

4422

2009-2010 Regular Sessions

I N S E N A T E

April 23, 2009

Introduced by Sen. O. JOHNSON -- read twice and ordered printed, and
when printed to be committed to the Committee on Commerce, Economic
Development and Small Business

AN ACT to amend the economic development law, in relation to providing a
program to assist in the development of brownfield sites and certain
property and adjacent waters that are, or are suspected to be, contam-
inated with hazardous wastes or hazardous substances; to amend the
state finance law, in relation to establishing the environmental reme-
diation indemnification fund; to amend the environmental conservation
law, in relation to re-establishing the state superfund management
board; and to repeal section 27-1319 of the environmental conservation
law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The economic development law is amended by adding a new
2 article 17 to read as follows:

3 ARTICLE 17

4 DEVELOPMENT OF CONTAMINATED PROPERTY

5 SECTION 400. LEGISLATIVE FINDINGS AND DECLARATIONS.

6 401. DEFINITIONS.

7 402. DIVISION OF DEVELOPMENT ASSISTANCE, ENVIRONMENTAL INDEMNIFI-
8 CATION AND LAND USE CONTROL.

9 403. EXECUTIVE BOARD.

10 404. ESTABLISHMENT OF A PLAN OF INDEMNIFICATION AND AN OFFICE OF
11 INDEMNIFICATION.

12 405. ENVIRONMENTAL REMEDIATION PROJECTS PURSUANT TO THIS ARTI-
13 CLE.

14 406. CRITERIA OF PROGRAM OF INDEMNIFICATION.

15 407. APPLICATION OF INDEMNIFICATION AND LAND USE CONTROLS.

16 408. COSTS OF INDEMNIFICATION.

17 409. RESPONSIBILITY OF RESPONSIBLE PARTIES.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD08163-01-9

- 410. LIABILITY LIMITATION AND INDEMNIFICATION.
- 411. CHANGE OF USE.
- 412. CONTINUATION OF THE STATE SUPERFUND MANAGEMENT BOARD.
- 413. COST OF DEMOLITION OF STRUCTURES ON VARIOUS SITES.
- 414. INDEMNIFICATION FOR RESPONSIBLE DEVELOPER.
- 415. MUNICIPALITY PARTICIPATION.

S 400. LEGISLATIVE FINDINGS AND DECLARATIONS. THE LEGISLATURE FINDS THAT THE ECONOMIC DEVELOPMENT OF THE STATE AND ITS VARIOUS SUBDIVISIONS IS SERIOUSLY IMPAIRED BY THE PRESENCE OF PROPERTIES THAT ARE, OR ARE SUSPECTED OF BEING, CONTAMINATED WITH HAZARDOUS WASTES OR SUBSTANCES, INCLUDING PROPERTIES THAT ARE COMMONLY KNOWN AS BROWNFIELD SITES. THE LEGISLATURE FINDS THAT MANY OF THESE SITES, WHILE LOCATED IN AREAS THAT WERE USED FOR INDUSTRIAL OR OTHER PURPOSES WHERE CONTAMINATES WERE EMPLOYED OR USED ON SUCH SITES FOR MANUFACTURING, AGRICULTURAL OR STORAGE PURPOSES, ARE ALSO SITES THAT WOULD BE IDEAL FOR THE LOCATION OF NEW INDUSTRIAL, MANUFACTURING, SERVICE, STORAGE, RESIDENTIAL PROJECTS OR OTHER PURPOSES BECAUSE OF THEIR LOCATION, INCLUDING THE CLOSE PROXIMITY OF TRANSPORTATION, WATER, POWER RESOURCES OR OTHER EXISTING INFRASTRUCTURE.

THE LEGISLATURE FURTHER FINDS THAT OWNERS OF SUCH PROPERTIES OR POSSIBLE DEVELOPERS, INCLUDING MUNICIPALITIES, ARE FAILING TO UTILIZE, DEVELOP OR REDEVELOP SUCH PROPERTIES OUT OF FEAR THAT THE OWNERSHIP OF ANY SUCH PROPERTIES MIGHT FORCE UPON THEM EXTENSIVE COSTS, NOT ONLY FOR REMEDIATING SUCH PROPERTIES, BUT ALSO FROM POSSIBLE EXPOSURE TO GOVERNMENTAL OR THIRD PARTY AND/OR PRIVATE PARTY LAWSUITS ARISING FROM PRESENT OR FUTURE CLAIMS OF INJURY FROM CONTAMINATION ALLEGED TO BE ASSOCIATED WITH SUCH PROPERTIES.

THE LEGISLATURE FURTHER FINDS THAT THE LOSS OF THE USE OF SUCH PROPERTIES HAS AN ADVERSE IMPACT UPON THE ABILITY OF THE COMMUNITIES WHERE SUCH PROPERTIES ARE LOCATED TO ATTRACT ENTITIES THAT WOULD BRING EMPLOYMENT AND OTHER ECONOMIC DEVELOPMENT BENEFITS TO SUCH COMMUNITIES. THE LOSS OF THE USE OF THESE PROPERTIES ALSO ADVERSELY IMPACTS THE TAX BASE OF SUCH COMMUNITIES, IMPAIRING THEIR ABILITY TO DELIVER THE MUNICIPAL SERVICES THEY ARE REQUIRED TO DELIVER. THE LEGISLATURE FURTHER FINDS THAT THE IMPAIRMENT OF SUCH LOCALITIES TO ATTRACT DEVELOPMENT AND INCREASE THEIR TAX BASE REQUIRES THEM TO SEEK FURTHER ASSISTANCE FROM THE STATE WHICH IN TURN REDUCES THE STATE'S ABILITY TO FURTHER REDUCE ITS TAX BURDEN AND ITS OWN ABILITY TO ATTRACT MORE DEVELOPMENT WITHIN THE STATE GENERALLY.

THE LEGISLATURE ALSO FINDS THAT THE EARLIER ANY PROBLEM OF CONTAMINATION OF PROPERTY WITHIN THE STATE THAT MIGHT OR MIGHT BE SUSPECTED OF ADVERSELY AFFECTING THE ENVIRONMENT AND THE HEALTH OF THE PEOPLE OF THIS STATE IS INVESTIGATED AND IF FOUND TO BE A FACT, REMEDIATED, THE BETTER IT WILL BE FOR THE HEALTH AND ENVIRONMENT OF THE PEOPLE WITHIN OR VISITING THIS STATE AND WILL ALSO PROVIDE A GREATER OPPORTUNITY TO DEVELOP SUCH PROPERTIES, PROVIDE MORE WORK CIRCUMSTANCES FOR THE PEOPLE OF THIS STATE, AND ASSIST GREATLY IN ECONOMIC DEVELOPMENT, NOT MERELY OF THE LOCALITY WHERE SUCH PROPERTIES HAVE BEEN DEVELOPED, BUT FOR THE STATE AS A WHOLE.

THE LEGISLATURE FINDS THAT WHILE THOSE WHO WOULD CLEAN UP AND DEVELOP SUCH PROPERTIES WANT TO BE ASSURED THAT THE COST THAT THEY WILL INCUR WILL BE LIMITED TO THE COST, IF ANY, OF REMEDIATING THE PROPERTY, SUFFICIENTLY TO PROTECT THE HEALTH AND THE ENVIRONMENT OF THE PEOPLE OF THIS STATE, TAKING INTO CONSIDERATION THE PURPOSE FOR WHICH THE PROPERTY WILL BE USED, AND THAT IF THEY ENTER INTO AN AGREEMENT WITH THE STATE TO DO SUCH REMEDIATION AND ADHERE TO THAT AGREEMENT THAT THEY WILL NOT BE

1 SUBJECTED TO PAY FOR FURTHER REMEDIATION IN THE FUTURE NOT REQUIRED BY
2 THE AGREEMENT OR THIS ARTICLE OR TO BE SUBJECT TO LAWSUITS BY THE STATE
3 OR ANYONE ELSE FOR CLAIMS OF INJURY FROM CONTAMINATION FROM SUCH PROPER-
4 TY EXCEPT CLAIMS FOR DAMAGES FROM THEIR OWN ACTIVITIES SUBSEQUENT TO
5 SUCH REMEDIATION AND EXCEPT THAT NOTHING IN THIS SECTION SHALL BAR
6 PRIVATE CLAIMS AGAINST A RESPONSIBLE PARTY FOR INJURIES CLAIMED TO HAVE
7 BEEN SUFFERED FROM CONTAMINATION FOR WHICH SUCH PARTIES WOULD HAVE BEEN
8 LIABLE PRIOR TO SUCH CLEANUP.

9 THE LEGISLATURE FURTHER FINDS THAT THE ENVIRONMENTAL COMMUNITY, ON THE
10 OTHER HAND, WANTS THE STATE, REGARDLESS OF THE INTENDED USE OF THE PROP-
11 erty TO HAVE THE PROPERTY REMEDIATED TO AS CLEAN A STANDARD AS POSSIBLE
12 PURSUANT TO PARAGRAPH D OF SUBDIVISION FIVE OF SECTION 27-1313 OF THE
13 ENVIRONMENTAL CONSERVATION LAW AS IT EXISTED ON JANUARY FIRST, TWO THOU-
14 SAND NINE, SO THAT SHOULD THE USE CHANGE OR THE SCIENTIFICALLY ACCEPTA-
15 BLE LEVELS OF EXPOSURE TO CERTAIN TOXIC SUBSTANCES INCREASE THAT SUCH
16 PROPERTIES WILL NOT PRESENT A DANGER TO HEALTH AND ANY SUCH PROBLEM WILL
17 BE REMEDIATED OR ELIMINATED.

18 THE LEGISLATURE FURTHER FINDS THAT THE STANDARDS SET FOR THE CLEANUP
19 OF CONTAMINATION TODAY ARE BASED ON THE BEST SCIENTIFIC ADVICE CURRENTLY
20 AVAILABLE BUT THAT NO ONE CAN PREDICT WHAT SCIENCE MAY TURN UP IN THE
21 FUTURE TO REQUIRE EITHER THAT NEWLY DISCOVERED TOXINS MUST BE REMEDIATED
22 OR GREATER LEVELS OF REMEDIATION OF VARIOUS TOXINS MAY BE DISCOVERED TO
23 BE NEEDED TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT AND A SYSTEM OF
24 LAND USE CONTROLS TO MONITOR SUCH EVENTUALITIES AND BE ABLE TO ADDRESS
25 SUCH EVENTUALITIES WITHOUT REQUIRING DEVELOPERS OR OTHERS WHO ARE ACTING
26 IN GOOD FAITH TO COMPLY WITH THE REQUIREMENTS OF THE LAW TO BE PENALIZED
27 FOR SUCH CHANGED CONDITIONS.

28 THE LEGISLATURE THEREFORE, DETERMINES THAT IN ORDER TO ADVANCE THE
29 ECONOMIC DEVELOPMENT OF THIS STATE AND PROTECT THE HUMAN HEALTH AND
30 ENVIRONMENT OF THE PEOPLE OF THE STATE, A DIVISION OF DEVELOPMENT
31 ASSISTANCE, LAND USE CONTROLS AND ENVIRONMENTAL INDEMNIFICATION SHOULD
32 BE ESTABLISHED WITHIN THE DEPARTMENT TO IMPLEMENT A PROGRAM OF INDEMNIFI-
33 CATION FOR DEVELOPERS OF SUCH PROPERTIES, AND INDEMNIFICATION OF THE
34 ENVIRONMENTAL INTEGRITY OF SUCH PROPERTIES, INCLUDING OVERSIGHT OF LAND
35 USE CONTROLS.

36 S 401. DEFINITIONS. 1. "DIVISION" SHALL MEAN THE DIVISION OF DEVELOP-
37 MENT ASSISTANCE, ENVIRONMENTAL INDEMNIFICATION AND LAND USE CONTROL AS
38 ESTABLISHED BY SECTION FOUR HUNDRED TWO OF THIS ARTICLE.

39 2. "DEVELOPER" SHALL MEAN AN INDIVIDUAL, A PARTNERSHIP, A CO-PARTNER-
40 SHIP, A LIMITED LIABILITY COMPANY, A FOR PROFIT CORPORATION OR A
41 NOT-FOR-PROFIT CORPORATION OR A GOVERNMENTAL ENTITY INCLUDING MUNICI-
42 PALITIES, AGENCIES, AUTHORITIES OR OTHER PUBLIC CORPORATIONS.

43 3. "OFFICE OF INDEMNIFICATION" SHALL MEAN THE OFFICE OF INDEMNIFICA-
44 TION CREATED BY SECTION FOUR HUNDRED FOUR OF THIS ARTICLE AND SHALL
45 INCLUDE ANY INDEMNIFICATION COMPANY, INSURANCE PROVIDER, CASUALTY OR
46 BONDING COMPANY ACTING ON BEHALF OF SUCH OFFICE OF INDEMNIFICATION.

47 4. "LAND USE CONTROLS" SHALL MEAN ENGINEERING, AND/OR INSTITUTIONAL
48 CONTROLS (INCLUDING DEED RESTRICTIONS).

49 5. EXCEPT TO THE EXTENT INCONSISTENT WITH THIS ARTICLE, ALL DEFI-
50 NITIONS OF HAZARDOUS WASTE, HAZARDOUS SUBSTANCES, BROWNFIELDS OR OTHER
51 DEFINITIONS AFFECTING THE ENVIRONMENT OR AN ENVIRONMENTAL STANDARD
52 ESTABLISHED IN THE ENVIRONMENTAL CONSERVATION LAW OR THE PUBLIC HEALTH
53 LAW NOW OR AS AMENDED FROM TIME TO TIME, OR THE RULES AND REGULATIONS OF
54 THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION OR THE DEPARTMENT OF HEALTH
55 APPLICABLE THERETO SHALL BE DEEMED TO APPLY TO THE MATTERS TO BE CONSID-
56 ERED BY THE DIVISION, EXCEPT THAT THE DIVISION SHALL HAVE STANDING TO

1 CHALLENGE ANY SUCH RULE OR REGULATION OF EITHER DEPARTMENT IN AN ADMIN-
2 ISTRATIVE HEARING IN SUCH DEPARTMENT PROMULGATING SUCH RULE OR REGU-
3 LATION OR IN A COURT OF LAW AFTER A DETERMINATION IS MADE AS A RESULT OF
4 SUCH DEPARTMENTAL HEARING.

5 S 402. DIVISION OF DEVELOPMENT ASSISTANCE, ENVIRONMENTAL INDEMNIFICA-
6 TION AND LAND USE CONTROL. THE COMMISSIONER, IN CONCERT WITH THE
7 COMMISSIONER OF ENVIRONMENTAL CONSERVATION, THE COMMISSIONER OF HEALTH,
8 THE STATE COMPTROLLER AND THE DIRECTOR OF THE BUDGET, SHALL ESTABLISH
9 WITHIN THE DEPARTMENT, A DIVISION OF DEVELOPMENT ASSISTANCE, ENVIRON-
10 MENTAL INDEMNIFICATION AND LAND USE CONTROL WITH AN EXECUTIVE DIRECTOR
11 AND SUCH OTHER PERSONNEL, FROM THE DEPARTMENT, THE DEPARTMENT OF ENVI-
12 RONMENTAL CONSERVATION, THE DEPARTMENT OF HEALTH, THE DEPARTMENT OF
13 AUDIT AND CONTROL AND THE DIVISION OF THE BUDGET AS MAY BE REQUIRED TO
14 PERFORM THE DUTIES OF THE DIVISION.

15 S 403. EXECUTIVE BOARD. THE DIVISION SHALL HAVE AN EXECUTIVE BOARD
16 CONSISTING OF THE COMMISSIONER, WHO SHALL ACT AS CHAIR, THE COMMISSIONER
17 OF ENVIRONMENTAL CONSERVATION, THE COMMISSIONER OF HEALTH, THE STATE
18 COMPTROLLER AND THE DIRECTOR OF THE BUDGET. EXCEPT AS MAY OTHERWISE BE
19 PROVIDED IN THIS ARTICLE, EACH BOARD MEMBER SHALL HAVE AN EQUAL VOTE IN
20 ANY EXECUTIVE BOARD DECISION.

21 S 404. ESTABLISHMENT OF A PLAN OF INDEMNIFICATION AND AN OFFICE OF
22 INDEMNIFICATION. THE DIVISION SHALL HAVE AN OFFICE OF INDEMNIFICATION
23 AND ESTABLISH A PLAN TO CARRY OUT THE INDEMNIFICATION PROVISIONS OF THIS
24 ARTICLE. IN SO DOING THE DIVISION MAY CONTRACT OUT ONE OR MORE DUTIES OF
25 THE OFFICE SUCH AS ACTUARIAL STUDIES, RATE PROJECTIONS, INSPECTION
26 PROGRAMS, AND CLAIMS ADJUSTMENT WITH ONE OR MORE INDEMNIFICATION, INSUR-
27 ANCE, CASUALTY OR BONDING COMPANIES AUTHORIZED TO DO BUSINESS IN THE
28 STATE, AND WITH OFFICES IN THE STATE OR THE STATE INSURANCE FUND, FOR
29 ITS PROGRAM OF INDEMNIFICATION OF ANY DEVELOPER IN ACCORDANCE WITH THE
30 TERMS OF THIS ARTICLE THAT UNDERTAKES A PROJECT TO AND DOES REMEDIATE
31 ANY PROPERTY IN THE STATE TO THE LEVEL REQUIRED BY THE STATE FOR THE
32 INTENDED USE OF THE PROPERTY IN ACCORDANCE WITH A PLAN AGREED TO BY THE
33 DEPARTMENT, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPART-
34 MENT OF HEALTH.

35 S 405. ENVIRONMENTAL REMEDIATION PROJECTS PURSUANT TO THIS ARTICLE. 1.
36 THE DIVISION WITH THE APPROVAL OF THE EXECUTIVE BOARD, PROVIDED THE
37 COMMISSIONER OF ENVIRONMENTAL CONSERVATION AND THE COMMISSIONER OF
38 HEALTH VOTE IN THE AFFIRMATIVE, MAY ENTER INTO A CONTRACT WITH A DEVEL-
39 OPER TO UNDERTAKE AN ENVIRONMENTAL REMEDIATION PROJECT.

40 2. IN ADDITION TO SUCH OTHER TERMS AND CONDITIONS AS THE DIVISION MAY
41 DEEM APPROPRIATE, SUCH CONTRACT SHALL PROVIDE AS FOLLOWS:

42 (A) AN ESTIMATE OF THE COST OF SUCH PROJECT AS DETERMINED BY THE DIVI-
43 SION, THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION AND THE COMMISSION-
44 ER OF HEALTH;

45 (B) AN AGREEMENT BY THE DEVELOPER TO PROCEED EXPEDITIOUSLY WITH AND
46 COMPLETE SUCH PROJECT IN ACCORDANCE WITH SUCH AN AGREEMENT BY THE DEVEL-
47 OPER;

48 (C) AN AGREEMENT BY THE DEVELOPER THAT IT SHALL PREPARE AND IMPLEMENT
49 A PUBLIC PARTICIPATION PLAN PRIOR TO REMEDIAL ACTIVITIES UNDERTAKEN
50 PURSUANT TO THIS SECTION. THE PLAN SHALL PROVIDE OPPORTUNITIES FOR
51 EARLY, INCLUSIVE PARTICIPATION PRIOR TO THE SELECTION OF A PREFERRED
52 COURSE OF ACTION, SHALL FACILITATE COMMUNICATION, INCLUDING DIALOGUE
53 AMONG THE DEVELOPER, THE MUNICIPALITY WHERE THE REMEDIATION PROJECT
54 SHALL TAKE PLACE, THE DIVISION AND THE INTERESTED PUBLIC, AND SHALL
55 PROVIDE TIMELY AND ACCESSIBLE DISCLOSURE OF INFORMATION. AT A MINIMUM,
56 THE DESIGN OF THE PLAN SHALL TAKE INTO ACCOUNT THE SCOPE AND SCALE OF

1 THE PROPOSED ENVIRONMENTAL REMEDIATION PROJECT, LOCAL INTEREST AND OTHER
2 RELEVANT FACTORS. THE PLAN SHALL ALSO PROVIDE FOR: ADEQUATE PUBLIC
3 NOTICE OF THE AVAILABILITY OF A DRAFT REMEDIAL PLAN; A FORTY-FIVE DAY
4 PERIOD FOR SUBMISSION OF WRITTEN COMMENTS; A PUBLIC HEARING ON SUCH PLAN
5 IF SUBSTANTIVE ISSUES ARE RAISED BY MEMBERS OF THE AFFECTED COMMUNITY;
6 AND TECHNICAL ASSISTANCE IF SO REQUESTED BY MEMBERS OF THE AFFECTED
7 COMMUNITY. PROVIDED, HOWEVER, THAT THE REQUIREMENTS OF THIS PARAGRAPH
8 SHALL NOT APPLY TO INTERIM REMEDIAL MEASURES UNDERTAKEN AS PART OF AN
9 ENVIRONMENTAL REMEDIATION PROJECT TO ADDRESS EMERGENCY SITE CONDITIONS.
10 IN SUCH INSTANCE, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION OR THE
11 DEPARTMENT OF HEALTH OR SUCH PERSONS IMPLEMENTING THE INTERIM REMEDIAL
12 MEASURE OR MAKING THE REQUEST SHALL CONDUCT PUBLIC PARTICIPATION ACTIV-
13 ITIES AS SUCH DEPARTMENTS OR THE DIVISION DEEM NECESSARY AND APPROPRIATE
14 UNDER SUCH CIRCUMSTANCES;

15 (D) AN AGREEMENT BY THE DEVELOPER THAT IT SHALL PUT INTO PLACE ANY
16 ENGINEERING AND/OR INSTITUTIONAL CONTROLS (INCLUDING DEED RESTRICTIONS)
17 THAT THE DIVISION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE
18 DEPARTMENT OF HEALTH MAY DEEM NECESSARY TO ALLOW THE CONTEMPLATED USE TO
19 PROCEED, THAT SUCH ENGINEERING AND/OR INSTITUTIONAL CONTROLS SHALL BE
20 BINDING ON SUCH DEVELOPER, ANY SUCCESSOR IN TITLE, AND ANY LESSEES AND
21 THAT ANY SUCCESSORS IN TITLE AND ANY LESSEES CANNOT CHALLENGE STATE OR
22 DIVISION ENFORCEMENT OF SUCH CONTROLS;

23 (E) IN THE EVENT THAT ENGINEERING CONTROLS AND/OR INSTITUTIONAL
24 CONTROLS ARE NECESSARY, THE DEVELOPER AND ITS SUCCESSORS IN TITLE SHALL
25 AGREE TO DEVELOP A PLAN APPROVED BY THE DIVISION, WITH THE CONSENT OF
26 THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF
27 HEALTH, WHICH ENSURES THAT SUCH ENGINEERING AND/OR INSTITUTIONAL
28 CONTROLS BE CONTINUALLY MAINTAINED IN THE MANNER REQUIRED BY THE PLAN.
29 FAILURE TO IMPLEMENT SUCH PLAN OR MAINTAIN SUCH CONTROLS SHALL CONSTI-
30 TUTE A VIOLATION OF SUCH CONTRACT AND SHALL TERMINATE FOR THE DURATION
31 OF SUCH FAILURE THE PROTECTION AFFORDED UNDER THIS ARTICLE;

32 (F) IN THE EVENT THAT DEED RESTRICTIONS ARE REQUIRED, SUCH DEVELOPER
33 SHALL AGREE TO CAUSE SUCH DEED RESTRICTIONS TO BE RECORDED AND INDEXED
34 AS DECLARATIONS OF RESTRICTIONS IN THE OFFICE OF THE RECORDING OFFICER
35 OF THE COUNTY OR COUNTIES WHERE THE REAL PROPERTY SUBJECT TO SUCH ENVI-
36 RONMENTAL REMEDIATION PROJECT IS LOCATED IN THE MANNER PRESCRIBED BY
37 ARTICLE NINE OF THE REAL PROPERTY LAW. SUCH DECLARATION OF RESTRICTION
38 SHALL CONTAIN THE NAME OF THE OWNER OF THE SECTION, BLOCK, AND LOT
39 NUMBER OF SUCH PROPERTY; AND

40 (G) A PROVISION THAT EXEMPTS A DEVELOPER AND ANY SUCCESSOR IN TITLE
41 FROM THE REQUIREMENT TO OBTAIN ANY STATE OR LOCAL PERMIT OR OTHER
42 AUTHORIZATION FOR ANY ACTIVITY NEEDED TO IMPLEMENT SUCH PROJECT THAT IS
43 CONDUCTED ON THE REAL PROPERTY SUBJECT TO SUCH PROJECT SO LONG AS THE
44 ACTIVITY IS CONDUCTED IN A MANNER WHICH SATISFIES ALL SUBSTANTIVE TECH-
45 NICAL REQUIREMENTS APPLICABLE TO LIKE ACTIVITY CONDUCTED PURSUANT TO A
46 PERMIT.

47 S 406. CRITERIA OF PROGRAM OF INDEMNIFICATION. THE PROGRAM OF INDEMNIFI-
48 CATION FOR ANY DEVELOPER SHALL BE THAT THE DEVELOPER UNDERTAKES TO AND
49 DOES REMEDIATE ANY PROPERTY TO THE ENVIRONMENTAL REQUIREMENTS FOR THE
50 INTENDED USE OF THE PROPERTY IN ACCORDANCE WITH THE PLAN, WHICH IS
51 PROTECTIVE OF HUMAN HEALTH AND THE ENVIRONMENT, AGREED TO BY THE DEPART-
52 MENT, DIVISION, DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND DEPARTMENT
53 OF HEALTH.

54 S 407. APPLICATION OF INDEMNIFICATION AND LAND USE CONTROLS. 1. IF THE
55 PLAN OF REMEDIATION IS LESS THAN ONE OF COMPLETE REMEDIATION AND ANY
56 LAND USE CONTROLS ARE REQUIRED, IN ADDITION TO ANY OTHER POWERS THE

1 DEPARTMENT, THE DIVISION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
2 OR THE DEPARTMENT OF HEALTH MAY POSSESS BY OPERATION OF LAW, THE DIVI-
3 SION OR ITS OFFICE OF INDEMNIFICATION SHALL HAVE THE RIGHT AND SHALL
4 MAKE AT LEAST ONE ANNUAL ANNOUNCED INSPECTION AND ONE ANNUAL UNANNOUNCED
5 INSPECTION OF SUCH PROPERTY TO EVALUATE THE EFFECTIVENESS OF SUCH LAND
6 USE CONTROLS AND MAY INSPECT SUCH LAND USE CONTROLS AT ANY OTHER TIME AS
7 IT DEEMS NECESSARY. IN THE EVENT SUCH CONTROLS ARE NOT WORKING OR FOR
8 ANY OTHER REASON THE REMEDIATION IS NOT EFFECTIVE AS SET FORTH IN THE
9 AGREEMENT BETWEEN THE DEVELOPER AND THE DIVISION, THE STATE SHALL
10 REQUIRE THE DEVELOPER (UNLESS OTHERWISE INDEMNIFIED PURSUANT TO SECTION
11 FOUR HUNDRED TEN OF THIS ARTICLE), OR IF THE DEVELOPER IS NOT RESPONSI-
12 BLE FOR THE FAILURE OF SUCH CONTROLS BECAUSE OF THE ACT OF A THIRD
13 PARTY, THEN SUCH RESPONSIBLE THIRD PARTY TO REMEDIATE THE PROPERTY, AND
14 IF THE DEVELOPER WHO IS NOT INDEMNIFIED PURSUANT TO THIS ARTICLE OR THE
15 THIRD PARTY RESPONSIBLE FOR THE FAILURE OF SUCH CONTROLS AND FURTHER
16 CONTAMINATION FAILS OR REFUSES TO CORRECT THE LAND USE CONTROL AND REME-
17 DIATE THE PROPERTY WITHIN THE TIME LIMIT SET BY THE DIVISION, THE DIVI-
18 SION SHALL REFER THE MATTER TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVA-
19 TION AND THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL IMMEDIATELY
20 UNDERTAKE TO REMEDIATE THE PROPERTY PURSUANT TO SECTION 27-1313 OF THE
21 ENVIRONMENTAL CONSERVATION LAW WITH ITS STAFF AND ITS STANDBY CONTRAC-
22 TORS FOR SUCH REMEDIATION WORK, AND THE COST OF SUCH WORK INCLUDING THE
23 DEPARTMENT'S OVERSIGHT AND MANAGEMENT SHALL BE PAID FROM THE INDEMNIFI-
24 CATION FUND PROVIDED BY THIS ARTICLE; PROVIDED, HOWEVER THAT THE LEVEL
25 OF CLEAN UP SHALL BE THE LEVEL REQUIRED FOR PURPOSE OF THE USE OF THE
26 PROPERTY PURSUANT TO THE AGREEMENT BETWEEN THE DEVELOPER AND THE DIVI-
27 SION MADE PURSUANT TO THIS ARTICLE AND NOT THE LEVEL REQUIRED BY PARA-
28 GRAPH D OF SUBDIVISION FIVE OF SECTION 27-1313 OF THE ENVIRONMENTAL
29 CONSERVATION LAW AS IT EXISTED ON JANUARY FIRST, TWO THOUSAND NINE. THE
30 COST OF CORRECTING THE LAND USE CONTROLS AND REMEDIATION IF DONE PURSU-
31 ANT TO THIS SECTION SHALL BE A CHARGE AGAINST THE PARTY CAUSING SUCH
32 PROBLEM UNLESS OTHERWISE INDEMNIFIED UNDER THIS ARTICLE AND THE STATE ON
33 BEHALF OF THE INDEMNIFICATION FUND MAY INSTITUTE A CLAIM OR CAUSE OF
34 ACTION FOR PAYMENT AGAINST SUCH DEVELOPER OR PARTY IN THE SUPREME COURT
35 OF THIS STATE FOR RECOVERY OF SUCH COSTS FROM SUCH PARTY.

36 2. IF THE PLAN OF REMEDIATION IS ONE THAT REQUIRES COMPLETE REMEDI-
37 ATION OR OTHERWISE IS NOT SUBJECT TO LAND USE CONTROL REQUIREMENTS, THE
38 OFFICE OF INDEMNIFICATION SHALL HAVE THE RIGHT AND THE DUTY TO INSPECT
39 SUCH PROPERTY FROM TIME TO TIME TO OBSERVE AND REPORT IF THERE ARE ANY
40 CHANGE OF CONDITIONS THAT REQUIRE REMEDIATION. IF THE REPORT FINDS THAT
41 BECAUSE OF CHANGED CONDITIONS FURTHER REMEDIATION IS NEEDED AND THE
42 DEVELOPER OR ITS SUCCESSOR IN TITLE IS INDEMNIFIED UNDER THIS ARTICLE,
43 THE OFFICE OF INDEMNIFICATION SHALL NOTIFY SUCH PARTY AND THE DEPARTMENT
44 OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF HEALTH AND THE DIVISION
45 AND ENTER INTO AN AGREEMENT WITH THE DEVELOPER OR THE SUCCESSOR IN TITLE
46 TO REMEDIATE SUCH PROPERTY THROUGH THE DEPARTMENT OF ENVIRONMENTAL
47 CONSERVATION'S STANDBY CONTRACTORS AT THE EXPENSE OF THE OFFICE OF
48 INDEMNIFICATION. IF THE CONTAMINATION WAS THE RESULT OF THE ACTS OF THE
49 DEVELOPER OR ITS SUCCESSOR IN INTEREST AFTER THE REMEDIATION PROJECT
50 COVERED BY THE AGREEMENT BETWEEN THE DEVELOPER AND THE DIVISION AND IS
51 NOT COVERED BY THE INDEMNIFICATION SET FORTH IN THIS ARTICLE THEN THE
52 COST OF SUCH A REMEDIATION SHALL BE BORNE BY THE RESPONSIBLE PARTY.

53 S 408. COSTS OF INDEMNIFICATION. TO DEFRAY THE COST OF INDEMNIFICA-
54 TION, AN ACTUARIAL STUDY SHALL BE MADE BY THE OFFICE OF INDEMNIFICATION
55 AND A SURCHARGE SHALL BE ADDED TO THE COST OF THE REMEDIATION IN THE
56 AGREEMENT REFERRED TO IN SECTION FOUR HUNDRED FIVE OF THIS ARTICLE.

1 SUCH SURCHARGE MAY BE IN THE FORM OF A ONE TIME LUMP SUM PAYMENT OR A
2 YEARLY PAYMENT AS DETERMINED BY THE EXECUTIVE BOARD. THE MONIES FROM
3 SUCH SURCHARGE SHALL BE PLACED IN THE ENVIRONMENTAL REMEDIATION INDEMNIFI-
4 CATION FUND ESTABLISHED PURSUANT TO SECTION NINETY-NINE-Q OF THE STATE
5 FINANCE LAW AND MAY BE INVESTED AND REINVESTED PURSUANT TO THE LAWS OF
6 THIS STATE TO BUILD A FUND ACTUARIALLY SUFFICIENT TO COVER THE ANTICI-
7 PATED NEEDS OF SUCH FUND. THE EXECUTIVE BOARD MAY FROM TIME TO TIME
8 ADJUST SUCH SURCHARGE IN ACCORDANCE WITH ANY CHANGED CONDITIONS, AND THE
9 STATE MAY FROM TIME TO TIME THROUGH ITS BUDGETARY PROCESS MAKE APPROPRI-
10 ATIONS TO THE FUND TO MAINTAIN THE FUND'S INTEGRITY.

11 S 409. RESPONSIBILITY OF RESPONSIBLE PARTIES. NOTHING IN THIS ARTICLE
12 SHALL RELIEVE A RESPONSIBLE PARTY FROM THE COST OF REMEDIATION EXCEPT
13 THAT THE EXECUTIVE BOARD MAY COMPROMISE ANY CLAIM ON ADVICE OF COUNSEL
14 FOR GOOD AND SUFFICIENT REASON, SUCH AS FUTILITY OF RECOVERY OR DECISI-
15 SIONS AS TO THE STRENGTH OR WEAKNESS OF EACH INDIVIDUAL CASE. THE EXECU-
16 TIVE BOARD MAY ALSO FOR GOOD AND SUFFICIENT REASONS RELIEVE A MUNICI-
17 PALITY FROM ALL OR A PART OF SUCH COSTS. SHOULD THE MUNICIPALITY SELL
18 SUCH PROPERTY, THE BOARD MAY REQUIRE THE PAYMENT TO THE STATE OF SUCH
19 AMOUNT AS IT DEEMS FEASIBLE TO OFFSET THE COST OF REMEDIATION, THE VALUE
20 OF THE PROPERTY AND THE ADDED VALUE OF THE POTENTIAL ECONOMIC DEVELOP-
21 MENT. NOTHING IN THIS ARTICLE SHALL RELIEVE A RESPONSIBLE PARTY THAT HAS
22 NOT CONTRIBUTED TO THE COST OF REMEDIATION FROM AN ACTION BY THE RESPON-
23 SIBLE PARTY OR PARTIES THAT HAVE PAID FOR SUCH REMEDIATION FOR THE EQUI-
24 TABLE SHARE SUCH PARTY SHOULD HAVE PAID AND SUCH PARTY SHALL NOT BE
25 ACCORDED INDEMNIFICATION UNDER THIS ARTICLE OR THE INDEMNIFICATION
26 AGREEMENT WITH THE DEVELOPERS THAT HAVE PAID FOR THE REMEDIATION OF SUCH
27 PROPERTY.

28 S 410. LIABILITY LIMITATION AND INDEMNIFICATION. 1. (A) NOTWITHSTAND-
29 ING ANY OTHER PROVISION OF LAW AND EXCEPT AS PROVIDED IN SUBDIVISION TWO
30 OF THIS SECTION AND IN PARAGRAPH (E) OF SUBDIVISION TWO OF SECTION FOUR
31 HUNDRED FIVE OF THIS ARTICLE, THE FOLLOWING SHALL NOT BE LIABLE TO THE
32 STATE UPON ANY STATUTORY OR COMMON LAW CAUSE OF ACTION, OR TO ANY PERSON
33 UPON STATUTORY CAUSE OF ACTION ARISING OUT OF THE PRESENCE OF ANY
34 HAZARDOUS SUBSTANCE IN OR ON PROPERTY AT ANY TIME BEFORE THE EFFECTIVE
35 DATE OF A CONTRACT ENTERED INTO PURSUANT TO THIS ARTICLE:

36 (I) A DEVELOPER WHO HAS ENTERED INTO AN AGREEMENT WITH THE DIVISION TO
37 UNDERTAKE AND HAS UNDERTAKEN AN ENVIRONMENTAL REMEDIATION PROJECT PURSU-
38 ANT TO THIS ARTICLE AND HAS COMPLIED WITH THE TERMS AND CONDITIONS OF
39 THE AGREEMENT PROVIDED THAT THE DEVELOPER DID NOT GENERATE, ARRANGE FOR,
40 TRANSPORT FOR DISPOSAL OF ANY HAZARDOUS SUBSTANCE LOCATED AT SUCH PROP-
41 erty AND DID NOT OWN SUCH PROPERTY DURING ANY SUCH TIME WHEN PROPERTY
42 WAS CONTAMINATED; AND

43 (II) A SUCCESSOR IN TITLE TO THE REAL PROPERTY SUBJECT TO SUCH
44 PROJECT; ANY LESSEE OF SUCH PROPERTY; AND ANY PERSON THAT PROVIDES
45 FINANCING TO SUCH DEVELOPER RELATIVE TO THE REMEDIATION, RESTORATION, OR
46 REDEVELOPMENT OF SUCH PROPERTY, PROVIDED THAT SUCH SUCCESSOR IN TITLE,
47 LESSEE, OR LENDER DID NOT GENERATE, ARRANGE FOR, TRANSPORT, OR DISPOSE,
48 AND DID NOT CAUSE THE GENERATION, ARRANGEMENT FOR, TRANSPORTATION, OR
49 DISPOSAL OF ANY HAZARDOUS SUBSTANCE LOCATED AT SUCH PROPERTY, AND DID
50 NOT OWN SUCH PROPERTY DURING ANY SUCH TIME WHEN PROPERTY WAS CONTAM-
51 INATED.

52 (B) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, ANY PERSON
53 SEEKING THE BENEFIT OF THIS SUBDIVISION SHALL BEAR THE BURDEN OF PROVING
54 THAT A CAUSE OF ACTION, OR ANY PART THEREOF, IS ATTRIBUTABLE SOLELY TO
55 HAZARDOUS SUBSTANCES PRESENT IN OR ON SUCH PARCEL BEFORE THE EFFECTIVE
56 DATE OF SUCH CONTRACT.

2. SUBDIVISION ONE OF THIS SECTION SHALL NOT APPLY TO RELIEVE ANY DEVELOPER, SUCCESSOR IN TITLE, LESSEE OR LENDER FROM LIABILITY ARISING FROM:

(A) FAILING TO IMPLEMENT SUCH PROJECT TO THE DIVISION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH'S SATISFACTION OR FAILING TO COMPLY WITH THE TERMS AND CONDITIONS OF THE CONTRACT;

(B) FRAUDULENTLY DEMONSTRATING THE CLEANUP LEVELS IDENTIFIED IN OR TO BE IDENTIFIED IN ACCORDANCE WITH SUCH PROJECT WERE REACHED;

(C) CAUSING THE RELEASE OR THREAT OF RELEASE AT THE PROPERTY SUBJECT TO SUCH PROJECT OF ANY HAZARDOUS SUBSTANCE AFTER THE EFFECTIVE DATE OF SUCH CONTRACT; OR

(D) CHANGING SUCH PROPERTY'S USE FROM THE INTENDED USE AS IDENTIFIED IN THE CONTRACT PURSUANT TO THIS ARTICLE TO A USE REQUIRING A LOWER LEVEL OF RESIDUAL CONTAMINATION UNLESS THE ADDITIONAL REMEDIAL ACTIVITIES ARE UNDERTAKEN WHICH SHALL MEET THE SAME STANDARD FOR PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT THAT APPLIES TO REMEDIAL ACTIONS UNDERTAKEN PURSUANT TO THE INTENDED USE OF THE PROPERTY AS AGREED TO BY THE DIVISION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH SO THAT SUCH USE CAN BE IMPLEMENTED WITH SUFFICIENT PROTECTION OF PUBLIC HEALTH AND THE ENVIRONMENT.

3. THE OFFICE OF INDEMNIFICATION SHALL INDEMNIFY AND SAVE HARMLESS, THE DEVELOPER, ANY SUCCESSOR IN TITLE, LESSEE, OR LENDER IDENTIFIED IN PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION IN THE AMOUNT OF ANY JUDGMENT, OR SETTLEMENT, OBTAINED AGAINST SUCH DEVELOPER, SUCCESSOR IN TITLE, LESSEE OR LENDER IN ANY COURT FOR ANY COMMON LAW CAUSE OF ACTION ARISING OUT OF THE PRESENCE OF ANY HAZARDOUS SUBSTANCE IN OR ON SUCH PROPERTY AND IS THE SUBJECT OF THE AGREEMENT BETWEEN THE DEVELOPER AND THE DIVISION AT ANYTIME BEFORE THE EFFECTIVE DATE OF A CONTRACT ENTERED INTO PURSUANT TO THIS ARTICLE. SUCH DEVELOPER, SUCCESSOR IN TITLE, LESSEE OR LENDER SHALL BE ENTITLED TO LEGAL REPRESENTATION TO BE PROVIDED BY, OR THE COST OF WHICH SHALL BE PAID FOR BY, THE OFFICE OF INDEMNIFICATION AS SUCH OFFICE SHALL DETERMINE PROVIDED SUCH DETERMINATION OF SUCH REPRESENTATION SHALL BE CONSISTENT WITH THE CODE OF PROFESSIONAL RESPONSIBILITY APPLICABLE TO LEGAL REPRESENTATION IN THIS STATE AND ANY SETTLEMENT OF SUCH AN ACTION SHALL BE SUBJECT TO THE APPROVAL OF THE DIVISION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH AS TO FORM AND AMOUNT, AND THIS SUBDIVISION SHALL NOT APPLY TO ANY SETTLEMENT OF ANY SUCH ACTION WHICH HAS NOT RECEIVED SUCH APPROVAL.

4. THE DEVELOPER AND ANY SUCCESSOR IN TITLE SHALL IMPLEMENT AN ENVIRONMENTAL SAMPLING PROGRAM APPROVED BY THE DIVISION AND THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH AND, IN THE EVENT THAT CONDITIONS ON SUCH PROPERTY ARE NOT SUFFICIENTLY PROTECTIVE OF HUMAN HEALTH FOR ITS CURRENT USE DUE TO ENVIRONMENTAL CONDITIONS RELATED TO THE PROPERTY SUBJECT TO SUCH PROJECT THAT WERE UNKNOWN TO THE DIVISION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH AS OF THE EFFECTIVE DATE OF SUCH CONTRACT OR DUE TO INFORMATION RECEIVED IN WHOLE OR IN PART AFTER THE DIVISION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH APPROVAL OF SUCH PROJECT FINAL ENGINEERING REPORT AND CERTIFICATION, SHALL TAKE SUCH EMERGENCY MEASURES THAT ARE NECESSARY TO MAINTAIN SUFFICIENT PROTECTION OF HUMAN HEALTH FOR SUCH PROPERTY'S CURRENT USE UNTIL SUCH CONDITIONS ARE ADDRESSED; AND THE OFFICE OF REMEDIATION SHALL TAKE SUCH MEASURES AS IT MAY DETERMINE THROUGH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND ITS STANDBY CONTRACTORS TO RETURN SUCH PROPERTY TO

1 CONDITIONS SUFFICIENTLY PROTECTIVE OF HUMAN HEALTH AND THE COST OF SUCH
2 WORK SHALL BE PAID BY THE OFFICE OF INDEMNIFICATION.

3 5. IN ADDITION TO ANY OTHER POWERS THE DEPARTMENT MAY HAVE, THE DIVI-
4 SION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF
5 HEALTH SHALL HAVE THE AUTHORITY TO PERIODICALLY INSPECT EACH PROJECT
6 SITE TO ENSURE THAT THE USE OF THE PROPERTY COMPLIES WITH THE TERMS AND
7 CONDITIONS OF THE CONTRACT.

8 S 411. CHANGE OF USE. 1. AT LEAST SIXTY DAYS BEFORE THE START OF PHYS-
9 ICAL ALTERATION OR CONSTRUCTION CONSTITUTING A CHANGE OF SUCH AT A PROP-
10 ERTY REMEDIATED UNDER AN ENVIRONMENTAL REMEDIATION AGREEMENT OR PROJECT,
11 OR AT LEAST SIXTY DAYS BEFORE A CHANGE OF USE AT SUCH A PROPERTY NOT
12 INVOLVING ANY PHYSICAL ALTERATION OR CONSTRUCTION, AS THE CASE MAY BE,
13 THE PERSON PROPOSING TO MAKE A CHANGE OF USE SHALL PROVIDE WRITTEN
14 NOTIFICATION TO THE DIVISION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVA-
15 TION, THE DEPARTMENT OF HEALTH AND THE CLERKS OF THE COUNTY AND OTHER
16 MUNICIPALITIES IN WHICH SUCH PROPERTY IS LOCATED.

17 2. NO PERSON SHALL ENGAGE IN ANY ACTIVITY AT A PROPERTY REMEDIATED
18 UNDER AN ENVIRONMENTAL REMEDIATION PROJECT THAT IS NOT CONSISTENT WITH
19 RESTRICTIONS PLACED UPON THE USE OF THE PROPERTY, OR THAT WILL, OR THAT
20 REASONABLY IS ANTICIPATED TO PREVENT OR INTERFERE SIGNIFICANTLY WITH A
21 PROPOSED, ONGOING, OR COMPLETED PROJECT; OR EXPOSE THE PUBLIC HEALTH OR
22 THE ENVIRONMENT TO A SIGNIFICANTLY INCREASED THREAT OF HARM DONE OR
23 DAMAGE AT SUCH PROPERTY. IF THE DIVISION TOGETHER WITH THE COMMISSIONER
24 OF ENVIRONMENTAL CONSERVATION AND THE COMMISSIONER OF HEALTH DETERMINE
25 THAT A PROPOSED CHANGE OF USE IS PROHIBITED PURSUANT TO THIS SECTION, IT
26 SHALL, WITHIN FORTY-FIVE DAYS AFTER RECEIPT OF THE COMPLETE NOTICE
27 REQUIRED BY THIS SECTION, PROVIDE THE PERSON GIVING SUCH NOTICE WITH A
28 WRITTEN DETERMINATION THAT SUCH CHANGE OF USE WILL NOT BE AUTHORIZED,
29 TOGETHER WITH THE REASONS FOR SUCH DETERMINATION.

30 3. FOR THE PURPOSES OF THIS SECTION:

31 (A) "CHANGE OF USE" MEANS THE TRANSFER OF TITLE TO ALL OR PART OF
32 PROPERTY SUBJECT TO AN ENVIRONMENTAL REMEDIATION AGREEMENT WITH THE
33 DIVISION, THE ERECTION OF ANY STRUCTURE ON SUCH PROPERTY, THE PAVING OF
34 SUCH PROPERTY FOR USE AS A ROADWAY OR PARKING LOT, AND THE CREATION OF A
35 PARK OR OTHER PUBLIC OR PRIVATE RECREATIONAL FACILITY ON SUCH PROPERTY,
36 OR ANY ACTIVITY THAT IS LIKELY TO DISRUPT OR EXPOSE HAZARDOUS SUBSTANCES
37 OR TO INCREASE DIRECT HUMAN EXPOSURE; OR ANY OTHER CONDUCT THAT WILL OR
38 MAY TEND TO SIGNIFICANTLY INTERFERE WITH AN ONGOING OR COMPLETED ENVI-
39 RONMENTAL REMEDIATION PROJECT; AND

40 (B) "COMPLETE NOTICE" MEANS A NOTICE THAT ADEQUATELY APPRISES THE
41 DIVISION AND THE EXECUTIVE BOARD OF THE CONTEMPLATED PHYSICAL ALTERATION
42 OF THE PROPERTY AND HOW SUCH ALTERATION MAY AFFECT THE PROPERTY'S
43 PROPOSED, ONGOING, OR COMPLETED REMEDIATION, OR OF THE PROPOSED NEW
44 OWNER'S ABILITY TO IMPLEMENT THE ENGINEERING AND INSTITUTIONAL CONTROLS
45 ASSOCIATED WITH THE PROPERTY'S REMEDIATION.

46 S 412. CONTINUATION OF THE STATE SUPERFUND MANAGEMENT BOARD. THE STATE
47 SUPERFUND MANAGEMENT BOARD, CREATED PURSUANT TO SECTION 27-1319 OF THE
48 ENVIRONMENTAL CONSERVATION LAW, SHALL BE CONTINUED AS THE ADVISORY BOARD
49 TO THE DIVISION AND THE COMMISSIONER SHALL BE AN EX OFFICIO MEMBER OF
50 SUCH BOARD WHEN IT MEETS TO ADVISE THE DIVISION.

51 S 413. COST OF DEMOLITION OF STRUCTURES ON VARIOUS SITES. IN THE EVENT
52 THAT THE SURCHARGE RECEIPTS REFERRED TO IN SECTION FOUR HUNDRED EIGHT OF
53 THIS ARTICLE SHALL EXCEED THE ACTUARIAL ESTIMATES OF FUTURE COSTS OF THE
54 INDEMNIFICATION PROCESS, OR BECAUSE OF OTHER DEVELOPMENTAL OPPORTU-
55 NITIES, SUCH MONIES MAY BE AUTHORIZED BY THE DIVISION TO BE USED FOR
56 DEMOLITION OF STRUCTURES ON THE SITES COVERED BY THIS ARTICLE, INCLUDING

1 ANY DEFINED AS BROWNFIELDS, EVEN THOUGH SUCH STRUCTURES MAY NOT IN AND
2 OF THEMSELVES BE THE SOURCE OF CONTAMINATION OR BE REQUIRED TO BE
3 REMOVED TO GET AT THE SOURCE OF SUCH CONTAMINATION.

4 S 414. INDEMNIFICATION FOR RESPONSIBLE DEVELOPER. NOTWITHSTANDING ANY
5 CONTRARY OR INCONSISTENT PROVISION OF THIS ARTICLE, IF A DEVELOPER WHO
6 WAS A RESPONSIBLE PARTY FOR THE CONTAMINATION OF ANY PROPERTY INCLUDING
7 PROPERTY WHICH IT OWNS, ENTERS AN AGREEMENT WITH THE DIVISION TO UNDER-
8 TAKE A REMEDIATION PROJECT PURSUANT TO THIS ARTICLE AND PROVIDED THAT
9 THE LEVEL OF REMEDIATION OF SUCH PROPERTY SHALL BE CONSISTENT WITH THAT
10 REQUIRED BY SECTION 27-1313 OF THE ENVIRONMENTAL CONSERVATION LAW THE
11 INDEMNIFICATION PORTION PROVIDED IN SUBDIVISION FOUR OF SECTION FOUR
12 HUNDRED TEN OF THIS ARTICLE SHALL APPLY TO SUCH DEVELOPER AND ANY
13 SUCCESSOR IN TITLE TO SUCH REMEDIATED PROPERTY IF SUCH DEVELOPER
14 COMPLIES WITH SUCH SECTION IN ITS AGREEMENT WITH THE STATE AND REMEDI-
15 ATES ITS CONTAMINATED PROPERTY PURSUANT TO SUCH AGREEMENT AND PAYS A
16 SURCHARGE FOR SUCH INDEMNIFICATION PROVIDED IN THIS ARTICLE TO THE
17 OFFICE OF INDEMNIFICATION AND SUCH PARTY SHALL BE SUBJECT TO ALL THE
18 OTHER TERMS AND CONDITIONS OF THIS ARTICLE EXCEPT THE INDEMNIFICATION
19 AND RELIEF OF LIABILITY PROVIDED BY THIS ARTICLE SHALL ONLY EXTEND TO
20 THE PROPERTY THAT WAS THE SUBJECT OF THE REMEDIATION AGREEMENT BETWEEN
21 THE STATE AS TO CLAIMS DESCRIBED IN SUBDIVISION FOUR OF SECTION FOUR
22 HUNDRED TEN OF THIS ARTICLE AND SHALL NOT APPLY TO CLAIMS FOR NATURAL
23 RESOURCE DAMAGES OR THIRD PARTY CLAIMS DESCRIBED IN SUBDIVISION THREE OF
24 SECTION FOUR HUNDRED TEN OF THIS ARTICLE, EXCEPT THAT LEGAL REPRESENTATION AS PROVIDED IN SUBDIVISION THREE OF SECTION FOUR HUNDRED TEN OF
25 THIS ARTICLE SHALL BE PROVIDED TO SUCH DEVELOPER FOR CLAIMS MADE AGAINST
26 SUCH DEVELOPER AS DESCRIBED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED
27 TEN OF THIS ARTICLE AS IT WOULD FOR ANY OTHER DEVELOPERS DESCRIBED IN
28 SUCH SECTION.

30 S 415. MUNICIPALITY PARTICIPATION. NOTWITHSTANDING ANY OTHER LAW TO
31 THE CONTRARY, A MUNICIPALITY AS DEFINED IN TITLE FIVE OF ARTICLE FIFTY-
32 SIX OF THE ENVIRONMENTAL CONSERVATION LAW MAY UTILIZE THIS ARTICLE FOR
33 ANY PROJECT AND STILL BE ENTITLED TO STATE AID FROM THE CLEAN
34 WATER/CLEAN AIR BOND ACT OF 1996 ACCORDING TO SUCH TITLE.

35 S 2. The state finance law is amended by adding a new section 99-q to
36 read as follows:

37 S 99-Q. ENVIRONMENTAL REMEDIATION INDEMNIFICATION FUND. 1. THERE IS
38 HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE
39 COMMISSIONER OF TAXATION AND FINANCE A SPECIAL REVENUE FUND TO BE KNOWN
40 AS THE "ENVIRONMENTAL REMEDIATION INDEMNIFICATION FUND".

41 2. (A) SUCH FUND SHALL CONSIST OF, AND THE STATE COMPTROLLER IS HEREBY
42 AUTHORIZED AND DIRECTED TO RECEIVE FOR DEPOSIT TO THE CREDIT OF SUCH
43 FUND, MONIES COLLECTED PURSUANT TO SECTIONS FOUR HUNDRED FOUR AND FOUR
44 HUNDRED EIGHT OF THE ECONOMIC DEVELOPMENT LAW INCLUDING, BUT NOT LIMITED
45 TO, ALL SURCHARGES AND CLAIMS ADJUSTMENTS AND SETTLEMENTS RECEIVED FROM
46 ONE OR MORE INDEMNIFICATION, INSURANCE, CASUALTY OR BONDING COMPANIES OR
47 THE STATE INSURANCE FUND RELATING TO THE REQUIREMENTS OF SUCH ARTICLE
48 AND ALL OTHER MONEYS CREDITED OR TRANSFERRED TO SUCH FUND FROM ANY OTHER
49 FUND OR SOURCE PURSUANT TO LAW.

50 (B) THE STATE COMPTROLLER IS HEREBY AUTHORIZED AND DIRECTED TO PERMIT
51 INTEREST EARNINGS ON ANY FUND BALANCES TO ACCRUE TO THE BENEFIT OF SUCH
52 FUND.

53 3. MONIES OF THE FUND, FOLLOWING APPROPRIATION BY THE LEGISLATURE,
54 SHALL BE AVAILABLE TO THE DIVISION OF DEVELOPMENT ASSISTANCE, ENVIRON-
55 MENTAL INDEMNIFICATION AND LAND USE CONTROL IN THE DEPARTMENT OF ECONOM-

1 IC DEVELOPMENT AND SHALL BE EXPENDED EXCLUSIVELY FOR THE PURPOSES OF
2 ARTICLE SEVENTEEN OF THE ECONOMIC DEVELOPMENT LAW.

3 4. MONIES SHALL BE PAID OUT OF SUCH FUND ON THE AUDIT AND WARRANT OF
4 THE STATE COMPTROLLER ON VOUCHERS APPROVED AND CERTIFIED BY THE COMMIS-
5 SIONER OF ECONOMIC DEVELOPMENT.

6 S 3. Section 27-1319 of the environmental conservation law is REPEALED
7 and a new section 27-1319 is added to read as follows:

8 S 27-1319. STATE SUPERFUND MANAGEMENT BOARD.

9 1. A. THERE IS HEREBY CREATED WITHIN THE DEPARTMENT THE "STATE SUPER-
10 FUND MANAGEMENT BOARD" HEREINAFTER REFERRED TO IN THIS SECTION AS THE
11 BOARD. SUCH BOARD SHALL CONSIST OF FOURTEEN MEMBERS, INCLUDING THE
12 COMMISSIONER AND THE COMMISSIONER OF HEALTH, OR THEIR DESIGNEES, AND
13 TWELVE AT LARGE MEMBERS APPOINTED BY THE GOVERNOR, TWO OF WHOM SHALL BE
14 APPOINTED UPON RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE
15 AND TWO OF WHOM SHALL BE APPOINTED UPON RECOMMENDATION OF THE SPEAKER OF
16 THE ASSEMBLY, ONE OF WHOM SHALL BE APPOINTED UPON RECOMMENDATION OF THE
17 MINORITY LEADER OF THE SENATE AND ONE OF WHOM SHALL BE APPOINTED UPON
18 RECOMMENDATION OF THE MINORITY LEADER OF THE ASSEMBLY, AND, OF THE
19 REMAINING SIX, TWO SHALL LIVE WITHIN A MUNICIPALITY WITHIN WHICH EXISTS
20 AN INACTIVE HAZARDOUS WASTE SITE, OR SITES, AS LISTED PURSUANT TO
21 SECTION 27-1305 OF THIS TITLE, AND HAVE BEEN INVOLVED IN A CITIZEN'S
22 ORGANIZATION THAT HAS A PURPOSE RELATING TO THE SITE OR SITES WITHIN
23 THAT MUNICIPALITY, TWO SHALL BE REPRESENTATIVES OF ORGANIZATIONS WHOSE
24 PRIME FUNCTION IS THE PROTECTION OF NATURAL RESOURCES AND ENHANCEMENT OF
25 THE ENVIRONMENTAL QUALITY OF THE STATE AND TWO SHALL BE REPRESENTATIVES
26 OF INDUSTRIES THAT GENERATE HAZARDOUS WASTE IN THE STATE. NONE OF THE
27 MEMBERS APPOINTED BY THE GOVERNOR SHALL BE OFFICERS OR EMPLOYEES OF ANY
28 STATE DEPARTMENT OR AGENCY AND EACH SHALL BE, BY PROFESSIONAL TRAINING
29 OR EXPERIENCE AND ATTAINMENT, QUALIFIED TO ANALYZE AND INTERPRET MATTERS
30 PERTAINING TO HAZARDOUS WASTE MANAGEMENT AND THE REMEDIATION OF INACTIVE
31 HAZARDOUS WASTE DISPOSAL SITES.

32 B. NO AT LARGE MEMBER OF THE BOARD MAY APPOINT A DESIGNEE TO TEMPORAR-
33 ILY OR PERMANENTLY ASSUME HIS OR HER PLACE ON THE BOARD.

34 2. A. THE COMMISSIONER SHALL SERVE AS CHAIRPERSON OF THE BOARD AND THE
35 BOARD SHALL ELECT A VICE CHAIRPERSON FROM AMONG THE APPOINTED MEMBERS TO
36 PRESIDE IN THE ABSENCE OF THE CHAIRPERSON.

37 B. OF THE TWELVE AT LARGE MEMBERS APPOINTED BY THE GOVERNOR, EACH
38 SHALL BE REAFFIRMED OR REAPPOINTED ON JANUARY THIRTY-FIRST, TWO THOUSAND
39 TWELVE AND EVERY TWO YEARS THEREAFTER AND EACH SHALL HOLD OFFICE UNTIL
40 SUCH TIME AS HE OR SHE SHALL RESIGN OR BE REMOVED IN THE MANNER PROVIDED
41 BY LAW. ANY VACANCY ON THE BOARD SHALL BE FILLED BY APPOINTMENT PURSUANT
42 TO SUBDIVISION ONE OF THIS SECTION FOR THE UNEXPIRED BALANCE OF THE
43 TERM.

44 3. THE MEMBERS OF THE BOARD SHALL SERVE WITHOUT COMPENSATION FOR THEIR
45 SERVICES AS MEMBERS OF THE BOARD, EXCEPT THAT EACH OF THEM SHALL BE
46 ALLOWED THE NECESSARY AND ACTUAL EXPENSES WHICH HE OR SHE SHALL INCUR IN
47 THE PERFORMANCE OF HIS OR HER DUTIES UNDER THIS SECTION.

48 4. THE BOARD SHALL HAVE THE POWER, DUTY AND RESPONSIBILITY TO:

49 A. SERVE AS A WORKING FORUM FOR THE EXCHANGE OF VIEWS, CONCERNS,
50 IDEAS, INFORMATION AND RECOMMENDATIONS RELATING TO HAZARDOUS WASTE
51 MANAGEMENT AND THE REMEDIATION OF INACTIVE HAZARDOUS WASTE DISPOSAL
52 SITES.

53 B. REQUEST AND RECEIVE FROM THE DEPARTMENT AT EACH MEETING OF THE
54 BOARD ANY PORTIONS OF THE PLAN OR ANY REVISIONS, AMENDMENTS OR CHANGES
55 AVAILABLE FOR REVIEW, AND ANY SUPPORTING DOCUMENTS OR OTHER PERTINENT
56 DATA. ALL INFORMATION REQUESTED BY OR PROVIDED TO THE BOARD SHALL ALSO

1 BE PROVIDED TO THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE
2 ASSEMBLY, AND THE CHAIRPERSONS OF THE SENATE AND ASSEMBLY ENVIRONMENTAL
3 CONSERVATION COMMITTEES.

4 C. COMPEL THE ATTENDANCE AT EACH MEETING OF THE BOARD OF SUCH PERSON-
5 NEL OF THE DEPARTMENT, OR OF OTHER APPROPRIATE STATE DEPARTMENTS OR
6 AGENCIES, AS MAY REASONABLY BE EXPECTED TO SUPPLY ANY PERTINENT DATA THE
7 BOARD MAY REQUEST.

8 D. MONITOR AND REVIEW THE IMPLEMENTATION OF THE INACTIVE HAZARDOUS
9 WASTE SITE REMEDIATION PROGRAM AND THE POLICIES, PROGRAM OBJECTIVES,
10 METHODS, AND STRATEGIES OUTLINED IN THE PLAN, THE ANNUAL IMPLEMENTATION
11 STATUS REPORT, ANY PLAN UPDATE, THE REGISTRY, AND THE QUARTERLY SITE
12 STATUS REPORTS BY THE DEPARTMENT, AS WELL AS INFORMATION WHICH THE BOARD
13 MAY ACQUIRE FROM OTHER SOURCES.

14 E. REVIEW THE HAZARDOUS WASTE SITE REMEDIATION REMAINING TO BE
15 COMPLETED UNDER THE STATE INACTIVE HAZARDOUS WASTE REMEDIAL PLAN AS
16 UPDATED, THE ESTIMATE OF THE COSTS WHICH WOULD BE INCURRED IN THE
17 COMPLETION OF THIS REMEDIATION, THE SCHEDULE UNDER WHICH THE COSTS WILL
18 BE INCURRED, THE REVENUES AND RESOURCES EXPECTED TO BE AVAILABLE TO MEET
19 THESE COSTS.

20 F. REVIEW AND EVALUATE THE MUNICIPAL COST SHARING PROGRAM ESTABLISHED
21 PURSUANT TO PARAGRAPH G OF SUBDIVISION FIVE OF SECTION 27-1313 OF THIS
22 TITLE AND REVIEW THE APPROPRIATE STATE AND INDUSTRY CONTRIBUTION TO THE
23 INACTIVE HAZARDOUS WASTE SITE REMEDIAL PROGRAM.

24 G. BASED UPON ITS MONITORING, REVIEWING AND OTHER INFORMATION AVAIL-
25 ABLE TO IT, THE BOARD SHALL REPORT TO THE GOVERNOR AND TO THE LEGISLA-
26 TURE ON OR BEFORE JANUARY FIRST OF EACH YEAR ITS ASSESSMENT OF THE
27 IMPLEMENTATION OF THE REMEDIATION PROGRAM, TOGETHER WITH ITS COMMENTS,
28 SUGGESTIONS, AND RECOMMENDATIONS REGARDING THE PROGRAM, ITS IMPLEMENTA-
29 TION, AVAILABLE FUNDING AND RESOURCES, AND THE NEED FOR STEPS TO ASSURE
30 THE FUTURE AVAILABILITY OF FUNDING.

31 5. A. THE BOARD SHALL:

32 1. MEET AT LEAST QUARTERLY;

33 2. KEEP A RECORD OF ALL ITS PROCEEDINGS AND PROVIDE SUCH RECORD TO THE
34 PUBLIC UPON REQUEST; AND

35 3. DETERMINE THE RULES OF ITS OWN PROCEDURES.

36 B. SEVEN MEMBERS OF THE BOARD SHALL CONSTITUTE A QUORUM FOR THE TRANS-
37 ACTION OF ANY BUSINESS OF THE BOARD.

38 6. STAFF SERVICES, INCLUDING RECORDING OF BOARD PROCEEDINGS, SHALL BE
39 PERFORMED BY PERSONNEL OF THE DEPARTMENT, OR SUCH STATE DEPARTMENTS OR
40 OTHER AGENCIES AS THE CHAIRPERSON DEEMS APPROPRIATE OR DESIRABLE.

41 7. FOR THE PURPOSES OF THIS SECTION, THE AT LARGE MEMBERS OF THE BOARD
42 SHALL BE CONSIDERED OFFICERS OR EMPLOYEES OF PUBLIC ENTITIES AND SHALL
43 BE AFFORDED SUCH DEFENSE AND INDEMNIFICATION PROVIDED PURSUANT TO
44 SECTION EIGHTEEN OF THE PUBLIC OFFICERS LAW.

45 S 4. Severability clause. If any clause, sentence, paragraph, subdivi-
46 sion, section or part of this act shall be adjudged by any court of
47 competent jurisdiction to be invalid, such judgment shall not affect,
48 impair or invalidate the remainder thereof, but shall be confined in its
49 operation to the clause, sentence, paragraph, subdivision, section or
50 part thereof directly involved in the controversy in which such judgment
51 shall have been rendered. It is hereby declared to be the intent of the
52 legislature that this act would have been enacted even if such invalid
53 provision had not been included herein.

54 S 5. This act shall take effect immediately.