# Committee Meeting

before

## SENATE ENVIRONMENT COMMITTEE
## and
## ASSEMBLY ENERGY AND HAZARDOUS WASTE COMMITTEE

## SENATE BILL No. 1070 and ASSEMBLY BILL No. 1727

(Make various changes to ECRA and to other hazardous site remediation programs; impose a surcharge on remediations; establish a loan and grant fund for remediation activities; appropriate bond moneys)

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**LOCATION:** Auditorium
Bergen County Technical School
Teterboro, New Jersey

**DATE:** October 5, 1992
7:20 p.m.

### MEMBERS OF SENATE COMMITTEE PRESENT:

Senator Henry P. McNamara, Chairman
Senator Randy Corman, Vice-Chairman
Senator Ronald L. Rice

### MEMBERS OF ASSEMBLY COMMITTEE PRESENT:

Assemblyman John E. Rooney, Chairman
Assemblyman Ernest L. Oros, Vice-Chairman
Assemblyman David C. Russo

### ALSO PRESENT:

Raymond E. Cantor, Judith L. Horowitz,
and Kevil D. Duhon, Aides
Office of Legislative Services

***Hearing Recorded and Transcribed by***
The Office of Legislative Services, Public Information Office,
Hearing Unit, 162 W. State St., CN 068, Trenton, New Jersey 08625-0068

New Jersey State Legislature
ASSEMBLY ENERGY AND HAZARDOUS WASTE COMMITTEE
SENATE ENVIRONMENT COMMITTEE
LEGISLATIVE OFFICE BUILDING, CN-068
TRENTON, NEW JERSEY 08625-0068
(609) 292-7676



# JOINT COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE ENVIRONMENT COMMITTEE
MEMBERS OF THE ASSEMBLY ENERGY AND HAZARDOUS WASTE COMMITTEE

FROM: SENATOR HENRY P. McNAMARA, CHAIRMAN
ASSEMBLYMAN JOHN E. ROONEY, CHAIRMAN

SUBJECT: **COMMITTEE MEETING - October 5, 1992**

*The public may address comments and questions to Raymond E. Cantor, Judith L. Horowitz, or Kevil Duhon, Committee Aides, or make bill status and scheduling inquiries to Elva Thomas or Carol Hendryx, secretaries, at (609) 292-7676.*

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The Senate Environment Committee and the Assembly Energy and Hazardous Waste Committee will meet on Monday, October 5, 1992 at 7:00 P.M. in the Auditorium of the Bergen County Technical School, Teterboro, New Jersey to consider the following bills:

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|---|---|
| S-1070<br>McNamara/Rice | Makes various changes to ECRA and to other hazardous site remediation programs; imposes a surcharge on |
| A-1727<br>Albohn/Crecco | remediations; establishes a loan and grant fund for remediation activities; appropriates bond moneys. |

The committees will hear testimony on measures designed to reduce the financial burdens on persons required to remediate property. Provisions of the bill that correspond to this topic include sections 8, 14, 15, 18, 21 through 29, and 32. These sections provide for penalties that may be imposed under ECRA, provide for limited conveyances and condemnations of ECRA subject property, provide amnesty for persons who have violated ECRA or other remediation laws, establish a Hazardous Discharge Site Remediation Fund and provide grants and loans from the fund, eliminate the need for financial assurance for remediations, require a cleanup fund source, impose a cleanup funding source surcharge, appropriate money from the 1986 Hazardous Discharge Site Bond Act, and require the preparation of a pamphlet on how to select an environmental consultant. The committee will also hear testimony on other provisions of the bill.

(OVER)

Anyone wishing to testify should contact committee staff.

DIRECTIONS:
From NJ Turnpike - Take Exit 18W (Hackensack) onto Rt. 46 West, travel about 3 miles to Teterboro Airport. Technical School is on right across from the airport, in the middle of the block

From Garden State Parkway - Take Exit 157 (Rt. 46 East), proceed to traffic light at Hyler Street. Make "U" turn to Rt. 46 West. Technical School is on the right in the middle of the block.

Issued 9/25/92

# SENATE, No. 1070

# STATE OF NEW JERSEY

INTRODUCED JULY 23, 1992

By Senators McNAMARA, RICE, DiFrancisco and Dorsey

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

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

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

3. As used in this act:

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

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

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

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

Matter underlined thus is new matter.

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

"Closing operations" means:

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

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

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

(4) the initiation of bankruptcy proceedings;

"Transferring ownership or operations" means:

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

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

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

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

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

(6) the financial reorganization,

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

"Change in ownership" means:

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

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

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

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

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

"Change in ownership" shall not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

transfers] operations or transfers ownership or operations.

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

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

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

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

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

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

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

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

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

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

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

(cf: P.L.1983, c.330, s.8)

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

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

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

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

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

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

(6) a proposed negative declaration.

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

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

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

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

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

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

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

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

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

(7) a proposed negative declaration, if applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Department" means the Department of Environmental Protection;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

f. (1) Following a written determination that the person required to obtain the cleanup funding source has failed to perform the remediation as required, the department may make disbursements from the fully funded trust or the line of credit. A copy of the determination by the department shall be delivered to the person required to establish the cleanup funding source and, in the case of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), to any transferee of the property.

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

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

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

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

b. The remediation fund shall be credited with:

(1) moneys as are appropriated by the Legislature;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

contaminants remaining on the property; and

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

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

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

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

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

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

b. The Ecology Advisory Task Force shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33. (New section) The Attorney General, in consultation with the Department of Environmental Protection, shall prepare, and the department shall distribute, for the cost of reproduction and postage, to any interested person, informational materials that set forth criteria that may be used to evaluate the qualifications of environmental consultants, environmental consulting firms, engineers, geologists or any other consultant, other than attorneys, whose expertise or training may be required by a person to comply with the provisions of P.L.1986, c.102, P.L.1983, c.330, P.L.1976, c.141, and P.L. , c. (now before the Legislature as this bill). The materials may describe the expertise or training necessary to address specific types of environmental cleanups, sites or contamination, the significance and availability of various types of liability insurance, the average cost of services and tests commonly performed by consultants, the significance of available accreditations or certifications and any other relevant factor that may be used to evaluate the qualifications and expertise of environmental consultants.

34. (New section) Notwithstanding the provisions of Executive Order 66 of 1978, the regulations adopted by the Department of Environmental Protection pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.) and allocated in the New Jersey Administrative Code as Chapter 26B of Title 7, shall not expire as provided in that Executive Order but shall remain in effect until that time the department adopts new regulations revising the existing regulations to conform with the provisions of P.L. , c. (now before the Legislature as this bill).

35. This act shall take effect immediately.

STATEMENT

This bill would substantially amend the "Environmental Cleanup Responsibility Act" (ECRA) and the State's other hazardous discharge remediation programs in order to encourage cleanups, reduce costs of compliance, provide financial resources for cleanups, encourage the redevelopment of the State's industrialized areas, and protect the public health and environment. It is also the intent of this bill to begin a change in the perception of New Jersey from that of a State antagonistic toward business concerns to a State that seeks to work with businesses and property owners to solve environmental problems in a manner beneficial to all and to the economic future of the State.

The original intent of ECRA was that contaminated industrial property should be cleaned up as a precondition to its closure or transfer. The cleanup would thus occur when private money was available, thereby avoiding the abandonment of contaminated property that would require publicly funded remediation. Because ECRA compelled the owner or operator to perform the cleanup no matter who caused the contamination, cleanups would occur without lengthy litigation to determine responsibility. The owner or operator could seek reimbursement from the responsible parties after the cleanup.

The act also protected a buyer from acquiring contaminated property and the commensurate liability. A purchaser of property in New Jersey, as well as the lending institution, would thus feel reasonably assured that the acquired property would be free of contamination.

Despite the laudable goals of ECRA, neither the Legislature nor the Department of Environmental Protection anticipated the law's impact on commercial and industrial real estate transactions in the State. At the time of the enactment of ECRA the hazardous waste cleanup industry was in its infancy, and thus the act provided only broad directives concerning the cleanup of contaminated sites, which in effect required the Department of Environmental Protectionto adopt the technical rules and regulations necessary to implement the act. Because of the general nature of the act, confusion arose as to which industrial establishments were subject to the act, when the act was triggered, and what was expected of the owner or operator of the industrial establishment performing an ECRA cleanup. The answer to these questions was crucial, because ECRA not only imposed high monetary penalties for noncompliance, but allowed the department to void the transfer of property undertaken in violation of the act. Additionally, because transfers were conditioned on certain departmental approvals, property transfers and stock transactions were delayed while all parties wrangled with a vague and cumbersome law. The initial confusion, backlogs, and problems of the early years of ECRA's implementation have only recently been resolved.

In the eight years since ECRA was enacted, the department, environmental attorneys and consultants, and the business community have acquired extensive knowledge of the manner in

which remedial activities should occur. The ECRA and other site remediation programs have evolved, establishing new procedures and terminology not reflected in existing statutory law. Additionally, both the federal and State liability laws for hazardous substance discharges have made the public and the real estate community aware of the dangers and liabilities of contaminated properties. Also, since the enactment of ECRA, the State has enacted a number of other laws that overlap with ECRA.

In the light of the experience and events of the last eight years, this bill would amend ECRA, as well as certain other hazardous discharge site remediation laws, to reflect the current state of scientific and regulatory knowledge and public policy priorities.

This bill does not remove the requirement that contaminated industrial establishments be cleaned up when they are closed or transfered, nor does it privatize the remediation of these sites. Rather the bill attempts to carefully draw a balance between the public's interest in ensuring that hazardous contamination is cleaned up so that it poses no threat to public health or to the environment with the interest of businesses in performing expeditious and cost effective cleanups and with transfering property in a timely fashion.

The bill also provides loan and grant moneys for cleanups, promotes the redevelopment of industrial areas, and clarifies the intent and operation of the law.

This bill balances the various interests by taking certain properties out of the ECRA process and by allowing the privitization of the remediation process under certain circumstances. This bill defines the various stages of a remediation - preliminary assessment, site investigation, remedial investigation, feasibility study, and remedial action - and recognizes that the State's interest in overseeing a particular type of cleanup may vary depending on the stage of a cleanup.

This bill provides that the owner or operator of an industrial establishment previously subject to an ECRA or similar full site remediation can close or transfer the industrial establishment without going through the ECRA process by submitting a certification. The bill also allows properties that are of minimal environmental concern to be cleaned without departmental oversight and approval and for properties where underground storage tanks are the only environmental problem to be transfered without the necessity of a negative declaration or a remedial action workplan approval. The bill provides that up to one third of a property may be conveyed, even if contaminated, without triggering ECRA for the remaining parcel and that a condemnation of less than two thirds of an industrial establishment will not trigger ECRA review on the remaining parcel.

This bill provides that when a tenant closes or transfers operations, ECRA will be triggered for only the property in the tenant's exclusive control. The areas in common control will be subject to ECRA when ECRA is triggered by the landlord.

This bill provides that certain transfers between subsidiaries would not be subject to ECRA. Also, deferrals of cleanups, currently permissive by law, shall be approved by the department once a preliminary assessment, site investigation, remedial investigation, and feasibility study are performed. This bill removes from ECRA compliance, owners or operators who close or transfer an industrial establishment while that property is still in a prior ECRA review process.

This bill also would allow a person, pursuant to ECRA or otherwise, to perform an emergency cleanup to prevent the spread of contamination without the risk of having to redo the cleanup as long as the measures were taken in compliance with department requirements and standards. This provision should help speed up cleanups and reduce environmental risks to the public. In order to balance the needs of the public to be protected from risks caused by hazardous discharges, and the need of businesses to have finality of a cleanup action, the bill provides that if a discharge is remediated to the cleanup standards in effect, the person liable for the original discharge can not be compelled to further clean that site if the cleanup standards change absent a substantial threat to the public health or to the environment.

This bill codifies the ability of the department to adopt cleanup standards for all site remediation activities performed pursuant to the State's various environmental laws, and allows differential standards to be established based on exposure risk. This bill provides that the department cannot adopt ecologically based cleanup standards until after an Ecology Advisory Task Force offers input. This bill also codifies the natural resources that can be protected so as to avoid uncertainty in future rulemaking.

This bill deliniates these natural resources to include those natural resources which either federal or State law has identified as needing protection, management, or regulation in order to ensure that the State's discharge remediation program complements the State's natural resource protection and management programs.

This bill precludes the department from requiring a deed restriction on the property if the property is cleaned to a standard less then the most protective. Rather, notice to subsequent owners or operators will be provided by a deed notice. Enforcement of the restrictions will be by the local construction official in the building permit process.

This bill codifies a recent State Supreme Court decision, In Re Adoption of N.J.A.C.7:26B, by stating affirmatively that offsite contamination is required as part of an ECRA cleanup. This bill also codifies the issuing of administrative consent orders under ECRA and states what these orders may provide. This bill provides that a pamphlet on how to select an environmental consultant will be prepared by the Department of Law and Public Safety.

This bill seeks to lower the cost of remediation by eliminating the requirement for financial assurance that is currently required in addition to paying for the remediation activities. In its place is a requirement that a person undertaking a cleanup establish

and maintain a cleanup funding source by establishing a fully funded trust, a line of credit, or being able to fund the operations out of working capital. The bill allows the department, or the transferee in an ECRA process, to use the moneys in the cleanup funding source guarantee to complete the cleanup in the event of a stoppage in the remediation activities.

The person providing the cleanup funding source will be assessed a 1% surcharge on the amount of the cleanup costs. The moneys collected by the surcharge will be placed into a Hazardous Discharge Site Remediation Fund. The fund would be used to give low interest loans to persons performing ECRA or other cleanups. Moneys would be targeted for urban areas, municipally owned properties, voluntary cleanups, ECRA cleanups, and for emergency cleanups. Additionally, muncipalities would be able to obtain grants for the identification of municipally owned contaminated property. Only those persons, other than municipalities, who could not otherwise provide a cleanup funding source would qualify for a loan.

The fund would be administered by the New Jersey Economic Development Authority and would be funded by a $100 million appropriation from the "Hazardous Discharge Bond Act of 1986," by the surcharges, interest, loan repayments, legislative appropriations, and by any moneys placed into the fund by the authority.

Finally, the bill seeks to encourage the cleanups of sites by providing a one year amnesty from all ECRA or other discharge penalties for any person who agrees to comply with the relevant law within that one year period.

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

# ASSEMBLY, No. 1727

# STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 14, 1992

By Assemblyman ALBOHN and Assemblywoman CRECCO

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

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

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

3. As used in this act:

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

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

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

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

Matter underlined thus is new matter.

in the form of a statutory merger or consolidation, sale of the controlling share of the assets, the conveyance of the real property, dissolution of corporate identity, financial reorganization and initiation of bankruptcy proceedings]

"Closing operations" means:

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

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

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

(4) the initiation of bankruptcy proceedings;

"Transferring ownership or operations" means:

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

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

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

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

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

(6) the financial reorganization,

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

"Change in ownership" means:

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

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

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

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

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

"Change in ownership" shall not include:

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

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

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

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

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

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

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

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

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

listed in this subsection upon a finding that the operation of the industrial establishment does not pose a risk to public health and safety;

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

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

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

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

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

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

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

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

"Owner" means any person who owns the real property of an

industrial establishment or who owns the industrial establishment;

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

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

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

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

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

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

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

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

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

(1) Notify] notify the department in writing, no more than five days subsequent to closing operations or of its public release[,] of

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

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

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

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

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

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

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

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

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

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

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

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

industrial establishment prior to approval of a negative declaration or remedial action workplan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

an industrial establishment who knowingly directs or authorizes the violation of any provisions of this act shall be personally liable for the penalties established in this subsection.

(cf: P.L.1983, c.330, s.8)

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

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

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

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

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

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

(6) a proposed negative declaration.

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

the owner or operator shall comply with the provisions of section 4 of P.L.1983, c.330.

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

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

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

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

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

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

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

(7) a proposed negative declaration, if applicable.

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

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

(2) require the owner or operator perform the remediation

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

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

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

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

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

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

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

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

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

(1) the notice required pursuant to the provisions of subsection

a. of section 4 of P.L.1983, c.330,

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

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

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

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

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

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

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

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

(5) the payment of all fees or surcharges imposed pursuant to

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

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

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

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

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

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

14. (New section) a. The owner of an industrial establishment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Department" means the Department of Environmental Protection;

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

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

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

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

"Special ecological receptors" means all natural resources that are protected, managed, or otherwise regulated by federal or state law, pursuant to the "Comprehensive Response, Compensation, and Liability Act of 1980," 42 U.S.C. §9601 et seq.; the "Delaware and Raritan Canal State Park Law of 1974," P.L.1974, c.118, (C.13:13A-1 et seq.); the "Federal Endangered

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

f. (1) Following a written determination that the person required to obtain the cleanup funding source has failed to perform the remediation as required, the department may make disbursements from the fully funded trust or the line of credit. A copy of the determination by the department shall be delivered to the person required to establish the cleanup funding source and, in the case of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), to any transferee of the property.

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

(3) After the department has begun to perform the remediation in the place of the person required to establish the cleanup funding source or has granted the petition of the

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

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

b. The remediation fund shall be credited with:

(1) moneys as are appropriated by the Legislature;

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

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

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

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

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

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

(1) at least 20% of the moneys shall be allocated for loans to persons, other than governmental entities for remediation of real property located in a qualifying municipality as defined in section

1 of P.L.1978, c.14 (C.52:27D-178);

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

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

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

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

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

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

d. No person, other than a municipal governmental entity,

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

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

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

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

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

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

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

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

between the operator and owner, and certification that the owner approves of the loan;

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) submit documentation on the nature and scope of the

remediation to be performed, costs estimates thereon, and, as available, proofs of the actual cost of all work performed;

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

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

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

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

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

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

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

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

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

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

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

unobligated moneys available in the fund therefor; or

(2) impose any obligation on the authority for the quality of any work performed pursuant to a remediation undertaken with a loan or grant made pursuant section 23 of that act.

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

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

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

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

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

Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21 et seq.), the "Environmental Cleanup Responsibility Act," P.L.1983, c.330 (C.13:1K-6 et seq.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the "Comprehensive Regulated Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the "Sanitary Landfill Facility Closure and Contingency Fund Act," P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333 (C.13:1E-177 et seq.), or any other law or regulation by which the State may compel a person to perform remediation activities on contaminated property.

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

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

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

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

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

engineering or other controls at the property that exist and that need to be maintained in order to prevent exposure to contaminants remaining on the property; and

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

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

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

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

31. (New section) a. There is established, in but not of the

Department of Environmental Protection, an Ecology Advisory Task Force. The Task Force shall consist of 15 members as follows: the Commissioner of Environmental Protection, or a designee, and two representatives each from industrial businesses, the environmental consulting profession, the real estate industry, the environmental science academic community, public interest environmental organizations, the legal community, and from municipal government. The members on the Task Force shall be selected by the Commissioner of Environmental Protection, to the extent possible, from a list of names provided by the represented interests or from names of persons who have testified before the department on previously proposed cleanup standards. The Ecology Advisory Task Force shall, within two years, make recommendations to the department on the development of standards protective of special ecological receptors.

b. The Ecology Advisory Task Force shall:

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

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

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

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

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

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

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

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

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

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

32. (New section) Any person who, before July 1, 1992, has

discharged a hazardous substance in violation of P.L.1976, c.141, and prior to July 1, 1992:

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

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

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

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

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

33. (New section) The Attorney General, in consultation with the Department of Environmental Protection, shall prepare, and the department shall distribute, for the cost of reproduction and postage, to any interested person, informational materials that set forth criteria that may be used to evaluate the qualifications of environmental consultants, environmental consulting firms, engineers, geologists or any other consultant, other than attorneys, whose expertise or training may be required by a person to comply with the provisions of P.L.1986, c.102, P.L.1983, c.330, P.L.1976, c.141, and P.L. c. (now before the Legislature as this bill). The materials may describe the expertise or training necessary to address specific types of environmental cleanups, sites or contamination, the significance and availability of various types of liability insurance, the average cost of services and tests commonly performed by consultants, the significance of available accreditations or certifications and any other relevant factor that may be used to evaluate the qualifications and expertise of environmental consultants.

34. (New section) Notwithstanding the provisions of Executive Order 66 of 1978, the regulations adopted by the Department of Environmental Protection pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.) and allocated in the New Jersey Administrative Code as Chapter 26B of Title 7, shall not expire as provided in that Executive Order but shall remain in effect until that time the department adopts new regulations revising the existing regulations to conform with the provisions of P.L. , c. (now before the Legislature as this bill).

35. This act shall take effect immediately.

STATEMENT

This bill would substantially amend the "Environmental Cleanup Responsibility Act" (ECRA) and the State's other hazardous discharge remediation programs in order to encourage cleanups, reduce costs of compliance, provide financial resources for cleanups, encourage the redevelopment of the State's industrialized areas, and protect the public health and environment. It is also the intent of this bill to begin a change in the perception of New Jersey from that of a State antagonistic toward business concerns to a State that seeks to work with businesses and property owners to solve environmental problems in a manner beneficial to all and to the economic future of the State.

The original intent of ECRA was that contaminated industrial property should be cleaned up as a precondition to its closure or transfer. The cleanup would thus occur when private money was available, thereby avoiding the abandonment of contaminated property that would require publicly funded remediation. Because ECRA compelled the owner or operator to perform the cleanup no matter who caused the contamination, cleanups would occur without lengthy litigation to determine responsibility. The owner or operator could seek reimbursement from the responsible parties after the cleanup.

The act also protected a buyer from acquiring contaminated property and the commensurate liability. A purchaser of property in New Jersey, as well as the lending institution, would thus feel reasonably assured that the acquired property would be free of contamination.

Despite the laudable goals of ECRA, neither the Legislature nor the Department of Environmental Protection anticipated the law's impact on commercial and industrial real estate transactions in the State. At the time of the enactment of ECRA the hazardous waste cleanup industry was in its infancy, and thus the act provided only broad directives concerning the cleanup of contaminated sites, which in effect required the Department of Environmental Protectionto adopt the technical rules and regulations necessary to implement the act. Because of the general nature of the act, confusion arose as to which industrial establishments were subject to the act, when the act was triggered, and what was expected of the owner or operator of the industrial establishment performing an ECRA cleanup. The answer to these questions was crucial, because ECRA not only imposed high monetary penalties for noncompliance, but allowed the department to void the transfer of property undertaken in violation of the act. Additionally, because transfers were conditioned on certain departmental approvals, property transfers and stock transactions were delayed while all parties wrangled with a vague and cumbersome law. The initial confusion, backlogs, and problems of the early years of ECRA's implementation have only recently been resolved.

In the eight years since ECRA was enacted, the department, environmental attorneys and consultants, and the business community have acquired extensive knowledge of the manner in

which remedial activities should occur. The ECRA and other site remediation programs have evolved, establishing new procedures and terminology not reflected in existing statutory law. Additionally, both the federal and State liability laws for hazardous substance discharges have made the public and the real estate community aware of the dangers and liabilities of contaminated properties. Also, since the enactment of ECRA, the State has enacted a number of other laws that overlap with ECRA.

In the light of the experience and events of the last eight years, this bill would amend ECRA, as well as certain other hazardous discharge site remediation laws, to reflect the current state of scientific and regulatory knowledge and public policy priorities.

This bill does not remove the requirement that contaminated industrial establishments be cleaned up when they are closed or transfered, nor does it privatize the remediation of these sites. Rather the bill attempts to carefully draw a balance between the public's interest in ensuring that hazardous contamination is cleaned up so that it poses no threat to public health or to the environment with the interest of businesses in performing expeditious and cost effective cleanups and with transfering property in a timely fashion.

The bill also provides loan and grant moneys for cleanups, promotes the redevelopment of industrial areas, and clarifies the intent and operation of the law.

This bill balances the various interests by taking certain properties out of the ECRA process and by allowing the privitization of the remediation process under certain circumstances. This bill defines the various stages of a remediation - preliminary assessment, site investigation, remedial investigation, feasibility study, and remedial action - and recognizes that the State's interest in overseeing a particular type of cleanup may vary depending on the stage of a cleanup.

This bill provides that the owner or operator of an industrial establishment previously subject to an ECRA or similar full site remediation can close or transfer the industrial establishment without going through the ECRA process by submitting a certification. The bill also allows properties that are of minimal environmental concern to be cleaned without departmental oversight and approval and for properties where underground storage tanks are the only environmental problem to be transfered without the necessity of a negative declaration or a remedial action workplan approval. The bill provides that up to one third of a property may be conveyed, even if contaminated, without triggering ECRA for the remaining parcel and that a condemnation of less than two thirds of an industrial establishment will not trigger ECRA review on the remaining parcel.

This bill provides that when a tenant closes or transfers operations, ECRA will be triggered for only the property in the tenant's exclusive control. The areas in common control will be subject to ECRA when ECRA is triggered by the landlord.

This bill provides that certain transfers between subsidiaries would not be subject to ECRA. Also, deferrals of cleanups, currently permissive by law, shall be approved by the department once a preliminary assessment, site investigation, remedial investigation, and feasibility study are performed. This bill removes from ECRA compliance, owners or operators who close or transfer an industrial establishment while that property is still in a prior ECRA review process.

This bill also would allow a person, pursuant to ECRA or otherwise, to perform an emergency cleanup to prevent the spread of contamination without the risk of having to redo the cleanup as long as the measures were taken in compliance with department requirements and standards. This provision should help speed up cleanups and reduce environmental risks to the public. In order to balance the needs of the public to be protected from risks caused by hazardous discharges, and the need of businesses to have finality of a cleanup action, the bill provides that if a discharge is remediated to the cleanup standards in effect, the person liable for the original discharge can not be compelled to further clean that site if the cleanup standards change absent a substantial threat to the public health or to the environment.

This bill codifies the ability of the department to adopt cleanup standards for all site remediation activities performed pursuant to the State's various environmental laws, and allows differential standards to be established based on exposure risk. This bill provides that the department cannot adopt ecologically based cleanup standards until after an Ecology Advisory Task Force offers input. This bill also codifies the natural resources that can be protected so as to avoid uncertainty in future rulemaking.

This bill deliniates these natural resources to include those natural resources which either federal or State law has identified as needing protection, management, or regulation in order to ensure that the State's discharge remediation program complements the State's natural resource protection and management programs.

This bill precludes the department from requiring a deed restriction on the property if the property is cleaned to a standard less then the most protective. Rather, notice to subsequent owners or operators will be provided by a deed notice. Enforcement of the restrictions will be by the local construction official in the building permit process.

This bill codifies a recent State Supreme Court decision, In Re Adoption of N.J.A.C.7:26B, by stating affirmatively that offsite contamination is required as part of an ECRA cleanup. This bill also codifies the issuing of administrative consent orders under ECRA and states what these orders may provide. This bill provides that a pamphlet on how to select an environmental consultant will be prepared by the Department of Law and Public Safety.

This bill seeks to lower the cost of remediation by eliminating the requirement for financial assurance that is currently required in addition to paying for the remediation activities. In its place is a requirement that a person undertaking a cleanup establish

and maintain a cleanup funding source by establishing a fully funded trust, a line of credit, or being able to fund the operations out of working capital. The bill allows the department, or the transferee in an ECRA process, to use the moneys in the cleanup funding source guarantee to complete the cleanup in the event of a stoppage in the remediation activities.

The person providing the cleanup funding source will be assessed a 1% surcharge on the amount of the cleanup costs. The moneys collected by the surcharge will be placed into a Hazardous Discharge Site Remediation Fund. The fund would be used to give low interest loans to persons performing ECRA or other cleanups. Moneys would be targeted for urban areas, municipally owned properties, voluntary cleanups, ECRA cleanups, and for emergency cleanups. Additionally, muncipalities would be able to obtain grants for the identification of municipally owned contaminated property. Only those persons, other than municipalities, who could not otherwise provide a cleanup funding source would qualify for a loan.

The fund would be administered by the New Jersey Economic Development Authority and would be funded by a $100 million appropriation from the "Hazardous Discharge Bond Act of 1986," by the surcharges, interest, loan repayments, legislative appropriations, and by any moneys placed into the fund by the authority.

Finally, the bill seeks to encourage the cleanups of sites by providing a one year amnesty from all ECRA or other discharge penalties for any person who agrees to comply with the relevant law within that one year period.

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

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**ASSEMBLYMAN JOHN E. ROONEY (Chairman):** Good evening. I am Assemblyman John Rooney. I Chair the Energy and Hazardous Waste Committee of the Assembly. To my right is Senator McNamara. This is the second of our joint meetings on the ECRA reform bills. The two bills we are considering -- and I have them right here -- are S-1070, McNamara/Rice, and A-1727, Albohn/Crecco. We will limit the comments to those two bills at the present time.

I want to thank the Senator because he has allowed the Assembly Committee to join his ongoing campaign to reform ECRA. In the Assembly we had heard of his work and what he was doing along these lines, and we wanted to make sure that we didn't duplicate that and try to parallel the two Committee meetings. So I am very happy that Senator McNamara has consented to that.

We will try to limit the testimony to five minutes. We are not going to really be strict on that rule, unless you start getting a lot longer than five minutes. Then we will try to ask you to cut your comments short. Then, please don't repeat things that other people have said. We have a long meeting ahead, it looks like, from the amount of people who have already signed up, plus we have an existing list of people who signed up from the previous meeting.

So at this time what I would like to do is have a roll call, and then I will turn it over to Senator McNamara for his comments. Do the roll call, please.

MS. HOROWITZ (Senate Committee Aide): Senator McNamara?

**SENATOR HENRY P. McNAMARA (Chairman):** Here.

MS. HOROWITZ: Senator Rice?

SENATOR RICE: Here.

MS. HOROWITZ: Kevil?

ASSEMBLYMAN ROONEY: Kevil, do you want to--

MR. DUHON (Assembly Committee Aide): Okay. Assemblyman Russo?

ASSEMBLYMAN RUSSO: Here.

MR. DUHON: Assemblyman Oros?

ASSEMBLYMAN OROS: Here.

MR. DUHON: Assemblyman Rooney?

ASSEMBLYMAN ROONEY: Here.

Okay, I will turn it over to Senator McNamara.

SENATOR McNAMARA: Thank you very much for taking the time out to join us in Teterboro.

I would like to start off with Assemblyman Pascrell, the Mayor of Paterson. He has another engagement he has to go to, so I would like him to start off.

ASSEMBLYMAN ROONEY: That's dual office-holding hands.

UNIDENTIFIED MEMBER OF COMMITTEE: Double dippers.

SENATOR McNAMARA: Double dippers, right. Love it, right? Assemblyman?

**A S S E M B L Y M A N W M. J. P A S C R E L L, JR.:** Good evening, Chairmen -- plural -- and members of the Joint Committee. First of all, I would like to thank the Assembly Energy and Hazardous Waste Committee and the Senate Environment Committee for holding this hearing tonight.

We are in desperate need of taking a look at some very essential, essential problems which are affecting manufacturing in the State of New Jersey, particularly in areas that have been used for industrialization for, perhaps, 70, 80, 90 years. But we are never going to be able to get right to the core of things. We are never going to be able to return those properties to picnic areas. And, as much as all of us on both sides of the aisle and in both Houses are concerned about environmental problems -- and we all are-- I don't think there is a legislator who serves on your Committee that has not demonstrated through his or her vote the conciseness of your attack on environmental problems over the past many, many years.

The fact is, manufacturing jobs in this State have shrunk from 40 percent to 28 percent of our work force, and we cannot exist on a computerized work force, or a vocational work force in this State. We need to deal with manufacturing and crafts-producing work, that many of our people are not permitted to do because there are no jobs out there.

One of the reasons we have a lack of jobs is because ECRA, and the present laws that now exist, stand in the way -- substantially in the way -- of people selling their property, and of those properties being turned over into further industrialization. I have this problem on a daily basis. I want you to know that. As Mayor of the third largest city, and the first industrial city in the United States, I can tell you firsthand how difficult it is in my own city to get a property that has been used for perhaps 125 years, perhaps 150 years, to produce a product, or many products. To return that product, to have that property sold to another person to utilize it again, it has taken, in many instances, four to five years. By the time the process is unwinding, many new developers will walk away, and many potential users of that property will be disappointed and disillusioned, and will throw in the towel.

As your Committees begin their work on reforming the Environmental Cleanup Responsibility Act-- I do say "reform." I don't believe we want to throw away the baby with the afterbirth. I don't think that's healthy; I don't think it's wise; and I don't believe we want to go backwards in time.

I want to express my hope that your effort will produce positive results. I see evidence every day that ECRA is preventing redevelopment in the industrial areas of my city, and towns all across the State. I had a Commissioner in my city on a major problem just this past Friday, and I think the Commissioner met with Senator McNamara, or talked to Senator McNamara last Friday. The problem was with a major company that wants to move its total production line into the City of

Paterson. It means that 250 jobs cannot be done because the environmental laws of this State, many times, are not clear as to how to proceed.

What happens when you want to knock down a building on a site that has been contaminated? If you want to knock down a building that has been "not clean" for many, many years, so to speak, what do you do with the materials after you knock the building down? I asked many people in DEPE, and as many people as I have asked, I have gotten that many answers. So, what happens when an individual who wants to sell a property -- a piece of property-- What does he do, or what does she do?

Older cities like Paterson are poised for growth, if we can persuade investors that industrial properties are available at a market price and with a minimum amount of red tape from State and local agencies. Unfortunately, it has been difficult to make that case in the last 10 years, as the State's environmental permit approval process has become burdensome, costly, and really, a nightmare.

These problems have led me to introduce legislation as well. A-1835, which goes a little further in some areas, particularly in the urban situation-- I co-prime-sponsored that with Assemblyman Paul DiGaetano, of Passaic. It provides a needed exemption for certain properties; devises more realistic, environmentally sound criteria for cleanup standards. It differentiates cleanup standards for industrial and residential properties, as the bills before you essentially do.

If real reform of this system is going to occur, it is essential that the policy issues adjust and these measures be examined by this Committee. In my view, we in the Legislature now have the best opportunity to enact meaningful and necessary reforms to the ECRA program. It is ironic that we are addressing these ECRA problems as they affect our communities at the same time that we are in a recession, and a horrible one

at that. So maybe sometimes there is a blessing in disguise in some of the horror pictures we see in the papers every day. It forces us to go back to the laws that are already on the books that we thought would help us improve the quality of life, which may indeed not be improving the quality of life, and, in fact, may be hurting people so they cannot put bread on the table for their families. That is a dilemma, by any stretch of the imagination.

Micro-management of the cleanup process by State officials has led to increased costs, unnecessary red tape, and, most importantly, serious delays in completing cleanup projects. I would be particularly concerned about the dollar amount -- the cap amount -- in the bills that are before you. I do not believe they are adequate. In fact, it is not really clear to me whether we are dealing by project or by municipality. If I own a factory in Paterson, or if I own a factory in Camden, or anyplace, must the municipality apply for those dollars, or can I, as an individual who owns that particular property, be involved in the process, or must I go through my municipality? What does this cap really mean?

I know we place these items before the Committee to have people respond to them. I know you want to get input. I know that the bills are not complete, and I would suspect that this is an area not only of deep complexity, but one which we need to take a very serious look at. If we are really interested -- and there is no reason for me to believe that you are not-- If we are really interested, and within a year or so, in changing this law so we can bring more manufacturing jobs in to save New Jersey -- and I think that is our total objective -- a set of explicit environmental standards, coupled with a strong, final review and enforcement mechanism would be the preferred alternative to many of the proposals currently under consideration.

Above all, we need to reduce the costs and complexity of cleanup operations, so that redevelopment of our industrial areas becomes economically viable and possible, but within the next two centuries.

I realize this hearing has been held to examine many ECRA reform measures. I hope, Senator and Assemblyman, that in your deliberations you will find it within your latitude and longitude, as some would say, to consider 1835. I want to be part of the solution. I face the problem day in and day out.

I would now be more than happy to answer any of your questions.

SENATOR McNAMARA: Mayor, or Assemblyman, I would just like to note that we are not really just beginning. We started last March 16 in the Senate. We decided to have joint hearings to accomplish-- You know, it will serve everyone's time much better. The funds are on a per applicant basis.

ASSEMBLYMAN PASCRELL: So the applicant would be applying, not with the municipality as a copartner, but would be applying himself, or herself?

SENATOR McNAMARA: Yes.

ASSEMBLYMAN PASCRELL: Okay. I would recommend that you look at the language in--

SENATOR McNAMARA: And the municipality could also be an applicant, you know. But they are not in partnership -- or the individual does not have to go through the municipality.

ASSEMBLYMAN PASCRELL: What I am suggesting--

SENATOR McNAMARA: I just want to note that Senator Corman has arrived, a few minutes late, but let's just make sure that we mark him present.

SENATOR CORMAN: Thank you, Senator.

ASSEMBLYMAN PASCRELL: Any questions? I would be more than happy to respond on my own experiences.

SENATOR RICE: I have a question.

SENATOR McNAMARA: Ronnie, there is only one-- This is the only mike. Those are for recording purposes.

SENATOR RICE: Have you looked at the provision of the loan area, and are you satisfied with that cap of a million--

ASSEMBLYMAN PASCRELL: No, I--

SENATOR RICE: --for urban areas?

ASSEMBLYMAN PASCRELL: I think we need to take a look at that. I think it would be easy if we went over the last five years of experience and tried to average out the project costs. When we are talking about some big project, that is not going to be adequate. But I do realize that it is a lot better than it is now. How we get to that million dollars, of course-- The taxing mechanism, I think we ought to take a look at, too.

SENATOR McNAMARA: By the way, I hope you also recognize that we are talking about "X" number of dollars, and I want to get the biggest bang for the buck. So, we are here for the purpose of getting all the input. That is the focal point of this hearing, plus whatever else is brought up. Remember that we are limited by the amount of dollars that we will be able to provide.

ASSEMBLYMAN PASCRELL: Sure, and where those dollars are coming from.

SENATOR McNAMARA: Exactly.

ASSEMBLYMAN PASCRELL: To answer the Senator's question, I think we need to take a very careful look at that, and look at different ways we can fund this in the first place. I don't think that was exhausted in the bill.

SENATOR McNAMARA: How many properties does Paterson own that they could clean up? Do you have any idea, or an inventory of actual properties that need cleanup?

ASSEMBLYMAN PASCRELL: Oh, yes. The City of Paterson itself does not own any of these properties. These are privately owned, or they are about to go into foreclosure.

SENATOR McNAMARA: You would have given them back the other tax deal?

ASSEMBLYMAN PASCRELL: Or they are about to go into foreclosure. You know, then we have another prolongation of the process, because the city certainly can't afford to clean these properties up. We don't want the burden and the liability on ourselves, and I think you understand that.

But I would say, in the City of Paterson alone, that there are at least between 50 and 100 industrial sites that have ECRA problems right now.

SENATOR McNAMARA: Well, I am pleased, Mayor, that you came out, to be very honest with you, because one of the reasons is to also hear from the urban mayors. We did hear from the Mayor of Trenton some months back, but, quite frankly, the problems are somewhat unique to the city.

ASSEMBLYMAN PASCRELL: You know, one individual -- one factory in the City of Paterson, last week, had waited four years. We tried to help them over the past year-and-a-half that I knew about it. By the time help came, he could not finance the cleanup because of how the costs had risen, and how many times he had been fined, because of not complying during a certain period of time. I don't believe that this is an uncommon situation. I think it is very common, and I think it needs to be addressed.

The point I would like to leave you with -- and I thank you for your graciousness -- is that this is an emergency. I don't use that term. I mean, a mayor doesn't use that term very frequently, because you can get into a lot of trouble. This is an emergency, because what it has done-- There is a ripple effect to the other industries, and those that want to expand. We had a hearing before the Policy and Rules Committee last Monday -- excuse me, Thursday. It is quite obvious that in order-- The experts who were called in by the Committee discussed manufacturing in the State of New

Jersey. We had this mind-set that we need to get people from other states to come here and invest.

Well, first of all, you know our ECRA laws are not very attractive to those kinds of investors. But what we really concluded, I believe, was that we need to encourage and precipitate investment from the people who are already here, who own the infrastructure, who possess the infrastructure to begin with; that that is a lot more effective and will be a lot more cost-efficient than attempting to lure some company from Indiana, because everybody now is spending a lot of money to lure people from Mars, and all over the place, to come to New Jersey.

We have to take a look at what is already here, and people who are about to walk away from their businesses for fear of what is going to happen if they want to upgrade, if they want to retrofit. What is going to happen to them when it comes time for them to build on a piece of property that was once a former parking lot?

SENATOR McNAMARA: Mayor, that is a main concern of the Joint Committee. It is the main thrust of looking at the entire program. Hopefully, and I think quite accurately, I can state that the Department has been very efficient in the time that I have been exposed to dealing with them, as opposed to over some past experiences.

What we have, we have. What we gave the Department initially, the Legislature-- I wasn't there to vote on it, but what the Legislature gave them, without any parameters, is what caused tremendous expenses. I can show you a chart starting way back of what the cost of an average cleanup was in the early '80s, as opposed to what it is today, and it is the difference of night and day. Thank God, it is going in the right direction; it is going down.

ASSEMBLYMAN PASCRELL: Right.

SENATOR McNAMARA: So, I mean, basically we are looking for constructive criticism, and I hope that everyone who testifies will stay along those lines.

ASSEMBLYMAN OROS: Mayor, I have one question.

ASSEMBLYMAN PASCRELL: Yes, sir?

ASSEMBLYMAN OROS: Have you had a large industrial site where you have had a successful cleanup? And, if you have, how long did it take?

ASSEMBLYMAN PASCRELL: Well, let me start off with the worst horror story: Public Service Electric and Gas owns the largest piece of vacant property in the City of Paterson. It's 12.3 acres. The whole place is contaminated. They started a cleanup process -- a process now, they didn't actually go into the ground -- 10 years ago. I just had a meeting-- I stayed on their tail, because being a vacant piece of property, we want that property developed, and so did former mayors who preceded me.

The point is, it is going to take-- With the current algebraic rate of speed, it will be done by the year 2010. The question is, how do we accelerate this, and we try to get people to sit down. If we ever think we are going to return this property to what it was in the year 1752, we are only kidding ourselves. But what can we do? Can we encapsulate? What are the options available to us?

The Department of Environmental Protection needs to be working with the utility, in this case, in order to try to get this land back on the rolls again; to try to get this land to be productive. It is doing nothing now. It is just sitting there. There are a couple of shacks on it, and that is about it.

Now, that is a major case. There are other cases that I can tell you about. I get these cases, believe it or not, every day -- every day of the week. That is not an exaggeration.

I think, Assemblyman, your question also bears-- I just want to make one point: You know, we are past the cliches and the generalities about-- You know, I can be partisan better than anybody else, as you know. I like to be partisan when it is time to be partisan. But you know, we are past the partisan perceptions of one party being for the environment and the other party being against the environment; one party being probusiness, and the other party being anti-- I mean, if we can get by those cliches and perceptions, and we can deal with this on a nonpartisan basis, I think we will make progress.

I believe that the Department itself is ready not only for a cleansing of the soul, but a changing of procedures. I really believe that they will change. I think they understand that second and third level management cannot drag this State into the Atlantic Ocean. I know they have protected turf, and I understand that.

I like to say it the way it is, Senator, and that's where it's at.

SENATOR McNAMARA: I hear what you're saying, and I don't want to cut you off, but we have been very gracious with the time we have allowed you--

ASSEMBLYMAN PASCRELL: You have been.

SENATOR McNAMARA: --and I am suggesting that you wrap it up.

ASSEMBLYMAN PASCRELL: Did you have another question, Assemblyman?

ASSEMBLYMAN OROS: No, it was just a two-parter.

ASSEMBLYMAN PASCRELL: Okay, thank you. Thank you for your time. I appreciate it.

ASSEMBLYMAN OROS: Those were PCBs on that site? Is that what the problem is?

ASSEMBLYMAN PASCRELL: Yes. Thank you.

SENATOR McNAMARA: It wasn't an oversight. I was just being kind, Lance, that I didn't call for the fact that you

were sitting over there, with the members of your staff. But for the record, let it be shown that Lance Miller and representatives of the Department are here. If there comes a time when there is a specific question we want to address, we can call on the Department. They are here to listen, as well as we are.

Jim Sinclair.

ASSEMBLYMAN ROONEY: Before Jim comes up-- We had an additional witness who was supposed to be here. I think I mentioned at the last hearing that this company, Fluid Systems -- well actually, Houdialle Industries of Rockaway, New Jersey-- I think Lance will be able to look this up. It's on the list; I know it's there. The individual was called out on an emergency. There is a letter that he is submitting as testimony, but basically it goes back to 1986, when he worked for the company and he tried to purchase the company. Actually it was 1985. They wound up in the ECRA situation. There were 50 employees at that particular site. I believe that site is still vacant, still has not been cleaned up, or maybe is under the process, but whatever it is, here it is 1992 and Mr. Koury has gone into another company, and the 50 people there were all laid off.

So, these are the kinds of examples that many of the people in industry can support. But he did leave this letter, and I will have it put into the record.

Thank you very much. Jim, sorry to interrupt.

**J A M E S S I N C L A I R, P.E.:** I am Jim Sinclair, from the New Jersey Business & Industry Association. I will keep my comments to five minutes. I have given you testimony that we prepared that summarizes what Mr. Hogan presented at the last meeting, plus some oversight comments that I have provided.

Those oversight comments are very important to the context of what we are dealing with -- these sections of the bill -- because in this section of the bill we are dealing with

funding. We are talking about somewhat putting an additional tax on the business community to support part of this. There is a trade-off in doing away with the dual funding thing. This 1 percent surcharge is something that we have, in the past, said that we thought was an idea that might work, although -- and let me spin off of that a little bit -- the 1 percent that I was thinking about was not 1 percent of the total per year, but something that looked like 1 percent of what you expended during that year for actual cleanup.

SENATOR McNAMARA: You know, on the other hand, look at what you are trading off. The dual finance guarantee has to be there every year, whether it's three years, five years, or ten years. So a letter of credit is not done for a single year. It is done for the amount of what has to be expended for the cleanup.

MR. SINCLAIR: I understand, Senator. You could also say to me, what you are aiming to do with this bill is to develop workable standards that the business community can use to actually go out there and do realistic cleanups, and not be sitting on their hands on properties that might be moving in Paterson or Passaic or Camden or Trenton. Hopefully, that is going to be in the bill. What you are doing is, you are hopefully putting together procedures that are going to cut out the time delays in this process, which has been one of the big concerns for the business community; giving 14 days, as you have in this bill to rush to give something to DEP, and then waiting three months to get a response to it, and then given 14 days again, and then waiting until three or four months later.

So, if you have time limits in there on actions, or, in fact, if you move, not only in this bill, but in years to come-- If we set a dialogue down that what we really want is this process of remediation of urban properties to, in fact, turn over, to be cleaned up to reasonable standards for what their use of the property is, that has a risk level that

people, you know, are not going to be hurt by. We want a system that works -- that looks a little bit like the "due diligent" system that does not have you going to DEP to approve everything along the way. In fact, if you know what you are doing, you can go through the process and get done with it. Then 1 percent doesn't look like a lot of money to me, sir.

The caveat is: Are we really going to get those things there? Maybe sort of jumping around in my mind, is the whole issue of funding, of that pot of money, of the people who Mayor Pascrell is talking about, who want to get going, might have a site, looking for some funding to do it -- and clearly a million dollars is not going to make it on a lot of sites or areas. But clearly we have a limited pot of money.

I think we were talking about $100 million into the pot to get it started, and maybe that is in question, although I don't think it should be. I mean, I am a person-- I look at these terms, like "Site Remediation Fund," and my mind goes back to the deal we cut in 1965, where the business community came in and said, "Yes, we know there is a problem in cleaning up hazardous waste sites; we know there are Superfund sites; we know there are State sites. Yes, count us in for a 1/2 of 1 percent increase in the corporate business tax."

SENATOR McNAMARA: That was '85.

MR. SINCLAIR: That's a lot of money that we have paid in the business community -- people who have ECRA and don't have ECRA -- a lot of money that we have paid into that, and none of that money has gone for cleanup -- zero. It has all gone someplace else. So what I would say to you is, my offering on this pot of money, is that simple language in this bill would say: "If that money is not used in that pot--" In fact, I would combine the pots together. Why would you have two different funds?

We ought to be making priority decisions on what the most--

SENATOR McNAMARA: Jim, that pot is long gone. It was used as general revenue.

MR. SINCLAIR: But we're still paying it, today, yesterday, tomorrow, next week.

SENATOR McNAMARA: I don't want to get into that debate. It happens to be a reason which hopefully will gain us leverage to start off with a pot of money. Okay?

MR. SINCLAIR: That is what I'm saying to you, sir. I'm saying--

SENATOR McNAMARA: That is the direction we're going.

MR. SINCLAIR: Next year, when we put the money in, if it doesn't go for those cleanups, it should go into this pot. That is what I would say. At the end of the year, or at some point, if there is money left over in that, it should go into this pot. I mean, that is what we really want to do. I mean, that is the answer to this.

SENATOR RICE: I thought that was the direction we were moving in once the foundation is laid for the funding. I can't see-- To me, I will always look at it like a dedicated type funding; you know, whatever is there--

MR. SINCLAIR: That is what I thought it was.

SENATOR RICE: --remains bills, bills, bills. So we don't mind the problem. I don't know.

ASSEMBLYMAN ROONEY: Dedicated by--

MR. SINCLAIR: I thought it was dedicated. Okay.

ASSEMBLYMAN ROONEY: The same thing with the gasoline tax. That seemed to go away, too. It was supposed to be dedicated, but we lost the vote on the dedication through the ACR.

SENATOR RICE: No, but my point is, I thought we were trying to move in that direction to put back on track what should be. If you look at history, we understand what was. But I think we are starting with zero, and it is a sin to say there are no dollars. We're saying, "There will be dollars."

Maybe not sufficient dollars, but there will be dollars. An issue is that at the end of a year, or a period of time, what we started with-- There ought to be dollars left, and if there are, they should continue to accrue.

MR. SINCLAIR: I think that when you make a decision -- and that is what we pay the people in DEP to do, to make decisions -- you should be able to weigh a decision whether a huge site down in Logan Township, that has no interface with a lot of people, or a site in Newark that is an ECRA site-- We should make the same kind of judgment of where the money should go; where is the priority; what is the most important public good; what is the best thing for the State?

I mean, it seems to me that that's-- When I talked about combining the pots together, that is the kind of policy decisions we should be making here. This is not something separate from that. As far as Mayor Pascrell is concerned, it is probably more important than those sites that are out in the boonies.

So, that is one issue. I think there should be an Advisory Council. I think Mr. Hogan talked about it. There should be an Advisory Council of real people advising the Department on remediation and helping them to weigh these kinds of policies. I think a goal of this program should be more efficiency in how we administer, and it shouldn't be something that you just proclaimed today. It should be an ongoing goal of the program that it is going to improve; that it is going to cut red tape; that it is going to make things faster. That would be the legacy. That would be the greatest thing you could do in ECRA reform; if you didn't do a static reform, but did a dynamic reform in the process. You could build that in with the Council. They could come back to you and tell you suggested changes. I mean, there are a variety of things that you could do with the Council. I urge you to look at that concept. It works with the Code Advisory Board at the Uniform

Construction Code. It has been very supportive for the Department of Community Affairs.

Voiding: Clearly we should get rid of that out of the process. DEP does not need to be in that. That would be helpful in lending and a whole variety of things.

I would urge that municipalities don't clean up sites. I would encourage you to set a priority where they could get a developer to come in to apply for those funds and give them a priority. I think you could leverage a lot. And, speaking of leverage, I would not limit it to just loans and grants. You could use that money to guarantee funds that they might get elsewhere out in the private sector, so I would include that option in the package, similar to what EDA does in some of its loan programs.

I guess that is my five minutes. I'll give you this in writing.

SENATOR McNAMARA: Thank you. Any questions? (no response)

Mark Manewitz, from Clapp & Eisenberg, Newark.

**M A R K L. M A N E W I T Z, ESQ.:** Thank you for giving me the opportunity to speak to both Committees.

I am an attorney in private practice here in New Jersey. I have spent a good deal of my career working for coprorations that have had to deal with ECRA, and I thought tonight, since I have no particular client that I represent, it might be useful for you to hear the opinion of someone who has been in corporate practice and is also in private practice in New Jersey, as to some of the technical aspects of the bill.

Having read through it several times trying to understand the details of it, I came away supporting the bill, I think, as a major step forward for New Jersey. You are really making an effort to cure two of the more difficult problems that face not only New Jersey industries, but

industries around the country that have taken a look at New Jersey as a potential home for facilities.

Those two problems are the double funding aspect, which you addressed in the bill, and the second aspect, which the Mayor before me addressed, I thought, quite well, is that two heads of business in American sitting in a board room who are used to being able to shake hands on a deal and have their staffs accomplish it, now recognize that New Jersey presents an impediment if there is a facility within ECRA, because they have been burned. The process of going through approvals in New Jersey for major deals has led to a lot of creative thought in corporate transactions as to how to take the New Jersey factor out of the equation, because of the problems with ECRA.

I think this bill goes a way down the road to help cure that problem. I urge you to listen to some of the comments that have been made, to try to help that issue along.

I want to address four technical aspects of the bill tonight, if I may. I looked at the bill with an eye towards trying to improve what I think is a laudable piece of the legislation, which is to broaden the scope of the funding that is available to do ECRA cleanups, which is, I think, part of your intent in the statute: to make moneys available both from the private sector and from the fund that you have created to broaden the scope of the pocket that deals with the issue.

One of the tests that is actually in the current regulations for the self-assured funding source, is that one-third of the tangible net worth of the company not excede the cost of the cleanup. Now, tangible net worth is a concept which even from the earliest financial documents that go back to the old ECRA closure statutes -- where the term comes from -- has troubled some corporations. American corporate structure now is a leveraged corporate structure very often. There are restructures of capitalization. There are leverage

buyouts, and there are other forms of financial instruments that are done which leverage the assets of corporations.

When you leverage those assets, tangible net worth as an accounting test may disqualify those corporations for the self-assured funding source, because when you look at tangible net assets, they might be negligible for very substantial companies that are leveraged and that are recapitalized. The difference is that you do not include so-called intangible property. That would include such accounting terms as: goodwill, rights to patents, and some of the intellectual property that corporations put on their books as assets and have substantial real value.

I would recommend that you give consideration to making that test -- a net worth test. There is a trade, as there is in anything when you make the net worth test. The trade is that you are not going to have available to the State, if they have to come in and look for moneys to undertake the completion of the cleanup, the same kinds of assets that you would be looking for from a tangible net test. They are not reducible to money as quickly or as easily as intangible assets. But intangible assets are part of how we calculate the true worth of corporations. I recommend that you consider that change in order that you increase the amount of self-assured funding you get. By doing that, I think, you lessen the demand on the funds you have created, and you may increase the ability of companies to go forward with self-assured funding.

The second question that I want to address is the one section of the statute that probably troubled me the most when I read it -- section 16 of Senate Bill No. 1070. That section addresses the owner/tenant aspects of the statute. As drafted -- and I look for guidance from the Chair--

SENATOR McNAMARA: Please understand that it is not in its final form. Continue with your comments.

MR. MANEWITZ: I appreciate--

SENATOR McNAMARA: You are dealing with a moveable part.

MR. MANEWITZ: Well, I'm glad you said that, because I have some language to suggest with respect to that section which I have given you as part of my written testimony. I don't think that you are doing here is worthy of the rest of the effort in the bill.

What happens in the current draft is, once you have a tenant who undergoes an ECRA cleanup, there is a trap for the unwary, because essentially what you are saying is, "Even though the property owned by the owner at a later time has no ECRA trigger because there is no SIC code-affected business on the property, you still have to go through ECRA." A lot of people will miss this. It will not be apparent to buyers, who will look at the property and say, "What is the SIC code of the property?" They are not going to look 15 years ago, or five years ago, or maybe even six months ago to see that there was an ECRA trigger tenant on the property, and that you only did an ECRA look at his tenancy.

What I would like to suggest you consider is going back to the basic underlying statute in New Jersey that has to do with the underlying problem of discharge. The Spill Fund regulations and statute address the question of when you have to do cleanup, and they also address the question as to when you have to report historical spills, as well as current spills. If you were to give the owner the option of having an ECRA cleanup that only deals with the tenancy and making the tenant deal with his spills, and you can have him deal with them on the basis that he has to report them so that we have a record -- we have a tangible record of what has been spilled on the property-- If he hasn't reported them, that is a more difficult problem because he may be reticent, yet the owner

then has an interest in making sure that there is proper reporting of spills.

Secondly, if there are no spills outside of the tenant's leasehold, and there are spills by either the owner or by other tenants on the property, you could give the owner the option of dealing with the problem when the tenant's ECRA arises, or dealing with it when he has another trigger event, such as the closure of business or the sale of the property.

The reason I say that is because one of the blessings of ECRA -- and this may be the only one that I have heard of -- is that at the time of the sale of the property there are funds available to address the issue. It is a question of timing under the ECRA statute as to when those funds are available. If you give the owner the option of timing when he has to deal with it, he is going to pick a time when he gets some assets cashed into a liquid form to deal with the problem, probably at the time he sells the property. And it is not going. to be a burden on the owner simply because a tenant leaves.

I want to point out that this will not change the underlying statutory law in New Jersey which has to do with spills. Spills that are reported require remediation, are addressed by the agency, and it is not going to change anything with respect to current spill statutes.

The third issue, if I may -- I don't want to push the time too much-- The third issue I would like to talk about briefly is risk assessment. What I mean by risk assessment is what is commonly referred to in the parlance of regulators and the regulated community as, "How clean is clean?" There are standards in New Jersey that are in regulatory form to address cleanup standards as to different types of properties.

New Jersey has made some progress -- and Lance and his group are to be commended -- on the issues of trying to move New Jersey forward on levels of cleanup that are different for residences and different for industries. It is common sense.

We know that the exposures to contaminants in a residence are more sensitive. First of all, you are there for a longer period of time, and second of all, you don't have to take-- Industry is required under the OSHA statute to take protective measures with respect to its workers that reduce exposures in the workplace. Therefore, if you are to address cleanup standards under ECRA, a differential standard as to what you set the risk at is appropriate.

Now, the Chemical Industry Council, which I have been talking to, among others, about this statute, has some suggestions as to how you set that differential standard. The two things I would urge this Committee to do if they are going to consider that -- and I think it is worthy of consideration, certainly the language that they have proposed is worthy of looking at -- is that you take into account not only the current use of the property, but also reasonably anticipated future use. In other words, if it is in an area that is anticipated to be residential or mixed use, you might want to make the standard at a slightly higher level than if it were purely anticipated to be industrial use forever.

The particular example that I have in mind are the waterfronts in New Jersey. We have begun the process of developing our waterfronts that have typically been used by industry. You have fine examples of waterfront development, like Nathaniel Hall in Boston, like the harbor at Baltimore, like the use of the New Jersey harbor which is made down at Liberty Park, and those kinds of developments which are in areas that were traditionally industrial. You need to look at those areas carefully, because we know there is going to be a lot of use made out of them.

So, I think you can take an almost land-use approach to looking at how clean is clean to set safe health standards for industry. In areas that are in inner cities where we want to encourage industrial development, there ought to be a

differential standard. This is a big question. One of the most important questions for industry is, how much money is it going to cost me to clean up? And how clean is clean -- the level at which you set the risk, drives that number.

It is easy to get the first 70 percent of contamination. It is a little more expensive to get the next 10 percent, and so on, but that last tenth of 1 percent, and if you are going to clean it up down to standards like in 1755-- Those last few molecules are damned expensive to get. You need to set a standard at a reasonable rate, at a reasonable, acceptable health risk, so that industry and New Jersey alike can prosper.

The last comment I want to make has to do with what I think is another outstanding idea in the bill. That has to do with the amnesty provision. ECRA is complex, and there have been many people who have stumbled to follow it. One of the aspects of the bill that I think you ought to take another look at is when the effective date of your amnesty would be. Obviously, the bill was anticipated to move, perhaps, faster than it did, so the July 1 date was set in the draft. I think it would be fairer if the effective date of the amnesty were the effective date of the statute, so that those who preceded the change in the law had an opportunity to get even.

I wanted to also note that there are two kinds of mistakes people can make with respect to ECRA: One is that they are not doing a remediation because they failed to give the proper notices and no one has undergone the appropriate regulatory oversight.

There is another aspect to this, too, and that is that for sites that have gone through ECRA sometime in the past or present, they may have overlooked the triggers by changing ownership. You may have had a stock transaction, which is a technical trigger, and later you did another trigger and you went through the ECRA cleanup. What are you going to do about

the guy who has a technical violation of failing to report it? The amnesty seems to require you to have to go through a remediation. There may be acts that you want to include in the amnesty that do not require subsequent remediation, because they are simply technical violations and there may have been a negative declaration appropriate, or remediation may have already been done, but they just did it at the wrong time. After all, ECRA is a timing statute.

Thank you for giving me the time to speak.

SENATOR McNAMARA: Thank you. Are there any questions? (no response)

Bruce Siminoff.

**B R U C E S I M I N O F F:** Thank you very much, gentlemen, for allowing us to testify. My name is Bruce Siminoff. I am Chairman of the State Issues Committee of the Commerce and Industry Association of New Jersey. I appreciate the opportunity to give our views.

Commerce and Industry is a little unique in this area because we are continuing to view ECRA as a very disastrous experiment which has placed New Jersey in a position that has destroyed our real estate base, our employment base, our manufacturing base, and has made us the laughingstock of the United States. We believe that two other states that have shown the way -- Connecticut and Illinois -- have systems that have worked; that they attract business and industry; and they get the cleanups done. They may be a little slower, but the cleanups get done, and they are not destroyed.

In the last three days, there were two articles in the newspaper which I would just-- Let me put my glasses on. I am not going to read them to you; I am just going to outline them. One was in The Ledger on Saturday. It was the front-page article. The title is, "The Howard Vanishes Into First Fidelity Fold." On the second page, the subtitle says,

"Bad real estate loans finally led to the State's second largest collapse."

Well, I can tell you that while ECRA didn't cause the collapse of the Howard, it was certainly the backdrop of why that bank failed, because what you have is the depression of prices; you have nobody wanting to come in and buy property; you have nobody wanting to develop property; you have cities that do not want to take property over for tax liens; you have people who are left property; you have innocent parties that receive property, older properties like in Newark or in Paterson, or wherever, which the Mayor told you they can do nothing with; and you have an ECRA process that has been the single destroyer.

One of the things it destroys are banks. Anybody who is sitting here who thinks that they can use money to leverage a bank loan to get money for ECRA from a bank, is kidding himself, is deluding himself. There is no mortgage company, bank, lending company, leasing company, private placement group, or partnership that is going to lend you money on an industrial property in this State. You just have to drive around and you can see that. That is obvious.

SENATOR McNAMARA: Bruce, I am not disputing you, but the Howard Savings Bank was not brought down by ECRA, because I'll tell you why: A tremendous amount of their investments were out of the State of New Jersey.

MR. SIMINOFF: I didn't say that it was, Senator.

SENATOR McNAMARA: Well, it contributed.

MR. SIMINOFF: I said, contributing to the failure of banks in the State of New Jersey is the fact that the prices of industrial property have plummeted. There is depression in industrial property. I am in that business, Senator. Believe me when I tell you, the word "depression" is the correct word. What we can get for rent today is 50 percent of what we got 12 years ago, with our costs probably 50 percent higher. We are

in a position where no landlord in the State of New Jersey wants to lease to an ECRA-subject tenant because of the words in ECRA which are, "liable jointly and severally without regard to fault." I have tried for the last 10 years. My family has lived in this State for 77 years. My father fled the Russian Revolution to come here, and I have stayed here.

I want to know how, in the State of New Jersey, in the United States, there can be words, "jointly and severally liable without regard to fault"? How can anybody be in trouble in the United States without regard to fault? The banks are in trouble that way, lenders, landlords, and tenants. So, I didn't say that it knocked the Howard down; I said it was contributing to the debacle that has destroyed the property in this State.

SENATOR McNAMARA: Go on.

MR. SIMINOFF: There is another article today -- in today's Ledger, and it quotes Al Griffith, who is the President of the New Jersey Bankers Association. He asks two questions in the article, and it is interesting. It is an article entitled, "Bankers Plan to Seek Relief from Regulation," and they are talking about two types of regulation. One type is, of course, Federal regulation of banks, and the other type is cleanup regulation.

The question is: "Do the regulators want us to lend or to buy securities," he asked. "Bankers must not be turned into robots." Then the article goes on into other things about national cleanup standards and other standards.

The problem we have here with ECRA by making it so stringent, so time-consuming, and so ridiculous, is that we have simply taken the base and destroyed it. Now that we have done that, after 10 years of destruction, to pass this bill in its present form or in a changed form, in our opinion as a business association, is just caving in to what is wrong. When

something is broken, you fix it. You just don't repair it slightly; you don't put tape around it.

What New Jersey should do is repeal ECRA. Face up to it. I don't care what any environmentalists say to me, because I can tell you, if they don't have a job, they will not be here worrying about the environment. People have to work. They have to work in Newark, and they have to work all around the State. What has to be done is, this must be repealed. Face it; be courageous. Face it; repeal it, and replace it with the Illinois statute, and you will save this State. I can tell you that ECRA, as it is now envisaged, with its "getting anybody who is standing there--" The present owner is what you use, not the person who polluted the property. It is the present owner. If a person owns property that is 200 years old, he gets it. If you are a widow or orphan and you get it in a trust, you get it. It is not the person who did it. If you are jointly and severally liable--

I am a landlord, Senator. I don't want to rent to any tenant who is ECRA subject. So, what happens? You have one of two things happening. Either the landlord lies, which I do not choose to do, and gives the guy a different SIC code, or you tell the guy to go out-of-state and take his business, and you try to get a guy who distributes dolls. What happens is, this State, through the Legislature of this State, has legislated out of this State ECRA-subject businesses, which are nearly all of the manufacturing base of the State. We have legislated them out. They can't come here. We don't want them.

I can tell you that you can't be an all-service society, as England is finding out with their oil and their 13 percent unemployment. It doesn't work. So we have to face up to it.

To get specific and not just rant on, I will tell you, if you are not going to repeal it, if you can't face up to that, then what you have to do is add a tremendous amount of

privatization. You must reduce the amount of tests and paperwork. You must reduce the cost; you must reduce the financial burden, but you don't reduce it by taking ECRA fees that are at a medium case right now that will run -- just the fees -- $16,000 or $17,000 for filing fees, and add a 1 percent charge on 500,000 and move that up to 21,000. You don't do that by increasing the cost. You don't do that by adding five steps to a process that was formerly a three-step process. You don't do that by condemning the property, as a municipality or a State, and telling the person who is condemned that he has to pay.

If a person wants to condemn your property, let the condemner pay. Only let's get straight in this country about who gets liability. If you fall down the stairs, you don't blame the stairs. Let's blame the guy who fell, not the banana peel. And that is what we do with ECRA. We always blame the innocent parties. It is either the landlord or the tenant or the bank or the city, but it is never the guy who does the work and pollutes it. I think it is ridiculous.

We also have to go through the statute and make it constitutional, so that there aren't words in it like "jointly and severally liable without regard to fault"; so that there aren't words like "present owner" who is guilty of doing something when he does nothing except for being the present owner. We have to grandfather. This bill was never grandfathered. People should be grandfathered who got caught in this mess. We are all American citizens. We live here under a Constitution, and we got caught in the mess and we are told, "Forget it. It is too bad. If you owned property before ECRA, you got it even if you didn't do it."

In addition, in A-59, which was Art Albohn's bill, he had an idea, which was the Arbitration Panel. I know Lance Miller who is sitting here will not agree with me on this; that he will fight me on that issue, as I would fight him. But I

can tell you, some way, other than the court system, has to be placed in ECRA to break the logjam, and there are constant logjams. I can tell you that Scott Weiner is not going to review every logjam. Art Albohn may have had a good idea. That is not in this, and maybe it should be looked at.

In addition, there are a lot of things in here that do not address some of the real problems. One of the real problems is the web that has been created by DEP in regulations. For example, when we went down and talked to Ray Cantor, he said that one of the things you were trying to do to permit a limited conveyance, such as the sale of a ball field next to a plant to let the guy raise money to do ECRA, for example, was to put in the word "shall." Make DEP have to do it. The problem is, DEP has crisscrossed regulations, and the regulations are this web, and the web--

For example, in that area, why your bill won't help anybody, is that-- I am reading a letter that is only a couple of months old. It is signed by Barbara Murray, Chief of the Bureau of Applicability and Compliance. It says: "The Department has consistently applied the definition of contiguous as defined in the Random House College Dictionary as 'close proximity without actually touching,' or near to vacant lots and blocks. In applicants we have used the cutoff of a fifth of a mile radius to the industrial established, to further clarify that position."

Well, I can tell you right now, if you put into your law that limited conveyance shall be permitted, but DEP's definition is a fifth of a mile-- Did you ever see a ball field that was a fifth of a mile away from the plant? No. It is abutting; it is next-door. But DEP has taken the words "abutting" and "contiguous" and they used their own dictionary. It is called the "DEPE Dictionary." That dictionary says anything you want. It isn't in the English language.

So what happens is, when you permit them to write the rules as they see them, you are no longer the legislators. They are the legislators. They legislate. You pass laws and they change them. Until you can get control over the Department, and until you can get control over these rules, your putting the word "shall" and permitting a limited conveyance is going to do nothing.

So, what has to be done here is, you have to face up to what this has done to the State and change it. The best way to do it when you have something lousy that smells bad in a bad keg of apples, is to get rid of the apples with the keg. Repeal this bill, put the Illinois statute in, and let's get New Jersey moving again. I say that as a Republican, but I can tell you, I say it as a Democrat, too, because I agree with the Mayor. Let's do this bipartisan and stop the crap. I have even talked to some environmentalists who have said that I am absolutely right.

That's it. Thank you very much. I got it off my chest. I appreciate it.

SENATOR McNAMARA: Thank you, Bruce.

MR. SIMINOFF: If there are any questions, I'll--

SENATOR McNAMARA: I'm glad you chose to restrain yourself in such a manner. (laughter) It is difficult to get to the objective that you were at, but I'd say it might have come over candid enough.

MR. SIMINOFF: Thank you, Senator. I appreciate it. I can tell you that we appreciate the opportunity to be heard.

SENATOR McNAMARA: Ron?

SENATOR RICE: Mr. Chairman, just a couple of quick things. Number one is a correction. You know, you don't go after the person who fell, and you don't go after the entrance at the port. You have to go after the person who put the banana peeling there. The question is, can you identify that

person? And that puts us back where we started. I just wanted to correct that.

I would repeal ECRA tomorrow; I would repeal it today. I have no problem with saying that. I have said that for I don't know how many years. But I am only one--

MR. SIMINOFF: I'll move to Newark to vote for you, Senator.

SENATOR RICE: --of 120 legislators. Until then, ECRA cannot stay the way it is. I don't like Band-Aid approaches. Maybe they would like to think that something will work correctly later on. Once you start to move in the right direction, it will work.

I think that Senator McNamara and Assemblyman Rooney and the rest of the Committee have been having these hearings for the input. Some of the input is going to, I understand, be considered, and some has already been considered, and some may not be considered. But if we can just get a solid foundation-- There may not be in the future, if we continue to listen, a need to repeal ECRA. We may think it is repealed if we strip it properly, but I just don't think it is going to happen.

But I do want to go on record -- and the press can cheer, I don't care -- I would have repealed ECRA a long time ago. In fact, I would have stopped the Federal government even dealing with this problem a long time ago the way they are doing it. We inherited some of this stuff. I know, because I spent 10 years in cities fighting with stuff at the national level, and my business administrator can tell you that. So, that is why I'm on this bill, and that is what I am trying to work with.

MR. SIMINOFF: Senator, I think your remarks are terrific. As I said, I would move to Newark to vote for you tomorrow on this issue.

SENATOR RICE: I have enough voters.

MR. SIMINOFF: I was born in Newark, so I would move back. I'm sorry.

SENATOR RICE: Oh, okay.

MR. SIMINOFF: You do not solve a problem of a five-page ECRA bill 10 years ago by creating a 50-page amendment bill. That is one of the major problems.

SENATOR RICE: There will be no more debate. I understand that, but what I am saying is--

MR. SIMINOFF: You solve it by facing up to it.

SENATOR RICE: --you don't leave the five pages the way they are, either. I would rather have the 50 pages, as bulky as that would be, and have something better.

Let me tell you, 50 pages would help Newark a lot better than those five pages have been helping us. It would help me a lot better than those five pages. We may have to come back and start reducing those pages and put them with something more substantive. But I am saying that the status quo with the environment, we will never see that. In the meanwhile, given the recession and all that has occurred over the years, we are hurting in cities like mine. We are hurting in those rural communities. We can't bring the right people in to be tenants of yours. So that 50 pages may be voluminous, but there may be enough substance there, and merit there to get the job done a little bit better. But that is not the answer. If I could repeal it, I would.

MR. SIMINOFF: Senator, the only problem is, you lost, for Newark, the U.S. Postal Service operations deal with 800 or 900 jobs. That bill you have here would not get you that deal back, because the Federal government--

SENATOR RICE: I lost it because of the five-page scenario. I may not have lost it with the 50-page. I could have negotiated that. I would have been in a better position. Let me tell you, so I lost the Post Office. Hell, they don't

pay tax anyway. (laughter) So I'll bring in industry that pays taxes, and they will provide jobs.

MR. SIMINOFF: Thank you, Senator.

ASSEMBLYMAN ROONEY: I would like to add one comment: If we repealed ECRA today, you would see that you wouldn't have any industry left in this State. They would all leave tomorrow. A lot of the ECRA legislation right now is probably the only thing that is keeping a lot of these companies here, because they know when they sell or transfer they would have to clean those sites out. I don't see throwing out ECRA at this point. I think it would be pointless to throw it out. To amend it is proper.

But, if you want to see an exodus of industrial companies, you repeal ECRA today, and they're gone tomorrow, because they know they have some dirty sites and they know they will get out while the getting is good, and somebody else will be left with the cleanup. That is why we have to do it in this manner. Maybe 50 pages is too much, but we'll refine it. That's what we're here for. That's what this bill is for.

MR. SIMINOFF: Assemblyman, I appreciate your remarks. I can only tell you, it is a sad day in this State when the only way you can keep business here is to keep them here with ECRA. But I can also tell you that business has already figured out the deal, and many of them are slipping out on five- and 10-year plans right now because of ECRA. It would seem to me to be smarter to do what's right to keep them here, than to let them go, or to figure that you've got them by ECRA. I don't happen to echo or agree with your comments.

SENATOR McNAMARA: Bruce, I think the purpose of the hearings is obvious. We may not agree with you verbatim on your testimony, but we want to hear everybody's testimony. There are going to be some differences of opinion. There are certain things that you mentioned that we are certainly going to look at in the bill.

MR. SIMINOFF: Well, you heard me, and I thank you for Commerce and Industry.

SENATOR McNAMARA: Really and truthfully, it is not a fixed, finished product. All right?

MR. SIMINOFF: Good.

SENATOR McNAMARA: The date that was stated, I guess, that it was to be released on, or it was to take effect, July 1, was extremely optimistic last March. We were recently talking about a release date in October. That was extremely optimistic, also, but we are continuing on and on. You know yourself, because you have been down speaking with staff. We are trying to get everybody's input as we move along. Okay?

MR. SIMINOFF: All right. Thank you.

SENATOR RICE: And repealing it is optimistic.

**A. W E L L E S S U M N E R, ESQ.:** (speaking from audience) A point worth mentioning--

ASSEMBLYMAN ROONEY: Yes?

MR. SUMNER: The concept joint and several liability without regard to fault appears nowhere in the ECRA statute. It appears only in DEPE rules and regulations. The Legislature may want to consider whether it is a good concept and should be embodied in ECRA, or whether it detracts from ECRA and is inconsistent with ECRA. But note that it should be corrected.

SENATOR McNAMARA: It has been noted. What we will decide, will be decided, but it is a subject that we will discuss.

ASSEMBLYMAN ROONEY: I believe part of this bill also deals with the perpetrators, so to speak. We are trying to go back to that person, so it may be cleaned up. We both have aides from Legislative Services from both Houses, so we're listening.

MR. SUMNER: The suggestion may have been taken that the ECRA statute embodies that concept.

ASSEMBLYMAN ROONEY: Right, you're absolutely correct. Thank you.

SENATOR McNAMARA: Well, it appears in Superfund -- or the Spill Fund -- but it does not appear in the statute on ECRA.

Jack Galloway.

**J O H N R. G A L L O W A Y:** Good evening. My name is Jack Galloway. I am with Chevron. We operate a facility in Perth Amboy. We have operated other facilities in the State of New Jersey for many years. I have with me Charles Etter, Professional Engineer, Manager of Environmental Projects, and Neil Fletcher, an attorney who deals with our environmental projects for Perth Amboy.

We have met with staff and have submitted several changes that we think could even improve this amended process for ECRA. I will be offering these to you, rather than detailing the record. We have nine changes that, in essence, try to reduce the duplication of ECRA to the Federal RCRA standard and, in essence, take those that are involved in RCRA and the RCRA corrective action process and have them not subject in the way that they are today to the existing ECRA enforcement and ECRA statute.

I would be happy to expand on that. They are fairly technical amendments. They go throughout the bill, you know, probably 19 different pages of the bill. We have submitted them, and, conceptually, we will be happy to discuss that, though, so that we understand.

We have a couple of other suggestions in the law that we think could be helpful. One is a clarification about the transfer of ownership or operations within the company, but changing the Standard Industrial Classification number as not triggering ECRA. We are very concerned about that, because we think that the ability to change an operation and remain in the State, remain a significant employer in a certain area, may

well be affected if you are not able to make this change from one SIC to another SIC.

We have other suggestions, including a grandfather protection and inclusion of NJDEPE's specific time frames for review of documents, and suggestions on the clarification of a non-ECRA trigger for intercompany transfers, if those intercompany transfers occur between identified and financially responsible parties.

We have asked for expedited industrial establishment and a real property transfer. We are concerned about the ability to move fast in real property transfers, to at least move faster than we are now able to under ECRA. We have made some specific language suggestions. I have those specific suggestions with me tonight.

Finally, we have asked that the notification time frame move from five days to 30 days. We don't think that 30 days for notification under ECRA is unreasonable.

I am open for questions. I have submitted some of these comments already, and I will hand in now the additional written comments.

SENATOR McNAMARA: Thank you, Jack. Are there any questions? Lance?

**ASST. COMMISSIONER LANCE R. MILLER:** (speaking from audience; no microphone) Senator, Lance Miller. This item grieves me a little bit. If I understand this correctly, those facilities that are subject to RCRA corrective action should be exempt from ECRA? Did I get the gist of it?

**MR. GALLOWAY:** In essence, that is what the suggestion is.

ASSISTANT COMMISSIONER MILLER: That is approximately 700 facilities by my count. I don't know what the difference is between someone that is subject to RCRA corrective action and most people who have a contaminated site that has resulted

from a discharge, since they have had the obligation since 1977 to clean that up under the Spill Act.

ECRA deals with the timing of when a cleanup has to occur. These other statutes propose the liability on when -- on the person who has to do the cleanup. They are two different things, and trying to combine them, in my mind, creates a lot of difficulty.

I sat quietly so far and listened to the first group of testifiers, and I kept hearing, "voluntary cleanup, voluntary cleanup, voluntary cleanup," echoing throughout these comments; that people want to come in and clean up their sites, and, you know, it is this ECRA thing that nobody wants to deal with. We have about 40 cases where people have gone through ECRA beforehand since we put that into effect in 1986, and 40 people have come through the process early as a voluntary aspect. Since announcing the voluntary cleanup program in January of this year, we have been very disappointed in the number of people who have come forward to voluntarily clean up their sites. I don't see it thus far with people coming in, saying, "Gee, my site is contaminated. I am subject to RCRA," or, "I am subject to (indiscernible; no microphone), and I am willing to clean up my property in cooperation with the Department, outside of an enforcement action."

I would be interested in hearing from some of the people testifying as to why they are not doing that. We could deal with a lot of these problems. We wouldn't have an ECRA problem if someone came forward and cleaned up their property now, and then when they weren't subject to a transaction, they would whiz right through it.

SENATOR McNAMARA: Maybe they're waiting for amnesty.

ASSISTANT COMMISSIONER MILLER: Maybe. If that is the case, Senator, then, you know, you certainly have our complete support for that provision. Maybe that is something we can hear about this evening.

MR. GALLOWAY: Well, Mr. Miller, I'm sorry that we are the first ones that you have seen fit to throw questions to, but let us try to answer some of those.

At the time of the enactment of the original ECRA statute--

SENATOR McNAMARA: Don't take it personally, Jack. (laughter) It is a level that everybody reaches after a point in time where you do respond.

MR. GALLOWAY: Right, and you know I would like to get away from here and see a football game as much as anyone.

SENATOR McNAMARA: Well, there was a method to our madness.

UNIDENTIFIED SPEAKER FROM AUDIENCE: The Giants weren't playing.

MR. GALLOWAY: The Eagles are.

Solid waste units that were subject to closure requirements under the New Jersey Solid Waste Management Act were exempt from ECRA at the time of the original legislation. RCRA was not in force. The Federal law involving hazardous and solid waste amendments were not in force at the time. We think the dual regulation is burdensome, certainly to the regulated community, and it may well be burdensome to the regulators, as well. It probably doesn't serve much useful purpose.

We certainly would be happy to discuss with the Department those areas that we think should be exempt from ECRA because of an ongoing RCRA operation we have. We are not trying to, in any way, have ourselves exempted from cleanup responsibilities. That is not the nature of our suggestion here. The nature of our suggestion is that there are a lot of uncertainties under the current method of operation under ECRA. We wouldn't have the reformation if we didn't have those uncertainties.

We think there are fewer uncertainties under the RCRA corrective action program, and that since we are already doing

that, if we can eliminate one set of uncertainties, it would make your investment decisions and your operating decisions a lot easier.

SENATOR McNAMARA: Lance, would you like to make another comment?

ASSISTANT COMMISSIONER MILLER: The only thing I would add is, we work very closely with EPA, and EPA accepts our ECRA clearances for their RCRA corrective action program. We are currently not delegated that authority at this time; we are working towards that. But we have had a very close relationship with EPA, and they have accepted our approvals to conform with their requirements. So, somebody that goes through ECRA, that has taken care of their dual responsibility, can be assured that they are outside the RCRA corrective action requirements as well. That is an effort we are moving towards in all of our cleanup programs, so that we have one program, one approval. We have that now for all of our State programs.

ECRA is just one aspect of the entire cleanup program that we have in the State of New Jersey. The word "ECRA" has been coming out time and time and time again this evening when, in fact, we are really talking about contaminated sites. In Mr. Siminoff's comments, I just-- I won't give an adjective. You have a situation where a property is contaminated. That is the cause of a lot of these problems. ECRA just deals, again, with when you have to clean it up. But that is going to come up at some point in time anyway. It is certainly a policy call as to when that cleanup responsibility gets imposed.

MR. GALLOWAY: Senator, Mr. Etter is our engineer in charge of this. He will give us just a couple of comments as an illustration.

**C H A R L E S H. E T T E R, P.E.:** Well, without going into detail because I am not prepared to cite specific examples right now, Chevron has commented extensively on the proposed

regulations by the Department of Environmental Protection. One of our primary concerns was the uniform approach to remediation.

Essentially, the proposed regulations are applying the current ECRA type approach to all remediations. In the case of RCRA corrective action, we feel there is some extra regulation that isn't really necessary, and I will offer two examples that I believe to be redundant; that is, asbestos and building interiors, where a facility like ours which is undergoing corrective action-- That wouldn't necessarily be something we would address, but it is covered under OSHA. Yet, under corrective action you are throwing that in, and also the approach that--

SENATOR McNAMARA: Why don't you say, "as it is stated," rather than it is "thrown in." You are dealing with a flexible document.

MR. ETTER: Okay.

SENATOR McNAMARA: I hope you recognize that there is a purpose for the hearings.

MR. ETTER: Yes, I understand.

MR. GALLOWAY: I think the witness is dealing with day-to-day challenges presented by the Department and the regulations and the proposed regulations, and we are dealing with new legislation. We enthusiastically support your activity towards recreating a different kind of ECRA. We just hope you are able to consider some of our suggestions, Senator.

SENATOR McNAMARA: Thank you. Are there any other questions anyone? (no response)

SENATOR RICE: As they walk away, I just want to tell Lance what respect I have for the DEPE and their problems. Although ECRA deals with the towns and sites to be cleaned up, and also some of the folks down here, there is that level of anxiety about coming forward, just based on your treatment when you do come forward sometimes. I just wanted to say that

particularly for the small agencies, who don't know what to expect.

ASSEMBLYMAN ROONEY: The next person we will call is Warren Victor. We don't have any association listed here on our witness list. Mr. Victor?

**W A R R E N V I C T O R:** I am Warren Victor. I am President of Action Business Consultants. I function in the area of acquisitions, mergers, and divestitures. I work closely with many parts of the business community. Previously I served a term on the Wastewater Treatment Trust Fund for the State of New Jersey, and have been involved in environmental work, particularly the Oceanographic Society, for about 45 years.

My interest is not because I own land or not because I have businesses -- I operate strictly as a service, as a lawyer would -- but I see something. I will not be redundant nor go over some of the fine statements that were issued here earlier. I think you have to get to the basic keystone of what the problem is. If I pronounce his name properly -- Mr. Siminoff, is it, or--

ASSEMBLYMAN ROONEY: Siminoff.

MR. VICTOR: Siminoff, right. He said it specifically, and I heard it from others, and from the Paterson Mayor, who eloquently covered many of the other points.

What is the point of building on quicksand? The quicksand is, if we don't respect our own Constitution and the amendments with the Bill of Rights, we have no right just publishing more paper and having people going in circles. This strict, several, and unlimited liability -- I am not a lawyer -- comes up in almost every business opportunity that goes through my hands. These are companies trying to come to New Jersey; people in frustration trying to sell out and save something of their life's work, and retire. But, the albatross won't go away.

The point is, approximately one year ago, I was in touch with-- I worked through Congressman Rinaldo and Congressman Swift, who are reforming RCRA. We worked together for awhile, and they are in the same position that you guys are, trying to get something through for RCRA. With the political situation now, it is going to wait its turn, just like this is going to wait its turn.

But grandfathering -- grandfathering -- not making somebody retroactively guilty, has to underline this entire process. Just because there is a deep pocket, just because we want to have the Robin Hood syndrome, just because a big corporation is impersonal, and who cares if we take something from them, except when it is our father or son or uncle who works for them and they close down, and the bread is not on the table--

So what I am saying here, if nothing else -- and I've got around eight points to go over here, hopefully within the few moments I am allotted -- is that we have to address the 14th Amendment of due process. We have to address the 5th Amendment of self-incrimination. If we are not ready to do that, all we are doing is just publishing paper here, confusing people.

Now, I think Walter Ritston (phonetic spelling) once said-- I believe he was with Chase Manhattan or Citibank. I'm not sure. He said, "The holy Bible contains 244 pages and covers all of human behavior." The Internal Revenue Code -- and this is, like, 12 years ago -- now runs 44,000 pages and, at best, can give you an opinion. That is where we are getting now.

I look at some of the formulas that stretch almost across the page of an 8 1/2 x 11 sheet, with equations and variances and so on. The common man has the opportunity to go into business and accumulate expenses beyond the means that he can hopefully run a successful business today, because of the

way the regulations are written. You cannot make somebody able to dunk a shot if he is only four foot, five inches tall. He is not going to be able to do it.

Now, the situation has evolved -- and I had this term run by me the other day by someone who was looking at a business, and finally decided that the hazards were too great for the investment in the State of New Jersey-- He called it "environmental McCarthyism." I think that says a lot about where we are right now, because you are guilty until proven innocent. I am not just talking about ECRA. I'm talking about RCRA; I'm talking about the whole scope of the important environmental concerns we have, and I have had 45 years of it, of trying to keep the ocean healthy, and in other areas also. So, I care about it.

Now, to deal specifically with what you are trying to do right now, I am afraid it is almost like fixing a car that is 25 years past its prime. Just putting in something else new, something else is going to break. Perhaps we have to, Senator Rice, go back and start again, because you are going to have a weak link someplace that is going to come apart. I don't know about this Illinois situation. I think we should look into it very strongly.

I know what I did bring forward recently, about a year ago, which I understand is in the works in the Legislature right now, a copy of the Connecticut underground tank law, which creates a self-generating fund to remove these tanks.

I would like to suggest this here is perhaps one of the most important things that all of us can do. Quite by chance, today, I received in the mail an October 19 issue of "Fortune" magazine. Starting on page 94, through page 100, is the crystallization of the most salient points of what we are trying to accomplish here: "Bringing Reason Out of Regulation." It goes on to another special report after that. I would say that we would all be remiss if we didn't read this

over at least twice and underline it, and go through it, because too much will slip through the cracks if we don't pay attention to something that is so well done like this. The October 19 issue of "Fortune," page 94 through page 100.

Dealing with the regulation amendment you have right now, looking at the exemption area where a person could qualify under certain circumstances, or businesses could qualify under certain circumstances for exemption-- After you read that, you go on to the following paragraphs and find out, except where. Bottom line -- no comfort. You could leave them both out, because the first section contradicts the second section. Or, you give yourself an opportunity to get a high-priced lawyer to prove your point, and nobody wants that.

Now, another part of the regulation, as proposed, has to do with the Environmental Oversight Commission that is to review environmental regulations as they come along. I would like to have that enlarged that all regulations, not only new regulations, have sunset procedures, so that they have to be reviewed and updated. I realize we are talking about a lot of work, but we have no right using regulations that do not do the job. So all regulations should be sunsetted, whether it is every three years they have to be reevaluated and approved again by the Oversight Commission.

This Oversight Commission should not be an instrumentality of any one organization, including the DEP. It has to be a cross section of banking, of insurance, of builders, of -- as far as I am concerned, it can be the clergy, because I think where we are right now we need prayer, as much as we need anything else, and maybe Senator McNamara could lead us in prayer to get us out of this quagmire we are in right now.

Perhaps the Legislature itself, from the Senate, from the Assembly-- There could be appointees, but it should not be the people dispensing the regulations and making them,

regulating themselves. This has to be an arm's length review committee of qualified people.

Loans and grants: They sound good. I have heard a lot about loans over here. The only thing about loans is, that is money that you owe, and it has to be paid back. Money that has to be paid back has to be earned out of profits. The loan situation, particularly when it is tied in with grandfathering-- We are not talking about a situation where you cannot be held liable for events that were done by standards what were acceptable procedure at that time. The loans are not going to accomplish it. They must be grants. I know, everybody right away, "Where is the money going to come from?" Whether it comes from the three cents a gallon that Connecticut collects on petrochemicals, whether it comes from any other -- whether it comes from, as I had proposed for RCRA, a national real estate transfer fund that would remediate all types of real estate that was grandfathered, so that there would be a self-generating fund-- We cannot expect the risk reward person in the business community to come along and borrow a million dollars and know that is another piece of financing he has undertaken. But if there will be land that is going to be -- that he will be able to work, there will be no problem.

Now, what am I talking about here as far as the inner cities are concerned -- Paterson or Newark? We have, as has been described, an environmental disaster area. I would like to propose that this ECRA amendment contain some provision for an environmental enterprise zone, or enterprise zones -- Newark, Elizabeth, Paterson -- areas that have been industrial for years. If we want to get business back there-- The reality is, moving dirt from one hole here and putting it in another hole, at some fantastic cost, is not the answer. The answer is to say, if a business will come into Newark, or come into Elizabeth, they can go into this enterprise zone and the

State will guarantee and bond that they do not have to face any type of remediation. Just put up a business, create jobs, and start a stream of income for the community.

Now, some of the standards--

ASSEMBLYMAN ROONEY: We are going to have to look at the time, because you have really overrun quite a bit.

MR. VICTOR: All right. I will finish up with one remark then: I would like for the standards that have been addressed here, particularly ones that I am a little more familiar with, and that would be the water standards, sludge standards which, at this particular point-- I have run into a number of businesses that want to locate, but when they look at the sewer rates and what they have to face, specifically the Passaic Valley Sewer Authority, which, in a way, is threatening the existence of a brewery in Newark, the Budweiser plant-- I mean, if those rates get high enough, no matter what investment there--

SENATOR RICE: And the home owners.

MR. VICTOR: What's that?

SENATOR RICE: More importantly, the home owners.

ASSEMBLYMAN ROONEY: I think we are far afield on the cost of sewerage treatment in the City of Newark. I really want to get back to the bill. Please, stay on the bill.

MR. VICTOR: All right. Then the keystone again is, let's concentrate on the 14th and the 5th Amendments and find out if we are building on quicksand.

ASSEMBLYMAN ROONEY: Thank you.

SENATOR McNAMARA: Bill Sullivan, Rutgers Environmental Law Clinic.

**D R E W K O D J A K:** Good evening. I am not Bill Sullivan.

SENATOR McNAMARA: We figured that out as you were walking up, Drew. Are you Drew?

MR. KODJAK: Drew Kodjak, yes. I represent the New Jersey Public Interest Research Group, it seems one of the accursed environmentalists, certainly in this room anyway.

I would like to first say that to be an environmentalist is also important, very important, I think. Environmentalists, if they don't understand it already, will certainly understand it more and more. Business, good business, and a good economy are essential for a good environment. We understand that. It is very important to us that ECRA works.

ECRA got into a lot of problems in the beginning years, primarily because of procedures. One point I want to make, just very broadly, before I get into the specifics -- and I am going to keep this very brief -- is that I do not want to-- I think the procedural aspects of the bill are terrific. I think differential standards go too far. I think it may be overkill, and I hope you will reconsider that. If you do go for differential standards, please, please, please consider access controls, buffer zones, and things like that. That is also very important.

As far as this goes, we support DEP's ability to void transactions. We realize they have never had to do that. That speaks for the essential-- Well, it is the heart of ECRA, basically. It provides a deadline and a barrier and a terrific hammer for DEP to work with. They have never had to use it; I am sure they never will have to use it, but it works very well.

As far as the target percentages for where the loans are going to go, we think you might want to consider having those sort of targets that DEP should shoot for, to the best of their ability. But to strap DEP down to at least 15 percent for this, at least 20 percent for that, may not work out in the end. You only give them 50 percent play. You may want to consider having those as targets, rather than mandated.

As far as section 26 -- and we have spoken about this to OLS -- you do not allow loans to groups that have penalties with DEP, unless they are being contested, which provides the incentive for everybody to contest DEP's actions. I don't

think we want to do that. I think we want to actually have an incentive for settlements, rather than the reverse. So I think you need to rework that language.

As far as the funding goes, you are going to take $100 million for the startup. That money, as far as I understand it, is from the 1986 Hazardous Discharge Bond Act. There is an issue here as to who pays, whether the polluters pay, or the taxpayers pay, who are certainly innocent. Those funds are generally used for abandoned sites where you cannot find a responsible party. The State has to go in and clean up those sites, and those bond banks are used to clean up those sites. If you take that $200 million and use $100 million for ECRA -- which is what you are going to do now -- you may want to consider its justification. You may be leaving taxpayers or the State unable to clean up abandoned sites that have absolutely no parties to clean them up.

I am all for funding. I am all for making sure that--

SENATOR McNAMARA: Drew, on the other hand, the testimony of the gentleman just -- well, not just before you, but prior to that, pointed out about the tax that was paid by the business community that was used for general revenue. So there is a balancing.

MR. KODJAK: Sure, there is a balancing. There is certainly also--

SENATOR McNAMARA: There is a balancing, because there is in excess of $100 million that was tapped and never went to clean up sites, and that money was given willingly, voluntarily, by the business community. They thought it was dedicated. They didn't read the small print.

SENATOR RICE: In my opinion, I was going to suggest that--

SENATOR McNAMARA: It is going to be a lot harder the next time to get a voluntary contribution, if, in fact, we do not recognize that fact and attempt to bridge the gap.

MR. KODJAK: Sure, I agree.

SENATOR RICE: Mr. Chairman, I was going to suggest a student checkoff. (laughter)

MR. KODJAK: Senator Rice, we are just trying to stay to this bill.

SENATOR McNAMARA: Amazing.

MR. KODJAK: The last consideration I want to raise is, there is a 1 percent surcharge, which you mentioned. If you account for all the money that has been spent for ECRA so far since 1984, which is $540 million, 1 percent of that will be about $500 million. That is not going to do very much good in creating a revolving fund. You might want to increase that tax a little bit. I know they have already been taxed in the business community, and we owe them, and everything, but a 1 percent surcharge is not really going to go very far.

SENATOR McNAMARA: We may be thinking of the 1 percent surcharge in view of a guarantee for those that, you know-- It is in lieu of a second source of funding. What happens when someone goes belly-up and there is no money for cleanup? So, you know-- I will be very honest with you. I am not entertaining increasing the 1 percent. This way we have a clear understanding--

MR. KODJAK: Sure. That's pretty clear, yes. Okay, well then I am just concerned about it, and it is not going to be very much. As far as it being said that is a revolving fund, it may not be-- You are not going to have a lot of money coming in the door.

Anyway, I appreciate the opportunity to address you all. I will have written comments by the end of the week. I do think there has been a tremendous amount of good work on this bill. I just want to leave on that note, so thank you.

SENATOR McNAMARA: Thank you very much.

Wayne Tamarelli.

**W A Y N E  T A M A R E L L I:** I appreciate the opportunity to speak to you tonight. I am the owner and Chairman of an R&D-based New Jersey manufacturing company. We are a small company -- we have 45 employees -- but we have been in business in New Jersey for a long time. I am also the Chairman of the Chemical Industry Council. Through our company's membership in several associations, I can assure you that the matters you are considering here are extremely, vitally important to many of the small- and medium-sized businesses we have in this State.

I hear a lot of these stories all the time. I certainly commend your efforts to make environmental protection and cleanup more workable. We all have a stake in both the environment and the economy.

In the interest of time, I want to confine my remarks to just one aspect of, you know, what you're doing; that is, the financial assurance mechanisms that deal with people who have to prepare prevention plans, as opposed to remediations.

It is very important that you make sure, you know, that these people are also dealt with in this situation. This is someone who does not have a cleanup, does not have a spill, whatever, but has to, under whatever regulation or legislation, provide financial assurance a priori, without even having a problem. An example is contained in the New Jersey Administrative Code, Title VII, Chapter 1E, commonly known as the DPCC regulations. There is one section of that 4.5 that calls for the posting of financial instruments that are just simply unavailable to most businesses. It is just impossible.

We want to keep in mind that the mere act of preparing a prevention plan does not increase the likelihood of a discharge, you know, leading to the need for a cleanup. In fact, quite the opposite is intended. The intent is to reduce the likelihood of a cleanup ever being needed.

Insurance is basically no longer available for environmental cleanup risks, due to various legal uncertainties

that face the insurance companies. So, forget insurance. Any policies that might have seemed, in the past, to be helpful are nowadays just too full of holes and exceptions. Despite their high cost, they just wouldn't really meet the legal financial insurance requirements.

Furthermore, unless a firm has a very large net worth, financial institutions will not want to issue financial assurance instruments, such as letters of credit, unless assets are posted as collateral. Most small and medium firms do not have those assets that can be used for this purpose. So this has, obviously, a stifling effect on the State's economy and business growth. You know, it should be obvious from that type of requirement. I know, for example, of a firm that after a great effort managed to obtain a financial assurance instrument from its bank. However, when the letter went to the bank for the renewal of their regular line of credit, they were turned down because their collateral was now tied up. Well, this is a disaster for a business. Unfortunately, I think it will be a typical story unless you remedy the problem.

Furthermore -- and I wasn't even thinking of the corporate income tax funds that were supposed to be used for cleanup-- But, even a small firm such as mine pays a lot of tax money into the Spill Compensation and Control Fund. My firm pays both directly and indirectly through our suppliers about $50,000 a year for that Fund. This amounts to about $1000 per employee, every year. Now that is a lot of money. We have been paying this tax for years, yet we haven't realized any benefit from the Fund, nor do we expect to ever do so.

So, you know, considering all the points I have mentioned, it is really grossly unfair and economically depressing to require small- and medium-sized businesses to post financial assurance instruments merely because they have to submit a Discharge Prevention Plan, and the Plan itself, by

the way, may involve considerable costs in preparing and executing it.

I feel it is very important that your legislation permit such small businesses to rely on the new mechanisms you are creating to satisfy the a priori financial requirements of the DPCC regulations, as well as any other required Discharge Prevention Plans.

I tried to be very brief and confine my comments just to this one aspect, which I think is one I don't believe has been sufficiently addressed to date. I think it is a very important aspect, you know, to make the regulations livable and workable in New Jersey. I appreciate your attention to my comments.

SENATOR McNAMARA: Thank you very much, Wayne. Are there any questions? (no response) Okay.

Glenn Grant, Business Administrator for the City of Newark.

**G L E N N A. G R A N T, ESQ.:** Good evening. I will keep my comments very brief as well.

Senator McNamara, Assemblyman Rooney, I am here again echoing the comments of Mayor Pascrell; that we in the City of Newark, as an older, industrial complex, have some very unique problems. Although we have had a very good working relationship with DEP, and we are particularly pleased about the new Memorandum of Agreement, in point of fact we got a phone call, Lance, just the other day from Hartz Mountain, which has indicated that they just signed a Memorandum of Agreement for a large industrial tract in Newark of about 60 acres.

We want to commend the Legislature for taking a look at this need for reform. There has to be a distinction between the urban and the rural environments in New Jersey. You cannot, as the Mayor talked about earlier, look at industrial sites that may be 100 or more years old in terms of industrial

use, and apply the same kind of standard. That is really important for Newark, because in order for us to really be viable, we have to have increased tax bases. If you are not going to have corporations, you are not going to have businesses invest because of regulatory processes, then we are really going to be stymied, and you are going to be looking at more State funding, more need for State reliance, and not developing the kind of independence that we need within the community, which I am certain all of you agree is important for the large urban environments like Newark, Paterson, etc., etc.

So I think that is really the fundamental message that I want to bring to you; that there has to be this distinction between Newark -- not in terms of residential components, because we think that if you are going to use property for residential purposes that it should be held to the same standard -- but we are particularly concerned about the industrial complexes which have been in use for a number of years.

The issue of grandfathering is really very important, because you cannot get people to invest, you cannot get people to purchase. In my prior capacity, I was the corporation counsel for the city, and I can't tell you the number of deals that fell through where the city was acting as a redevelopment agency, because of the difficulty of putting the process through ECRA. Now that has all changed somewhat, or has changed substantially, because of DEP responding to the clamoring outside to the businesses, to the Legislature, saying it has to be more responsive, and I think they have been. But I think we have to move forward in terms of the Legislature responding to the need of a balancing. As Senator Rice recognizes in terms of what we are trying to do in the City of Newark, we've got, not 100, but probably 200 sites that have some particular implications vis-a-vis ECRA, and we have to be able to put those properties back on the market. We have to be

able to have industrial uses come back, because those are really the true job creation opportunities for the city. Without those, we are not really going to be able to turn the city around.

That is really all my comments.

SENATOR McNAMARA: Thank you very much.

SENATOR RICE: Mr. Chairman, I would just like to thank Mr. Grant for coming up, because he is our new BA, and I want my Committee members -- you will see him again -- to look at his youth. He has been a corporation counsel for a number of years, and has been with the City of Newark ever since he finished college.

I do want to say that there are a lot of things that we don't talk about with this environmental situation, particularly in urban cities. That is the direct relationship to some of our vacant lots that need cleanups, some of our industries that have been abandoned that need cleanup. Those same industry locations and abandoned locations, believe it or not, also become crime havens. So, while we are not developing and we are losing dollars and ratables in that aspect, it is costing us even more trying to keep some of those areas from becoming crime fields, crime locations, etc.

I just wanted to put all of that into perspective. It costs a lot more than we can afford. And I want to thank our BA for coming up to Teterboro, rather than going to Trenton for a change.

SENATOR McNAMARA: Thank you, Ron.

Robert Lefelar, Clifton Adhesive.

**R O B E R T A. L E F E L A R:** My name is Robert Lefelar. I am President of Clifton Adhesive, a small corporation in Wayne, New Jersey. I have a speech prepared, but most of the points have been covered by some of the other people. I left one part out, and I would like to bring it in. This is not really prepared, so you will excuse me if I jump a little bit.

We are one of the voluntary cleanup people. I came in here tonight, and I say, "Gee, I am one of those." I didn't realize it. (laughter) We had an underground storage tank farm and tested and found we had some leaky tanks, and we are now in the process of cleaning up.

But I want to go through the expenditures we have had in the last four years and why your bill must give us -- us, we small companies -- some means of continuing to finance, to get moneys. Because of the cleanup I had, replacing my tanks was over $200,000; getting rid of -- setting up a reclamation project was over another -- close to another $150,000. Then, in the meantime, I had a problem with the insurance companies, and I had to sue my insurance company over the last four years -- past insurance companies. I spent $249,000.

So, you know, you quickly put some figures together with a corporation that are between $4 million and $6 million. That is a lot of money. My bank virtually has said, "Doors closed." How am I going to expand? I have 30 employees, and I want to continue to grow. We have been in this State since 1945. We need some process to be able to -- either some grants, some means of guaranteed low-interest loans; something that has to come-- I cannot move forward. My bank, as soon as they heard I had pollution problems-- They have already gotten my personal guarantee, some President, or main stockholder of the company. The only thing they haven't gotten are the last couple of pints of blood out of my system.

You know, I asked them. The only reason the loan continues is because they are basically stuck with me. I am cleaning the property up. I kept them involved with everything I have done, and I have been very up-front. What comes along is, you know, the door's closed. I want to continue to do this cleanup. We have an economy that is rather stinko at this time, and we are struggling along. We're pumping out water.

We're cleaning it. We're sending in the tests. We find a lot of duplication.

That is not my problem so much. A little duplication here and there-- Maybe the whole year you spend $6000, $8000, $10,000. I'm a small company. In the total picture, that is not a lot if there are means to get the money. The ways we can get-- We can talk to people, and we can get reason. We need a system of funding. We are really hoping that through your bill and perhaps some of the new means that we have of getting money, or perhaps getting money, to continue the cleanup. There are a number of us small businesses out there that want to clean up. I know people-- I have heard stories -- I don't know for a fact -- of people who said, "I have a circumstance like yours," or, "I know of buried drums," or things-- I don't know whether there is truth behind them or not, but they want to move ahead and they are just afraid of the financial responsibility.

That's all I have. Thank you.

SENATOR McNAMARA: Thank you.

SENATOR RICE: Mr. Chairman?

SENATOR McNAMARA: Senator Rice.

SENATOR RICE: I would suspect you are one of those 40. The question was on lands, which really I answered, but it has to be answered again. What you're saying is that there are folks in your position who want to clean up, but have not come forward voluntarily because of what you are going through now.

MR. LEFELAR: That is correct.

SENATOR RICE: And that is what I was aiming for with Lance. They didn't know the answer, but I told them before, the anxieties, the fear of the unknown, and the treatment they would be receiving, as well as the lack of help.

So, it is very simple. There is your answer, Lance. He is one of the 40, but now you know why there are so many others who have not come forward.

MR. LEFELAR: There is a tremendous degree of fear; fear of what is going to happen. The reason I took the step forward and said, "I own the property. I own the business--" This is not going to be my problem. It is going to be my children's problem, and I might as well start cleaning it up. I found out there was a problem, and I might as well start cleaning it up.

A couple of years ago, I was almost out of business. I was on my knees. It was just through a couple of good fortunes that we were able to keep going. But I was in the process of cleaning up. At that time, I had spent over $250,000 in remediation work, replacing and upgrading equipment.

I am not here to say what a great guy I am. I am just trying to say that there are many people who are in this situation, taking a lot of time.

Thank you.

SENATOR McNAMARA: Thank .you very, very much for sharing that.

Lance, do you want to comment now, or do you want to wait until later.

ASSISTANT COMMISSIONER MILLER: No, I'll wait.

SENATOR McNAMARA: Angelo Morresi.

**A N G E L O C. M O R R E S I, ESQ.:** Mr. Chairman, Mr. Chairman, my name is Angelo Morresi. I am giving testimony today on behalf of the CIC -- the Chemical Industry Council of New Jersey.

I will be brief. As we have talked about, my purpose is basically twofold tonight. The first purpose is to commend this Committee and its staff for the openness of the proceedings that we have seen so far. We see a very positive trend in terms of the complexities of these issues. Your staff has been working extremely hard. These issues are very complex. They are not going to be resolved easily. We hope that we don't rush into anything, because when you are talking

about the cleanup funding sources, or you are talking about cleanup standards, those are issues that once we close the door on this ECRA process, are going to be with us for another seven, eight, ten years. So we want to be careful.

SENATOR McNAMARA: I hope the Legislature does not take that position ever again on any particular program, to be very honest with you. I think there is a responsibility of oversight. I think the fact that we passed the initial bill and never revisited, is shame on the Legislature. Myself, I don't consider it closed the day after the bill is passed.

MR. MORRESI: What we are looking for is an effective system, and we think we are heading in the right direction in that sense. So that is very positive.

The second purpose is basically to run through the issues you have established as appropriate for this evening. I will be brief about them.

On section 8, you talked about the issue of voiding a transfer. We are in favor of eliminating the transaction to be voided by the Department.

On the issue of limited conveyances, I think we have talked about this previously. We provided some language to staff regarding the de minimis values; also the point that contiguous-- The definition of contiguous should be put into the statute, and some concept of what appraisals would be acceptable under what circumstances. That would remain true also for the point about eminent domain, where there isn't a definition of appraisals. You probably want to tighten that up a little bit, as we see the need in that section.

As far as talking about the issue of the funding source, we would just like to make a brief point. I think all of these things will be elaborated on a little bit more by Ken Mack. One of the points about financial assurance, is that many of the statutes dovetail together. If a person has to post financial assurance for DPCC, they might have to post

financial assurance for a RCRA Part B storage facility, and then they might have to post financial assurance for ECRA, all their capital is going to be set aside for a potential problem; not even a real problem, but a potential problem. Therefore, there would be a limtied amount for expansion and use elsewhere. So, we would like you to take a close look at that.

I would just like to make one comment on the urban areas, which is something dear to my heart. I think you are going to have to deal with that in sort of a creative way. We are going to have to get out of the current paradigm. We may have to accept a half of loaf, or three-quarters of a loaf, rather than none, as we are accepting now in terms of cleanups.

So, those are issues that are on the table. If we are all creative and get those juices flowing, I think we are going to be able to be successful here, just as long as we are not locked into any particular way of doing business.

I thank you for the opportunity to speak to you today.

SENATOR McNAMARA: Angelo, I have to say that we had asked-- This comment is not directed to you, but just in general. We started the hearings last March. We asked for a lot of comments from industry, and whatever. And I'll tell you what, I think the only way we got the responses is by just saying very simply, "We are going to release the bill by the 22nd of July" -- or, "October." All of a sudden, we are starting to get responses.

MR. MORRESI: Well, you got it.

SENATOR McNAMARA: You know, this isn't a process of an exercise of a waste of time, because we would all prefer to be doing something else.

MR. MORRESI: I love it.

SENATOR McNAMARA: Myself included.

ASSEMBLYMAN ROONEY: You must have a meter running.

SENATOR McNAMARA: Yes, all the attorneys have their meters running.

MR. MORRESI: No, there is no meter running on this. But, you're right. The fear of something happening does push people in strange ways. But I think--

SENATOR McNAMARA: Well, it is going to happen. Don't think it is something that is not going to happen.

MR. MORRESI: We're not. All we're thinking is that they are complex issues, and we are just going to have to bear down and be bright about it, I guess.

SENATOR McNAMARA: Thank you.

MR. MORRESI: Thank you.

SENATOR McNAMARA: Franklin Reich.

**F R A N K L I N G. R E I C H:** In the first place, I want to thank you for the fairness you have shown tonight. I think it is very important to comment on this because the system works. It works slowly, unfortunately. Sometimes it works in a very ragged way like a buzz saw that is not properly sharpened, but it does work, and it is nice to see that.

Now, I am not noted for tact, and I am also not a politician, so I hope you will exercise some of your tact and allow me to--

SENATOR McNAMARA: I am not noted for tact either, so feel comfortable.

ASSEMBLYMAN ROONEY: He picked the right Committee to come to, I guess.

MR. REICH: Okay. In the first place, as far as I am concerned, there has to be severe ECRA oversight or repeal. Your point on oversight-- The reason I bravoed you there, is because this is what caused this problem in the first place.

Now, I have a few notes here, and I am going to go through them quickly because it is only one page. It won't take very long.

In the first place, we all want to clean up the environment. There is nobody who is a more avid environmentalist than I am. I am a responsible member of

society, and I have always taken great pride in being a responsible member of society. Just so you know how I make my living, I am an inventor. Three or four years ago, I was the Inventor of the Year in New Jersey. I am in the Inventors' Hall of Fame, along with Tom Edison. I run my own company. I publish many scientific papers. I have many patents. I am working very closely right now with the National Bureau of Standards on superconductors, high temperature; also with Dr. Heller at Brandeis University. We are about to publish a major paper that is going to shake the whole world of superconductivity right to its core.

Now, I happen to have become a political activist in the last few years. I did it because of ECRA. That is its greatest accomplishment; converting me into a political activist. I would much have preferred to be doing something else, anything else, preferably working in my laboratory, because that is really what I like to do. I do not like this. I am not here because this is fun. It isn't, it's work.

When I first got involved with this whole thing, one of my attorneys said, "ECRA is a revolving door with no exit." I thought he was being funny. He wasn't, he was dead serious. And I found out that that was true. That is part of the problem, Senator, and it is part of the problem that the Legislature created.

Now, in the first place, we have to clean up the environment. Otherwise, if we do not do this, we are all doomed. There is no sense in kidding. I read Al Gore's book the other night. He is right up. He hit nails on the head; everyplace he went he said the right thing, and I agree with him. The question is: How do we keep from destroying the globe and keep society functioning at the same time? It is very important to all of us. Everybody in this room wants to clean up the environment, but it's not working.

Now, when you use new techniques that offend the basic rules of fairness of all civilized societies since Hammurabi codified the laws 2000 B.C., it is doomed to fail. There is an element of arbitrariness and unfairness in all of this which leads to horror story after horror story after horror story, and they abound. Lives lost; decent people ruined because of this. People who are innocent ruined because of this.

All right, case in point: "Joint and severally liable without regard to fault." That term is offensive to any civilized person with a knowledge of history. This technique was used to justify eradicating whole societies a few years ago in World War II, and has led to unspeakable acts. It is like the ends justify the means; a monstrous concept. It has no place in any civilized society.

Samuel Johnson said something with extreme wisdom: "Patriotism is the last refuge of a scoundrel." In the 1950s, the United States certainly showed this statement to be true. Senator McCarthy was a prime example. The same thing is now happening as a result of poorly thought-out, but well-intentioned laws such as ECRA. Scoundrels abound. Arbitrary injustice, unfairness, are causing a severe backlash, and the whole environment is going to suffer.

Now, ECRA is not about the environment. It is about raw, bureaucratic power. The sooner you realize that, sir, the better off we are all going to be. It has no checks and balances, and that is the problem. Oversight-- And you missed a bet. Never turn a bureaucrat loose anyplace in any civilized society, or you are going to end up with an absolute disaster. You have to learn this. The sooner you know this, the better off you are going to be. All right?

The only solution to this problem is strong legislative oversight. We must protect society and be sure that the intent of the legislators is not corrupted out of recognition by mindless bureaucrats. That is the fundamental

problem, because you turn these people loose. You can't do that. Legislative oversight is the solution. Repeal ECRA. Either that, or severe legislative oversight. You must get their funding away from them. They are running a business. They finance their operations through fines. Every time you cut their budget, they increase the fines. They send the boys out into the field to bring in more money. That is an independent operation, operating under the State. Shame, Senator -- shame, shame, shame. Those moneys should go into the general till, and you should be the person who decides where that money goes and how it is dispensed, not the bureaucracy, ever. All right? The only other sane approach is to follow the Illinois statute as closely as possible.

Senator Rooney -- excuse me, Assemblyman Rooney -- what you have to do, if you are concerned about repealing ECRA -- and I can understand everybody leaving the State-- That is a very good comment, yes. But you can phase one in and phase the other out. I don't see why you have to say, "This ends," then there is a gap, and "This begins." There should be a phase out/phase in. Perhaps there is some way to do that.

Now, I speak as a manufacturer. Every single product that my company manufactures, I invented. We are a small company. We do about $3 million a year in sales. We could be doing a lot more than that, but I put a lid on our growth in the State of New Jersey a couple of years ago, and I said, "Not until this is straightened out will we expand one iota in this State beyond the point where we are right now."

I have already located a building in Pennsylvania and staff in Pennsylvania, and that is where the superconductor project is going as soon as the cash flow develops -- out of New Jersey, until somebody persuades me, very persuasively, that I shouldn't.

Now, I'm small; I don't hire a lot of people. But you don't know where I am going to go in the next 10 to 20 years.

You don't know how many people I will hire in the next 10 to 20 years. But I will tell you right now, I remember the day when nobody knew what to do with transistors, just like they don't know what to do with high temperature superconductors right now. You never know where this technology is going to go, but I will tell you where it is going to go as far as I am concerned, and not in New Jersey. I'm sick to my ears with this sort of stuff, and I am not going to stand for it anymore. I have become a political activist. I have every intention of staying that way. I hope that you, as an honest, responsible member of the Legislature -- all of you -- realize that you have created, in the past, a Frankenstein monster, and you have now the responsibility of bringing it back under the fold and making sure it is not turned loose again, ever, because society -- our whole society -- will not stand for it.

Thank you, sir.

SENATOR McNAMARA: Thank you. Any questions?

ASSEMBLYMAN ROONEY: Just a comment. Mr. Reich, the purpose for us being here is that we all agree with you and with the comments that have been made here tonight.

MR. REICH: I appreciate that.

ASSEMBLYMAN ROONEY: If it were not our wish to see ECRA reformed, none of us would be here.

MR. REICH: I understand that.

ASSEMBLYMAN ROONEY: I felt strongly enough that we should do it in a quick manner, rather than have you go through this process on the Senate side and then repeat the process on the Assembly side.

MR. REICH: Yes.

ASSEMBLYMAN ROONEY: We are doing it jointly because we think it is that important. So I don't want you to get the wrong idea. We are totally in favor of ECRA reform. You have to admit that ECRA was a good idea. We are probably the most polluted State in the entire nation.

MR. REICH: I don't question-- I have never questioned the need to clean up the environment. I am questioning the methods and the way it is being done. Now, the fact is, no responsible person wants to live in a sewer; nobody does. And I don't want to create a sewer either. Any of you are welcome to come to my factory. We keep it as clean as a hospital operating room. Come visit us. See my plant. You are welcome; come see us. See what we do.

ASSEMBLYMAN ROONEY: Right now we are preaching to the choir, because we all agree that ECRA must be changed, and that is the purpose of these hearings.

MR. REICH: Well, I'll tell you, a lot of people are not here, and let me tell you why: fear of retribution.

ASSEMBLYMAN ROONEY: We agree.

MR. REICH: That is the reason they're not here. Now, there are not many people like I am, because I will tell you right now: I am a very angry person, and I have every intention of staying angry until this is straightened out. But I know a lot of people who are scared stiff. They will not come here and speak the way I am speaking because they are afraid of retribution. This is a fact, sir.

ASSEMBLYMAN ROONEY: I don't think they are taking names over there, or taking comments. I hope not.

MR. REICH: Look, I've got news for you. I'm telling you why these people are not here today--

ASSEMBLYMAN ROONEY: Site specific.

MR. REICH: --and it's not funny. It's not funny one little bit.

ASSEMBLYMAN ROONEY: We understand that.

MR. REICH: All right? Okay?

ASSEMBLYMAN ROONEY: We would like to get on to the next witness now.

MR. REICH: Thank you very much. I appreciate it.

SENATOR McNAMARA: Ken Mack.

**K E N N E T H  H.  M A C K,  ESQ.:** Good evening. I will be quite brief, briefer, certainly. I will also turn to less cosmic concerns and deal solely with the methodology of the funding mechanism set forth at the back of the proposed bill.

I would like to read to you what is our group's consensus -- I speak on behalf of the Chemical Industry Council -- as to what we think the current proposal as to the funding mechanism is supposed to mean, and I guess what we would like it to mean, to the extent that it doesn't already mean that.

First of all, we think it ought to extend to financial assurance vehicles outside of ECRA. I don't think the current text says that, although there is some language that would indicate the contrary. Certainly as Wayne Tamarelli testified, there is great need for such a funding mechanism outside of ECRA.

As we understand the bill, the primary funding source for the financial assurance pool to be established within the ECRA reform bill will be $100 million coming from the Hazardous Waste Cleanup Bond Act. I understand there is some question as to that. But in any event, these moneys are available to be used as a pool for the primary purpose of the cleanup of properties for those companies which are able to meet either the asset test or the net worth test, or are otherwise self-insured -- and there are some few left who can do those things -- or able to establish their own bonding mechanisms. No yearly fee would be paid into the bond fund or the funding pool. In that way, those companies that are able now to utilize their own assets will not be penalized -- taxed, if you will -- for the fact that they are credit worthy. We want to keep them in the State, not drive them out.

Those companies which cannot find financial assurance vehicles, cannot afford lines of credit at banks, or cannot convince their lending institutions to establish a line of credit specifically for the cleanup, or have net worth

significantly below the established standards for the various applicable regulations, including ECRA, would pay the 1 percent.

We would suggest-- I don't think the current bill reads that that 1 percent be based upon the actual money expended. This might result in a lesser amount at the outset, but it would create a continual cash flow to go into this bonding mechanism. Therefore, the 1 percent would not be calculated on the total estimated cleanup cost, but on the actual amount of money either estimated or, indeed, spent in each year of the cleanup activity. As we all know, cleanups can take -- and investigations even more -- a number of years to be completed.

The purpose of this funding mechanism is obvious. Since many companies cannot meet the financial assurance tests demanded of them by various regulatory schemes, cannot afford to have banks establish lines of credit for their cleanup, or cannot afford other financial vehicles available to establish financial responsibility, this pool of moneys would act as essentially the bond, the insurance vehicle to guarantee the cleanup. It would work in tandem, if you will, with the loan mechanism, so that companies such as those we have heard from this evening which cannot now, without great hardship, get a line of credit, a letter of credit, a bond which freezes the amount of assets and costs them, as luck or foresight would have it, about 1 percent a year on the bond amount, or the LC amount, will have an alternative available mechanism to stay in business and clean up their properties, not go out of business while they are cleaning up their properties.

We understand that language is not expected of us tonight. This is additional language to go with what is already in the proposed bill. We do expect to be able to provide you with proposed language in short order.

Thank you for your consideration.

SENATOR McNAMARA: Thank you.

ASSEMBLYMAN ROONEY: Thank you.

One comment, not to Ken, but just to the audience in general. One of the things that-- I have been hearing things about other bills, other approaches. As far as my Committee in the Assembly is concerned, we will be considering S-1070 and A-1727 in whatever form those bills take as a final form as a result of these hearings.

I want to say for the record, Mr. Albohn is not here tonight, but A-59 which was in is one approach. Art Albohn has been out in front on ECRA reform ever since I have known him. Ever since ECRA came in, Art has been there trying to reform it. He has been one of those people.

These are the bills that the Assembly Committee will be hearing. There won't be any other bills that will be heard. I want to make that clear. So if you have any input whatsoever, Senator McNamara on S-1070, Assemblyman Albohn on A-1727. I am positive that these two bills will be the same bills when they are finally put together. The Senator will be hearing it in his House first. I have all intentions of waiting for the bill to come over to the -- from the Senate to the Assembly. I just want you to know that up-front, on the record. It is going to be published that this is what will happen in the Assembly Committee.

So, if there have been any questions up to this point about other alternatives, forget it. Just a word to the wise.

SENATOR McNAMARA: Thanks, John. That will certainly stimulate a response to some of my requests in the letter I sent out to a number of people as far as what their suggestions might be.

ASSEMBLYMAN ROONEY: Yes. I don't think we want to confuse this issue by having other bills out there, or other approaches out there. This is the only game in town, gentlemen and ladies; the only game in town. This is what we are going to work on. We are going to work on these two bills until

they're right. You may not agree with everything that will come out of it, and probably that is the best sign that it was a good bill, if nobody agrees with it entirely. But we want to make sure that we do the ECRA reform.

SENATOR RICE: Mr. Chairman, that is like saying, "No repeal, no Illinois'." Is that correct?

ASSEMBLYMAN ROONEY: These are the bills we are working on, Senator.

SENATOR RICE: That's about it.

SENATOR McNAMARA: That is a pretty accurate description of that phase.

Is there anyone else to testify? (no response) Lance Miller?

ASSEMBLYMAN ROONEY: Do you have a score for us, Lance? Are you a Philadelphia fan? (referring to football game going on at time of hearing)

ASSISTANT COMMISSIONER MILLER: No. As I testified last time, I am a Giants' fan, but if my staff is going to continue to work for me, I will be brief so we can get into the car and head back, so we can at least listen to the game.

Senators, Assemblymen, I would certainly like to thank you for a very interesting evening. I can't imagine how else I would have wanted to spend this evening. (laughter)

SENATOR McNAMARA: I can assure you that I could have thought of 1000 different ways for myself.

ASSISTANT COMMISSIONER MILLER: Well, I think it says something.

I am going to focus briefly on the bill, but we have heard a lot tonight. I think it needs some response, and it needs to be placed on the record. I sit at ease and I try not to take it personally, but when references are made to the Department, to the administration of the program, it is very hard not to take it personally. I have spent now almost 17 years serving the citizens of the State of New Jersey as a

member of the Department, I think to the best of my ability. I would have loved to have had my wife here tonight, because I think she would have told me to quit, because the amount of time that I spend away from my family is considerable. The amount of time that my staff spends away-- I know I am preaching to the choir of you, gentlemen, on the amount of time it takes you to do your jobs as "part-time" legislators. I really think that is unfair. I think people who get up and talk about the Constitution the way we have tonight and forget the one most important part-- That is free speech, and they have all taken great liberties in that regard this evening.

I think people need to recognize and focus on the bill. I wish we had spent a lot more time focusing on the bill this evening, and the very important provisions in it, and the tremendous work that is being done by the two Committees and the staff. But, we didn't do that. I think there are some major issues that we failed to focus on.

There is a problem out there. There is contamination all over this State, Assemblyman, as you so precisely put it. We have industrialized this State, Mayor Pascrell, right from the beginning, starting in Paterson over 100 years ago. We have that legacy to deal with today.

I have a basic question, all the time when I talk to people who are considering buying or selling: Who is going to buy contaminated property? We have a Federal statute that provides a -- in Superfund, the Superfund amendments -- that has an innocent purchaser defense, which basically says, you better look, because if you don't look -- or, if you do look and you find it, you're liable. Well, that Federal law is out there. So, who is going to purchase property in the City of Newark that is contaminated; in Paterson, in Jersey City, in Trenton, in Camden, or anywhere? What a lot of these companies are doing is, they are going to other locations.

We have tremendous economic problems facing the State and the country today. They are real. The causes are diverse. Again, I think it is a disservice to focus solely on ECRA as the only problem, and that if we repeal ECRA the economy would take off, the stars would come out, the sun would shine the next morning, and everything would be great. I think everyone recognizes that that is not true, but nobody said that this evening. Everything was on ECRA; ECRA is the sole problem. Now, I think we all recognize that that is not true. I feel that I had to at least say that on the record.

I think the bills we are focusing on tonight go very, very far towards improving ECRA. There is a tremendous amount in them. Senator, I agree. ECRA was passed back in 1983. Very little consideration was given to it then. We started the process in 1986. It has literally taken six years of starts and stops to finally get to the point where I think we have a comprehensive piece of legislation.

Now I would like to focus on some of those provisions: Section 8 of S-1070 deals with the voiding provision. For the record, the Department does not need the ability to void sales. We have never used it; we never intend to use it. We think times have changed. We think it is no longer necessary, and maybe that is an example of something that can be shown to industry to say, "Look, we are not going to keep provisions in a bill that nobody feels are necessary. We are not trying to be antibusiness in the State of New Jersey, and we are willing to make some of those necessary changes."

Sections 14 and 15, which deal with limited conveyance and condemnations: The Department supports these provisions. They will, I think, help considerably in allowing certain types of transactions to move forward.

Responding to Mr. Siminoff's comments on condemnations, that the person taking the property should pay

for the cleanup, well, that is kind of like the example of suing the person who fell down the stairs, which I think he got a little backwards. If the person who condemns the property has to pay for the cleanup, that is like suing the person who fell down the stairs. They didn't put the contamination there. Nobody had the right to put that contamination there. So I think the condemnation provisions you have established here allow the process to move forward, without bringing the whole site in. It just allows that portion of the property to be dealt with.

Section 18 deals with ECRA amnesty, which the Department also supports. Senator, I agree that it is very possible that people are concerned about retribution, about how the Department is going to act, and that is why they are not coming forward. The amnesty provision in ECRA, and then later in section 32 for the Spill Act-- We have heard it. It must be real in perception, but I can assure you that it is not real in reality. If someone feels they are being mistreated by my staff, I wish they would call me on the telephone and give me an opportunity to fix that situation. I offer that.

Again, I put the number of hours in necessary to do the job. There is a lot of time spent on the phone dealing with issues. I have Ken Hart with me today. He will accept those phone calls, and we will address those problems. I am not saying we're perfect. We make mistakes. Sometimes you have people who go overboard. That is what managers are here for. That is why it is just not a group of mindless bureaucrats, as someone referred to us. I realize I don't have the education of that individual, and I haven't invented a lot of things, but hopefully I am sincere, hopefully I am hardworking, and I will certainly respond to people's phone calls and talk to them about their problems and try to get to the bottom of an issue.

There is something that could be done in the ECRA amnesty issue, and probably it is best addressed in the bill statement. We are currently very, very selective in assessing penalties for failure to notify under ECRA. Our primary concern in this area is to get people to comply with the statute. So if it is the legislative intent that after the amnesty period is over that the Department would increase its enforcement position in these matters to be more strict-- After the amnesty provision, if that is the intent, I would appreciate it if that could be included in the bill statement. Otherwise, you know, we certainly support the amnesty, but again, I think it is more perception. People who know how the Department is doing it are going to say, "Yes, the amnesty provision is nice, but the Department hasn't been taking enforcement action in these things anyway, so why should I even bother?" unless there is some intent that there is going to be more stringent enforcement in the future.

Regarding the spill reporting amnesty, I would like to work with the legislative staff to even expand this amnesty provision to our Voluntary Cleanup Program. The way the bill is currently drafted, someone would have to sign an Administrative Consent Order to get that amnesty. I think we can establish it so that if someone executed a Memorandum of Agreement to voluntarily clean up their site, provided they proceed to remediate that site, they would be able to have that amnesty; and if they didn't complete the cleanup they would lose their amnesty. That would be the fallback position on that.

Very briefly on the funding provisions: The alternate financial assurance mechanism that has been established was done so at the request of the regulated community. They convincingly made the point, obviously to you, and also to the Department because we support it, that the dual funding of cleanups was having a tremendous strain on those companies,

because basically what it does is take $750 million that we hold in financial assurances, and take that out of circulation. That is collateral that is otherwise not available. Putting that back into circulation is a very important provision of this bill, and one that we truly support.

Except for the person who has to pay for the cleanup, no one wants a cleanup done more than the Department. We do not want to see anyone go out of business because of a cleanup obligation. Everyone loses in that situation, from the company, its employees, the municipality, and, yes, even us mindless bureaucrats, because now we have to turn our limited resources and attention to that site. So, even with my limited capabilities -- mental capabilities, that is -- I am able to figure out that if we had some alternate funding, we would be able to turn that situation into a win/win situation, where the company remains--

SENATOR McNAMARA: Lance, I don't want to interrupt you, but I have to interrupt you for one thing. The reference that was made-- I want to let you know, just so you do not think you are just a select small group, that I have been referred to in the same manner over the telephone several times. So, quite frankly, it is a little frustrating to hear it, and I can hear the frustration in your response, but maybe now you understand why we used the panel the last time in order to focus on the issues.

This hearing served an important phase which was a very difficult phase for members of the Department that put a tremendous amount of time, effort, sweat, and blood into it, because let me tell you, if my wife was down here tonight, she would be telling me to resign the Senate.

That is part of the system now. Unless we hear from everybody-- I want to get it all out on the table, because hopefully after we have gone through the entire system, we will be able to do something that will serve everyone. I know that

that particular phrase really stuck a burr in your saddle, and it most probably was intended that way. You know, you have to understand, that is perception, but it is the public's perception of the Department; it is the public's perception of the people who serve in the Legislature.

ASSISTANT COMMISSIONER MILLER: I'm glad I am in such good company, Senator.

ASSEMBLYMAN ROONEY: And, Lance, let me tell you, my wife doesn't go to anything but a swearing in, and that's it. That is the only official function she has ever been invited to, specifically for those reasons.

ASSISTANT COMMISSIONER MILLER: I'll close with that, but we certainly support the ability to have people clean up their sites and stay in business. I mean, that is obviously to everyone's best interests.

Thank you very much.

ASSEMBLYMAN ROONEY: I want to make a comment, though. I have been in the Legislature now since 1983. Come to think of it, I probably voted for this bill, and I will take full blame, credit, whatever. But I've got to say, since 1983 and being down here, I have done through a lot of Commissioners, a lot of Deputy Commissioners, and I have served on most of the Environmental Committees in my tenure here. Dick Dewling and I went to the same high school. We were a year apart. Let me tell you, that didn't cut any weight either.

I have had more cooperation from Lance than any of the other Commissioners or Deputy Commissioners in my 10 years in the Legislature. I want to put that on the record. You have done an excellent job. You have always been available. Your staff has been very, very professional. Anything we have asked for, we have been able to get through Lance's group. So I want to say that he has been a pleasure to work with, and this is a change. Maybe it would be nice to have both Houses in the

majority, but I don't think that that has anything to do with it. I really believe that the individual has made an effort.

He came in and admitted there were problems in the Underground Storage Tank Program, in the ECRA Program, and was willing to listen, and is willing to work with us on this. So, I want to commend you. I think you have done a good job, and your staff has really supported you. For the record.

ASSISTANT COMMISSIONER MILLER: Mr. Chairman, from the bottom of my heart, I thank you for myself and for my staff. I could not receive a higher compliment.

ASSEMBLYMAN ROONEY: Thank you very much.

SENATOR McNAMARA: Well, it's ditto, Lance.

ASSEMBLYMAN ROONEY: See, there's mutual admiration here.

SENATOR McNAMARA: I have said this earlier on in the hearings, that I think the Department has been absolutely, totally-- I know that I have called at very odd hours, and I have gotten responses either from you or from Ken and received callbacks in a very short period of time. That spirit is there. I think the problem we all have to deal with is that public perception that is dealing in the past.

ASSEMBLYMAN ROONEY: Right.

SENATOR McNAMARA: Unfortunately, that perception is out there. Whether it is accurate or inaccurate, that doesn't solve the problem. I think that by working together we can change that image, because it is really-- Well, we have both discussed getting rid of the word "ECRA." I don't think that is a bad idea at all.

ASSEMBLYMAN ROONEY: That is the first order of business.

SENATOR McNAMARA: That very definitely, I think, is one of the things that is a must.

ASSEMBLYMAN ROONEY: Through this particular process.

SENATOR RICE: Mr. Chairman, I just want to say, my wife tells me, "You chose to do this," and therefore I have to take the good with the bad and do the best job I can. And that is what it is all about.

I do believe that the State has looked at the urban cities, particularly the larger, older cities, differently, maybe because they didn't have the time or the staff to really address it; maybe it was too complicated, so maybe the response wasn't exactly the same. The attitude of the Department has always been friendly. It is a lot better since the new Commissioner is there, because his attitude is a lot like mine. Some of the stuff, the hell with it, you know, if the laws don't govern it because it doesn't make any sense in the first place.

I would also like to say I think the Department was responding more to those who wanted to be environmental governors and legislators and all that stuff, than being objective about the State. I think that now the time has come-- I wasn't in in 1983, but I was here in 1986 when this mess started. I think, while there are only one or two of us here in full, I think the Department recognized that there are some of us who want balance in the State, and we are not going to take anything less than that. But that also kind of gives them support to get some of those environmentalist folks -- the special interests -- off their backs and let them do their jobs.

So, I commend you on your job. We still have a long way to go on my city and on cities like it, but you are getting there. I want to thank the Committee for being so kind to me during my time on this Committee. Hopefully, I will be on it for a long time.

Don't take this stuff personally. If you have a problem, let me know. I'll curse them out for you. (laughter)

ASSISTANT COMMISSIONER MILLER: Thank you, Senator.

SENATOR McNAMARA: The meeting is adjourned.

**(MEETING CONCLUDED)**

# APPENDIX

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NEW JERSEY BUSINESS & INDUSTRY ASSOCIATION

October 5, 1992

Hon. Henry P. McNamara
801 Franklin Avenue
P. O. Box 663
Franklin Lakes, NJ 07417

Dear Senator McNamara:

I am enclosing additional written testimony from the New Jersey Business and Industry Association (NJBIA) prepared for the Association's Environmental Quality Committee by Edward A. Hogan, Esq., of the law firm of Porzio, Bromberg & Newman, concerning your ECRA reform bill S-1070/A-1727. Mr. Hogan represented NJBIA at the public hearing on September 21, 1992, and I will speak at the hearing on October 5, 1992. This information supplements our testimony.

While there are many parts of your bill that we support, we believe there are areas that need to be reworked. NJBIA would like to draw your attention to a number of items in the enclosed document that are of major importance to the members of the Association:

## I. GENERAL COMMENTS

Page 1. We continue to believe that the "Environmental Cleanup Responsibility Act" (ECRA), as it is structured in New Jersey, should be repealed or replaced. The buyer protection provisions of the original Act have been replaced in the marketplace by a process of "due-diligence." A panoply of new and expanded environmental laws, rules and penalties have replaced ECRA as an institutional control for identifying and preventing future superfund sites. We understand that your bill is a reform vehicle and in that context we support your efforts to turn ECRA into an acceptable program. The following comments are presented to assist you in maximizing your reforms for both the environment and the business community.

Page 3. (B.1) ECRA should only apply to contamination caused by the triggering party.

Page 4. (B.2) A triggering party should not be held responsible for contaminants stemming from off-site contamination.

Page 4. (B.3) Despite the reforms to date, ECRA remains a program and a process that is filled with decision making delays built into its bureaucracy. There should be a maximum 30-45 day deadline for DEPE approvals. It should be the goal of this legislation and the associated regulations to eliminate as many approval steps by the DEPE as possible.

Page 4. (B.4) If a merger or consolidation does not affect the assets available for remediation, ECRA should not be triggered.

Page 5. (C.1) A Site Remediation Advisory Council should be established which would advise the DEPE on remediation activities. The Council would be structured similar to the Code Advisory Board in the Department of Community Affairs for the New Jersey Uniform Construction Code.

The role of the Council would be to monitor the activities of the State's remediation program, hold hearings, conduct special studies and promote evaluative exercises. Special management and scientific audits authorized by the Council and approved by the DEPE Commissioner could be conducted by outside firms and paid for by Site Remediation Funds.

The goal of the Council would be to improve the efficiency and effectiveness of the site remediation program by proposing changes to the rules, regulations, procedures and standards and to issue an annual report to the Legislature concerning proposed changes in the legislation that would expedite necessary cleanups, reduce the time for approvals or reduce the cost of environmental cleanups.

The Council would institutionalize the process of improving both the management and oversight of a multi-billion dollar site remediation program by focusing on how to reduce red-tape or efficiently resolve technical conflicts. The Council should be called upon to make recommendations concerning the structuring of an informal technical dispute resolution mechanism within the DEPE.

Members of the Council would be invited to attend public hearings of the DEPE on site remediation rule proposals and to question individuals testifying at these hearings.

Page 5. (C.) We need an alternative dispute resolution mechanism for technical issues. It does not need to be an overblown legal mechanism--an informal process could be effective.

## II. APPLICABILITY

Pages 6-7. We have offered suggested language changes in the bill that should clarify ECRA applicability, transactions subject to ECRA, change in ownership and closing of operations.

## III. PROCESS

Page 17. (A) We offer an important policy clarification concerning the redefined five-step remediation process. We must be clear that this process is not the same as federal superfund requirements. This is a sequential process that encourages private parties to move forward with their investigation and remediation without specific DEPE approvals at each stage. We suggest that the intent of the Legislature is spelled out in a statement including (1) the DEPE ought to continue its development of flexible and cost-effective guidance and standards for site investigation and remediation and (2) the DEPE shall be encouraged to periodically reexamine its rules and procedures to incorporate more efficient processing of cases and cost saving techniques for both the public and private sectors. Improved management should be an ongoing programmatic goal.

Pages 19-20. (D) We do not believe that ECRA should cover off-site contamination, however, if the Legislature deems that ECRA deals with off-site migration of contamination, then DEPE must have the means to compel neighbors to provide access without extorting unreasonable terms.

Page 21. (F) This bill should eliminate DEPE's power to void transactions.

Page 23. (J) We support the amnesty provisions in this section.

## IV. CLEANUP STANDARDS

Page 24. We support the development of reasonable cleanup standards. We should adopt nationally recognized standards where they are available and should not adopt New Jersey standards that are stricter than other states. Our standards should be based on reasonable risk assessment criteria (NOT $1 \times 10^{-6}$). A range of risk related to exposure and land use should establish the groundwork for flexible differentiated standards for different types of use. This is the key to development of a workable cost effective cleanup program. Adoption of the wrong standards could continue to freeze urban redevelopment and industrial reuse.

Page 24. Deed restrictions, covenants and or other documents attached to a deed will not ensure a workable system of institutional control. We would support a notification system at the local level (Code Enforcement Office) that would track land use restrictions due to contamination and other issues such as cover maintenance. The building permit is the appropriate tool for insuring that land use restrictions are observed.

Page 27. We support the development of an Ecology Advisory Task Force that could report its findings to the Legislature prior to the adoption of additional rules by the DEPE.

We shall provide additional written comments on the financial sections of the proposed legislation. Thank you for your continued interest in this issue.

Sincerely,

Jim Sinclair, P.E.
First Vice President

Enc.

**TESTIMONY**
**OF THE**
**NEW JERSEY BUSINESS & INDUSTRY ASSOCIATION**
**ON**
**S-1070/A-1727:**
**ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT ("ECRA") REFORM**
**September 21, 1992**

My name is Edward A. Hogan. I am a partner at the law firm of Porzio, Bromberg & Newman, P.C. in Morristown, New Jersey and chair the Environmental Department at the firm. I am testifying today on behalf of the New Jersey Business & Industry Association ("NJBIA"). NJBIA was formed in 1910 and since that time has been dedicated to improving the State's business climate and promoting a strong economy. With membership of over 13,600 companies, it is the largest statewide business trade association in the country.

We understand that sections 20-29 of S-1070/A-1727 ("the ECRA Reform Bill") will be addressed at a separate hearing. Accordingly, we will limit our comments to other aspects of the proposed legislation. Our comments are organized into five sections:

I. General Comments;
II. ECRA Applicability;
III. Process;
IV. Cleanup Standards; and
V. Miscellaneous Issues.

## I. GENERAL COMMENTS

### A. ECRA Should Be Repealed or Replaced

While we are glad to be here today to discuss the provisions of S-1070/A-1727, we would have preferred to be discussing repeal or replacement of ECRA.

An analysis of the limited legislative history of the 1983 legislation reveals that ECRA was designed to address two objectives: to protect innocent purchasers of contaminated property and to discover properties which may pose a threat to human health or the environment. Significant commercial and legislative developments have occurred in the past nine (9) years which now accomplish these objectives, thereby rendering ECRA unnecessary.

First, the real estate and commercial community in the State of New Jersey and throughout the nation now recognizes the significant liabilities associated with owning or operating commercial and industrial properties. Indeed, ECRA was the catalyst which lead to the understanding that the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C.A. §9601 et seq. and the Spill Compensation and Control Act (the "Spill Act"), N.J.S.A. 58:10-23.11 et seq. (Regulations N.J.A.C. 7:1E-1.1 et seq.)gave rise to such liability. In 1986, CERCLA was enacted to provide limited protection to innocent purchasers that exercise due diligence. 42 U.S.C. 9607(b). In so doing, the evolving practice of environmental due diligence was ratified. The practice has now been firmly institutionalized by the business and financial community. It is inconceivable that any business or real property transaction involving commercial or industrial facilities would proceed without a recognition and allocation of environmental liabilities. Accordingly, ECRA is no longer necessary as a purchaser protection measure.

Unfortunately, ECRA often is counterproductive, often misleading the very people it sought to protect. ECRA is still misunderstood as bestowing a "certification" by the State as to the condition of the property. Purchasers misunderstand this review as a form of waiver or estoppel by the New Jersey Department of Environmental Protection and Energy ("NJDEPE" or "Department"). Moreover, purchasers have been lulled into complacency by believing that the ECRA process involves a full due diligence environmental review and thus have not performed their own review. As we know, most facilities proceed through the ECRA process with nothing more than a walkover. Moreover, an ECRA inspection involves only a very cursory examination of operational environmental compliance (i.e. air and water pollution permits, hazardous waste regulations, right to know, etc.) The benefit of ECRA's process is overshadowed by the harm it has caused.

The second objective of ECRA, discovery of contaminated properties, is now addressed by the Spill Act.

As noted in the ECRA oversight hearings of 1984 and 1986, ECRA was originally drafted as a discovery statute. With the 1991 amendment of the Spill Act regulations, it is



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clear that all discharges, whether current or ancient, whether with potential for harm to human health or not, must be reported. N.J.A.C. 7:1E-5.1 et seq. and 1.6. Hence, the Spill Act requires that all discharges be reported.

Further, the Court in In Re: Adoption of N.J.A.C. 7:1E, 255 N.J. Super. 469 (App. Div. 1992), confirmed that the spill reporting requirements were as broad as the NJDEPE had asserted. The role of ECRA as a discovery statute is thus obsolesced by the new NJDEPE reporting requirements.

Although ECRA had sound objectives, the development of the past nine (9) years have rendered it not only unnecessary but even counterproductive. Accordingly we urge that ECRA be repealed.

Alternately, we should suggest that some form of disclosure statute replace ECRA. In the past nine years, no other State has enacted a statute which imposes the type of transactional preconditions that ECRA does. Several states, including, Connecticut and Illinois have enacted statutes that provide full disclosure of environmental conditions at the time of a transfer. They do not, however,impose limitations on a transaction. We would suggest at this point that ECRA be amended to reflect the provisions of the statute in Illinois (30 Ill. Rev. Stat. Ch. 901 et seq.), a full disclosure allowing parties to negotiate among themselves the responsibility for cleanup.

B. Existing ECRA - Major Reform

1. Innocent Party Protection

ECRA has been held to apply to the owner or operator and impose cleanup of contamination upon those parties. NJDEPE's interpretation of the statute to impose the entire cleaning burden on the current owner or operator, even if the contamination is the result of conditions created by another, has been sustained by the courts. Superior Air Products Co. v. NL Industries, Inc. 216 N. J. Super. 39 (App. Div. 1987). Ironically, this broad interpretation of ECRA works to impose liability upon innocent owners and operators, the very goal the statute was attempting to avoid!



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ECRA should only apply to contamination caused by the triggering party.

2. Off-Site Contamination

Although the court has found in In Re: Adoption of N.J.A.C. 7:26B, 128 N.J. 442 (1992) that ECRA applies to contamination which has migrated off-site, ECRA should be reformed to specifically limit ECRA investigations and remediations to the industrial establishment. The off-site application of ECRA goes well beyond the original purpose of ECRA and should be left to the Spill Act. The purpose of ECRA is to identify the specific condition of the property affected by the transaction and address issues at that site. Having ECRA imposed beyond the property boundaries poses an unnecessary burden upon transactions.

A similar issue has arisen in connection with contamination which migrates onto an industrial establishment. NJDEPE has not been satisfied with proof the industrial establishment is not the source but rather has required that as a condition of ECRA approval the off-site source be positively identified. If investigation reveals that the contamination has originated off-site, the remediation and investigation should end at that point. A triggering party should not be held responsible for contamination stemming from off-site.

3. Delay

The ECRA process must be sped up. Currently ECRA investigations and remediations go on for years and years. Much of this delay is attributable to the Department's review process. The Department itself is delaying investigation and remediation. The ECRA should be reformed to include a 30- or 45-day deadline on the Department for approval. A default of any deadline should be deemed an approval. The business of New Jersey cannot be held hostage by a Department which is not held to a reasonable review time period.

4. ECRA Triggers



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ECRA should be amended to link ECRA triggers directly to the effect upon the assets available for remediation. If an ECRA trigger, such as a merger or consolidation, does not affect the assets available for remediation, ECRA should not be triggered. The purpose of ECRA being triggered at the point of a transaction is to ensure that monies will be available to remediate the site. If this can be established, then ECRA should not be triggered.

C. Additional Sections

1. Site Remediation Advisory Council

We recommend that the ECRA Reform Bill be amended to include the creation of a gubernatorially appointed "Site Remediation Advisory Council" to study ECRA on an ongoing basis.

2. Alternate Dispute Resolution

The current dispute resolution process, particularly related to technical matters, is unsatisfactory. Parties subject to ECRA are either under tight time deadlines to achieve a negative declaration or approved cleanup plan prior to consummating the transaction or are subject to deadlines imposed by the Department under Administrative Consent Orders. Accordingly, there is little opportunity for the regulated community to engage in a significant challenge to the NJDEPE's technical demands. While a lack of challenges might be viewed as an efficient way for administrative governmental program it does so at the expense of the due process rights of the regulated community. It is this perception of "technical extortion" that has significantly contributed to the negative impression businesses had of New Jersey.

If, indeed, the ECRA program is retained as a precondition to the ability to consummate certain transactions then, an effective Alternate Dispute Resolution procedure must be created. Industry must feel it has some opportunity to challenge the Department's technical demands. The current process of attempting to have a position certified as final

agency action, a recommendation by an Administrative Law Judge, a decision by the Commissioner, and an appeal to the Appellate Division, is simply too cumbersome. Moreover, those tribunals are particularly inappropriate for the resolution of technical issues.

Accordingly, we suggest that a mechanism be created whereby a technical dispute resolution panel is formed. This panel will rule on technical issues related to site investigation and remediation. It might be comprised of technical decision makers selected by the disputants. This is a process utilized by the American Arbitration Association.

## II. ECRA APPLICABILITY

Under the existing statutory and regulatory scheme, ECRA is broadly applicable to "Industrial Establishments", a defined term, which undergo a regulated transaction. The existing act and implementing regulations provide what is essentially a two-pronged test of applicability. First, it must be determined whether a facility is an "industrial establishment" and second, whether a "triggering" transaction (sale or closure) is contemplated.

### A. Industrial Establishments

1. Standard Industrial Classification. A place of business is considered to be an "industrial establishment" if it has an SIC Industry Number within Major Groups 22 through 39 (inclusive), 46 through 49 (inclusive), 51 or 76, and engages in operations involved in the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances or hazardous wastes. Hence, the regulations set forth a two-prong test of "industrial establishment."

   The proper SIC Industry Number is determined by reference to the Standard Industrial Classification Manual published by the Office of Management and Budget, Executive Office of the President of the United States.

Section 19 of the ECRA Reform Bill requires the NJDEPE to audit ECRA Negative Declarations and Remedial Action Work Plans and thereafter adopt regulations identifying those facilities within the SIC Major Group Numbers listed in the definition of "industrial establishment" that do not pose a risk to public health, safety or the environment by their normal operation. We support this review of the SIC numbers and ECRA applicability.

Further, we suggest that the bill clarify that ECRA is triggered when there is a change in SIC Industry Number from a subject Industry Number to a non-subject Industry Number. As presently drafted a change from one non-subject Industry Number to another non-subject Industry Number would trigger ECRA. Accordingly, we suggest that the word **"subject"** be inserted after the word "establishment's" on line 30 on page 2 of S-1070.

2. Hazardous Substances and Wastes. The second test for defining industrial establishment is the use, generation or other utilization of hazardous substances or hazardous wastes. It was clearly the intent of the Legislature in 1983 not to subject every facility with a regulated Standard Industrial Classification Industry Number to ECRA, but only those facilities which were involved with hazardous substances or hazardous wastes. The NJDEPE's interpretation of the 1983 legislation, however, has rendered the second prong of the industrial establishment test so broadly as to render the test meaningless.

Under the NJDEPE's interpretation, the mere storage of xerox toner, ammonia, saccharin, acetic acid (found in vinegar), sodium nitrate (a preservative for meats), or common fertilizers would render a facility as one with a sufficient "storage" of hazardous substances to meet the second prong of the industrial establishment test. Clearly, if the Legislature in 1983 intended to have a second prong of the industrial establishment test, it was meant to exclude those facilities with such minimal involvement with hazardous substances or hazardous wastes as to not cause them to be subject to the statute. While the NJDEPE has adopted a de minimis process, N.J.A.C. 7:26B-10.1 et seq., it has



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not altered the definition of what is a hazardous substance. Rather, it merely specifies an alternative ECRA compliance procedure. In fact, the conditions of that alternative compliance procedure confirm the NJDEPE's interpretation that any quantity of hazardous substances, including common paints, inks and similar materials are hazardous substances for purposes of the statute.

Accordingly, it is appropriate for the Legislature to enact a de minimis standard in the definition section which clarifies that not every facility with a regulated Standard Industrial Classification Industry Number is an industrial establishment, but only those with the requisite involvement with hazardous substances or hazardous wastes. Accordingly, we recommend the following definition for hazardous substances. [To replace existing definition of "hazardous substances" on Page 3, Line 19, of the Bill].

**For purposes of the statute, hazardous substances shall involve only those materials stored in such quantities as causes an establishment to be a (a) hazardous waste generator, (b) facility which is required to report under §313 of SARA Title III, or (c) major facility for purposes of the Spill Discharge Prevention, Control and Countermeasure Plan regulations.**

If, in the alternative, the Legislature does intend "industrial establishment" to include all facilities with a subject SIC Major Group Number, then the nexus to hazardous substance or hazardous waste should be deleted as it is superfluous. Specifically, the words, "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," should be deleted from page 3 lines 36-39 of S-1070.

We do note as a technical correction that the current statute utilizes the term "special waste manifest." These manifests were used prior to the promulgation of the federal hazardous waste regulations in the early



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1980s. The definition of hazardous waste should be clarified and conformed to the regulations which appear under the Solid Waste Management Act and its implementing regulations, N.J.A.C. 7:26-1.1, et seq. Specifically, we suggest lines 31-34 on page 3 of S-1070 be deleted and replaced with the following definition of hazardous waste from the Solid Waste Management Act.

**"Hazardous waste" means any solid waste or combination of solid wastes, including toxic, corrosive, irritating, sensitizing, radioactive, biologically infectious, explosive or flammable solid waste, which poses a present or potential threat to human health, living organisms or the environment, provided that the solid waste is hazardous in accordance with the standards and procedures set forth at N.J.A.C. 7:26-8.**

3. Physical Extent. The existing regulation identifies "industrial establishment" as "all of the block(s) and lot(s) upon which the business is conducted and those contiguous block(s) and lot(s) controlled by the same owner or operator...". The statute should specify that ECRA obligations are limited to the affected areas alone and not all contiguous properties. Further, it should be clarified that the Department's interpretation of this definition to mean all property, owned or used by the same owner, within one fifth of a mile, is incorrect. Specifically, the following language should be added at line 43 on page 3 of S-1070.

**Except as provided for leased properties, the industrial establishment includes all of the block(s) and lot(s) upon which the business is conducted and those contiguous block(s) and lot(s) that are used in conjunction with such business. Industrial Establishment shall not include or interpreted to include all properties within a given geographic measurement.**

4. Condemnation. NJBIA supports Section 15 of the ECRA Reform Bill as it provides for a partial ECRA when only a portion of the property is subject to the condemnation. The procedures for appraisals in these cases should be flexible. That is, if the threshold

percentage for condemnation is established, one should not be required to establish the precise percentage for condemnation beyond the threshold amount. We suggest the following language be added to line 18, page 18 of S-1070.

**An appraisal is only required to establish the threshold value of two thirds and need not be more precise than two thirds if the threshold value is met.**

B. Transactions Subject to ECRA

The second prong of the ECRA applicability test is the triggering event. ECRA applies to industrial establishments only when they undergo a regulated transaction. The initial legislation regulated transfers, terminations, and closures of operations. Broadly analyzed, these transactions fall into two groups: transfers and terminations. In defining transfers, the statute covers "all transfers" and provided six non-exclusive examples. The NJDEPE, faced with this very general guidance, has chosen to apply ECRA to literally dozens of commercial and real property transactions. In fact, the current ECRA regulations identify 18 specific types of transactions subject to the statute as well as a similar number of exceptions. These policy judgments ought properly come from the Legislature. Accordingly, we suggest that the applicability of ECRA to the following types of transactions be statutorily confirmed:

1. ECRA Reform Bill, Section 1, **"Change in Ownership"**

The ECRA Reform Bill provides a list of five transactions which are defined as change in ownership. These five transactions should be specifically defined and quantified to clarify ECRA applicability. The following addresses each of the five areas and suggests alterative language for the Reform Bill.

**a. Sale or Transfer of the Business of and Industrial Establishment or any of its Real Property.**

Except as for the limited ECRA review provided in Section 10 of the ECRA Reform Bill, sale or transfer of a subject business or its real

property has been and should continue to be subject to ECRA.

**Suggested language to be inserted on Page 2, Line 33, of the Bill:**

**(1) Except as provided in Section 10, the sale or transfer of the business of an industrial establishment or any of its real property.**

**b. 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**

Transactions that do not themselves create a change in the ultimate control and ownership of the industrial establishment should be exempt. With focus on change in the ultimate control and ownership, fewer transactions should be subject and the rules should be simplified to make it clear which transactions are subject without the necessity of having the NJDEPE review each instance on a case-by-case basis.

Because the "control" is the key, not whether a merger or consolidation has occurred, this provision should be **deleted.**

**c. Sale or Transfer of Stock in a Corporation Resulting in a Change in the Person Holding the Controlling Interest in the Direct Owner or Operator or Indirect Owner of an Industrial Establishment.**

The public policy issue of when ECRA is triggered is to establish a critical point for an environmental analysis of a site. A change in the indirect owner of the property is not a critical point. As long as the direct owner does not change and the operator does not change, the property and the likelihood of resources for cleanup do not change. Hence, we suggest removal of any reference to indirect owners.

"Controlling interest" must be specifically defined to limit applicability. The current regulations contain an unworkable definition. We suggest the following definition of "controlling interest" be made part of the ECRA Reform Bill:

**Suggested language to be inserted in Section 1, of the Bill:**

**"Controlling Interest" means the interest held by a person owning more than 50 percent of the issued and outstanding stock of a corporation. It also means the interest held by a person who owns 50 percent or fewer of the issued and outstanding stock of a corporation and who possesses the power to direct the management and policies of a corporation.**

d. **Sale or Transfer of Title to an Industrial Establishment or the Real Property of an Industrial Establishment by Exercising an Option to Purchase**

As this provision only provides for an ECRA trigger when the option to purchase is exercised. Therefore, this provision is acceptable.

e. **Sale or Transfer of a Partnership Interest in a Partnership that Owns or Operates an Industrial Establishment that would Reduce by 10 Percent or More, the Assets Available for a Remediation of the Industrial Establishment**

Again, ECRA triggering should be specifically linked to a change in control and financial ability to remediate. Placing a 10 percent cut off on a partnership transfer is not logical. Ten (10) percent of the assets of one partnership could be 10 billion dollars where 90 percent of the assets of another partnership could be 10 dollars. ECRA triggers must be tied to change in control and ability to pay. We suggest the following language as an alternative:

**Suggested language to be inserted on Page 2, Line 45, of the Bill:**

**(5) the sale or transfer of the controlling interest in a partnership that owns or operates an industrial establishment that would reduce the assets available for a remediation to a point less than the estimated costs of a remediation.**

2. **"Change in Ownership" Shall Not Include**

The ECRA Reform Bill includes a list of four transactions specifically exempt from ECRA. We address each of these four exemptions and suggest changes where necessitated.

a. **Corporate Reorganization not Substantially Affecting the Ownership of the Industrial Establishment**

For the reasons stated above, we suggest the following language:

**Suggested language to be inserted on Page 2, Line 50, of the Bill:**

**(1) a corporate reorganization not substantially affecting the controlling interest of the industrial establishment.**

b. **Transaction or Series of Transaction...Where the Transaction Will Not Result in the Aggregate Diminution of the Net Worth...**

With regard to aggregating sales of assets, it would made it impossible to transfer good title to assets. There is almost no way for a buyer to ensure that any proposed sale would not have been aggregated with a previous sale, thus, creating a voidable title to those assets due to prior ECRA noncompliance.

How does the end purchaser, after a series of transactions affecting the industrial establishment, involving the transfer of stock,

assets or both, know whether an equal or greater amount in assets is available for the remediation of the industrial establishment before and after the transaction? ECRA may be triggered by the transaction without the knowledge of the buyer, and even, without the knowledge of the seller (who may also be unaware of what the status of the assets was at the beginning of the series of transactions).

What period is to be used in aggregating sales of assets? Other questions occur, such as, when are unrelated actions deemed to be related and unrelated persons aggregated? Should that be a determination made by the owner or operator; should that be something that the NJDEPE determines, or should the legislation define this?

We suggest this provision be **removed** as the first provision in this section addresses the controlling interest.

c. **Transaction or Series of Transactions Involving the Transfer of Stock, Assets or Both, Resulting in the Merger...of the Indirect Owner...**

For the reasons stated above, we suggest this provision be **deleted.**

d. **Transfers Between Members of the Same Family**

We support the exclusion of interfamily transfers from ECRA.

3. Closing Operations

a. With regard to closing operations; defined as meaning inter alia "cessation of all or substantially all." The NJDEPE has interpreted "substantially all" very broadly. The Legislature should quantify "substantially all" to reflect the type of closing of operations which should be of concern. Specifically, we suggest lines 7 and 8 of page 2 of S-1070 be deleted and replaced with the following

language.

**(1) the cessation of all or substantially all (substantially all shall mean a 95 percent reduction in employees and output) operations of an industrial establishment.**

b. Temporary Cessation. A temporary cessation, as the Legislation suggests, ought to be subject to the statute only when it extends for a period of more than two years. The wording as proposed appears to be somewhat awkward. We suggest that the phrase "not less" be deleted from line 10 on page 2 of S-1070 and replaced with the word **"more".**

Further, the conditions to prove cessation in current regulations are cumbersome. We suggest that the ECRA Reform Bill include the current regulations:

**i. The regulations at N.J.A.C. 7:26B-1.8(a) 7i. and ii. shall be amended to read as follows: In order to receive a letter of non-applicability, the owner or operator shall submit an affidavit attesting that the operations will be temporarily ceased as defined in the regulations.**

c. Non-Operation for Health or Safety Reasons. This ought not be a separate ECRA trigger. It would seem to suggest that ECRA ought to be separately applicable if, in fact, there is some health or safety reason for a cessation of any duration. We have two problems with this section. First, this implies that all other ECRA closures have nothing to do with health or safety and that the ECRA statute is not an environmental protection program. We think that the very concept that health or safety is a distinct and separate concern from the ECRA program is an implication that is illogical and inappropriate.

Secondly, if there is a very real health or safety concern, those concerns can and should be

dealt with under a variety of other programs, but ought not cause the ECRA program to be applicable.

Finally, a facility may become non-operation for health or safety reasons totally unrelated to any environmental concern. For example, a facility might be closed because a structural support was weak and needed to be replaced. While that is a safety closure, it ought not cause the facility to have to engage in an environmental investigation. Quite simply, if the facility is ceasing operations, there ought to be an ECRA obligation, but separately requiring an ECRA investigation for other conditions by which the facility becomes temporarily non-operational ought not separately and independently cause the statute to be triggered.

For these reasons we suggest the following language:

**Suggested language to be inserted on Page 2, Line 7, of the Bill:**

**(1) the complete closure of all operations of an industrial establishment for a period of two years, or more, by (a) voluntary act of the owner or operator thereof or (b) by a final judgement of a court of competent jurisdiction or regulatory authority, unless such judgement is duly stayed and appealed from; or**

**(2) the operations of the industrial establishment change so that its Standard Industrial Classification Number is one no longer subject to this Act.**

d. Initiation of Bankruptcy Proceedings;

This should be refined to reflect that it does not apply to Chapter 11, Reorganization, which usually does not necessitate "closing operations". Distinct from this would be

considerations under Chapter 7, Liquidation, which more usually implies a closing or cessation of operations.

Moreover, this category conflicts with paragraph (1) regarding cessation of all or substantially all operations. It would have a chilling affect on business if a company entering Chapter 11 in order to reorganize to continue operations was forced into an ECRA proceeding, the costs of which might actually force the company to liquidate and go out of business.

III. PROCESS

A. ECRA Reform Bill S-1070 introduces a new five-step ECRA process and eliminates the current two-step program. **Section 1, "Definitions"**, eliminates the terms "Sampling Plan" and "Cleanup Plan". Five new terms define the new five-step process: Preliminary Assessment; Site Investigation, Remedial Investigation; Feasibility Study; and Remedial Action Work Plan.

These five new terms outline a sequential process of investigation and remediation by the owner or operator of an industrial establishment. We suggest that the Legislature make two important policy clarifications. First, that this sequential process can proceed without specific individual approvals at each step by the NJDEPE. The reason for this is not to upset the NJDEPE's authority, but rather to encourage private parties to move forward with their investigation or remediation of contaminated sites without the inherent delays associated with NJDEPE approvals. In the past, the NJDEPE has on occasion interpreted its own authority as prohibiting private parties from moving sequentially through the process without approving every detail of each step. While this policy statement will not imply that the NJDEPE's judgment need not be required, it ought not be for each and every step of the way prior to final acceptance. We suggest that there be a statement that it is the intent of the Legislature that the NJDEPE ought to continue its development of flexible and cost-effective guidance and standards for site investigation and remediation. With this publicly-available, well-publicized and consistent

guidance, the Legislature can encourage the further privatization that the ECRA statute has always encouraged.

Second, there should be a statement that with regard to the use of any terms that have also been defined or used under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), the use of such term in the ECRA statute is merely coincidental. Use of such terms in ECRA should not be confused with their interpretation under federal law. Terms such as "Remedial Investigation" and "Feasibility Study" have specific meanings under CERCLA. Interpretation under CERCLA should have no precedent under ECRA and the legislative intent to such effect should be clearly stated.

We would also note that the NJDEPE has, in a number of locations, added to the term "release" or "discharge" the word "threatened." This provides the NJDEPE with very broad authority over many situations which might impact the environment. It must be remembered that ECRA is a remedial statute and is not meant to duplicate the spill planning and other preventative regulatory programs which the NJDEPE administers under other statutory authorization.

Accordingly, we suggest the following specific changes to the bill.

1. The following language be added to line 36 on page 6 , **"The department's review and approval authority shall not prohibit a party from conducting investigative or remedial activities in a timely manner."**

2. The following language be added to line 26 on page 6, **"The terms; preliminary assessment, site investigation, remedial investigation, feasibility study, and remedial action, shall be defined by this statute and are not to be confused with the terms as they may be defined in any other statute such as the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C.A. §9601 et seq."**

3. The word "threatened" be **deleted** throughout the statute as it refers to "releases" or "discharge".

B. ECRA Reform Bill, Section 2, Closure Notification

We support the standards of §2(d) of the bill which direct the Department's grant of Administrative Consent Orders ("ACOs"). These limitations are essential for the equitable treatment of those facilities which, because of business concerns, must seek ACOs.

C. ECRA Reform Bill, Sections 3-5, Municipalities

Pursuant to these sections, a municipality's foreclosure on an ECRA property does not relieve the former owner's obligation to clean up. Section 5 provides that if a municipality forecloses and cleans up the property, it is responsible for costs. Moreover, the original owner or operator is still held responsible.

Although these sections present good ideas regarding municipalities, we do not think these provisions go far enough. Specifically, it is still far too cumbersome for a municipality to foreclose. Accordingly, we propose that a municipality have the right to investigate the site without ECRA liability for the complete clean up. In addition, a municipality should have the right to transfer property without being subject to ECRA.

We further propose that a municipality have the right to initiate ECRA investigation, and in the event the costs become or are expected to become extreme, the municipality can secure and stop the process without further liability.

D. ECRA Reform Bill, Section 6, Off-site Access

ECRA Reform Bill, Section 6, gives the NJDEPE the right to order an ECRA complier to seek off-site access.

1. Off-site access should not be within ECRA as the original design was directed to cleaning up industrial sites. ECRA is not the framework within which the cleanup of contamination which may have spread to other sites should be addressed. Other statutes such as the Spill Act and CERCLA provide authority to address off-site contamination.

2. If, however, the Legislature deems that ECRA appropriately deals with off-site migration of contamination, then NJDEPE must have means to compel neighbors from whom the ECRA complier is seeking access, to give that access to the ECRA ordered party without extorting unreasonable terms.

   We are familiar with various situations whereby neighboring land owners to whose property has been or may have been contaminated have been in a position to require the ECRA complier to pay thousands of dollars to gain the right of access. Thus, not only does a business which is attempting to responsibly comply with ECRA have to underwrite the cost of cleanup, it also must deal with the often extortionate demands of those neighboring businesses.

3. There should be a "severance" mechanism in the event that an adjacent neighbor from whom access is sought adamantly refuses to grant access. In such an event, upon demonstration of reasonable good faith efforts to obtain access, closure of the ECRA process should not be delayed indefinitely while a stubborn neighbor is lobbied for access.

E. ECRA Reform Bill, Section 7, Deferral of Remedial Action Workplan [or Same Use Rule]

The concept of deferral of cleanup as articulated in this section is an admirable goal. However, the NJDEPE has refused to implement the deferral that exists under the current legislation, N.J.A.C. 7:26B-5.8, thus rendering this concept largely illusory. The NJDEPE's prior articulation that if the cleanup needs to be done, it needs to be done immediately; if it can be deferred, it does not need to be done at all, is one that probably makes a great deal of sense.

One exception, however, would relate to legitimization of the NJDEPE's approach for decontamination and decommissioning of the interior of facilities. In that circumstance, the NJDEPE has taken the position, we believe rightfully so, that decontamination and decommissioning is not needed unless the operations have ceased within the building. Codification of this concept, probably in the definition section defining decontamination and

decommissioning, is appropriate. We suggest the following definition of decontamination and decommissioning be added at line 19 on page 3 of S-1070.

**"Decontamination and Decommissioning" means the interior remediation of a facility conducted when the facility changes operations."**

F. ECRA Reform Bill, Section 8, Voiding

Section 8 of the ECRA Reform Bill retains the NJDEPE voiding provision for failure to submit a Negative Declaration or Cleanup Plan. The ECRA Reform Bill should eliminate the authority of the NJDEPE to void transactions. NJDEPE voiding has never been used, is punitive to only purchasers and is based on a failed policy. By elimination of the NJDEPE voiding power, the NJDEPE actually gives up nothing.

By eliminating voiding, the Legislature will overcome the problems this provision has caused for New Jersey business in the national financial community.

With respect to the right of a transferee to void a transaction, the ECRA Reform Bill should remain unchanged.

G. ECRA Reform Bill Sections 9-14, Expedited Review, Limited Site Review, Remediation in Progress and Ongoing Bureau of Underground Storage Tank Investigations, Low Environmental Concern Cases and Limited Conveyance.

Sections 9-14 of the ECRA Reform Bill provide general provisions which we applaud.

1. **Section 9 provides for expedited review where facilities have already been investigated pursuant to ECRA or pursuant to the act regulating the underground storage of hazardous substances and its implementing regulations.**

2. **Section 10 of the ECRA Reform Bill, which provides for limited site review, includes the same criteria as §9 which provides for expedited review.** We note, however, that the ECRA Reform Bill provision §10c provides that 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 Negative Declaration, as applicable, has been approved by the Department, or an Administrative Consent Order has been entered. This section should be amended with regard to the closure of operations. ECRA has never prohibited closure of an industrial establishment pending approval of a Negative Declaration or Cleanup Plan. Instead, ECRA merely requires that the statute be complied with when subject operations cease.

We suggest the words "close operations" be deleted from line 10 on page 14 of S-1070 and the following new section be added at line 15 on page 14.

**d. The owner or operator of an industrial establishment subject to the provisions of this section shall submit an Initial Notice within 10 days of the closing of operations.**

3. Section 11 of the ECRA Reform Bill appropriately sets forth the guidance for ECRA compliance at a site which is already in remediation.

4. Section 12 of the ECRA Reform Bill provides long overdue diplomatic recognition of the program regulating underground storage tanks. Where the only environmental concern at an industrial establishment relates to an underground storage tank already regulated pursuant to the Underground Storage Tank Act, the ECRA Reform Bill removes the duplicative requirement that a party obtain departmental approval of a Remedial Action Work Plan or a Negative Declaration or comply with an Administrative Consent Order pursuant to ECRA.

5. Section 13 of the proposed bill institutionalizes low-environmental concern cases. This process is a good idea to the extent NJDEPE is trying to expedite the process. However, applicants still must go through the whole process with consultants, attorneys and fees. This provision does not change the present law significantly.

6. Section 14 of the proposed bill provides for a conveyance of a portion of the real property on which an industrial establishment is situated without requiring a remediation of the entire industrial establishment. NJBIA supports this section as it acknowledges such transfers will facilitate conducting business in New Jersey and does not reduce the environmental protections provided by ECRA.

H. ECRA, Reform Bill, Section 16, Tenant Area Limitation

1. Section 16 of the proposed bill provides, in the case of a leasehold, that ECRA only applies to that area "under the exclusive current control of the tenant," not to common areas. NJBIA supports this section. A tenant can and should only be held accountable for areas it controls exclusively. This provision also eliminates overlapping ECRAs of common areas by multiple tenants and has NJBIA support.

I. ECRA Reform Bill, Section 17, Interim Response

The NJBIA acknowledges that this revision allowing for interim response action prior to NJDEPE approval of the action is helpful. We do note, however, that on Page 19 in line 8 of Section 17, the word "shall" is used to describe the NJDEPE's obligation to review compliance with applicable laws and regulations. We suggest that the word "may" be substituted.

J. ECRA Reform Bill, Section 18, Amnesty.

The NJBIA supports the concept of an ECRA amnesty. We would suggest that it be clarified that the amnesty relates to NJDEPE penalty and does not abrogate any of the rights between the parties under N.J.S.A. 13:1K-13(a), the provision that provides a cause of action in the transferee against the non-complying ECRA party.

We suggest the words **"by the department"** be added after the word "penalty" in line 26 on page 19 of S-1070. Further, we suggest the following sentence be added on line 33 on page 19 of S-1070.

**This provision shall not abrogate any rights between parties under N.J.S.A. 13:1K-13(a), the provision that**

**provides a cause of action in the transferee against the non-complying ECRA party.**

IV. ECRA REFORM BILL, SECTION 30, CLEANUP STANDARDS

A. Cleanup Standards

The NJBIA supports the NJDEPE's efforts earlier this year in adopting cleanup standards broadly applicable to all remediations in New Jersey. The NJBIA also supports Section 30 of the ECRA reform bill which would give statutory imprimatur to this effort. We do believe, however, that the Legislature should provide clear guidance to the NJDEPE for the development of these standards.

The proposed balancing of land surroundings, intended use of the property, potential exposure of a discharge, and surrounding ambient conditions are all criteria which the NJBIA supports.

We also believe, however, that the NJDEPE should be encouraged to consider not only the risk level, but also the routes of exposure for determining cleanup levels. In particular, the NJDEPE ought to be directed to take into consideration those routes of exposure in approval of remediations. The NJBIA's primary concern in the development of "New Jersey standards" is that the New Jersey standards not be more strict than standards utilized in other states.

Accordingly, we suggest the following be inserted on line 22 on page 31 of S-1070.

**It is the goal of this bill that nationally recognized or adopted standards be adopted by the State of New Jersey, and for contaminants that do not have nationally recognized or adopted criteria, the NJDEPE shall establish appropriate standards utilizing nationally recognized levels of risk and risk assessment methodology in determining the appropriate cleanup criteria for specific land uses.**

B. <u>Institutional Controls</u>

Section 30.b. of the bill prohibits the NJDEPE "as a condition of allowing a differential cleanup standard based

on intended use, require the owner of that property to restrict the use of that property through the filing of a deed covenant, condition, or other similar restriction. Where the department provides for differential cleanup standard based on the intended use of the property, it shall, as a condition of permitting a remediation to occur that would leave contamination at the property at levels or concentrations above the most protective standards established by the Department...agree to restrict the use of the property in a manner that prevents exposure; (2) require the recording with the office of the county recording officer in the county in which the property is located, a notice designed to inform prospective holders of an interest in the property that contamination exists or the property...(3) require a notice to the governing body of each municipality in which the property is located...."

We believe that this form of provision does not achieve the goals it purports to seek and has a number of unintended negative side effects. The goal of the recording provision is, as we understand it, (a) to protect those who might be exposed to contamination, (b) to inform purchasers, and (c) to require maintenance of any institutional control.

Recording, as has been specified, does not protect those that might inadvertently disrupt a cap. Generally, utility crews and other excavating contractors do not search land records of a county prior to conducting work. They do, however, generally obtain building or construction permits. We would strongly suggest that in order to protect potential users of the property, the recording ought to occur at the local building and/or health department level.

As to potential purchasers, we believe that they are appropriately notified of the potential conditions at the property under N.J.S.A. 13:1K-9(b)(2) of the original ECRA legislation which provides that a copy of the cleanup plan must be attached to the contract of sale. This provision should remain as in the original statute. Accordingly, notifying purchasers separately through the land records is unnecessary and duplicative.

As to the requirements to maintain a cap, these are obligations that indeed ought to run with the property. We understand that the NJDEPE has urged that this justifies the use of deed restrictions or notices. We note, however,

that there might be at most 1,000 to 2,000 facilities that might ever have such a restriction; however, there are an excess of 50,000 facilities with underground storage tanks. Those facilities are not required to include in their land records the fact that there is an underground storage tank at the facility, nor is it required that a full copy of the underground storage tank regulations be recorded in the land records for each underground storage tank. Indeed, it is a regulatory obligation that runs with the property. The state has not seen fit to interject itself in the relationship between owners and operators of property where an underground storage tank has been installed, nor has it seen fit to require that those obligations be recorded in the land records. Rather, it is a regulatory obligation that goes with the regulated unit. Accordingly, to the extent the NJDEPE approves a remediation, that obligation is and ought to run with the land. To the extent that an owner and operator of a property have a disagreement as to the proper remediation of the property, those issues can and ought to be resolved in private litigation between the parties.

The unintended side effects that recordation causes are several. First and foremost, recording issues in land title has caused inappropriate overvaluation of uncertainty by those financing property and has had a chilling effect on conveyances. We have also found that the NJDEPE's requiring deed notices or deed restrictions which can only be entered by the owner of the real property has given landlords a very strong hand in extorting large sums of money from their tenants.

It is not unusual that a tenant become subject to ECRA because of the change in ownership of the corporation which leases and operates on the property. In order to be able to consummate a nationwide corporate transaction, it has to enter an Administrative Consent Order and post large financial assurance. Through the ECRA investigation, ancient contamination is discovered, contamination which it did not cause and predates its tenancy. As a condition of ECRA approval, the NJDEPE is taking the position that the urban property must be returned to residential cleanup levels unless a deed notice or deed restriction is entered. In many circumstances, landlords in this situation have presented their tenants with the option of paying an extortionate sum in order to "buy" a deed notice or

restriction and avoid remediation of this ancient contamination.

These have not been isolated incidents and have contributed to the horror stories that have given the ECRA statute and New Jersey a bad name. The ECRA Reform Bill should prohibit deed restriction and deed notice. Accordingly, we suggest lines 47-54 on page 31, and lines 1-32 on page 32 be deleted and the following language be inserted at line 47 on page 31:

**(c) Where restrictive use conditions of a property as provided in subsection b. of this section or no longer required, the Department shall, upon written application by the owner or operator of that property, record with the office of the county recording officer a notice that the use of property is no longer restricted. The Department shall also notify in writing, the municipality in which the property is located of the removal of the restrictive use conditions.**

C. ECRA Reform Bill, Section 31, Ecology Advisory Task Force

1. NJBIA supports the establishment of the Ecology Advisory Force to develop standards for the protection of special ecological receptors. As this area has not been studied fully to date, setting of standards now, (as proposed by NJDEPE in the Cleanup Standards for Contaminated Sites Proposed New Rules: N.J.A.C. 7:26D, dated February 3, 1992) would be premature.

V. Other Issues

A. ECRA Reform Bill, Section 32, Spill Report Amnesty

Section 32 provides a one-year amnesty from fines and penalties for failure to notify for spills. Only if the person enters into an ACO or MOA with the Department.

Amnesty makes sense but it should not be conditioned upon one's ability to clean up. No where else is spill reporting tied to liability. The proposed bill should facilitate and encourage people to report spills.

On behalf of the NJBIA, I thank you for this opportunity to provide these comments on S-1070/A-1727. If you have any questions, or if we might provide any further insights, please let us know. We look forward to providing separate testimony on Sections 20-29 in a separate hearing.

**MARK L. MANEWITZ**
**COMMENTS ON SENATE BILL NO. 1070**
**OCTOBER 5, 1992**

My name is Mark L. Manewitz and I am admitted to the practice of law in New Jersey and head of the Environmental Law practice of Clapp & Eisenberg in Newark, New Jersey. My comments represent my own opinion and analysis and are not on behalf of any organization or client. I support S.1070 both in its concept and its structure as a substantial step forward for the State of New Jersey's business community. S.1070 clarifies and cures a number of difficult issues which have troubled lawyers and clients since the effective date of The Environmental Cleanup Responsibility Act (P.L.1983,c. 330) (hereinafter "ECRA").

The Department of Environmental Protection and Energy has been called upon to fill in missing details under ECRA which were not anticipated by the authors of the original statute. This amendment clarifies a number of the issues in the same fashion that the Department of Environmental Protection and Energy interpreted ECRA. That codification of guidance is helpful.

The principal improvement of S.1070 is the elimination of the double funding aspect of ECRA. Under S.1070 New Jersey industry will no longer have to fund the full cost of cleanup in a guarantee of performance and then finance ECRA cleanups out of a separate source of funds.

Today New Jersey and the nation are in an economic downturn. There is an awareness throughout the country that two heads of business cannot shake hands on a deal and have an

assurance it will be accomplished in a reasonable period of time if the deal involves transfer of New Jersey assets covered by ECRA. That perception may be favorably changed by these amendments.

Tonight I will address four aspects of Senate 1070. My first comment is on the technical details of the financial tests required for a person to self guarantee a cleanup funding source. Second, I suggest a change in language of Section 16 of S. 1070, to avoid problems in owner/tenant provisions under Section 16. Third, I comment on some of the concerns which industry has expressed about the risk assessment provisions provided in new Section 30 of the statute. Last I will comment on the amnesty provision.

**Self Assurance of a Funding Source**

S.1070 uses terms with respect to its financial tests that have in the past posed some difficulties. I note that under Subsection E, Section 21 which appears at page 24, line 16, a self guarantee may be approved by the Department where the cost of the remediation as estimated in the remedial action workplan or in the administrative consent order does not exceed "one-third of the tangible net worth" of the person required to establish a funding source. S.1070 goes on to require the person have cash flow and liabilities sufficient to assure the availability of funds for the work (pg. 24, line 21-24). Tangible net worth is not necessarily a desirable test for many corporations which have gone through recapitalization or a leveraged buy out. Those organizations, due to their financial leverage, may have tangible net worth which is

negligible, yet they would certainly have sufficient funds, cash flow and availability of monies to do remediation. I recommend consideration be given to deleting the one-third tangible net worth requirement and in favor of "one-third of net worth" test. I have included the definitions from the DEPE regulations as an exhibit to this testimony to illustrate the difference.

By changing the tangible net worth requirement to net worth, you are allowing leveraged companies to include such intangible assets in their net worth such as goodwill and the rights to patents and royalties. This is a significant addition to the assets and would enable a number of credit worthy entities to qualify for the requirements of a self guarantee cleanup funding source. There is a trade off, as there is with most things. New Jersey would be taking a risk that such companies do not have assets which are easily reducible to cash for purposes of collecting monies to complete cleanups. This risk, however, is somewhat lessened by the creation of the loan fund which makes available loans should the company no longer meet the requirements for a self guarantee funding source. Changing this test, I believe, will reduce the demand for loans and increase the amount of cleanup that will be done without resorting to the fund.

**OWNER/TENANT (SECTION 16)**

With your permission, I would like to address Section 16 which addresses the relationship between owners and tenants. As now drafted, I believe this section would be a very serious

continuing problem for New Jersey industry. The sentence on page 18 of the S.1070, lines 26 through 42 of Section 16 represent a considerable trap for the unwary. In effect, once there has been an ECRA transaction concerning a tenant of a property there is a continuing ECRA responsibility for the owner for that property, whether or not it is an industrial facility at the time the owner sells, closes or abandons the property. This would be a very, very tough pill for New Jersey to swallow. The concern of DEPE, I believe, is for hazardous discharges not addressed by landlords and tenants. I suggest that the scope of the ECRA assessment be based upon the existing New Jersey law with respect to spills. The Spill Act, N.J.S.A. 58:10-23.11, et seq., provides for persons who maybe subject to liability for a discharge whether a current discharge or historical in nature, are required to notify the Department. Failure to notify is a violation which is substantially penalized. If there are reportable spills with respect to the subject property, which were not caused by the tenant, then it would be an appropriate time to address all of the environmental concerns about a property whether related to the tenant's leasehold or common areas.

A property owner may not be prepared financially to assess and remediate a property because costs may be incurred at a time when funds are not available from the sale of the property. Certainly one of the merits of ECRA is that often cleanup is being done at a time when funds are available due to the sale of the property. By making timing of ECRA review the owner's option, the

DEPE can be assured that funds are likely to be available when the work is to be done. There is no change, however, in the owner's continuing responsibility under the Spill Act. A reportable spill must be addressed and cleanup is required whether or not the property is subject to ECRA.

Creating potential ECRA triggers which are not apparent for the unwary to stumble over is not the best practice for New Jersey. In the long run it is better for the transferability of property for all issues to be addressed at one time with clear tests for later triggers. Confidence of the business community will be improved when persons acquiring property can be certain there are no hidden ECRA triggers about which they have to be worried. Simpler is better.

**Risk Assessment**

One of the greatest concerns by environmental groups, government and industry alike, is "how clean is clean." Risk assessment is the basis of making that determination.

The plain facts are that there is less health risk to the public from an industrial establishment than there is to a family at its residence. There are sound environmental and health based reasons why the cleanup standards for industrial properties in an inner city can reasonably be set at levels substantially less than those cleanup standards required for residential property. Some would urge that there be latitude allowed to argue on behalf of industry that a level of risk for industrial property be accepted

more than that which would be required for a residence. The risk ought to be reviewed on a case-by-case basis. The concern is that the language of S.1070 which deals with those issues at Section 30 (page 30, line 43) is going to result in (at best) the same difficult standards which New Jersey now applies, or (at worst) standards will be more difficult and expensive to meet. S.1070 could provide a range risk assessment between one in ten thousand and one in a million for a judgment to be made about residential or industrial cleanup standards. The language in S.1070 which is found in Section 30 page 31 at line 13 "the maximum extent practicable" when the standard use to judge the cleanup standards is troublesome. The Chemical Industry Council of New Jersey (CIC) has drafted substitute language which is worthy of consideration.

It is reasonable to expect that some industrial property will be developed for residential purposes. Many previously industrial properties in New Jersey and around the country, in particular at waterfronts of major cities have been developed. New Jersey has a great deal of undeveloped waterfront which can be developed that was used by industry.

I believe that S.1070 can meet the industry concern by incorporating the CIC's language as to a range of risk assessment with one additional requirement. That requirement would be that the risk assessment standard has to take into account not only current use, but a reasonably anticipated future use of the property. If an industrial property was being cleaned up under ECRA and was in a redevelopment zone designated for mixed use or

residential use of the property, a higher level of cleanup standards could be required by DEPE. Industry would have the burden of analyzing the use to make the case for lower cost cleanup standards. I understand that the Chemical Industry Council has proposed an amendment of S.1070 to set the risk assessment test at one in ten thousand, with a rebuttable presumption of validity. The CIC approach is worthy of consideration. Care should be taken that the risk assessment analysis meets with the generally accepted methods used to do such assessments. Further, the assessment should be done by persons who have the knowledge and expertise to do a professional risk assessment.

**Amnesty**

ECRA has been a complex statute to administer with substantial penalties for noncompliance. Amnesty is an outstanding idea. After amendment, start with a clean slate. I recommend the amnesty date coincide with the effective day of S.1070.

Respectfully submitted,

Mark L. Manewitz

October 5, 1992

**New Section 16**

16. (New section) Where the closure of operations or the transfer of ownership or operations of an industrial establishment by an owner or operator who is a tenant requires compliance with P.L. 1983,c.330, the area of the industrial establishment subject to the provisions of P.L. 1983, c.330 shall be limited to that area under the current control of the tenant pursuant to a lease or other agreement, and any areas of common use not under the tenant's control, for which the tenant is a person responsible for a discharge pursuant to N.J.S.A. 58:10-23.11e (whether or not reported). The area under current control of the tenant shall not include any area of common use among more than one tenant if no discharge has occurred for which the tenant is responsible. The area under current control of the tenant may include areas in which the landlord has access in the capacity as a landlord. In the event that an owner or operator of an industrial establishment receives a negative declaration or remedial action workplan approval for the area under the tenant's current control pursuant to this section, and there is a discharge pursuant to N.J.S.A. 58:10-23.11e for which the tenant is not responsible in those areas of the industrial establishment not included in the negative declaration or remedial action workplan, then the subject property shall at the option of the owner either immediately be subject to all of the requirements of P.L.1983,c.330(C.13:1E-9) or subject to those requirements at the time of the closure of operations or transfer of ownership of operations by the owner.

**DEFINITIONS OF TANGIBLE NET WORTH**
**ATTACHMENT TO TESTIMONY OF MARK L. MANEWITZ**
**OCTOBER 5, 1992**

**N.J.A.C. 7:26-9.10(c)**

(c) The following terms are used in the specification for the financial tests for liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

1. "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

2. "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

3. "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

4. "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

5. "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

6. "Net working capital" means current assets minus current liabilities.

7. "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

8. "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

**N.J.A.C. 7:26B-6.5(b)**

(b) A corporate owner or operator may qualify for self-bonding only if it meets the following financial test:

1. The approved cleanup plan cost estimate or financial assurance amount specified by an ACO is less than or equal to five percent of tangible net worth;

2. The corporation has net working capital at least six times the approved cleanup plan cost estimate or six times the financial assurance amount specified by an ACO;

3. The corporation has assets located in the United States amounting to at least 90 percent of total assets or at least six times the approved cleanup plan cost estimate or six times the financial assurance amount specified by an ACO;

4. The ratio of net worth to total liabilities is greater than 0.5;

5. The ratio of current assets to current liabilities is greater than 1.5; and

6. The ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities is greater than 0.1.

**State of New Jersey**
**Department of Environmental Protection and Energy**
Site Remediation Program
CN 028
Trenton, NJ 08625-0028
Tel. # 609-292-1250
Fax. # 609-633-2360

[illegible] A. Weiner
[illegible]ommissioner

Lance R. Miller
Assistant Commissioner

October 5, 1992

Dear Chairman McNamara and Chairman Rooney:

At the request of Assemblyman Smith, I am enclosing a summary of the Environmental Cleanup Responsibility Act (ECRA) total program accomplishments for the record.

I hope that you will find this information interesting and informative.

Sincerely,

Lance R. Miller

c: Senator Corman
Senator Adler
Senator Bassano
Senator Rice
Senator Sinagra
Assemblyman Oros
Assemblyman Albohn
Assemblyman Impreveduto
Assemblyman Russo
Assemblyman R. Smith
Assemblywoman Wright

# TOTAL PROGRAM
## ACCOMPLISHMENTS

- 8,194 Applications Filed
- 5,690 Negative Declarations Approved
- 857 Cleanup Plans Approved
- 475 Completed - $89.4 Million to Complete
- 379 In Progress - Estimated $443.6 Million to Complete
- 1,288 Completed "At Peril" Cleanups - $58.7 Million to Complete
- 1,395 Administrative Consent Orders - $642.8 Million in Financial Assurance
- 35,175 Letters of Non-Applicability Issued

ECRA - 6/30/92

# FLUID SYSTEMS INC.

25 Greenbrook Road, Fairfield, New Jersey 07004
Fax: 201-226-1348 • Telephone: 201-226-0200

October 5, 1992

OFFICE OF LEGISLATIVE SERVICES
OCT 5 2 34 PM '92

I wanted very badly to testify on the bill to amend "ECRA". My company had a serious emergency causing me to leave town on October 5, 1992. If possible I would like to testify through this letter by having the letter read at the hearing.

My name is George Koury, I live at 247 Ellin Drive in Park Ridge, New Jersey. In 1985 I was the President of the Modular Systems Division of Warren Pumps.

Modular Systems was located in Rockaway, N.J. Warren Pumps is located in Warren, Mass. Modular Systems employed 50 people and was in the business of manufacturing refinery type equipment. Warren Pumps offered to sell me the division late in 1985. When I went to obtain bank financing it was determined that Warren Pumps and Houdialle Industries had not filed for ECRA when Warren Pumps did their buy out from Houdialle Industries in early 1985. None of the company's involved were aware of New Jersey's ECRA law. Warren Pumps and Klockner Co., the people who owned the factory building filed for ECRA in early 1986. The procedure took so long that in July of 1986 Warren Pumps closed Modular Systems and laid off all the people.

I believe the intent of ECRA is a good one and I am also hopeful that the law will be amended so small company's can meet the requirements of the law without going out of business.

If more information about my situation is desired I would be pleased to give it in person or in writing at a future date.

Sincerely,

George Koury
President

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Chevron

**COMMENTS ON PROPOSED SENATE BILL NO. 1070 STATE OF NEW JERSEY INTRODUCED JULY 23, 1992 BY SENATORS McNAMARA, RICE, DiFRANCISCO AND DORSEY**

**COMMENT #1 - RCRA CORRECTIVE ACTION EXEMPTION**

**[ADD NEW SECTION __ TO APPEAR AFTER LINE 39 ON PAGE 8]**

"Any industrial establishment that has a legal obligation to undergo corrective action pursuant to the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6926, et seq., is exempt from this act provided, adequate financial assurance is maintained to insure that RCRA Corrective Action requirements are implemented. A legal obligation to undergo RCRA Corrective Action exists whenever an industrial establishment is subject to the requirements of either RCRA 3004(u) or RCRA 3008(h)."

**[SECTION 9 (2) ON PAGE 12]**

Should be revised in part to read: "(2) a certification that for the industrial establishment, RCRA Corrective Action has been completed pursuant to a RCRA Permit or Order, a remedial action workplan....."

**[SECTION 9 (3) ON PAGE 12]**

Should be revised in part to read: ".....in order to identify areas of concern that are new or have continued in use since the completion of RCRA Corrective Action, the issuance of a no further..... subsequent to the completion of RCRA Corrective Action, the approval of the negative declaration....."

**[SECTION 9 (5) ON PAGE 12]**

Should be revised in part to read: "(5) a copy of the RCRA Permit or Order, the negative declaration....."

**[SECTION 10 (2) ON PAGE 13]**

Should be revised in part to read: "(2) a certification that for the industrial establishment, RCRA Corrective Action has been completed pursuant to a RCRA Permit or Order, a remedial action workplan ....."

**[SECTION 10 (3) ON PAGE 13]**

Should be revised in part to read: ".....in order to identify areas of concern that are new or have continued in use since the completion of RCRA Corrective Action, the issuance of a no further..... subsequent to the completion of RCRA Corrective Action, the approval of the negative declaration....."

**[SECTION 10 (4) ON PAGE 13]**

Should be revised in part to read: "(4) a copy of the RCRA Permit or Order, the negative declaration....."

**[SECTION 10 (5) ON PAGE 13]**

Should be revised in part to read: ".....that has changed since the completion of RCRA Corrective Action, the last departmental ....."

**[SECTION 19 (b) ON PAGE 19]**

Should be revised in part to read: "b. An industrial establishment for which RCRA Corrective Action has been completed pursuant to a RCRA Permit or Order, a remedial action workplan....."

The legislature in the original ECRA Statute showed their desire to prevent duplicative regulation by exempting units or areas which were covered by cleanup or closure requirements under existing statutes. Solid waste units subject to closure requirements under the New Jersey Solid Waste Management Act were exempt from ECRA. This serves as a precedent. The RCRA Hazardous and Solid Waste Amendments (HSWA) of 1984 (which include RCRA-CA) were not in effect at the time of the original ECRA legislation.

Dual regulation is burdensome to the regulated community, serves little or no useful purpose and usually inhibits the remedial process. The minimal or minor environmental benefit, if any, is outweighed by the burdensome costs of dual regulation.

There will be little or no incremental environmental benefit to require ECRA enforcement after RCRA-CA. A facility subject to RCRA-CA will undergo remediation in accordance with the NJDEPE proposed cleanup rules. These proposed regulations require a thorough site evaluation and cleanup process. They also set the same cleanup criteria for both programs. The additional costs to comply with the administrative requirements of ECRA will result in little or no environmental benefit.

A RCRA-CA exemption from ECRA would also result in a more efficient operation of the NJDEPE, in that, only one case manager needs to be involved. This would not be the case where dual regulation applies. RCRA-CA must take place to meet the requirements of the federal RCRA. The state cannot exempt facilities which have gone through ECRA from going through RCRA-CA.

Any industrial establishment that has completed RCRA-CA prior to triggering the provisions of ECRA should be exempt from the ECRA process provided subsequent unremediated releases have not occurred.

**COMMENT #2 - CLARIFICATION ON SIC CODE CHANGE FROM ECRA TO ECRA**

**[ADD NEW PARAGRAPH TO APPEAR AFTER LINE 31 ON PAGE 2]**

"Transferring ownership or operations shall not include any change by the owner of an industrial establishment in the operations of an industrial establishment that changes the industrial establishment's Standard Industrial Classification number to one that is also subject to this act."

While the existing ECRA Regulations would appear to imply the above it has not been the case in actual practice. The regulated community should have the flexibility to make prudent and often times necessary operational decisions without fear of triggering ECRA. The fierce competition in the marketplace coupled with the difficult economic times most industries are facing underscore the need for this flexibility.

**COMMENT #3 - MANDATE FOR INCLUSION BY NJDEPE OF SPECIFIC TIME FRAMES FOR NJDEPE TO COMPLETE REVIEW OF DOCUMENT SUBMITTALS**

**[SECTION 5. a. ON PAGE 10]**

Should be revised in part to read: "..... any other review or approval required by the department; specific time frames within which the department must complete its review of any submittals made by the owner or operator of an industrial establishment pursuant to the requirements of this act; and any other provisions or procedures necessary....."

Delays in review may result in adverse economic impacts to the regulated community which make it essential that the Department respond to all submittals in a prompt, complete and efficient manner.

**COMMENT #4 - GRANDFATHER PROTECTION FOR PREVIOUSLY APPROVED REMEDIATION PROJECTS**

**[ADD NEW PARAGRAPH h. TO APPEAR AFTER LINE 38 ON PAGE 8]**

"h. Industrial establishments which have approved ECRA plans or remediation projects shall be exempt from the provisions of this section as well as any future ECRA amendments."

**[NEW SECTION 30 LINE 38 PAGE 32]**

Should be revised in part to read: "..... that were in effect at the commencement of the remedial action or at the time of the approval of the remedial action workplan, whichever occurs first,

the owner or operator of the property....."

Industrial establishments which have begun investigations or remediations under an existing ACO, permits or other regulatory document prior to the effective date of this act should be able to complete the work under the existing regulatory document. It will be overly burdensome, and serve no useful purpose to require industrial establishments which have already begun investigations or remediations to "revisit" their site, basically restarting from "ground zero". Our concern is that previous remediation work may be deemed worthless if ECRA is modified to include more stringent standards. The regulated community needs to be protected from moving goals and targets.

**COMMENT #5 - CLARIFICATION ON NON-ECRA TRIGGER INTER-COMPANY TRANSFERS**

**[REPLACE THE PARAGRAPH COMMENCING ON LINE 52 OF PAGE 2]**

"(2) a transaction or series of transactions involving the transfer of stock, assets or both, among corporations under common ownership, where the transactions will not result in a diminution of assets available for the remediation of the industrial establishment before and after the transactions,"

The regulated community needs to have the business flexibility to implement inter-company property transfers without fear of triggering ECRA. The proposed three criteria test creates an unnecessary impediment to the desired business flexibility which could be alleviated by the elimination of the first two criteria. The result would be a single criteria test which addresses the real underlying concern of not diminishing the amount of available assets for remediation of the industrial establishment.

**COMMENT #6 - EXPEDITED INDUSTRIAL ESTABLISHMENT AND REAL PROPERTY TRANSFER**

**[ADD NEW PARAGRAPH 6.d. TO APPEAR AFTER LINE 32 ON PAGE 11]**

"d. The department may in appropriate cases defer compliance with subsections 6.a.(2) through (4) of this section until after completion of the transfer of ownership of the industrial establishment and its real property where the department is satisfied that both the buyer and seller are financially responsible and have provided adequate financial assurance to address remediation of the site, if necessary."

This provision would facilitate an expedient transfer of property between known financially responsible parties without compromising

the public interest. The regulated community needs the flexibility in appropriate cases to eliminate red tape delays. Such delays in certain cases serve no useful purpose and could very well prevent an otherwise beneficial transaction from happening.

**COMMENT #7 - EXPANSION OF NOTIFICATION TIME FRAME**

**[SECTION 4. a. ON PAGES ~~2~~ 5 & ~~3~~ 6]**

Should be revised in part to read: "..... notify the department in writing, no more than thirty days subsequent to closing operations or of its public release of its decision to close operations, whichever occurs first, or within thirty days after the execution of an agreement....."

The ECRA and real estate transaction process is not moving so quickly that a five day notification is necessary.

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Legislative Viewpoint

NEW JERSEY STATE LEAGUE OF MUNICIPALITIES
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JOHN E. TRAFFORD, Executive Director
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STATEMENT BY WILLIAM G. DRESSEL, JR.
ASSISTANT EXECUTIVE DIRECTOR
NEW JERSEY STATE LEAGUE OF MUNICIPALITIES
ON A-1727/S-1070
BEFORE THE JOINT SENATE ENVIRONMENT AND
ASSEMBLY ENERGY AND HAZARDOUS WASTE COMMITTEE
MONDAY, OCTOBER 5, 1992
AUDITORIUM OF THE BERGEN COUNTY TECHNICAL SCHOOL
TETERBORO, NEW JERSEY

THANK YOU SENATOR MCNAMARA, ASSEMBLYMAN ROONEY AND MEMBERS OF THE JOINT COMMITTEE FOR THE OPPORTUNITY TO PRESENT TESTIMONY ON BEHALF OF THE LEAGUE OF MUNICIPALITIES.

LET ME BEGIN BY AFFIRMING THE LEAGUE'S COMMITMENT TO ADDRESSING THE COMPLEX PROBLEMS ASSOCIATED WITH HAZARDOUS SITE REMEDIATION IN NEW JERSEY. THIS ISSUE HAS SURFACED IN RECENT TIMES AS ONE OF CRITICAL IMPORTANCE; AND FAIR AND EQUITABLE SOLUTIONS TO THE PROBLEMS SURROUNDING THE ISSUE ARE NECESSARY TO PROTECT THE ENVIRONMENTAL AND ECONOMIC INTERESTS OF EVERYONE LIVING IN THE GARDEN STATE. WE ARE, OF COURSE, PARTICULARLY CONCERNED WITH PROTECTING THE INTERESTS OF LOCAL GOVERNMENT, BECAUSE THE SUCCESS OF ANY AND ALL SOLUTIONS WILL DEPEND ON A BALANCED DISTRIBUTION OF RESPONSIBILITY ON PUBLIC AND PRIVATE ENTITIES; AND WE DO NOT WANT TO SEE LOCAL GOVERNMENTS FORCED TO SHOULDER A DISPROPORTIONATE AMOUNT OF LEGAL RESPONSIBILITY FOR SITUATIONS OVER WHICH THEY HAVE LIMITED CONTROL.

HAVING THUS PREFACED MY COMMENTS ON A-1727/S-1070, I CANNOT, REGRETTABLY, GIVE YOU THE THOROUGH AND DETAILED ANALYSIS ON THIS LEGISLATION THAT I SO VERY MUCH WOULD LIKE TO PROVIDE. THOUGH WE HAVE MADE EVERY EFFORT TO COORDINATE COMMENTS FROM OUR MUNICIPAL CONSTITUENTS SINCE WE WERE FIRST

APPRISED OF THIS MEETING ON WEDNESDAY, SEPTEMBER 30, WE HAVE BEEN UNABLE TO EXTRACT MORE THAN A GENERAL THOUGH DEEP-SEEDED CONCERN WITH THE BILLS.

BRIEF PRELIMINARY DISCUSSIONS WITH OFFICIALS FROM TRENTON AND PATERSON HAVE INDICATED THAT A-1727/S-1070 WOULD CAUSE MORE PROBLEMS FOR OUR URBAN MUNICIPALITIES; AND THAT THEY WOULD RECEIVE INADEQUATE PROTECTION UNDER THE CURRENT PROPOSAL.

AT THIS TIME, WE HAVE QUESTIONS REGARDING HOW MUCH MONEY WOULD, IN FACT, BE AVAILABLE TO MUNICIPALITIES UNDERTAKING REMEDIATION EFFORTS. WE FEEL LOCAL GOVERNMENTS NEED MORE DIRECT ACCESS TO THE SPILL FUND; BUT THAT IS NOT PROVIDED FOR. WE FURTHER BELIEVE REQUIRING FINANCIAL ASSURANCE FROM MUNICIPALITIES IS UNNECESSARY; BUT THAT HAS YET TO BE ADDRESSED. CURRENT LANGUAGE RELATING TO SITE USE RESTRICTIONS NEEDS CHANGE TO AFFORD MORE LOCAL INPUT; AGAIN, THIS NEEDS TO BE INCORPORATED INTO THIS LEGISLATION. I WANT TO MAKE ONE THING VERY CLEAR: REDEVELOPMENT IN INDUSTRIAL AREAS SHOULD NOT BE ALTOGETHER IMPEDE BY ECRA.

THESE ARE BUT A FEW, ADMITTEDLY GENERAL, CONCERNS WE HAVE WITH THE BILLS YOU ARE CONSIDERING THIS EVENING. JUST WEDNESDAY, OUR LAND USE, ENVIRONMENT AND COMMUNITY DEVELOPMENT COMMITTEE REVIEWED THE LEGISLATION FOR THE FIRST TIME. OUR COMMITTEE REFERRED THE BILL TO LEAGUE COUNSEL FOR REVIEW, SO THEY CAN CAREFULLY SCRUTINIZE ITS IMPACT FROM A LEGAL PERSPECTIVE. REST ASSURED WE WILL COME FORTH WITH SUBSTANTIVE INPUT AS SOON AS POSSIBLE.

IN THE MEANTIME, I RESPECTFULLY REQUEST THAT YOU HOLD THESE BILLS UNTIL THAT TIME DURING WHICH MUNICIPALITIES CAN PROVIDE THE INPUT I KNOW YOU ARE

SEEKING. I APOLOGIZE FOR NOT BEING ABLE TO CONTRIBUTE THAT INPUT TONIGHT, BUT GIVEN THE OPPORTUNITY, WE WILL BE WORKING WITH ALL INTERESTED PARTIES TO ACCOMPLISH THE MUTUALLY DESIRABLE GOAL OF ADDRESSING THE MYRIAD PROBLEMS ASSOCIATED WITH HAZARDOUS SITE REMEDIATION.