

P.L. 2005, CHAPTER 223, *approved September 15, 2005*
Senate, No. 277 (*Third Reprint*)

1 **AN ACT** concerning the remediation of contaminated sites, and
2 amending and supplementing P.L.1993, c.139.

3

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

6

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

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

11 "Area of concern" means any location where contaminants are or
12 were known or suspected to have been discharged, generated,
13 manufactured, refined, transported, stored, handled, treated, or
14 disposed, or where contaminants have or may have migrated;

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

17 "Brownfield development area" means an area that has been so
18 designated by the department, in writing, pursuant to the provisions of
19 section 7 of P.L. , c. (C.) (now in the Legislature as this bill);

20 "Brownfield site" means any former or current commercial or
21 industrial site that is currently vacant or underutilized and on which
22 there has been, or there is suspected to have been, a discharge of a
23 contaminant;

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

29 "Department" means the Department of Environmental Protection;

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

34 "Engineering controls" means any mechanism to contain or stabilize
35 contamination or ensure the effectiveness of a remedial action.
36 Engineering controls may include, without limitation, caps, covers,
37 dikes, trenches, leachate collection systems, signs, fences and physical

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SEN committee amendments adopted November 15, 2004.

² Assembly AEN committee amendments adopted May 19, 2005.

³ Assembly ABU committee amendments adopted June 23, 2005.

1 access controls;

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

4 "Financial assistance" means loans or loan guarantees;

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

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

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

26 "Person" means an individual, corporation, company, partnership,
27 firm, or other private business entity;

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

40 "Recreation and conservation purposes" means the use of lands for
41 beaches, biological or ecological study, boating, camping, fishing,
42 forests, greenways, hunting, natural areas, parks, playgrounds,
43 protecting historic properties, water reserves, watershed protection,
44 wildlife preserves, active sports, or a similar use for either public
45 outdoor recreation or conservation of natural resources, or both;

46 "Remedial action" means those actions taken at a site or offsite if

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

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

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

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

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

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

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

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

46 "Site investigation" means the collection and evaluation of data

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

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

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

15 (cf: P.L.2001, c.154, s.3)

16

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

19 26. a. There is established in the New Jersey Economic
20 Development Authority a special, revolving fund to be known as the
21 Hazardous Discharge Site Remediation Fund. Moneys in the
22 remediation fund shall be dedicated for the provision of financial
23 assistance or grants to [municipal governmental entities, the New
24 Jersey Redevelopment Authority, individuals, corporations,
25 partnerships, and other private business entities] municipalities,
26 counties, redevelopment entities authorized to exercise redevelopment
27 powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), and
28 persons , for the purpose of financing remediation activities at sites at
29 which there is, or is suspected of being, a discharge of hazardous
30 substances or hazardous wastes.

31 b. The remediation fund shall be credited with:

32 (1) moneys as are appropriated by the Legislature;

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

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

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

38 (5) moneys deposited in the fund as repayment of recoverable
39 grants made by the New Jersey Redevelopment Authority for
40 brownfield redevelopment;

41 (6) moneys deposited into the fund from cost recovery subrogation
42 actions; and

43 [(6)] (7) moneys made available to the authority for the purposes
44 of the fund.

45 (cf: P.L.1997, c.278, s.12)

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

3 27. a. (1) Financial assistance from the remediation fund may only
4 be rendered to persons who cannot establish a remediation funding
5 source for the full amount of a remediation. Financial assistance
6 pursuant to this act may be rendered only for that amount of the cost
7 of a remediation for which the person cannot establish a remediation
8 funding source. The limitations on receiving financial assistance
9 established in this paragraph (1) shall not limit the ability of [municipal
10 governmental entities, the New Jersey Redevelopment Authority,]
11 municipalities, counties, redevelopment entities authorized to exercise
12 redevelopment powers pursuant to section 4 of P.L.1992, c.79
13 (C.40A:12A-4), persons who are not required to establish a
14 remediation funding source for the part of the remediation involving
15 an innovative technology, an unrestricted use remedial action or a
16 limited restricted use remedial action, persons performing a
17 remediation in an environmental opportunity zone, or persons who
18 voluntarily perform a remediation, from receiving financial assistance
19 from the fund.

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

25 (3) Financial assistance rendered to persons who do not have to
26 provide a remediation funding source for the part of the remediation
27 that involves an innovative technology, an unrestricted use remedial
28 action, or a limited restricted use remedial action may only be made
29 for that amount of the cost of the remediation that the person cannot
30 otherwise fund by any of the authorized methods to establish a
31 remediation funding source.

32 b. Financial assistance may be rendered from the remediation fund
33 to (1) owners or operators of industrial establishments who are
34 required to perform remediation activities pursuant to P.L.1983, c.330
35 (C.13:1K-6 et al.), upon closing operations or prior to the transfer of
36 ownership or operations of an industrial establishment, (2) persons
37 who are liable for the cleanup and removal costs of a hazardous
38 substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), and
39 (3) persons who voluntarily perform a remediation of a discharge of
40 a hazardous substance or hazardous waste.

41 c. Financial assistance and grants may be made from the
42 remediation fund to a [municipal governmental entity or the New
43 Jersey Redevelopment Authority] municipality, county, or
44 redevelopment entity authorized to exercise redevelopment powers
45 pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), for real
46 property: (1) on which it holds a tax sale certificate; (2) that it has

1 acquired through foreclosure or other similar means; or (3) that it has
2 acquired, or in the case of a county governed by a board of chosen
3 freeholders, has passed a resolution or , in the case of a municipality
4 or a county operating under the "Optional County Charter Law,"
5 P.L.1972, c.154 (C.40:41A-1 et seq.), has passed an ordinance or
6 other appropriate document to acquire, by voluntary conveyance for
7 the purpose of redevelopment , or for recreation and conservation
8 purposes. Financial assistance and grants may only be awarded for
9 real property on which there has been a discharge or on which there
10 is a suspected discharge of a hazardous substance or hazardous waste.
11 [Financial assistance and grants may not be made to any entity listed
12 in this subsection for any real property used by that entity for the
13 conduct of its official business.]

14 d. Grants may be made from the remediation fund to persons [and
15 the New Jersey Redevelopment Authority,] who own real property on
16 which there has been a discharge of a hazardous substance or a
17 hazardous waste and that person [or the authority] qualifies for an
18 innocent party grant pursuant to section 28 of P.L.1993, c.139
19 (C.58:10B-6).

20 e. Grants may be made from the remediation fund to qualifying
21 persons who propose to perform a remedial action that uses an
22 innovative technology or that would result in an unrestricted use
23 remedial action or a limited restricted use remedial action.

24 f. Grants may be made from the remediation fund to municipalities,
25 counties, and redevelopment entities authorized to exercise
26 redevelopment powers pursuant to section 4 of P.L.1992, c.79
27 (C.40A:12A-4), for the preliminary assessment, site investigation,
28 remedial investigation and remedial action on contaminated real
29 property within a brownfield development area. An ownership interest
30 in the contaminated property shall not be required in order for a
31 municipality, county, or redevelopment entity authorized to exercise
32 redevelopment powers pursuant to section 4 of P.L.1992, c.79
33 (C.40A:12A-4) to receive a grant for a remediation of property in a
34 brownfield redevelopment area.¹Notwithstanding the limitation on the
35 total amount of financial assistance and grants that may be awarded in
36 any one year pursuant to subsection b. of section 28 of P.L.1993,
37 c.139 (C.58:10B-6), the authority may award an additional amount of
38 financial assistance and grants in any one year, of up to \$2,000,000, to
39 any one municipality, county, or redevelopment entity for the
40 remediation of property in a brownfield development area.¹ Any
41 property on which a municipality, county, or redevelopment entity
42 makes expenditures for a remedial action and the property is not
43 owned by that entity shall be subject to the provisions of section 8 of
44 P.L. , c. (C.) (now in the Legislature as this bill).

45 [For the purposes of this section, "person" shall not include any

1 governmental entity.]

2 (cf: P.L.1999, c.214, s.1)

3

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

6 28. a. Except for moneys deposited in the remediation fund for
7 specific purposes, financial assistance and grants from the remediation
8 fund shall be rendered for the following purposes ¹[and, on an annual
9 basis, obligated in the percentages as provided in this subsection.
10 Upon a written joint determination by the authority and the department
11 that the demand for financial assistance or grants for moneys allocated
12 in any paragraph exceeds the percentage of funds allocated for that
13 paragraph, financial assistance and grants dedicated for the purposes
14 and in the percentages set forth in any other paragraph of this
15 subsection, may, for any particular year, if the demand for financial
16 assistance or grants for moneys allocated in that paragraph is less than
17 the percentage of funds allocated for that paragraph, be obligated to
18 the purposes set forth in the over allocated paragraph. The] ^{2,2} A¹
19 written ¹[determination] report¹ shall be sent to the Senate
20 Environment Committee, and the Assembly [Agriculture and Waste
21 Management] Environment and Solid Waste Committee, or their
22 successors ¹at the end of each calender quarter detailing the allocation
23 and expenditures related to the financial assistance and grants from the
24 fund¹. [For the purposes of this section, "person" shall not include
25 any governmental entity.]

26 (1) ¹[At least [15%] 10% of the moneys] Moneys¹ shall be
27 allocated for financial assistance to persons, [and the New Jersey
28 Redevelopment Authority established pursuant to P.L.1996, c.62
29 (C.55:19-20 et al.),] for remediation of real property located in a
30 qualifying municipality as defined in section 1 of P.L.1978, c.14
31 (C.52:27D-178);

32 (2) ¹[At least [10%] 35% of the moneys] Moneys¹ shall be
33 allocated [for financial assistance and grants] to : (a) [municipal
34 governmental entities and the New Jersey Redevelopment Authority]
35 municipalities, counties, or redevelopment entities authorized to
36 exercise redevelopment powers pursuant to section 4 of P.L.1992,
37 c.79 (C.40A:12A-4), for:

38 (i) projects in brownfield development areas pursuant to subsection
39 f. of section 27 of P.L.1993, c.139 (C.58:10B-5),

40 (ii) matching grants¹ up to a cumulative total amount from the fund
41 of \$5,000,000 per year¹ of up to¹ [25%]² [50%]¹ 75%² of the costs
42 of the remedial action for projects involving the redevelopment of
43 contaminated property for recreation and conservation purposes,
44 ¹provided that the use of the property for recreation and conservation
45 purposes is included in the comprehensive plan for the development or
46 redevelopment of contaminated property,¹ or² up to 50% of the costs

1 of the remedial action for projects involving the redevelopment of
2 contaminated property² for affordable housing pursuant to P.L.1985,
3 c.222 (C.52:27D-301 et seq.).

4 (iii) grants for preliminary assessment, site investigation or remedial
5 investigation of a contaminated site,

6 (iv) financial assistance for the implementation of a remedial action,
7 or

8 (v) financial assistance for remediation activities at sites that have
9 been contaminated by a discharge of a hazardous substance or
10 hazardous waste, or at which there is an imminent and significant
11 threat of a discharge of a hazardous substance or hazardous waste, and
12 the discharge or threatened discharge poses or would pose an
13 imminent and significant threat to a drinking water source, to human
14 health, or to a sensitive or significant ecological area; or

15 (b) persons for financial assistance for remediation activities at sites
16 that have been contaminated by a discharge of a hazardous substance
17 or hazardous waste, or at which there is an imminent and significant
18 threat of a discharge of a hazardous substance or hazardous waste, and
19 the discharge or threatened discharge poses or would pose an
20 imminent and significant threat to a drinking water source, to human
21 health, or to a sensitive or significant ecological area.

22 Except as provided in subsection f. of section 27 of P.L.1993, c.139
23 (C.58:10B-5), financial assistance and grants to municipalities,
24 counties, or redevelopment entities authorized to exercise
25 redevelopment powers pursuant to section 4 of P.L.1992, c.79
26 (C.40A:12A-4) may be made for real property: (1) on which they hold
27 a tax sale certificate; (2) that they have acquired through foreclosure
28 or other similar means; or (3) that they have acquired, or , in the case
29 of a county governed by a board of chosen freeholders, have passed a
30 resolution or, in the case of a municipality or a county operating under
31 the "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-1 et
32 seq.), have passed an ordinance or other appropriate document to
33 acquire, by voluntary conveyance for the purpose of redevelopment,
34 or for recreation and conservation purposes . Financial assistance and
35 grants may only be awarded for real property on which there has been
36 or on which there is suspected of being a discharge of a hazardous
37 substance or a hazardous waste. Grants and financial assistance
38 provided pursuant to this paragraph shall be used for performing
39 preliminary assessments, site investigations, [and] remedial
40 investigations , and remedial actions on real property in order to
41 determine the existence or extent of any hazardous substance or
42 hazardous waste contamination , and to remediate the site in
43 compliance with the applicable health risk and environmental standards
44 on those properties. No ¹[grant shall be awarded pursuant to this
45 paragraph (2) for the purposes of a remedial investigation and no]¹
46 financial assistance ¹or grants¹ for a remedial action shall be awarded

1 until the [municipal government entity or the New Jersey
2 Redevelopment Authority] municipality, county, or redevelopment
3 entity authorized to exercise redevelopment powers pursuant to
4 section 4 of P.L.1992, c.79 (C.40A:12A-4), actually owns the real
5 property , provided that a matching grant for ¹[25%] ²[50%¹] 75%²
6 of the costs of a remedial action for a project involving the
7 redevelopment of contaminated property for recreation and
8 conservation purposes, or ²a matching grant for 50% of the costs of
9 a remedial action for a project involving the redevelopment of
10 contaminated property² for affordable housing pursuant to P.L.1985,
11 c.222 (C.52:27D-301 et seq.) may be made to a municipality, county,
12 or redevelopment entity authorized to exercise redevelopment powers
13 pursuant to section 4 of P.L.1992, c.79 even if it does not own the real
14 property and a grant may be made to a municipality, county, or
15 redevelopment entity authorized to exercise redevelopment powers
16 pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) for a
17 remediation in a brownfield development area pursuant to subsection
18 f. of section 27 of P.L.1993, c.139 (C.58:10B-5) even if the entity
19 does not own the real property . ¹No grant shall be awarded for a
20 remedial action for a project involving the redevelopment of
21 contaminated property for recreation or conservation purposes unless
22 the use of the property is preserved for recreation and conservation
23 purposes by conveyance of a development easement, conservation
24 restriction or easement, or other restriction or easement permanently
25 restricting development, which shall be recorded and indexed with the
26 deed in the registry of deeds for the county.¹ A [municipal
27 governmental entity or the New Jersey Redevelopment Authority]
28 municipality that has performed, or on which there has been
29 performed, a preliminary assessment, site investigation or remedial
30 investigation on property may obtain a loan for the purpose of
31 continuing the remediation on those properties as necessary to comply
32 with the applicable remediation regulations adopted by the department.
33 No grant shall be awarded pursuant to this paragraph to a [municipal
34 government entity] municipality, a county, or a redevelopment entity
35 authorized to exercise redevelopment powers pursuant to section 4 of
36 P.L.1992, c.79 (C.40A:12A-4) unless that entity has adopted by
37 ordinance or resolution a comprehensive plan specifically for the
38 development or redevelopment of contaminated or potentially
39 contaminated real property in that municipality or the entity can
40 demonstrate to the authority that a realistic opportunity exists that the
41 subject real property will be developed or redeveloped within a
42 three-year period from the completion of the remediation;
43 (3) [At least 15% of the moneys shall be allocated for financial
44 assistance to persons, the New Jersey Redevelopment Authority, or
45 municipal governmental entities for remediation activities at sites that
46 have been contaminated by a discharge of a hazardous substance or

1 hazardous waste, or at which there is an imminent and significant
2 threat of a discharge of a hazardous substance or hazardous waste, and
3 the discharge or threatened discharge poses or would pose an
4 imminent and significant threat to a drinking water source, to human
5 health, or to a sensitive or significant ecological area;

6 (4) ¹[At least 10% of the moneys] Moneys¹ shall be allocated for
7 financial assistance to persons who voluntarily perform a remediation
8 of a hazardous substance or hazardous waste discharge;

9 [(5) At least 10% of the moneys shall be allocated for financial
10 assistance to persons who are required to perform remediation
11 activities at an industrial establishment pursuant to P.L.1983, c.330
12 (C.13:1K-6 et al.), as a condition of the closure, transfer, or
13 termination of operations at that industrial establishment;

14 (6) (4) ¹[At least 15% of the moneys] Moneys¹ shall be allocated
15 for grants to persons who own real property on which there has been
16 a discharge of a hazardous substance or a hazardous waste and that
17 person qualifies for an innocent party grant. A person qualifies for an
18 innocent party grant if that person acquired the property prior to
19 December 31, 1983, [except as provided hereunder,] the hazardous
20 substance or hazardous waste that was discharged at the property was
21 not used by the person at that site, and that person certifies that he did
22 not discharge any hazardous substance or hazardous waste at an area
23 where a discharge is discovered [; provided, however, that
24 notwithstanding any other provision of this section the New Jersey
25 Redevelopment Authority established pursuant to P.L.1996, c.62
26 (C.55:19-20 et al.), shall qualify for an innocent party grant pursuant
27 to this paragraph where the immediate predecessor in title to the
28 authority would have qualified for but failed to apply for or receive
29 such grant] . A grant authorized pursuant to this paragraph may be
30 for up to 50% of the remediation costs at the area of concern for
31 which the person qualifies for an innocent party grant, except that no
32 grant awarded pursuant to this paragraph to any person [or the New
33 Jersey Redevelopment Authority] may exceed \$1,000,000;

34 [(7) (5) ¹[At least [5%] 10% of the moneys] Moneys¹ shall be
35 allocated for (a) financial assistance to persons who own and plan to
36 remediate an environmental opportunity zone for which an exemption
37 from real property taxes has been granted pursuant to section 5 of
38 P.L.1995, c.413 (C.54:4-3.154) [;

39 (8) At least 5% of the moneys shall be allocated for] , or (b)
40 matching grants for up to 25% of the project costs to qualifying
41 persons , municipalities, counties, and redevelopment entities
42 authorized to exercise redevelopment powers pursuant to section 4 of
43 P.L.1992, c.79 (C.40A:12A-4), who propose to perform a remedial
44 action that uses an innovative technology , or for the implementation
45 of a limited restricted use remedial action or an unrestricted use
46 remedial action except that no grant awarded pursuant to this

1 paragraph [to any qualifying person] may exceed [\$100,000]
2 \$250,000 ;

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

13 (10) At least 5% of the moneys shall be allocated for grants to
14 persons who own real property on which there has been a discharge of
15 a hazardous substance or a hazardous waste from an underground
16 storage tank and that person qualifies for an underground storage tank
17 grant. A person qualifies for an underground storage tank grant if that
18 person acquired the property prior to December 31, 1986, the person
19 complied with all laws, rules and regulations regarding the
20 underground storage tank, the underground storage tank was closed
21 or removed prior to December 31, 1990, and there is a discovery of
22 contamination that originated from the underground storage tank and
23 that discovery is made more than five years after closure or removal
24 of the underground storage tank. A grant authorized pursuant to this
25 paragraph may be for up to 50% of the remediation costs at the area
26 of concern for which the person qualifies for an underground storage
27 tank grant, except that no grant awarded pursuant to this paragraph to
28 any person may exceed \$1,000,000] ; and

29 [(11) Five] (6) Twenty percent of the moneys in the remediation
30 fund shall be allocated for financial assistance or grants for any of the
31 purposes enumerated in paragraphs (1) through [(10)] (5) of this
32 subsection [, except that where moneys in the fund are insufficient to
33 fund all the applications in any calendar year that would otherwise
34 qualify for financial assistance or a grant pursuant to this paragraph,
35 the authority shall give priority to financial assistance applications that
36 meet the criteria enumerated in paragraph (3) of this subsection] .

37 For the purposes of [paragraphs (8) and (9)] paragraph (5) of this
38 subsection, "qualifying persons" means any person who has a net
39 worth of not more than \$2,000,000 and "project costs" means that
40 portion of the total costs of a remediation that is specifically for the
41 use of an innovative technology or to implement an unrestricted use
42 remedial action or a limited restricted use remedial action, as
43 applicable.

44 b. Loans issued from the remediation fund shall be for a term not
45 to exceed ten years, except that upon the transfer of ownership of any
46 real property for which the loan was made, the unpaid balance of the

1 loan shall become immediately payable in full. The unpaid balance of
2 a loan for the remediation of real property that is transferred by devise
3 or succession shall not become immediately payable in full, and loan
4 repayments shall be made by the person who acquires the property.
5 Loans to [municipal governmental entities and the New Jersey
6 Redevelopment Authority established pursuant to P.L.1996, c.62
7 (C.55:19-20 et al.),] municipalities, counties, and redevelopment
8 entities authorized to exercise redevelopment powers pursuant to
9 section 4 of P.L.1992, c.79 (C.40A:12A-4) , shall bear an interest rate
10 equal to 2 points below the Federal Discount Rate at the time of
11 approval or at the time of loan closing, whichever is lower, except that
12 the rate shall be no lower than 3 percent. All other loans shall bear an
13 interest rate equal to the Federal Discount Rate at the time of approval
14 or at the time of the loan closing, whichever is lower, except that the
15 rate on such loans shall be no lower than five percent. Financial
16 assistance and grants may be issued for up to 100% of the estimated
17 applicable remediation cost, except that the cumulative maximum
18 amount of financial assistance which may be issued to a person, in any
19 calendar year, for one or more properties, shall be \$1,000,000.
20 Financial assistance and grants to any one [municipal governmental
21 entity or the New Jersey Redevelopment Authority] municipality,
22 county, or redevelopment entity authorized to exercise redevelopment
23 powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) may
24 not exceed ¹[\$2,000,000] ¹\$3,000,000¹ in any calendar year ¹except
25 as provided in subsection f. of P.L.1993, c.139 (C.58:10B-5)¹ .
26 Grants to a municipality, a county, or a redevelopment entity
27 authorized to exercise redevelopment powers pursuant to section 4 of
28 P.L.1992, c.79 (C.40A:12A-4) may not exceed ¹[50%] ¹75%¹ of the
29 total costs of the remediation at any one site. Repayments of principal
30 and interest on the loans issued from the remediation fund shall be paid
31 to the authority and shall be deposited into the remediation fund.

32 ²[The total amount of grant monies awarded in any one year may
33 not exceed 70 percent of the total amount of financial assistance and
34 grants awarded in that year.]² ³The total amount of grant monies
35 awarded in any one year may not exceed 70 percent of the total
36 amount of financial assistance and grants awarded in that year.³

37 c. No person, other than a qualified person planning to use an
38 innovative technology for the cost of that technology, a qualified
39 person planning to use a limited restricted use remedial action or an
40 unrestricted use remedial action for the cost of the remedial action, a
41 person performing a remediation in an environmental opportunity
42 zone, or a person voluntarily performing a remediation, shall be
43 eligible for financial assistance from the remediation fund to the extent
44 that person is capable of establishing a remediation funding source for
45 the remediation as required pursuant to section 25 of P.L.1993, c.139

1 (C.58:10B-3).

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

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

20 (cf: P.L.2001, c.70, s.1)

21

22 5. Section 29 of P.L.1993, c.139 (C.58:10B-7) is amended to read
23 as follows:

24 29. a. A qualified applicant for financial assistance or a grant from
25 the remediation fund shall be awarded financial assistance or a grant
26 by the authority upon the availability of sufficient moneys in the
27 remediation fund for the purpose of the financial assistance or grant.
28 The authority shall award financial assistance and grants in the
29 following order of priority:

30 (1) Sites on which there has been a discharge and the discharge
31 poses and imminent and significant threat to a drinking water source,
32 to human health, or to a sensitive or significant ecological area shall
33 be given first priority; and

34 (2) Sites in areas designated as Planning Area 1 (Metropolitan),
35 Planning Area 2 (Suburban), designated centers, or areas receiving
36 plan endorsement as designated pursuant to the "State Planning Act,"
37 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.),
38 1 sites that the Brownfields Redevelopment Task Force, established
39 pursuant to section 5 of P.L.1997, c.278 (C.58:10B-23), determines
40 are of immediate economic development potential,¹ and sites in
41 brownfield development areas, shall be given second priority.

42 [Priority] The priority ranking of applicants within any priority
43 category enumerated in this section for awarding financial assistance
44 and grants from the remediation fund shall be based upon the date of
45 receipt by the authority of [a complete] an application from the
46 applicant. If an application is determined to be incomplete by the

1 authority, an applicant shall have 30 days from receipt of written
2 notice of incompleteness to file any additional information as may be
3 required by the authority for a completed application. If an applicant
4 fails to file the additional information within those 30 days, the filing
5 date for that application for financial assistance or a grant for a site
6 that is not within a priority category enumerated in this section, shall
7 be the date that the additional information is received by the authority.
8 An application shall be deemed complete when all the information
9 required by the authority has been received in the required form.
10 [Notwithstanding that the New Jersey Redevelopment Authority is
11 eligible for grants and financial assistance from the fund, the authority
12 shall be awarded a grant or financial assistance based upon the priority
13 system for such awards as provided in this subsection.]

14 b. Within 90 days, for a private entity, or 180 days for a [municipal
15 governmental entity or the New Jersey Redevelopment Authority]
16 municipality, county, or a redevelopment entity authorized to exercise
17 redevelopment powers pursuant to section 4 of P.L.1992, c.79
18 (C.40A:12A-4), of notice of approval of a financial assistance or grant
19 application, an applicant shall submit to the authority an executed
20 contract for the remediation activities for which the financial assistance
21 or grant application was made. The contract shall be consistent with
22 the terms and conditions for which the financial assistance or grant
23 was rendered. Failure to submit an executed contract within the time
24 provided, without good cause, shall constitute grounds for the
25 alteration of an applicant's priority ranking for the awarding of
26 financial assistance or a grant.
27 (cf: P.L.1996, c.62, s.66)

28
29 6. Section 30 of P.L.1993, c.139 (C.58:10B-8) is amended to read
30 as follows:

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

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

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

42 (3) establish a priority system for rendering financial assistance or
43 grants for remediations identified by the department as involving an
44 imminent and significant threat to a public water source, human health,
45 or to a sensitive or significant ecological area pursuant to [paragraph

- 1 (3) of] subsection a. of section 28 of P.L.1993, c.139 (C.58:10B-6);
- 2 (4) provide that payment of a grant shall be conditioned upon the
3 subrogation to the department of all rights of the recipient to recover
4 remediation costs from the discharger or other liable parties. All
5 moneys collected in a cost recovery subrogation action shall be
6 deposited into the remediation fund;
- 7 (5) provide that an applicant for financial assistance or a grant pay
8 a reasonable fee for the application which shall be used by the
9 authority for the administration of the loan and grant program;
- 10 (6) provide that where financial assistance to a person other than a
11 [municipal governmental entity or the New Jersey Redevelopment
12 Authority] municipality, a county, or a redevelopment entity
13 authorized to exercise redevelopment powers pursuant to section 4 of
14 P.L.1992, c.79 (C.40A:12A-4), is for a portion of the remediation
15 cost, that the proceeds thereof not be disbursed to the applicant until
16 the costs of the remediation for which a remediation funding source
17 has been established has been expended;
- 18 (7) provide that the amount of a grant for the costs of a remedial
19 action shall not include the cost to remediate a site to meet residential
20 soil remediation standards if the local zoning ordinances adopted
21 pursuant to the "Municipal Land Use Law," P.L.1975, c.291
22 (C.40:55D-1 et seq.) does not allow for residential use;
- 23 (8) adopt such other requirements as the authority shall deem
24 necessary or appropriate in carrying out the purposes for which the
25 Hazardous Discharge Site Remediation Fund was created.
- 26 b. An applicant for financial assistance or a grant shall be required
27 to:
- 28 (1) provide proof, as determined sufficient by the authority, that the
29 applicant, where applicable, cannot establish a remediation funding
30 source for all or part of the remediation costs, as required by section
31 25 of P.L.1993, c.139 (C.58:10B-3). The provisions of this paragraph
32 do not apply to grants to innocent persons, grants for the use of
33 innovative technologies, or grants for the implementation of
34 unrestricted use remedial actions or limited restricted use remedial
35 actions or to financial assistance or grants to [municipal governmental
36 entities or the New Jersey Redevelopment Authority] municipalities,
37 counties, or redevelopment entities authorized to exercise
38 redevelopment powers pursuant to section 4 of P.L.1992, c.79
39 (C.40A:12A-4); and
- 40 (2) demonstrate the ability to repay the amount of the financial
41 assistance and interest, and, if necessary, to provide adequate
42 collateral to secure the financial assistance amount.
- 43 c. Information submitted as part of a loan or grant application or
44 agreement shall be deemed a public record subject to the provisions of
45 P.L.1963, c.73 (C.47:1A-1 et seq.).
- 46 d. In establishing requirements for financial assistance or grant

1 applications and financial assistance or grant agreements, the
2 authority:

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

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

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

15 (cf: P.L.1997, c.278, s.15)

16

17 7. (New section) The Department of Environmental Protection
18 shall establish guidelines to establish a procedure for the designation
19 of brownfield development areas. In establishing criteria for the
20 establishment of a brownfield development area, the department shall
21 require:

22 (1) that a brownfield development area includes at least two
23 brownfield sites within a contiguous area;

24 (2) that the boundaries are consistent with the boundaries of a
25 distinct neighborhood;

26 (3) broad community support for the establishment of a brownfield
27 development area; and

28 (4) that the establishment of a brownfield development area will
29 result in a benefit to the public health and safety, and the environment.

30 A brownfield development area shall be designated by the
31 department, in writing, upon application by a person proposing to
32 remediate a site or sites within the area, or upon the department's
33 initiative.

34 The guidelines, and any subsequent revisions thereto, and a list of
35 the brownfield development areas, and any subsequent revisions
36 thereto, and shall be published in the New Jersey Register. The
37 adoption of the guidelines or of the revisions thereto, shall not be
38 subject to the requirements of the "Administrative Procedure Act,"
39 P.L.1968, c.410 (C.52:14B-1 et seq.).

40

41 8. (New section) Any expenditure of grant monies for a remedial
42 action in a brownfield development area by a municipality, county, or
43 redevelopment entity on property in which the municipality, county,
44 or redevelopment entity does not have an ownership interest, shall
45 constitute a debt of the property owner to the fund. The debt shall
46 constitute a lien on the real property at which the remedial action is

1 performed. The lien shall be in the amount of the grant awarded for
2 the remedial action on that property. The lien shall attach when a
3 notice of lien, incorporating the name of the property owner, a
4 description of the property subject to the remedial action and an
5 identification of the amount of the grant awarded from the fund, is
6 duly filed with the county recording officer in the county in which the
7 property is located. The lien filed pursuant to this section which
8 affects the property subject to the remedial action shall create a lien
9 with priority over all other claims or liens which are or have been filed
10 against the property, except if the property comprises six dwelling
11 units or less and is used exclusively for residential purposes, this notice
12 of lien shall not affect any valid lien, right or interest in the property
13 filed in accordance with established procedure prior to the filing of this
14 notice of lien. A lien that is filed on real property pursuant to this
15 section shall be removed upon transfer of ownership of the property
16 to the municipality, county, or redevelopment entity that expended
17 grant monies for a remedial action on that property.

18

19 [19. (New section) Notwithstanding the provisions of sections 27
20 and 28 of P.L.1993, c.139 (C.58:10B-5 and 58:10B-6), or any other
21 law, or any rule or regulation adopted pursuant thereto to the
22 contrary, the New Jersey Economic Development Authority may
23 provide grants or recoverable grants from the fund to a municipality
24 that has received a commitment prior to the effective date of this act,
25 from the New Jersey Redevelopment Authority, established pursuant
26 to P.L.1996, c.62 (C.55:19-20 et al.), for funding the implementation
27 of a remedial action and any other activities within the approved scope
28 of work associated with the redevelopment of a brownfield site. Any
29 repayments to the New Jersey Redevelopment Authority for grants or
30 other financial assistance made for brownfields remediation or
31 redevelopment shall be paid to the New Jersey Economic Development
32 Authority and shall be deposited into the fund.]¹

33

34 19. (New section) a. The Department of Environmental Protection,
35 in consultation with the New Jersey Economic Development
36 Authority, shall develop a pilot program to award grants from the
37 Hazardous Discharge Site Remediation Fund established pursuant to
38 section 26 of P.L.1993, c.139 (C.58:10B-4) to nonprofit organizations
39 described in section 501(c)(3) of the federal Internal Revenue Code,
40 26 U.S.C. s.501(c)(3), that are exempt from taxation pursuant to
41 section 501(a) of the federal Internal Revenue Code, 26 U.S.C.
42 s.501(a), for the preliminary assessment, site investigation, and
43 remedial investigation of real property that has been contaminated or
44 is suspected of being contaminated by the discharge of a hazardous
45 substance. All of the limitations and conditions for the award of

1 financial assistance and grants applicable to municipalities pursuant to
2 the provisions of the "Brownfield and Contaminated Site Remediation
3 Act," P.L.1997, c.278 (C.58:10B-1.1 et al.) shall apply to the award
4 of grants to a nonprofit organization pursuant to this section. The
5 total amount awarded pursuant to this pilot program shall not exceed
6 \$5,000,000.

7 b. Prior to March 1 of each year, the Department of Environmental
8 Protection shall prepare and transmit to the members of the Senate
9 Environment Committee and the Assembly Environment and Solid
10 Waste Committee, or their successors, an annual report that provides
11 ²[of] a ²description of the projects for which grants have been
12 awarded, the grant recipients for each project, the owner of the
13 property being remediated, the amount of each grant, and the location
14 of the property being remediated.¹

15

16 10. This act shall take effect immediately.

17

18

19

20

21 Revises laws concerning financial assistance for contaminated site
22 remediation.