

[Second Reprint]

SENATE, No. 2261

STATE OF NEW JERSEY
212th LEGISLATURE

INTRODUCED OCTOBER 12, 2006

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Assemblyman DAVID R. MAYER

District 4 (Camden and Gloucester)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Senator McNamara, Assemblymen Manzo, Gordon, Assemblywoman Cruz-Perez, Assemblymen Conaway, Conners and Assemblywoman Lampitt

SYNOPSIS

Requires DHSS standards for safe building interiors; submission of documentation of investigation and remediation as a condition to issuance of construction permit for certain sites; makes changes to the "Industrial Site Recovery Act."

CURRENT VERSION OF TEXT

As amended by the General Assembly on December 11, 2006.

(Sponsorship Updated As Of: 12/15/2006)

1 AN ACT concerning contaminated property, supplementing Title 52
2 of the Revised Statutes, and amending and supplementing
3 P.L.1983, c.330.

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

7
8 1. '(New section)'¹ a. Within **'[nine] 12'**¹ months after the
9 effective date of this act, the Department of Health and Senior
10 Services shall adopt rules and regulations pursuant to the
11 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
12 seq.) that establish: (1) procedures for the evaluation and
13 assessment of the interior of buildings that are to be used for a child
14 care center licensed pursuant to the provisions of P.L.1983, c.492
15 (C.30:5B-1 et seq.), or for **'[residential or]'**¹ educational purposes;
16 and (2) standards that establish maximum contaminant levels for
17 building interiors to be used for child care centers licensed pursuant
18 to the provisions of P.L.1983, c.492, or for **'[residential and]'**¹
19 educational purposes, that are protective of the public health and
20 safety. 'The rules and regulations adopted pursuant to this
21 subsection shall be protective of the health of children and infants,
22 and shall account for the difference in rate of the absorption,
23 metabolism, and excretion of compounds between adults and infants
24 and children.'¹

25 b. The department shall establish an application process for the
26 certification issued pursuant to subsection c. of this section. Every
27 application for a certification shall be accompanied by a fee,
28 established in accordance with a fee schedule adopted by the
29 department, by rule or regulation, reflecting the costs of reviewing
30 and processing the application. 'Fees collected pursuant to this
31 subsection shall be deposited into a separate account, and shall be
32 dedicated for use by the department solely for the purposes of
33 administering and enforcing the provisions of this section and any
34 rules or regulations adopted pursuant thereto.'¹

35 c. Upon a demonstration to the department by the applicant
36 that the procedures established pursuant to subsection a. of this
37 section for the evaluation and assessment of building interiors have
38 been followed, and that there are no contaminants present in the
39 building that exceed the maximum contaminant levels established in
40 subsection a. of this section, the department shall issue a
41 certification that the building interior is safe for use as a child care
42 center, or for **'[residential or]'**¹ educational purposes.

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEN committee amendments adopted November 27, 2006.

²Assembly floor amendments adopted December 11, 2006.

1 d. As used in this section ²[,] ²; "contaminant" shall have the
2 same meaning as provided in section 23 of P.L.1993, c.139
3 (C.58:10B-1) ²; and "educational purposes" shall mean for the
4 purposes of a private school or public school as defined in
5 N.J.S.18A:1-1, or a charter school as defined pursuant to P.L.1995,
6 c.426 (C.18A:36A-1 et seq.)².

7 ¹e. Whenever the Commissioner of Health and Senior Services
8 finds that a person has violated any provision of this section, or any
9 rule or regulation adopted pursuant thereto, or knowingly makes a
10 false statement, representation, or certification in any application,
11 record, or other document filed or required to be maintained
12 pursuant to this section, the commissioner may assess a civil
13 administrative penalty of not more than \$25,000 for a first offense,
14 and not more than \$50,000 for the second and every subsequent
15 offense. Each day that a violation continues shall constitute an
16 additional, separate, and distinct offense. The department may
17 compromise and settle any claim for a penalty pursuant to this
18 subsection in an amount as the department determines is appropriate
19 and equitable under the circumstances.

20 Any penalty imposed pursuant to this subsection may be
21 collected, with costs, in a summary proceeding pursuant to the
22 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
23 et seq.). The Superior Court and the municipal court shall have
24 jurisdiction to enforce the provisions of the "Penalty Enforcement
25 Law of 1999" in connection with this section.¹

26
27 2. (New section) a. ¹(1)¹ No construction permit shall be
28 issued pursuant to section 12 of P.L.1975, c.217 (C.52:27D-130) for
29 ¹the reconstruction, alteration, conversion, or repair of¹ any
30 ¹building or¹ structure ¹to be used for a child care center licensed
31 pursuant to the provisions of P.L.1983, c.492 (C.30:5B-1 et seq.), or
32 for educational purposes, if¹ that ¹building or structure¹ was
33 previously used for industrial, storage, or high hazard purposes, ¹as
34 a nail salon, dry cleaning facility, or gasoline station,¹ or ¹[that]¹ is
35 on a contaminated site, on a site on which there is suspected
36 contamination, or on an industrial site that is subject to the
37 provisions of the "Industrial Site Recovery Act," P.L.1983, c.330
38 (C.13:1K-6 et al.), except upon the submission of the certification
39 issued by the Department of Health and Senior Services pursuant to
40 section 1 of P.L. , c. (C.)(pending in the Legislature as this bill)
41 to the construction official by the applicant, that the ¹building or¹
42 structure has been evaluated and assessed for contaminants, and that
43 the ¹building or¹ structure is safe for use as a child care center
44 licensed pursuant to the provisions of P.L.1983, c.492, or for
45 ¹[residential or]¹ educational purposes.

1 ¹(2) Notwithstanding the provisions of paragraph (1) of this
2 subsection to the contrary, a construction permit may be issued for
3 the construction or alteration of any building or structure to be used
4 as a child care center licensed pursuant to the provisions of
5 P.L.1983, c.492, or for educational purposes, if the construction
6 permit is necessary to perform work in the building or structure in
7 order to comply with the rules and regulations adopted pursuant to
8 subsection a. of section 1 of P.L. , c. (C.) (pending in the
9 Legislature as this bill) and obtain the certification issued by the
10 Department of Health and Senior Services pursuant to subsection c.
11 of section 1 of P.L. , c. (C.) (pending in the Legislature as
12 this bill).

13 A construction permit issued pursuant to this paragraph shall be
14 limited to the construction or alterations necessary to comply with
15 the rules and regulations adopted pursuant to subsection a. of
16 section 1 of P.L. , c. (C.) (pending in the Legislature as
17 this bill).

18 (3) ²**[A municipal]** The appropriate² enforcing agency shall not
19 grant a certificate of occupancy for any building or structure to be
20 used as a child care center licensed pursuant to the provisions of
21 P.L.1983, c.492, or for educational purposes, that received a
22 construction permit pursuant to paragraph (2) of this subsection,
23 except upon the submission of the certification issued by the
24 Department of Health and Senior Services pursuant to subsection c.
25 of section 1 of P.L. , c. (C.) (pending in the Legislature as
26 this bill) to the construction official by the applicant, that the
27 building or structure has been evaluated and assessed for
28 contaminants, and that the building or structure is safe for use as a
29 child care center licensed pursuant to the provisions of P.L.1983,
30 c.492, or for educational purposes. ¹

31 b. ¹(1)¹ No construction permit shall be issued for the
32 construction or alteration of any building or structure to be used as
33 a child care center licensed pursuant to the provisions of P.L.1983,
34 c.492, or for educational ¹**[or residential]**¹ purposes, ¹on a site that
35 was previously used for industrial, storage, or high hazard purposes,
36 as a nail salon, dry cleaning facility, or gasoline station, or¹ on a
37 contaminated site, on a site on which there is suspected
38 contamination, or on an industrial site that is subject to the
39 provisions of the "Industrial Site Recovery Act," P.L.1983, c.330
40 (C.13:1K-6 et al.), except after submission by the applicant to the
41 construction official of documentation sufficient to establish that
42 ²the Department of Environmental Protection has approved a
43 remedial action workplan for the entire site or that² the site has
44 been remediated consistent with the remediation standards and other
45 remediation requirements established pursuant to section 35 of
46 P.L.1993, c.139 (C.58:10B-12) and a no further action letter has

1 been issued by the Department of Environmental Protection for the
2 entire site.

3 ¹(2) Notwithstanding the provisions of paragraph (1) of this
4 subsection to the contrary, a construction permit may be issued for
5 the construction or alteration of any building or structure to be used
6 as a child care center licensed pursuant to the provisions of
7 P.L.1983, c.492, or for educational purposes, on a site that was
8 previously used for industrial, storage, or high hazard purposes, as a
9 nail salon, dry cleaning facility, or gasoline station, or on a
10 contaminated site, on a site on which there is suspected
11 contamination, or on an industrial site that is subject to the
12 provisions of the "Industrial Site Recovery Act," P.L.1983, c.330
13 (C.13:1K-6 et al.), if the construction permit is necessary to
14 remediate the site consistent with the remediation standards and
15 other remediation requirements established pursuant to section 35
16 of P.L.1993, c.139 (C.58:10B-12) in order to obtain a no further
17 action letter from the Department of Environmental Protection.

18 A construction permit issued pursuant to this paragraph shall be
19 limited to the construction or alterations necessary to ²develop a
20 remedial action workplan to be submitted to the Department of
21 Environmental Protection for approval or to² remediate the site
22 consistent with the remediation standards and other remediation
23 requirements established pursuant to section 35 of P.L.1993, c.139
24 (C.58:10B-12) and receive a no further action letter from the
25 Department of Environmental Protection.

26 (3) ²[A municipal] The appropriate² enforcing agency shall not
27 grant a certificate of occupancy for any building or structure to be
28 used as a child care center licensed pursuant to the provisions of
29 P.L.1983, c.492, or for educational purposes, that received a
30 construction permit pursuant to paragraph (2) of this subsection,
31 except after submission by the applicant to the construction official
32 of documentation sufficient to establish that the site has been
33 remediated consistent with the remediation standards and other
34 remediation requirements established pursuant to section 35 of
35 P.L.1993, c.139 (C.58:10B-12) and a no further action letter has
36 been issued by the Department of Environmental Protection for the
37 entire site.¹

38 c. As used in this section ²[,] ² "contaminated site" means
39 any real property on which there is contamination ²[, and] ²
40 "contamination," "remediation" or "remediate," and "no further
41 action letter" shall have the same meanings as provided in section
42 ¹[1] ²³¹ of P.L.1993, c.139 (C.58:10B-1) ²; and "educational
43 purposes" means for the purposes of a private school or public
44 school as defined in N.J.S.18A:1-1, or a charter school as defined
45 pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.)² .

1 3. (New section) a. Whenever the Commissioner of
2 Environmental Protection finds that a person has violated any
3 provision of this act, or any rule or regulation adopted pursuant
4 thereto, or knowingly makes a false statement, representation, or
5 certification in any application, record, or other document filed or
6 required to be maintained pursuant to P.L.1983, c.330 (C.13:1K-6 et
7 al.), the commissioner may:

8 (1) issue an order requiring the person found to be in violation
9 to comply in accordance with subsection b. of this section;

10 (2) bring a civil action in accordance with subsection c. of this
11 section;

12 (3) levy a civil administrative penalty in accordance with
13 subsection d. of this section; or

14 (4) bring an action for a civil penalty in accordance with
15 subsection e. of this section.

16 Pursuit of any of the remedies specified under this section shall
17 not preclude the seeking of any other remedy specified.

18 Any officer or management official of an industrial
19 establishment who knowingly directs or authorizes the violation of
20 any provisions of P.L.1983, c.330 (C.13:1K-6 et al.) shall be
21 personally liable for the penalties established in this section.

22 b. Whenever the commissioner finds that a person has violated
23 this act, or any rule or regulation adopted pursuant thereto, the
24 commissioner may issue an order specifying the provision or
25 provisions of this act, or the rule or regulation adopted pursuant
26 thereto, of which the person is in violation, citing the action that
27 constituted the violation, ordering abatement of the violation, and
28 giving notice to the person of the person's right to a hearing on the
29 matters contained in the order. The ordered person shall have 20
30 calendar days from receipt of the order within which to deliver to
31 the commissioner a written request for a hearing. After the hearing
32 and upon finding that a violation has occurred, the commissioner
33 may issue a final order. If no hearing is requested, the order shall
34 become final after the expiration of the 20-day period. A request
35 for hearing shall not automatically stay the effect of the order.

36 c. The commissioner may institute an action or proceeding in
37 the Superior Court for injunctive and other relief to enforce the
38 provisions of this act and to prohibit and prevent a violation of this
39 act, or of any rule or regulation adopted pursuant thereto, and the
40 court may proceed in the action in a summary manner. In any such
41 proceeding the court may grant temporary or interlocutory relief.

42 Such relief may include, singly or in combination:

43 (1) a temporary or permanent injunction;

44 (2) assessment of the violator for the reasonable costs of any
45 inspection that led to the establishment of the violation, and for the
46 reasonable costs of preparing and litigating the case under this
47 subsection.

1 d. The commissioner may assess a civil administrative penalty
2 of not more than \$25,000 for a first offense, and not more than
3 \$50,000 for the second and every subsequent offense. Each day
4 that a violation continues shall constitute an additional, separate,
5 and distinct offense.

6 No assessment may be levied pursuant to this section until after
7 the violator has been notified by certified mail or personal service.
8 The notice shall include a reference to the section of the statute,
9 rule, regulation, or order violated, a concise statement of the facts
10 alleged to constitute a violation, a statement of the amount of the
11 civil administrative penalties to be imposed, and a statement of the
12 person's right to a hearing. The ordered person shall have 20
13 calendar days from receipt of the notice within which to deliver to
14 the commissioner a written request for a hearing.

15 After the hearing and upon finding that a violation has occurred,
16 the commissioner may issue a final order after assessing the amount
17 of the fine specified in the notice. If no hearing is requested, the
18 notice shall become a final order after the expiration of the 20-day
19 period. Payment of the assessment is due when a final order is
20 issued or the notice becomes a final order. The authority to levy a
21 civil administrative penalty is in addition to all other enforcement
22 provisions in this act, and the payment of any assessment shall not
23 be deemed to affect the availability of any other enforcement
24 provisions in connection with the violation for which the
25 assessment is levied. The commissioner may compromise any civil
26 administrative penalty assessed under this section in an amount the
27 commissioner determines appropriate.

28 e. A person who violates this act, or any rule or regulation
29 adopted pursuant thereto, shall be liable for a penalty of not more
30 than \$25,000 per day, to be collected in a civil action commenced
31 by the commissioner.

32 A person who violates an administrative order issued pursuant to
33 subsection b. of this section, or a court order issued pursuant to
34 subsection c. of this section, or who fails to pay an administrative
35 assessment in full pursuant to subsection d. of this section is subject
36 upon order of a court to a civil penalty not to exceed \$50,000 per
37 day of each violation.

38 Any penalty imposed pursuant to this subsection may be
39 collected, with costs, in a summary proceeding pursuant to the
40 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
41 et seq.). The Superior Court and the municipal court shall have
42 jurisdiction to enforce the provisions of the "Penalty Enforcement
43 Law of 1999" in connection with this act.

44

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

47 4. a. The owner or operator of an industrial establishment
48 planning to close operations or transfer ownership or operations

1 shall notify the department in writing, no more than five days
2 subsequent to closing operations or of its public release of its
3 decision to close operations, whichever occurs first, or within five
4 days after the execution of an agreement to transfer ownership or
5 operations, as applicable. The notice to the department shall:
6 identify the subject industrial establishment; describe the
7 transaction requiring compliance with P.L.1983, c.330 (C.13:1K-6
8 et al.); state the date of the closing of operations or the date of the
9 public release of the decision to close operations as evidenced by a
10 copy of the appropriate public announcement, if applicable; state
11 the date of execution of the agreement to transfer ownership or
12 operations and the names, addresses and telephone numbers of the
13 parties to the transfer, if applicable; state the proposed date for
14 closing operations or transferring ownership or operations; list the
15 name, address, and telephone number of an authorized agent for the
16 owner or operator; and certify that the information submitted is
17 accurate. The notice shall be transmitted to the department in the
18 manner and form required by the department. The department may,
19 by regulation, require the submission of any additional information
20 in order to improve the efficient implementation of P.L.1983, c.330.
21 The owner or operator of the industrial establishment shall also
22 provide all information required to be submitted to the department
23 pursuant to this subsection, to the clerk of the municipality in which
24 the industrial establishment is located, at the same time the
25 information is submitted to the department.

26 b. (1) Subsequent to the submittal of the notice required
27 pursuant to subsection a. of this section, the owner or operator of an
28 industrial establishment shall, except as otherwise provided by
29 P.L.1983, c.330 or P.L.1993, c.139 (C.13:1K-9.6 et al.), remediate
30 the industrial establishment. The remediation shall be conducted in
31 accordance with criteria, procedures, and time schedules established
32 by the department.

33 (2) The owner or operator shall attach a copy of any approved
34 negative declaration, approved remedial action workplan, no further
35 action letter, or remediation agreement approval to the contract or
36 agreement of sale or agreement to transfer or any option to purchase
37 which may be entered into with respect to the transfer of ownership
38 or operations. In the event that any sale or transfer agreements or
39 options have been executed prior to the approval of a negative
40 declaration, remedial action workplan, no further action letter, or
41 remediation agreement, these documents, as relevant, shall be
42 transmitted by the owner or operator, by certified mail, overnight
43 delivery, or personal service, prior to the transfer of ownership or
44 operations, to all parties to any transaction concerning the transfer
45 of ownership or operations, including purchasers, bankruptcy
46 trustees, mortgagees, sureties, and financiers.

47 (3) The preliminary assessment, site investigation, remedial
48 investigation, and remedial action for the industrial establishment

1 shall be performed and implemented by the owner or operator of the
2 industrial establishment, except that any other party may assume
3 that responsibility pursuant to the provisions of P.L.1983, c.330.

4 c. The owner or operator of an industrial establishment shall,
5 subsequent to closing operations, or of its public release of its
6 decision to close operations, or prior to transferring ownership or
7 operations except as otherwise provided in subsection e. of this
8 section, as applicable, submit to the department for approval a
9 proposed negative declaration or proposed remedial action
10 workplan. The owner or operator shall also ¹ [submit a copy of the
11 proposed negative declaration or proposed remedial action
12 workplan] provide written notification¹ to the clerk of the
13 municipality in which the industrial site is located ¹, that upon
14 written request, the municipality may receive a copy of the
15 proposed negative declaration or proposed remedial action
16 workplan. The owner or operator of the industrial establishment
17 shall provide the requested documents to the clerk of the
18 municipality within five days after receipt of the written request¹ .
19 Except as otherwise provided in section 6 of P.L.1983, c.330
20 (C.13:1K-11), and sections 13, 16, 17 and 18 of P.L.1993, c.139
21 (C.13:1K-11.2, C.13:1K-11.5, C.13:1K-11.6 and C.13:1K-11.7), the
22 owner or operator of an industrial establishment shall not transfer
23 ownership or operations until a negative declaration or a remedial
24 action workplan has been approved by the department or the
25 conditions of subsection e. of this section for remediation
26 agreements have been met and until, in cases where a remedial
27 action workplan is required to be approved or a remediation
28 agreement has been approved, a remediation funding source, as
29 required pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3),
30 has been established.

31 d. (1) Upon the submission of the results of either the
32 preliminary assessment, site investigation, remedial investigation,
33 or remedial action, where applicable, which demonstrate that there
34 are no discharged hazardous substances or hazardous wastes at the
35 industrial establishment, or that have migrated from or are
36 migrating from the industrial establishment, in violation of the
37 applicable remediation regulations, the owner or operator may
38 submit to the department for approval a proposed negative
39 declaration as provided in subsection c. of this section. ¹[The
40 owner or operator shall also submit a copy of the proposed negative
41 declaration to the clerk of the municipality in which the industrial
42 establishment is located.]¹

43 (2) After the submission and review of the information
44 submitted pursuant to a preliminary assessment, site investigation,
45 remedial investigation, or remedial action, as necessary, the
46 department shall, within 45 days of submission of a complete and
47 accurate negative declaration, approve the negative declaration, or

1 inform the owner or operator of the industrial establishment that a
2 remedial action workplan or additional remediation shall be
3 required. The department shall approve a negative declaration by
4 the issuance of a no further action letter.

5 e. The owner or operator of an industrial establishment, who
6 has submitted a notice to the department pursuant to subsection a.
7 of this section, may transfer ownership or operations of the
8 industrial establishment prior to the approval of a negative
9 declaration or remedial action workplan upon application to and
10 approval by the department of a remediation agreement. The owner
11 or operator requesting a remediation agreement shall submit the
12 following documents: (1) an estimate of the cost of the remediation
13 that is approved by the department; (2) a certification of the
14 statutory liability of the owner or operator pursuant to P.L.1983,
15 c.330 to perform and to complete a remediation of the industrial
16 establishment in the manner and time limits provided by the
17 department in regulation and consistent with all applicable laws and
18 regulations; however, nothing in this paragraph shall be construed
19 to be an admission of liability, or to impose liability on the owner
20 or operator, pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) or
21 pursuant to any other statute or common law; (3) evidence of the
22 establishment of a remediation funding source in an amount of the
23 estimated cost of the remediation and in accordance with the
24 provisions of section 25 of P.L.1993, c.139 (C.58:10B-3); (4) a
25 certification that the owner or operator is subject to the provisions
26 of P.L.1983, c.330, including the liability for penalties for violating
27 the act, defenses to liability and limitations thereon, the requirement
28 to perform a remediation as required by the department, allowing
29 the department access to the industrial establishment as provided in
30 section 5 of P.L.1983, c.330 (C.13:1K-10), and the requirement to
31 prepare and submit any document required by the department
32 relevant to the remediation of the industrial establishment; and (5)
33 evidence of the payment of all applicable fees required by the
34 department.

35 The department may require in the remediation agreement that
36 all plans for and results of the preliminary assessment, site
37 investigation, remedial investigation, and the implementation of the
38 remedial action workplan, prepared or initiated subsequent to the
39 transfer of ownership or operations, be submitted to the department,
40 for review purposes only, at the completion of each phase of the
41 remediation.

42 The department shall adopt regulations establishing the manner
43 in which the documents required pursuant to paragraphs (1) through
44 (5), inclusive, of this subsection shall be submitted. The
45 department shall approve the application for the remediation
46 agreement upon the complete and accurate submission of the
47 documents required to be submitted pursuant to this subsection.
48 The regulations shall include a sample form of the certifications.

1 Approval of a remediation agreement shall not affect an owner's or
2 operator's right to avail itself of the provisions of section 6 of
3 P.L.1983, c.330 (C.13:1K-11), of section 13, 14, 15, 16, 17, or 18
4 of P.L.1993, c.139 (C.13:1K-11.2, C.13:1K-11.3, C.13:1K-11.4,
5 C.13:1K-11.5, C.13:1K-11.6 or C.13:1K-11.7), or of the other
6 provisions of this section.

7 The owner or operator of the industrial establishment shall also
8 '[provide all information required to be submitted to the
9 department pursuant to this subsection, to] provide written
10 notification to' the clerk of the municipality in which the industrial
11 establishment is located, at the same time the information is
12 submitted to the department ¹, that upon written request, the owner
13 or operator shall provide the information required to be submitted to
14 the department pursuant to this subsection, to the municipality. The
15 owner or operator shall provide the information to the municipality
16 within five days after receipt of the written request ¹ .

17 f. An owner or operator of an industrial establishment may
18 perform a preliminary assessment, site investigation, or remedial
19 investigation for a soil, surface water, or groundwater remediation
20 without the prior submission to or approval of the department,
21 except as otherwise provided in a remediation agreement required
22 pursuant to subsection e. of this section. However, the plans for and
23 results of the preliminary assessment, site investigation, and
24 remedial investigation may, at the discretion of the owner or
25 operator, be submitted to the department for its review and approval
26 at the completion of each phase of the remediation.

27 g. The soil, groundwater, and surface water remediation
28 standard and the remedial action to be implemented on an industrial
29 establishment shall be selected by the owner or operator, and
30 reviewed and approved by the department, based upon the policies
31 and criteria enumerated in section 35 of P.L.1993, c.139 (C.58:10B-
32 12).

33 h. An owner or operator of an industrial establishment may
34 implement a soil remedial action at an industrial establishment
35 without prior department approval of the remedial action workplan
36 for the remediation of soil when the remedial action can reasonably
37 be expected to be completed pursuant to standards, criteria, and
38 time schedules established by the department, which schedules shall
39 not exceed five years from the commencement of the
40 implementation of the remedial action and if the owner or operator
41 is implementing a soil remediation which meets the established
42 minimum residential or nonresidential use soil remediation
43 standards adopted by the department.

44 Nothing in this subsection shall be construed to authorize the
45 closing of operations or the transfer of ownership or operations of
46 an industrial establishment without the department's approval of a

1 negative declaration, a remedial action workplan or a remediation
2 agreement.

3 i. An owner or operator of an industrial establishment shall
4 base the decision to select a remedial action based upon the
5 standards and criteria set forth in section 35 of P.L.1993, c.139
6 (C.58:10B-12). When a remedial action selected by an owner or
7 operator includes the use of an engineering or institutional controls
8 that necessitates the recording of a notice pursuant to section 36 of
9 P.L.1993, c.139 (C.58:10B-13), the owner or operator shall obtain
10 the approval of the transferee of the industrial establishment.

11 At any time after the effective date of P.L.1993, c.139, an owner
12 or operator may request the department to provide a determination
13 as to whether a proposed remedial action is consistent with the
14 standards and criteria set forth in section 35 of P.L.1993, c.139
15 (C.58:10B-12). The department shall make that determination
16 based upon the standards and criteria set forth in that section. The
17 department shall provide any such determination within 30 calendar
18 days of the department's receipt of the request.

19 j. An owner or operator proposing to implement a soil
20 remedial action other than one which is set forth in subsection h. of
21 this section must receive department approval prior to
22 implementation of the remedial action.

23 k. An owner or operator of an industrial establishment shall not
24 implement a remedial action involving the remediation of
25 groundwater or surface water without the prior review and approval
26 by the department of a remedial action workplan.

27 l. Submissions of a preliminary assessment, site investigation,
28 remedial investigation, remedial action workplan, and the results of
29 a remedial action shall be in a manner and form, and shall contain
30 any relevant information relating to the remediation, as may be
31 required by the department.

32 Upon receipt of a complete and accurate submission, the
33 department shall review and approve or disapprove the submission
34 in accordance with the review schedules established pursuant to
35 section 2 of P.L.1991, c.423 (C.13:1D-106). The owner or operator
36 shall not be required to wait for a response by the department before
37 continuing remediation activities, except as otherwise provided in
38 this section. Upon completion of the remediation, the plans for and
39 results of the preliminary assessment, site investigation, remedial
40 investigation, remedial action workplan, and remedial action and
41 any other information required to be submitted as provided in
42 section 35 of P.L.1993, c.139 (C.58:10B-12), that has not
43 previously been submitted to the department, shall be submitted to
44 the department for its review and approval.

45 The department shall review all information submitted to it by
46 the owner or operator at the completion of the remediation to
47 determine whether the actions taken were in compliance with rules
48 and regulations of the department regarding remediation.

1 The department may review and approve or disapprove every
2 remedial action workplan, no matter when submitted, to determine,
3 in accordance with the criteria listed in subsection g. of section 35
4 of P.L.1993, c.139 (C.58:10B-12) if the remedial action that has
5 occurred or that will occur is appropriate to meet the applicable
6 health risk or environmental standards.

7 The department may order additional remediation activities at the
8 industrial establishment, or offsite where necessary, or may require
9 the submission of additional information, where (a) the department
10 determines that the remediation activities undertaken were not in
11 compliance with the applicable rules or regulations of the
12 department; (b) all documents required to be submitted to the
13 department were not submitted or, if submitted, were inaccurate, or
14 deficient; or (c) discharged hazardous substances or hazardous
15 wastes remain at the industrial establishment, or have migrated or
16 are migrating offsite, at levels or concentrations or in a manner that
17 is in violation of the applicable health risk or environmental
18 standards. Upon a finding by the department that the remediation
19 conducted at the industrial establishment was in compliance with all
20 applicable regulations, that no hazardous substances or hazardous
21 wastes remain at the industrial establishment in a manner that is in
22 violation of the applicable health risk or environmental standards,
23 and that all hazardous substances or hazardous wastes that migrated
24 from the industrial establishment have been remediated in
25 conformance with the applicable health risk or environmental
26 standards, the department shall approve the remediation for that
27 industrial establishment by the issuance of a no further action letter.
28 (cf: P.L.1997, c.278, s.8)

29
30 5. Section 8 of P.L.1983, c.330 (C.13:1K-13) is amended to
31 read as follows:

32 8. **[a.]** Failure of the transferor to perform a remediation and
33 obtain department approval thereof as required pursuant to the
34 provisions of this act is grounds for voiding the sale or transfer of
35 an industrial establishment or any real property utilized in
36 connection therewith by the transferee, entitles the transferee to
37 recover damages from the transferor, and renders the owner or
38 operator of the industrial establishment strictly liable, without
39 regard to fault, for all remediation costs and for all direct and
40 indirect damages resulting from the failure to implement the
41 remedial action workplan. A transferee may not act to void the sale
42 or transfer of an industrial establishment or any real property except
43 upon providing notice to the transferor of the failure to perform and
44 affording the transferor a reasonable amount of time to comply with
45 the provisions of this act. A transferee may bring an action in
46 Superior Court to void the sale or transfer of an industrial
47 establishment or any real property or to recover damages from the
48 transferor, pursuant to this section.

1 **【b.** Any person who knowingly gives or causes to be given any
2 false information or who fails to comply with the provisions of this
3 act is liable for a penalty of not more than \$25,000.00 for each
4 offense. If the violation is of a continuing nature, each day during
5 which it continues shall constitute an additional and separate
6 offense. Penalties shall be collected in a civil action by a summary
7 proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et
8 seq.). Any officer or management official of an industrial
9 establishment who knowingly directs or authorizes the violation of
10 any provisions of this act shall be personally liable for the penalties
11 established in this subsection. **】**

12 (cf: P.L.1997, c.278, s.47)

13

14 6. This act shall take effect immediately.