborhoods and committed $700 million to provide affordable housing and promote home ownership.

REMARKS OF GOVERNOR CHRISTINE TODD WHITMAN
SIGNING OF SENATE BILL 39
EDGEWATER
TUESDAY, JANUARY 6, 1997

Once upon a time in New Jersey, a host of manufacturing companies, employing hundreds of thousands of people, thrived in our cities. As times changed, many of these manufacturers left New Jersey. They left our cities behind. Some also left behind harmful chemicals that could harm the environment and endanger the health of our people.

New Jersey did the right thing by passing tough laws to make certain these "brownfield" sites get cleaned up before they are used again. But in the process, we made it unattractive to even try to redevelop these sites, which exist in every part of our state and are a special problem for our cities. Today, hundreds of these sites lie fallow, doing nobody any good. Instead of being clean and useful, they remain contaminated, dangerous eyesores.

That's bad for our economy, bad for our environment, and even worse for our cities. We have a State Plan that says, let's bring new development back into our cities, but we have laws and regulations which make it hard to do that.

Developers trying to see the great potential of these sites are blinded by the problems – the risk of being sued for the contamination they inherit, the high cost of cleanup, the lack of expertise and information. All too often, they buy up open space and develop there instead.

For the sake of our environment, for the sake of our state, something has to change. To reinvigorate our cities, restore the value of these properties, and reaffirm our commitment to open space, we must make reusing brownfields truly worth the effort.

Today we begin to do that. The bill I will sign this morning will help us turn New Jersey's brownfields into productive, clean, useful properties.

First and foremost, we will protect the legal standing of those who invest in these properties. This bill provides liability protection for innocent purchasers, and it requires the New Jersey Department of Environmental Protection to agree in writing not to sue once it has declared a cleanup complete. These provisions are historic and will tear down one of the impediments that developers face in redeveloping brownfield sites in New Jersey.

We will also create a financial incentive to clean up. This bill will allow the State to pay back developers as much as three-quarters of the cost of remediation. What's more, we'll offer cash incentives for using innovative technologies in cleaning up.

And we'll amend the Environmental Opportunity Zone Act to permit municipalities to develop brownfields for residential use. That's the kind of thing that is happening here in Edgewater.

Here, what was once a 10-acre aluminum company factory has been dormant for 20 years. Now it will be cleaned up, safely and efficiently, to make way for an apartment complex with some 460 units. That means 460 more families will have homes without encroaching on New Jersey's precious open space.

This legislation is truly going to help improve our environment and our economy. Converting abandoned eyesores into productive properties is one more way we can make New Jersey a better place in which to live, work, and raise a family. And it's one more way we can help our cities recapture the vibrancy and energy that marked their proud history.

We owe a debt of gratitude to the bill's sponsors—Senator Hank McNamara, Senator Paul DiGaetano, Assemblyman Rich Bagger, and Assemblyman Joe Doria. My thanks also to the many others in the Senate and Assembly who cosponsored this legislation. And I thank developers like Daibes Enterprises, which is involved in this project, for their willingness to invest in New Jersey and its future in this important way.

With this bill, we are making a difference in the life of our cities. We are making this an even better state. We are giving our citizens another good reason to feel proud to call New Jersey home. And that's a great way to start off a New Year.

Now I will sign the bill.