



## The Green Laws

Because areas of New Jersey have been industrial centers for most of the 20th century, Garden State businesses have been at the forefront in coping with environmental rules and regulations.

By Joe Fiordaliso and Edward Hogan

**N**ew Jersey has always been a leader in environmental policy, tracing its regulatory roots back to 1755 when the state's British-run government enacted a law that prohibited the disposal of trash in local waterways. As the centuries passed and the state's population and industrial base grew, so did public awareness and concern about pollution.

In 1954, New Jersey was one of the first states to mollify this concern by adopting a statewide air pollution control law titled the "Air Pollution Control Act." This was followed by a flurry of state and federal legislation proposals, all targeting industry as a major contributor to pollution.

Manufacturers, in particular, had to develop aggressive and affirmative efforts to address public concerns. The business community had to pursue industry-wide cooperation in research; gather and disseminate legal and technical information to individual businesses; encourage sound and realistic legislation; and, make a major effort to keep the public informed of industry problems and actions. A close relationship with lawmakers and regulators was necessary.

Opposite page: An industrial site in Harrison at which J.M. Sorge, Inc. Somerville, conducted environmental remediation work.

By the 1970s, the number of laws, rules and standards had vastly increased the cost and complexity of environmental compliance. In fact, between 1970 and 1975, the Legislature adopted more than 200 measures aimed at environmental protection. One of the most significant was the creation of the state Department of Environmental Protection (DEP).

At the national level, after Earth Day on April 22 1970, Congress passed the first of the nation's modern environmental laws: the 1970 Clean Air Act and the 1972 Water Pollution Control Act. Concerning the latter, it soon became apparent that the regulation of conventional water pollut-

ants would not prevent the creation of polluted waterways. State and federal legislators thus focused on regulating a broader range of pollutants: hazardous substances and wastes.

What followed was the enactment of the federal Resource Conservation and Recovery Act of 1976, which focused on the prospective regulation of hazardous waste, from the time of generation to ultimate disposal.

The ink had not yet dried on that legislation when it became apparent that merely preventing new hazardous waste disposal sites did not address the need to deal with new spills of hazardous substances, as well as the remediation of already exist-

ing contaminated properties. These concerns were addressed with the passage of the New Jersey Spill Compensation and Control Act or "Spill Act" in 1977. At the federal level, Congressman James Florio was the author of the Comprehensive Environmental Response Compensation and Liability Act of 1980. Widely known as the "Superfund Act," it was the federal corollary to the New Jersey Spill Act.

State and federal officials aggressively enforced both the Spill Act and Superfund Act. The remediation of contaminated properties under those statutes occurred primarily as a result of enforcement activities. New Jersey, as it turned out, was home to more

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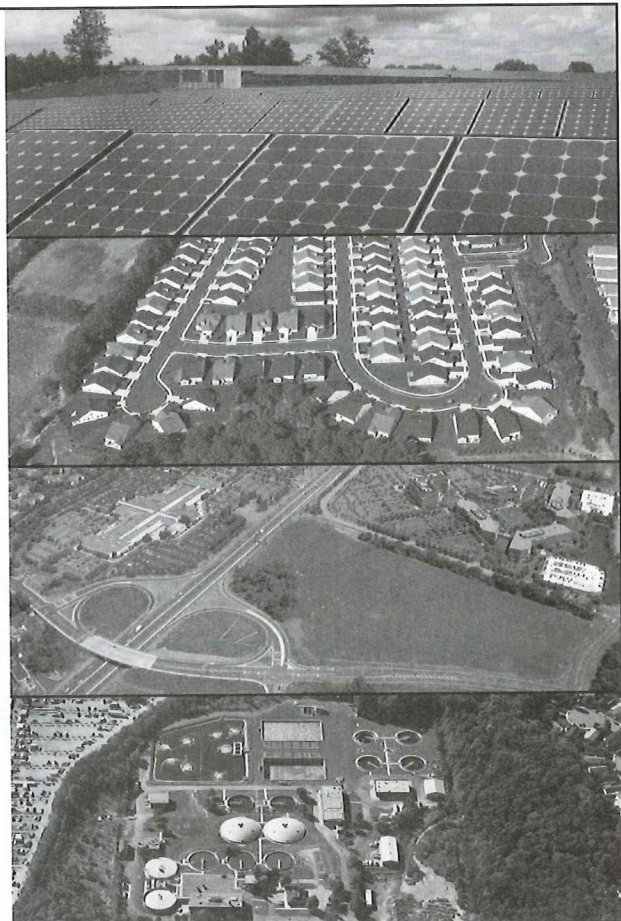
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designated Superfund sites than any other state in the country.

In 1983, New Jersey enacted a groundbreaking statute, the Environmental Cleanup Responsibility Act (ECRA), which made site remediation a regulatory obligation upon the closure of certain businesses (referred to as "industrial establishments") and a pre-condition to the sale of the business or the real property on which the industrial establishment operated. This shifted the "trigger" for remediation from enforcement by government authorities to either a regulatory obligation or a precondition to a business or property transaction. While criticized by the business community as unfairly impos-

ing the burden of investigation and cleanup to only the current business owner or operator, not the culpable party, it did result in the investigation and remediation of thousands of properties in New Jersey.

In the late 1970s and 1980s, much of the focus was on the regulation of hazardous waste; the remediation of hazardous sites, and continuous revisions to and expansions of the federal and state air and water pollution statutes. As technology improved, industry specific and process specific regulations were adjusted. Discharge standards and control requirements were implemented, regulating the operations themselves and not simply measuring "the end of the pipe." Discharges to public treatment systems were subject to pretreatment requirements.

Unfortunately, the logical development of regulatory programs was disrupted by dramatic incidents. Discovery of medical waste on New Jersey beaches in the summers of the late 1980s and early 1990s resulted in legislation that was distrustful of both the DEP and of business. The Clean Water Enforcement Act of 1990 took away from the DEP its enforcement discretion by mandating penalties for all violations of the numerical discharge permit limits. While the statute did nothing to deal with medical waste on the Jersey shore, it caused many dischargers, subject to numerical limitations, to move their operations out of New Jersey or redirect their discharges to public sewer systems.


To many in the business community, the Clean Water Enforcement Act was the highwater of anti-business regulation, but passage of the Industrial Site Recovery Act (ISRA) turned the tide. ISRA was the first major systematic effort to take an environmental statute and not merely make it "stricter," but rather make its



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implementation more efficient. An effort spearheaded by Senator Henry McNamara of Bergen County, ISRA significantly improved the site remediation process by correcting the flaws that had been identified since the enactment of ECRA 10 years earlier. That effort continued with the enactment of the Brownfield and Contaminated Site Remediation Act of 1998, which also created financial incentives for reinvestment in our urban areas. During this time period, improvements were also made to the procedural aspects of the DEP's other regulatory programs, including the Grace Period statute and enactments allowing at-risk permitting. In addition, there were a number of area-focused measures addressing wetlands, flood planes, coastal areas, Meadow-

lands, Pinelands and Highlands.

Last year, one of the most important pieces of environmental legislation of this new century was enacted in New Jersey. With broad bipartisan support of the Legislature, the state introduced the Licensed Site Remediation Professional (LSRP) program. The program revolutionizes the DEP's review of contaminated sites by putting the majority of technical review work into the hands of private environmental consultants certified as Licensed Site Remediation Professionals. Advocates say the program, based on similar initiatives in Massachusetts and Connecticut, will expedite the long-delayed clean-up of 20,000 toxic sites statewide.

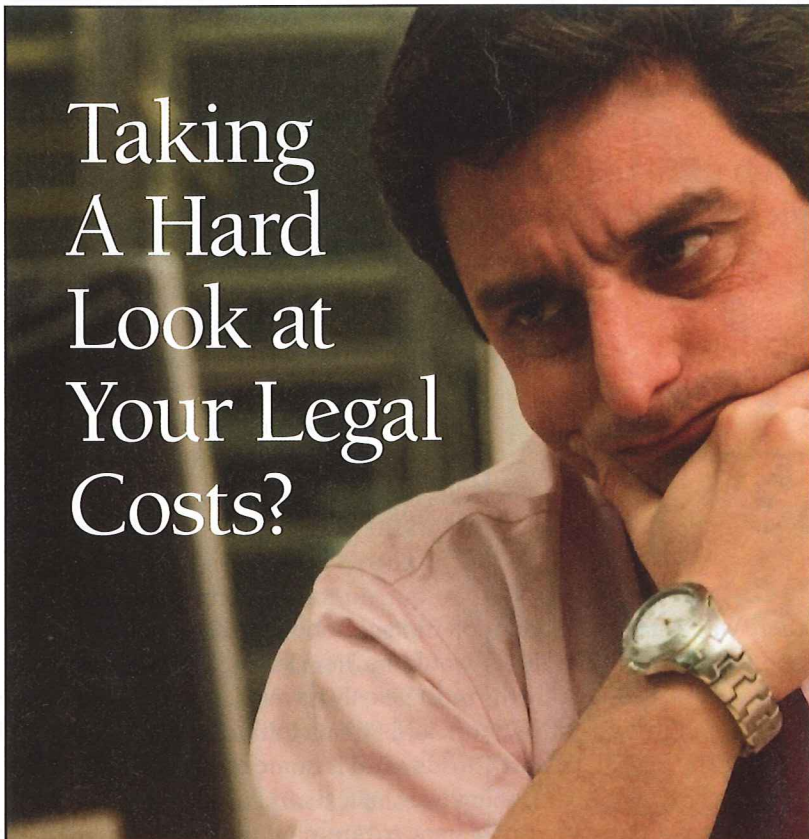
The program was ushered in by the Corzine administration last year

and has been embraced by the Christie administration. According to DEP Commissioner Bob Martin, the initiative "cannot and will not fail."

What the years have revealed is that a fair balance must be achieved between business and the environment. Both are necessary to produce a quality of life that improves our standard of living and make us appreciate nature and the rewards of capitalism. **NJB**

#### About the Authors:

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