

## INTRODUCTION

New Jersey's Environmental Cleanup Responsibility Act (ECRA)<sup>1</sup> is an innovative state approach to reduce the risks associated with hazardous wastes and substances. The Act requires owners or operators of industrial establishments who plan to close, transfer, or sell operations to provide the New Jersey Department of Environmental Protection (DEP) with either a cleanup plan or a negative declaration which indicates that the operation site is clean.<sup>2</sup> The DEP adopted interim regulations to initially implement ECRA.<sup>3</sup> The Act is unique in that closure, transfer, or sale of operations, rather than injury, activates ECRA's provisions. ECRA's self-executing nature encourages prompt, orderly cleanup without time-consuming litigation and large government expenditures.<sup>4</sup>

New Jersey's experience under ECRA is noteworthy.<sup>5</sup> ECRA was responsible for more than half of the DEP cleanups during 1985 and thirty-eight percent of the cleanups in 1986.<sup>6</sup> Furthermore, ECRA benefits investment bankers by disclosing whether certain land will have future environmental problems. Such disclosure is critical in deciding whether a loan will be a solid investment.<sup>7</sup> As a result of New

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1. N.J. STAT. ANN. §§ 13:1K-6 to -32 (West Supp. 1988).

2. N.J. STAT. ANN. § 13:1K-9 (West Supp. 1988).

3. N.J. Admin. Code tit. 7, §§ 1-3 (1986).

4. See *Superior Air Products Co. v. NL Indus., Inc.*, 216 N.J. Super. 46, 522 A.2d 1025 (App. Div. 1987) (ECRA imposes a self-executing duty to remedy without the delay of litigation).

5. See generally Schmidt, *New Jersey's Experience Implementing the Environmental Cleanup Responsibility Act*, 38 RUTGERS L. REV. 729 (1987).

6. *Id.* at 736-37. The author describes a number of ECRA cleanup plans ranging in cost from \$3,359 to \$4.2 million.

7. *Urgency of Density, Industrial Problems Led to Strict Laws Said to Have Made New Jersey a Leader in Solving Environmental Problems*, 16 Env't. Rep. (BNA) 1672, 1673 (1985) [hereinafter *Urgency*].

Jersey's experience with ECRA, several other states have considered adopting similar legislation.<sup>8</sup>

New Jersey has experienced several problems with ECRA, however.<sup>9</sup> Areas of concern include ECRA's relation with existing New Jersey environmental legislation<sup>10</sup> and with the Bankruptcy Code.<sup>11</sup> Other problems include successor landowner liability<sup>12</sup> and the effect of cleanup costs on tax assessments.<sup>13</sup> This symposium addresses these problems. Because some see ECRA as the "wave of the future,"<sup>14</sup> and because states have paid close attention to the Act, a critical analysis of ECRA is needed to assist other states in their efforts to adopt similar legislation. Additionally, this symposium aims to aid practitioners in advising clients who are subject to ECRA.

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8. Schmidt, *supra* note 5, at 738. States considering ECRA-type legislation include Maryland, New York, Washington, California, and Pennsylvania. *Id.* at 738 n.53. Several other states have contacted New Jersey's Department of Environmental Protection concerning ECRA. *Id.* See also Chattman & Conway, *A New Trend: New Jersey's Environmental Cleanup Responsibility Act*, 14 PROB. & PROP. 30 (1986). Chattman and Conway discuss Connecticut's adoption of 1985 Conn. Pub. Acts 568, 1985 Conn. Legis. Serv. 378 (West 1985), which is based largely on ECRA. The authors note ECRA's potential to be a model for a series of state laws. *Id.*

9. Schmidt, *supra* note 5, at 739-753.

10. See *Superior Air Products* article, *infra*.

11. See *Bankruptcy* article, *infra*.

12. See *Successor Landowner* article, *infra*.

13. See *Tax Assessment* article, *infra*.

14. *Urgency*, *supra* note 7, at 1673.