

SENATE, No. 1897

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED JUNE 5, 2008

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Co-Sponsored by:

Senator Oroho

SYNOPSIS

Establishes licensed site professional program for site remediation and makes various changes to site remediation laws.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/24/2009)

1 AN ACT concerning site remediation, and amending and
2 supplementing various parts of the statutory law.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. (New section) As used in sections 1 through 22 of this act:

8 "Business firm" means any corporation, association, firm,
9 partnership, sole proprietorship, trust or other form of commercial
10 organization.

11 "Certified subsurface evaluator" means a person certified to
12 perform services at the site of an underground storage tank or an
13 unregulated heating oil tank pursuant to P.L.1991, c.123 (C.58:10A-
14 24.1 et seq.) as a subsurface evaluator.

15 "Environmental crime" means any criminal violation of one of
16 the following State laws: R.S.12:5-1 et seq.; P.L.1975, c.232
17 (C.13:1D-29 et al.); the "Solid Waste Management Act," P.L.1970,
18 c.39 (C.13:1E-1 et seq.); section 17 of P.L.1975, c.326 (C.13:1E-
19 26); the "Comprehensive Regulated Medical Waste Management
20 Act," P.L.1989, c.34 (C.13:1E-48.1 et al.); P.L.1989, c.151
21 (C.13:1E-99.21a et al.); the "New Jersey Statewide Mandatory
22 Source Separation and Recycling Act," P.L.1987, c.102 (C.13:1E-
23 99.11 et al.); the "Pesticide Control Act of 1971," P.L.1971, c.176
24 (C.13:1F-1 et seq.); the "Industrial Site Recovery Act," P.L.1983,
25 c.330 (C.13:1K-6 et al.); the "Toxic Catastrophe Prevention Act,"
26 P.L.1985, c.403 (C.13:1K-19 et seq.); "The Wetlands Act of 1970,"
27 P.L.1970, c.272 (C.13:9A-1 et seq.); the "Freshwater Wetlands
28 Protection Act," P.L.1987, c.156 (C.13:9B-1 et al.); the "Coastal
29 Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.); the
30 "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et
31 seq.); the "Water Supply Management Act," P.L.1981, c.262
32 (C.58:1A-1 et al.); P.L.1947, c.377 (C.58:4A-5 et seq.); the "Water
33 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.);
34 P.L.1986, c.102 (C.58:10A-21 et seq.); the "Safe Drinking Water
35 Act," P.L.1977, c.224 (C.58:12A-1 et al.); the "Flood Hazard Area
36 Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.).

37 "Immediate environmental concern" means a condition at a
38 contaminated site where: there is confirmed contamination at levels
39 at or above the ground water remediation standards adopted by the
40 department from a discharge of a hazardous substance in wells used
41 for potable purposes; subsurface contaminants from a discharge are
42 confirmed to have migrated into an occupied or confined space
43 producing a toxic or harmful atmosphere resulting in an
44 unacceptable human health exposure, or producing an oxygen-
45 deficient atmosphere, or resulting in demonstrated physical damage

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.

1 to essential underground services; or a condition where there is
2 analytical data that documents that either dermal contact or
3 ingestion of a contaminated material could result in an acute human
4 health impact.

5 "Local government unit" means a county, municipality, or other
6 political subdivision of the State, or any agency, authority, or other
7 entity thereof.

8 "Person" means any individual or business firm.

9
10 2. (New section) a. The Department of Environmental
11 Protection shall establish a licensing program for site
12 remediation professionals. The department shall establish licensing
13 requirements for site remediation professionals and shall oversee
14 their licensing and performance.

15 b. The department shall establish standards for education,
16 training and experience that shall be required of any person who
17 applies for a license or a license renewal. The department shall
18 conduct examinations to certify that an applicant possesses
19 sufficient knowledge of the State regulations, standards and
20 requirements applicable to site remediation and the applicant is
21 qualified to obtain a license or a license renewal.

22 The department shall also adopt standards for the professional
23 conduct for licensed site remediation professionals. The department
24 shall require an applicant to submit references to assure that the
25 applicant meets the standards established for professional conduct
26 by licensed site remediation professionals.

27 c. Application for a license shall be made in a manner and on
28 such forms as may be prescribed by the department. The filing of
29 an application shall be accompanied by an application fee that shall
30 cover the costs of processing the application and developing and
31 conducting the examinations. The department may also charge an
32 annual license fee that shall cover the costs of the licensing
33 program.

34 d. An applicant for a site remediation professional license shall
35 demonstrate to the department that the applicant:

36 (1) holds a bachelor's degree or higher in natural, chemical or
37 physical science, or an engineering degree, from an accredited
38 institution of higher learning;

39 (2) has 10 years of continuous full time employment in the field
40 of contaminated site remediation during which the applicant has
41 been responsible for managing the remediation of the sites on which
42 the applicant has worked;

43 (3) has a minimum of 5,000 hours of experience over the five
44 years immediately prior to the submission of the application, of
45 work on contaminated sites within the State;

46 (4) has attended and completed the minimum environmental
47 health and safety education and training no more than 12 months

1 prior to the submission of an application for a license pursuant to
2 this section;

3 (5) has attended and completed the course approved by the
4 department on the State's regulations concerning the technical
5 requirements for site remediation no more than 12 months prior to
6 the submission of the application;

7 (6) the applicant has financial responsibility assurance as
8 provided in subsection e. of this section;

9 (7) the applicant has not been indicted for, convicted of, or
10 plead guilty to, an environmental crime or any similar or related
11 criminal offense under federal or state law; and

12 (8) has not had a state license revoked by any state licensing
13 board or any other licensing agency within the previous 10 years.

14 e. As a condition for the issuance of a license or license
15 renewal of a site remediation professional, a licensee shall be
16 required to provide the department with evidence of financial
17 responsibility for the performance of services provided pursuant to
18 P.L.1993, c.139 (C.58:10B-1 et seq.). Financial responsibility shall
19 be in an amount to be determined by the department but in no case
20 less than:

21 (1) for bodily injury - \$2,000,000 per occurrence and
22 \$5,000,000 aggregate;

23 (2) for property damage - \$2,000,000 per occurrence and
24 \$5,000,000 aggregate;

25 (3) for professional liability, errors and omissions -
26 \$2,000,000 per occurrence and \$5,000,000 aggregate;

27 (4) for pollution or property damage - \$5,000,000.

28 The licensee shall promptly notify the department of any
29 cancellation or change in coverage. A failure to so notify the
30 department may be grounds for a license suspension or revocation.
31 Financial responsibility in the amount and form required by the
32 department shall be maintained for the term of the license.

33 f. No person may obtain a license unless that person
34 satisfactorily completes the examination and meets the standards
35 established for training, experience, and education required in
36 subsection b. of this section, provides evidence of financial
37 responsibility as required pursuant to subsection e. of this section,
38 meets standards for professional conduct established pursuant to
39 subsection b. of this section, and satisfies any other requirements
40 established by the department to assure that licensed site
41 remediation professionals meet the requirements established
42 pursuant to this section, and are in compliance routinely and on a
43 continuing basis with all standards and requirements applicable to
44 site remediation professionals.

45 g. In order to maintain a license issued pursuant to P.L. ,
46 c. (C.) (pending before the Legislature as this bill), every
47 licensed site professional shall meet the continuing education
48 requirements as established by the department.

1 3. (New section) a. Each license issued pursuant to section 2
2 of P.L. , c. (C.) (pending before the Legislature as this bill)
3 shall be issued to an individual, shall be valid only for the
4 individual to whom it is issued and shall not be transferable. Each
5 license issued pursuant to section 2 of P.L. , c. (C.) shall be
6 valid for a period not to exceed three years, unless a shorter period
7 is specified therein, or unless suspended or revoked.

8 b. A licensed site professional shall submit an application for a
9 license renewal no more than 90 days prior to the expiration of the
10 license. The department shall establish standards for the renewal of
11 the site remediation professional license and may require training or
12 continuing education, experience or other requirements as a
13 condition for the renewal of a license. The department shall also
14 establish standards and requirements for the renewal of a site
15 remediation professional license after a site remediation
16 professional's license has been suspended or revoked. The filing of
17 an application for a license renewal shall be accompanied by a
18 nonrecoverable application fee.

19
20 4. (New section) Notwithstanding the provisions of the
21 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
22 seq.) to the contrary, the department shall adopt, after notice,
23 interim rules and regulations establishing a program for the
24 licensing of site remediation professionals pursuant to the
25 provisions of P.L. , c. (C.) (pending before the Legislature as
26 this bill), and establishing oversight requirements and mandatory
27 timeframes as provided in sections 18 and 19 of P.L. , c. (C.)
28 (pending before the Legislature as this bill), a no more than 180
29 days after the effective date of P.L. , c. (C.) (pending before
30 the Legislature as this bill). The rules and regulations shall be
31 effective as regulations immediately upon filing with the Office of
32 Administrative Law and shall be effective for a period not to exceed
33 two years, and may, thereafter, be amended, adopted or readopted
34 by the department in accordance with the provisions of the
35 "Administrative Procedure Act."

36
37 5. (New section) a. The Department of Environmental
38 Protection shall issue a temporary site remediation professional
39 license. A person who meets the requirements set forth in this
40 section to the satisfaction of the department shall be issued
41 a temporary license. All applications for a temporary site
42 remediation professional license, together with any applicable fees,
43 shall be submitted to the department no later than three months after
44 the effective date of P.L. , c. (C.) (pending before the
45 Legislature as this bill).

46 b. An applicant for a temporary site remediation professional
47 license shall demonstrate to the department that the applicant:

1 (1) holds a bachelor's degree or higher in natural, chemical or
2 physical science, or an engineering degree, from an accredited
3 institution of higher learning;

4 (2) has 10 years of continuous full time employment in the field
5 of contaminated site remediation during which the person has been
6 responsible for managing the remediation of the sites on which the
7 applicant has worked;

8 (3) has a minimum of 5,000 hours of experience over the past
9 five years of work on contaminated sites within the State;

10 (4) possesses at least one of the following certifications:

11 (a) Certified Hazardous Materials Manager from the Institute
12 of Hazardous Material Management;

13 (b) Certified Ground Water Professional from the National
14 Ground Water Association;

15 (c) Licensed Professional Engineer from the National
16 Council Of Examiners For Engineers;

17 (d) Licensed Professional Geologist from any state's
18 professional geologist licensing board;

19 (e) Certified Environmental Professional from the Academy
20 of Board Certified Environmental Professionals;

21 (f) Qualified Environmental Professional from the Institute
22 of Professional Environmental Practice;

23 (g) state license to perform remediation work from a
24 licensing program determined by the department to be comparable
25 to the licensing program established pursuant to P.L. , c. (C.)
26 (pending before the Legislature as this bill);

27 (5) has attended and completed the minimum environmental
28 health and safety education and training no more than 12 months
29 prior to the submission of an application for a temporary license
30 pursuant to this section;

31 (6) has attended and completed the course approved by the
32 department on the State's regulations concerning the technical
33 requirements for site remediation no more than three years prior to
34 the effective date of P.L. , c. (C.) (pending before the
35 Legislature as this bill);

36 (7) the applicant has financial responsibility assurance as
37 provided in subsection d. of this section;

38 (8) the applicant has not been indicted for, convicted of, or
39 plead guilty to, an environmental crime or any similar or related
40 criminal offense under federal or state law; and

41 (9) has not had a state license or any other certification required
42 pursuant to paragraph (4) of this subsection revoked by any state
43 licensing board or any other licensing agency within the previous
44 10 years.

45 c. Any certification or license required pursuant to paragraph
46 (4) of subsection b. of this section shall be maintained in good
47 standing. The loss or lapse of a certification or license provided in

1 order to qualify for a temporary license pursuant to this section
2 shall be grounds for immediate loss of the temporary license.

3 d. (1) An applicant shall provide with their temporary license
4 application, a list of site remediation projects on which the
5 applicant worked as the manager of the site within the last 10 years
6 that meets the requirement set forth in paragraph (2) of subsection
7 b. of this section. The list shall include name and address of the
8 site, the identifying numbers for the sites, the applicant's dates of
9 participation, and the state or federal environmental agency under
10 whose oversight the projects were conducted. For each referenced
11 project, an applicant shall provide a brief description of the specific
12 activities the applicant performed with respect to the project.

13 (2) An applicant shall provide with their temporary license
14 application, a list of site remediation projects conducted under the
15 oversight of the department on which the applicant worked within
16 the State during the five years prior to the application date. For
17 each referenced project, the applicant must provide a brief
18 description of the specific activities the applicant performed with
19 respect to the remediation and the rules that were applicable to the
20 site. The remediation work performed as required pursuant to
21 paragraph (3) of subsection b. of this section shall demonstrate the
22 applicant's knowledge of, and application of, all applicable rules
23 and regulations regarding site remediation.

24 (3) As a condition for the issuance of a temporary license
25 pursuant to this section, an applicant shall provide the department
26 with evidence of financial responsibility for the performance of
27 services provided pursuant to P.L.1993, c.139 (C.58:10B-1 et seq.).
28 Financial responsibility shall be in an amount to be determined by
29 the department but in no case less than:

30 (a) for bodily injury - \$2,000,000 per occurrence and
31 \$5,000,000 aggregate;

32 (b) for property damage - \$2,000,000 per occurrence and
33 \$5,000,000 aggregate;

34 (c) for professional liability, errors and omissions -
35 \$2,000,000 per occurrence and \$5,000,000 aggregate;

36 (d) for pollution or property damage - \$5,000,000.

37 An applicant employed by a local government unit or by the
38 federal government shall not be required to maintain financial
39 responsibility assurance as provided in this section. Any applicant
40 so employed shall not be authorized to perform licensed site
41 professional work for any person other than their government
42 employer.

43 The licensee shall promptly notify the department of any
44 cancellation or change in coverage. A failure to so notify the
45 department may be grounds for a license suspension or revocation.
46 Financial responsibility in the amount and form required by the
47 department shall be maintained for the term of the license.

1 e. A temporary site remediation professional license issued
2 pursuant to this section shall expire 180 days after the adoption of
3 interim rules pursuant to section 4 of P.L. , c. (C.) (pending
4 before the Legislature as this bill) establishing the licensing
5 requirements for site remediation professionals.

6
7 6. (New section) Any person certified to perform services at
8 the site of an underground storage tank or an unregulated heating
9 oil tank pursuant to P.L.1991, c.123 (C.58:10A-24.1 et seq.) as a
10 subsurface evaluator may perform site remediation services at
11 underground storage tank sites or unregulated heating oil tank sites
12 except under the following conditions:

13 a. the conditions at the site pose an immediate environmental
14 concern;

15 b. Contaminated groundwater exists within 100 feet of a
16 potable well, whether the well is located on the property of beyond
17 the property boundaries of the site;

18 c. Groundwater contamination has migrated beyond the
19 property boundaries of the site;

20 d. A vapor intrusion investigation is required pursuant to the
21 technical rules for site remediation;

22 e. Contamination from the site impacts any surface water body
23 or wetlands; or

24 f. The person responsible for conducting the remediation is
25 implementing a restricted use remedial action or a limited restricted
26 use remedial action at the site.

27
28 7. (New section) a. No more than 90 days after the effective
29 date of P.L. , c. (C.) (pending before the Legislature as this
30 bill), any submissions concerning the remediation of a contaminated
31 site shall be signed and certified by a licensed site professional, or
32 by a subsurface evaluator as provided in subsection d. of section 11
33 of P.L. , c. (C.) (pending before the Legislature as this bill).

34 b. A licensed site professional or a subsurface evaluator, as
35 appropriate, that signs and certifies submissions to the department
36 concerning the remediation of a contaminated site shall certify that
37 the work was performed, that the licensed site professional, or the
38 subsurface evaluator, as appropriate, managed, supervised, or
39 performed the work that is the basis of the submission, and that the
40 work and the submission conform to the technical requirements for
41 site remediation adopted by the department.

42
43 8. (New section) a. The Department of Environmental
44 Protection shall issue a certification of authorization to a business
45 firm that shall authorize the business firm to provide services for
46 the remediation of contaminated sites.

47 b. A business firm may file an application with the department,
48 on forms designated by the department for a certification of

1 authorization for the business firm. The business firm shall provide
2 the following information on its application and any renewal
3 thereof:

4 (1) the name and address of the business firm and its satellite
5 offices;

6 (2) the name, home address, and signature of all officers,
7 corporate board members, directors, and principals and any licensed
8 site professionals who are responsible for the provision of licensed
9 site professional services through the business firm;

10 (3) any other information as may be required by the department
11 to ensure compliance with P.L. , c. (C.) (pending before the
12 Legislature as this bill).

13 The department may charge a fee for the issuance or renewal of a
14 certification of authorization to a business firm pursuant to this
15 section.

16 c. No business firm shall offer to provide licensed site
17 professional services in the State unless the department has issued a
18 certification of authorization to the business firm pursuant to this
19 section.

20 d. The certificate of authorization shall designate one or more
21 State licensed site professionals. The licensed site professional
22 shall be responsible for the provision of site remediation services
23 and the submission of documents to the department. All final
24 documents concerning the remediation of a contaminated site, when
25 submitted to the department by the business firm or filed for public
26 record, shall be signed and sealed by the State licensed site
27 professional who is responsible for the remediation.

28 e. Any change to the information submitted to the department
29 pursuant to subsection b. of this section shall be reported to the
30 department no more than 30 days after the change.

31 f. The business firm shall notify the department upon a change
32 at a business firm of the licensed site professional designated on the
33 certificate of authorization. If a licensed site professional who is
34 designated by the business firm on the certificate of authorization,
35 leaves the business firm, fails to renew his license, or has his
36 license suspended or revoked, the business firm shall not continue
37 to provide licensed site professional services until it has notified the
38 department of the licensed site professional responsible for site
39 remediation at the business firm.

40

41 9. (New section) The Department of Environmental Protection
42 shall establish a ranking system for all contaminated sites.
43 Contaminated sites shall be ranked in one of four tiers. The
44 department shall use the following criteria for the classification of
45 sites:

46 a. the potential impact posed to the public health and the
47 environment as determined by the department using its relative
48 ranking system, including any receptor evaluation;

1 b. the length of time the site has been undergoing remediation
2 without completing a remedial investigation;

3 c. the compliance history of the person responsible for
4 conducting the remediation; and

5 d. any other data deemed necessary by the department to
6 distinguish the tier classification based on impact to public health,
7 safety and the environment.

8

9 10. (New section) a. The department shall classify a site as a
10 tier 1 site if it meets the following criteria:

11 (1) the person responsible for conducting the remediation has a
12 history of non-compliance with environmental statutes and
13 regulations as evidenced by the receipt of multiple formal
14 enforcement actions issued by the department over a four year
15 period;

16 (2) the person responsible for conducting the remediation has
17 repeatedly failed to meet the remediation timeframes established by
18 the department by rule or regulation or pursuant to an
19 administrative or court order; and

20 (3) the person responsible for conducting the remediation has
21 failed to complete a remedial investigation of the entire site at least
22 10 years or more after discovery of the discharge and has failed to
23 complete a remedial investigation for the entire site to the
24 department's satisfaction two years after the effective date of
25 P.L. , c. (C) (pending before the Legislature as this bill).

26 b. The department shall classify a site as a tier 2 site if it meets
27 the following criteria:

28 (1) the site poses a significant detrimental impact on public
29 health, safety and the environment as determined by a receptor
30 evaluation;

31 (2) the site is within a brownfield development area or other
32 economic development priority area;

33 (3) the site affects a licensed childcare facility, school or other
34 sensitive population;

35 (4) the site remediation is subject to federal oversight; or

36 (5) the site is in an environmentally sensitive area, or is a high
37 priority for economic development purposes.

38 c. The department shall classify a site as a tier 3 site if the site
39 does not meet the criteria established for classification as a tier 1, 2
40 or tier 4 site.

41 d. The department shall classify a site as a tier 4 site if it meets
42 the following criteria:

43 (1) the site involves the remediation of a leak from an
44 unregulated heating oil tank; and

45 (2) the remediation does not pose an immediate environmental
46 concern, ground water contamination is not within 100 feet of a
47 potable well, ground water contamination has not migrated beyond
48 the property boundaries of the property on which the discharge

1 occurred, or the site has not posed a vapor intrusion concern inside
2 a building.

3 e. The department, in its sole discretion, may change a site's
4 tier classification based the compliance history of the person
5 responsible for conducting the remediation of a contaminated site,
6 or on new information received from the certified subsurface
7 evaluator or licensed site professional on behalf of the person
8 responsible for conducting the remediation, or on information from
9 any other source.

10

11 11. (New section) a. Except as provided in subsection d. of this
12 section, all documents concerning the remediation of a site
13 classified as a tier 1 or a tier 2 site, shall be submitted, signed, and
14 certified by a licensed site professional. The licensed site
15 professional shall submit a preliminary assessment, a site
16 investigation report, a receptor evaluation, a remedial investigation
17 workplan, a remedial investigation report, a remedial action
18 workplan, a remedial action report and progress reports, including
19 any changes or additions made to the reports or other documents.
20 The department may require additional reports or data as
21 appropriate. In addition, the person responsible for conducting the
22 remediation and the licensed site professional shall submit any
23 certifications required by the department.

24 b. Except as provided in subsection d. of this section, all
25 documents concerning the remediation of a site classified as a tier 3
26 site shall be submitted by a licensed site professional. The licensed
27 site professional shall submit any screening documents and
28 certifications required by the department, a receptor evaluation, a
29 remedial investigation report, a remedial action workplan, and a
30 remedial action report including any changes or additions made to
31 the reports or other documents. The department may require
32 additional reports or data as appropriate.

33 c. Except as provided in subsection d. of this section, the
34 documents required to be submitted for a site classified as a tier 4
35 site may be submitted by a licensed site professional or a certified
36 subsurface evaluator. The licensed site professional or the
37 subsurface evaluator shall submit any checklists and certifications
38 required by the department and a remedial action report.

39 d. Any person responsible for conducting the remediation of a
40 contaminated site who seeks a no further action letter based solely
41 on the review of a preliminary assessment and site investigation that
42 indicates that no contamination above an applicable standard exists
43 on the site for which the person is seeking the no further action
44 letter, may submit the preliminary assessment and site investigation
45 report to the department.

1 12. (New section) a. For all sites classified as tier 1 sites:

2 (1) the department shall review and issue an approval or a denial
3 of all documents submitted by the licensed site professional for the
4 site;

5 (2) the department shall select the remedial action for the site;

6 (3) the person responsible for conducting the remediation shall
7 establish a remediation funding source in the form of a remediation
8 trust fund pursuant to subsection c. of section 25 of P.L.1993, c.139
9 (C.58:10B-3); and

10 (4) the department shall approve all disbursements of funds
11 from the remediation trust fund prior to payment;

12 (5) the licensed site professional shall provide all submissions
13 required by the department, to the department and the person
14 responsible for conducting the remediation simultaneously;

15 (6) the person responsible for conducting the remediation shall
16 implement a public participation plan, as required by the
17 department, to receive public comment from the residents of the
18 surrounding community concerning the remediation of the site.

19 b. For all sites classified as tier 2 sites, the department shall
20 review and issue an approval or a denial of all documents submitted
21 by the licensed site professional for the site.

22 c. For all sites classified as tier 3 sites, the department shall
23 review screening documents and certifications submitted by a
24 licensed site professional for the site.

25 d. For all sites classified as tier 4 sites, the department shall
26 review required checklists and certifications.
27

28 13. (New section) a. The department shall audit the remediation
29 of any site classified in tier 3 or tier 4 as follows:

30 (1) If the department's review of a screening document or
31 checklist indicates the licensed site professional or certified
32 subsurface evaluator conducting the remediation of the site did not
33 comply with the technical requirements for site remediation, the
34 department may conduct a review of any document submitted to the
35 department or developed by the licensed site professional or
36 certified subsurface evaluator;

37 (2) If the department's review conducted pursuant to paragraph
38 (1) of this subsection indicates the data upon which the remedial
39 investigation, remedial action workplan, or remedial action is
40 based, raises concerns about the quality of the work conducted by
41 the licensed site professional or certified subsurface evaluator, the
42 department will conduct a field audit of the site and a more
43 comprehensive review of submitted documents and site conditions;

44 (3) If the results of the department's field audit indicate that the
45 licensed site professional or certified subsurface evaluator did not
46 conduct the remediation in accordance with all applicable
47 environmental statutes and regulations, the department shall notify
48 the licensed site professional or certified subsurface evaluator in

1 writing, of any additional remediation activities the licensed site
2 professional or certified subsurface evaluator shall conduct at the
3 site and the deadlines by which the work must be conducted.

4 b. If the department issued a no further action letter to the
5 person responsible for conducting the remediation based on the
6 documents submitted or the field activities performed by the
7 licensed site professional that the department found to be deficient,
8 the department may revoke the no further action letter.

9 c. The department shall post the name and license number of
10 all licensed site professionals receiving a notification of
11 deficiencies pursuant to paragraph (3) of subsection a. of this
12 section, on the department's official website.

13

14 14. (New section) a. A licensed site professional may be audited
15 by the department at least once during the three-year licensing
16 period.

17 b. Every licensed site professional shall cooperate with the
18 department in the audit and provide any information requested by
19 the department.

20 c. Every licensed site professional shall maintain all data,
21 documents and information concerning remediation activities at
22 each contaminated site the licensed site professional has worked on,
23 including but not limited to, technical records and contractual
24 documents, raw sampling and monitoring data, whether or not the
25 data and information, including technical records and contractual
26 documents, were developed by the licensed site professional. The
27 licensed site professional may assert a privilege regarding the
28 documents, but shall agree not to assert any confidentiality or
29 privilege claims with respect to any data related to site conditions,
30 sampling or monitoring.

31 d. The licensed site professional shall preserve for a minimum
32 of 10 years after the date the department issues a no further action
33 letter concerning a site at which the licensed site professional has
34 conducted remediation, all data and information required to be
35 maintained pursuant to this section in his possession or in the
36 possession of the licensed site professional's divisions, employees,
37 agents, accountants, contractors, or attorneys that relate in any way
38 to the contamination at the site. After the expiration of the 10-year
39 period, the licensed site professional may make a written request to
40 the department to discard the documents. The request shall be
41 accompanied by a description of the documents involved, including
42 the name of each document, date, name and title of the sender and
43 receiver and a statement of contents. Upon receipt of written
44 approval by the department, the licensed site professional may
45 discard only those documents that the department does not require
46 to be preserved for a longer period. Upon receipt of a written
47 request by the department, the licensed site professional shall agree
48 to submit to the department all data and information required to be

1 maintained pursuant to this section. The licensed site professional
2 may assert any privilege regarding the data or information, but shall
3 agree not to assert any confidentiality or privilege claims with
4 respect to any data related to site conditions, sampling, or
5 monitoring.

6 e. The department may order a licensed site professional to
7 correct any deficiencies, errors or omissions found as a result of the
8 audit, including deficiencies found in complying with applicable
9 laws, rules or regulations.

10 f. The department may revoke or suspend the license of a
11 licensed site professional as a result of the audit pursuant to the
12 provisions of sections 16 and 17 of P.L. , c. (C.) (pending
13 before the Legislature as this bill).

14

15 15. (New section) a. There is established a code of professional
16 conduct which shall be binding on every licensed site professional
17 and certified subsurface evaluator.

18 b. Each licensed site professional or certified subsurface
19 evaluator is required to have knowledge of and familiarity with the
20 provisions of the code of professional conduct set forth in this
21 section, and shall have an understanding of these provisions.

22 c. Each licensed site professional or certified subsurface
23 evaluator shall act with reasonable care and diligence, and shall
24 apply the knowledge and skill ordinarily exercised by licensed site
25 professionals or certified subsurface evaluators in good standing
26 practicing in the State at the time the services are performed.

27 d. A licensed site professional or certified subsurface evaluator
28 shall not provide professional services outside the areas of
29 professional competency, when this competency is based on
30 education, training, or experience, unless the licensed site
31 professional or certified subsurface evaluator has relied upon the
32 technical assistance of one or more professionals whom the licensed
33 site professional or certified subsurface evaluator has reasonably
34 determined are qualified in these areas by education, training or
35 experience.

36 e. A licensed site professional or certified subsurface evaluator
37 shall correct all deficiencies in a submitted document identified by a
38 notice of deficiency issued by the department which shall be
39 provided in the timeframes established for resubmittal.

40 f. A licensed site professional or certified subsurface evaluator
41 may complete any phase of remediation based on remediation work
42 performed under a previous licensed site professional or certified
43 subsurface evaluator, and the workplan or report generated by the
44 previous licensed site professional or certified subsurface evaluator
45 may be relied upon as sufficient to protect public health, safety,
46 welfare, or the environment, only if the successor licensed site
47 professional or certified subsurface evaluator has: (1) reviewed all
48 available documentation known to the successor licensed site

1 professional that describes previous discharges, remediation and
2 results; (2) conducted a site visit to observe current conditions and
3 to verify the status of as much of the work as is reasonably
4 observable; and (3) concluded, in the exercise of independent
5 professional judgment, that the successor licensed site professional
6 or certified subsurface evaluator has sufficient information upon
7 which to complete any additional phase of remediation and prepare
8 workplans and reports related thereto.

9 g. A licensed site professional or certified subsurface evaluator
10 who has taken over the responsibility for the remediation of a
11 contaminated site from another licensed site professional pursuant
12 to subsection f. of this section shall correct all deficiencies in a
13 document submitted by the previous licensed site professional or
14 certified subsurface evaluator identified by a notice of deficiency
15 issued by the department which shall be provided in the timeframes
16 established for resubmittal.

17 h. A licensed site professional or certified subsurface evaluator
18 shall hold paramount the protection of the public health, safety and
19 the environment in the performance of professional services.

20 i. A licensed site professional or certified subsurface evaluator
21 shall sign a workplan, report or any other required submittal only
22 when the licensed site professional or certified subsurface evaluator
23 has managed, supervised or actually performed the work that is the
24 basis of the submittal, or has periodically reviewed and evaluated
25 the performance by others of the assessment.

26 j. In providing professional services, a licensed site
27 professional or certified subsurface evaluator shall: (1) exercise
28 independent professional judgment; (2) adhere to the requirements
29 and procedures set forth in the applicable provisions of P.L. ,
30 c. (C.) (pending before the Legislature as this bill); (3) make a
31 good faith and reasonable effort to identify and obtain the relevant
32 and material facts, data, reports and other information evidencing
33 conditions at a site that the client of the licensed site professional or
34 certified subsurface evaluator possesses or that is otherwise readily
35 available, and identify and obtain whatever additional data and
36 other information as the licensed site professional or certified
37 subsurface evaluator deems necessary to discharge the professional
38 obligations under the provisions of P.L.2005, c.365 (C.58:10B-23.1
39 et seq.); and (4) disclose and explain in any workplan, report or
40 other required document the material facts, data, other information,
41 and qualifications and limitations known by the licensed site
42 professional or certified subsurface evaluator which may tend to
43 support or lead to a workplan, report or required document contrary
44 to, or significantly different from, the workplan, report or required
45 document completed by the licensed site professional.

46 k. If a licensed site professional or certified subsurface
47 evaluator identifies a discharge or threat of discharge that in the
48 independent professional judgment of that person meets the

1 definition of an immediate environmental concern at a particular
2 site at which the person is working as a licensed site professional or
3 certified subsurface evaluator, then the licensed site professional or
4 certified subsurface evaluator shall: (1) immediately verbally advise
5 the client of the need to notify the department of the discharge or
6 potential discharge; and (2) immediately notify the department of
7 the discharge or threat of discharge by calling the department's
8 telephone hotline.

9 l. If a licensed site professional or certified subsurface
10 evaluator obtains knowledge of a condition that in the independent
11 professional judgment of that person requires notification to the
12 department, then the licensed site professional or certified
13 subsurface evaluator shall promptly notify the client of the
14 existence of the condition and thereupon notify the department
15 pursuant to subsection k. of this section.

16 m. If a licensed site professional or certified subsurface
17 evaluator has knowledge of an action taken or a decision made by
18 that person's client with respect to a particular aspect of the work of
19 the licensed site professional or certified subsurface evaluator that
20 significantly deviates from any scope of workplan or report the
21 licensed site professional or certified subsurface evaluator has
22 developed to meet the requirements of P.L.2005, c.365 (C.58:10B-
23 23.1 et seq.) or any rules or regulations adopted pursuant thereto, or
24 an order of the department, the licensed site professional or certified
25 subsurface evaluator shall promptly notify the client in writing of
26 the deviation.

27 n. A licensed site professional or certified subsurface evaluator
28 shall not reveal facts, data or information obtained in a professional
29 capacity without the prior consent of the client, except as may be
30 authorized or required by law, if the facts, data or information are
31 claimed to be confidential by the client in a written communication
32 to the licensed site professional or certified subsurface evaluator,
33 and these facts, data or information are not in the public domain.

34 o. If subsequent to the date a licensed site professional or
35 certified subsurface evaluator completes a report concerning a
36 phase of remediation that person learns that material facts, data or
37 other information existed at the time the phase of remediation was
38 conducted which may tend to support or lead to a workplan or
39 report contrary to, or significantly different from, the one
40 completed, the licensed site professional or certified subsurface
41 evaluator shall promptly notify the client in writing of these
42 circumstances.

43 p. If subsequent to the date a successor licensed site
44 professional or certified subsurface evaluator is engaged that person
45 learns of material facts, data or other information which existed at
46 the date of completion of a phase of remediation by a predecessor
47 licensed site professional or certified subsurface evaluator that was
48 not disclosed in that phase of remediation workplan or report, the

1 successor licensed site professional or certified subsurface evaluator
2 shall promptly notify the client in writing of these circumstances.

3 q. A licensed site professional or certified subsurface evaluator
4 shall not allow the use of that person's name by, or associate in a
5 business venture with, any person that the licensed site professional
6 or certified subsurface evaluator knows or should know is engaging
7 in fraudulent or dishonest business or professional practices relating
8 to the professional responsibilities of a licensed site professional.

9 r. Every licensed site professional or certified subsurface
10 evaluator shall cooperate fully in the conduct of investigations by
11 the department by promptly furnishing, in response to formal
12 requests, orders or subpoenas, whatever information the department,
13 or persons duly authorized by the department, deems necessary to
14 perform its duties. In any investigation by the department of
15 applications or disciplinary complaints, a licensed site professional
16 shall not: (1) knowingly make a false statement of material fact; (2)
17 fail to disclose a fact necessary to correct a material
18 misunderstanding known by the licensed site professional to have
19 arisen in the matter; (3) knowingly and materially falsify, tamper
20 with, alter, conceal, or destroy any document, data record, remedial
21 system, or monitoring device that is relevant to the investigation,
22 without obtaining the prior approval of the department; or (4)
23 knowingly allow or tolerate any employees, agents, or contractors
24 of the licensed site professional to engage in any of the foregoing
25 activities.

26 s. A licensed site professional or certified subsurface evaluator
27 who is involved in a management or review capacity at a disposal
28 site shall be considered jointly responsible with a second licensed
29 site professional or certified subsurface evaluator for a violation of
30 this code of professional conduct committed by the second licensed
31 site professional or certified subsurface evaluator if the licensed site
32 professional or certified subsurface evaluator: (1) orders, directs, or
33 formally ratifies professional services or an opinion being
34 conducted or prepared by the second licensed site professional or
35 certified subsurface evaluator; (2) recognizes that the professional
36 services or opinion violate an obligation or prohibition contained in
37 this code of professional conduct; and (3) fails to take reasonable
38 steps to attempt to avoid or mitigate the violation.

39 t. A licensed site professional or certified subsurface evaluator
40 shall comply with all conditions that are imposed on that person's
41 license or certification as a result of a disciplinary proceeding.

42 u. In any communication with a client or prospective client,
43 including but not limited to communications with respect to a
44 proposed scope of services or proposed contract, it is the
45 responsibility of the licensed site professional or certified
46 subsurface evaluator to inform the client or prospective client of the
47 relevant and material assumptions, limitations, or qualifications
48 underlying the communication. Evidence that a licensed site

1 professional or certified subsurface evaluator has provided the
2 client or prospective client with timely written documentation of
3 these assumptions, limitations, or qualifications shall be deemed by
4 the department to have satisfied the requirements of this subsection.

5 v. In any communication with a client or prospective client, a
6 licensed site professional or certified subsurface evaluator shall not
7 state or imply, as an inducement or a threat, an ability to improperly
8 influence a government agency or official.

9 w. In any description of qualifications, experience, or ability to
10 provide services, a licensed site professional or certified subsurface
11 evaluator shall not knowingly: (1) make a material
12 misrepresentation of fact or law; (2) omit a fact necessary to make
13 the description, when considered as a whole, not materially
14 misleading; or (3) make a statement that, in the opinion of the
15 department, is likely to create an unjustified expectation about
16 results the licensed site professional or certified subsurface
17 evaluator may achieve, or state or imply that the licensed site
18 professional or certified subsurface evaluator may achieve results
19 by means that violate the provisions of applicable environmental
20 laws, rules or regulations, including the provisions of P.L. ,
21 c. (C.) (pending before the Legislature as this bill).

22 x. A licensed site professional who becomes obligated to make
23 any of the notifications required under the provisions of this act
24 shall make the required notification even if that licensed site
25 professional is discharged by the client prior to doing so.

26 y. A licensed site professional or certified subsurface evaluator
27 shall not accept compensation, financial or otherwise, for
28 professional services pertaining to a site from more than one person
29 having significant conflicting or adverse interests unless the
30 circumstances are fully disclosed and agreed to by all clients
31 engaging that person with regard to that site.

32 z. A licensed site professional or certified subsurface evaluator
33 shall not be a salaried employee of the person responsible for
34 conducting the remediation for which that person is providing
35 remediation services.

36 aa. A licensed site professional or certified subsurface evaluator
37 shall not allow any ownership interest, compensation, or continued
38 employment affect the professional services of that person to the
39 extent that the professional services fail to meet the standards set
40 forth in this act.

41
42 16. (New section) a. (1) Whenever, on the basis of available
43 information, the department finds that a person is in violation of a
44 provision of P.L. , c. (C.) (pending before the Legislature as
45 this bill), or any rule, regulation, plan, information request, code of
46 conduct, or order adopted or issued pursuant thereto, or who
47 knowingly has made any false statement, representation, or

1 certification in any documents or information required to be
2 submitted to the department, the department may:

3 (a) Revoke or suspend the license of a licensed site professional
4 in accordance with subsection b. of this section;

5 (b) Bring a civil action in accordance with subsection c. of this
6 section;

7 (c) Issue an administrative order in accordance with subsection
8 d. of this section;

9 (d) Bring an action for a civil penalty in accordance with
10 subsection e. of this section; or

11 (e) Assess a civil administrative penalty in accordance with
12 subsection f. of this section.

13 The exercise of any of the remedies provided in this section shall
14 not preclude recourse to any other remedy so provided.

15 (2) A person who purposely, knowingly, or recklessly violates a
16 provision of this act, including making a false statement,
17 representation, or certification in any application, record, or other
18 document filed or required to be maintained under this act, or by
19 falsifying, tampering with, or rendering inaccurate any monitoring
20 device or method required to be maintained pursuant to this act, or
21 by failing to submit a monitoring report, or any portion thereof,
22 required pursuant to this act, shall be guilty, upon conviction, of a
23 crime of the third degree and shall, notwithstanding the provisions
24 of subsection e. of this section, be subject to a fine of not less than
25 \$5,000 nor more than \$75,000 per day of violation, or by
26 imprisonment, or both.

27 (3) Any person who negligently violates this act, including
28 making a false statement, representation, or certification in any
29 application, record, or other document filed or required to be
30 maintained under this act, or by falsifying, tampering with, or
31 rendering inaccurate any monitoring device or method required to
32 be maintained pursuant to this act, or by failing to submit a
33 discharge monitoring report, or any portion thereof, required
34 pursuant to this act, shall be guilty, upon conviction, of a crime of
35 the fourth degree and shall, notwithstanding the provisions of
36 subsection e. of this section, be subject to a fine of not less than
37 \$5,000 nor more than \$50,000 per day of violation, or by
38 imprisonment, or both.

39 b. (1) The department may revoke or suspend a license issued
40 to a licensed site professional. The department may not revoke or
41 suspend a license until a violator has been notified by certified mail
42 or personal service. The notice shall: (a) identify the statutory or
43 regulatory basis of the violation; (b) identify the specific citation of
44 the act or omission constituting the violation; (c) identify the
45 license to be revoked or suspended; and (d) affirm the right of the
46 violator to a hearing on any matter contained in the notice and the
47 procedures for requesting a hearing.

1 (2) A violator shall have 20 days from receipt of the notice
2 within which to request a hearing on any matter contained in the
3 notice, and shall comply with all procedures for requesting a
4 hearing. Failure to submit a timely request or to comply with all
5 procedures set forth by the department shall constitute grounds for
6 denial of a hearing request. After a hearing and upon a finding that
7 a violation has occurred, the department shall issue a final order
8 revoking or suspending the license specified in the notice. If a
9 violator does not request a hearing or fails to satisfy the statutory
10 and administrative requirements for requesting a hearing, the notice
11 of intent to revoke or suspend the license shall become final after
12 the expiration of the 20-day period. If the department denies a
13 hearing request, the notice of denial shall become a final order,
14 revoking or suspending the license, upon receipt of the notice by the
15 violator.

16 c. The department is authorized to institute a civil action in
17 Superior Court for appropriate relief from any violation of the
18 provisions of this act, or any rule, regulation, plan, information
19 request, code of conduct, or order adopted or issued pursuant
20 thereto. Such relief may include, singly or in combination, a
21 temporary or permanent injunction.

22 d. Whenever the department finds that any person is in
23 violation of any provision of this act, the department may issue an
24 order (1) specifying the provision or provisions of this act, or the
25 rule, regulation, or code of conduct of which the person is in
26 violation; (2) citing the action which caused the violation; (3)
27 requiring compliance with the provision or provisions; and (4)
28 giving notice to the person of the person's right to a hearing on the
29 matters contained in the order.

30 e. Any person who violates the technical rules for site
31 remediation or a court order issued pursuant thereto, or who fails to
32 pay a civil administrative penalty in full or to agree to a schedule of
33 payments therefor, shall be subject, upon order of a court, to a civil
34 penalty not to exceed \$50,000 per day of the violation, and each day
35 during which the violation continues shall constitute an additional,
36 separate, and distinct offense. Any civil penalty imposed pursuant
37 to this subsection may be collected with costs in a summary
38 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
39 P.L.1999, c.274 (C.2A:58-10 et seq.).

40 f. (1) The department may assess a civil administrative penalty
41 of not more than \$50,000 for each violation of the provisions of this
42 act, or any rule, regulation, plan, information request, code of
43 conduct, or order adopted or issued pursuant thereto, and each day
44 during which each violation continues shall constitute an additional,
45 separate and distinct offense.

46 Prior to assessment of a penalty under this subsection, the person
47 committing the violation shall be notified by certified mail or
48 personal service that the penalty is being assessed. The notice shall:

1 (a) identify the statutory or regulatory basis of the violation; (b)
2 identify the specific citation of the act or omission constituting the
3 violation; (c) state the basis for the amount of the civil penalties to
4 be assessed; and (d) affirm the right of the violator to a hearing on
5 any matter contained in the notice and the procedures for requesting
6 a hearing.

7 (2) (a) A violator shall have 20 days from the receipt of the
8 notice within which to request a hearing on any matter contained in
9 the notice, and shall comply with all procedures for requesting a
10 hearing. Failure to submit a timely request or to comply with all
11 procedures set forth by the department shall constitute grounds for
12 denial of a hearing request. After a hearing and upon a finding that
13 a violation has occurred, the department shall issue a final order
14 assessing the amount of the civil administrative penalty specified in
15 the notice. If a violator does not request a hearing or fails to satisfy
16 the statutory and administrative requirements for requesting a
17 hearing, the notice of assessment of a civil administrative penalty
18 shall become a final order after the expiration of the 20-day period.
19 If the department denies a hearing request, the notice of denial shall
20 become a final order upon receipt of the notice by the violator.

21 (b) Payment of the assessment is due when a final
22 administrative enforcement order is issued or the notice becomes a
23 final order. The authority to levy a civil administrative order is in
24 addition to all other enforcement provisions, and the payment of
25 any assessment shall not be deemed to affect the availability of any
26 other enforcement provisions in connection with the violation for
27 which the assessment is levied. The department may compromise
28 any civil administrative penalty assessed under this section in an
29 amount and with conditions the department determines appropriate.
30 A civil administrative penalty assessed, including a portion thereof
31 required to be paid pursuant to a payment schedule approved by the
32 department, which is not paid within 30 days of the date that
33 payment of the penalty is due, shall be subject to an interest charge
34 on the amount of the penalty, or portion thereof, which shall accrue
35 as of the date payment is due. If the penalty is contested, no
36 additional interest charge shall accrue on the amount of the penalty
37 until after the date on which a final order is issued. Interest charges
38 assessed and collectible pursuant to this subsection shall be based
39 on the rate of interest on judgments provided in the New Jersey
40 Rules of Court.

41 (3) The department may assess and recover, by civil
42 administrative order, the costs of any investigation, cleanup or
43 removal, and the reasonable costs of preparing and successfully
44 enforcing a civil administrative penalty pursuant to this subsection.
45 The assessment may be recovered at the same time as a civil
46 administrative penalty, and shall be in addition to the penalty
47 assessment.

1 g. A licensed site professional may not apply for a new license
2 for ten years following the date of revocation of the license by the
3 department. At the conclusion of the license revocation, the
4 licensed site professional shall follow the application procedures for
5 licensure in accordance with section 2 of P.L. , c. (C.) (pending
6 before the Legislature as this bill).

7 h. Upon the second revocation of license, a licensed site
8 professional shall be disqualified from making an application for a
9 license in this State.

10 i. If a person violates any of the provisions of this act, or any
11 rule, regulation, plan, information request, code of conduct, or order
12 adopted or issued pursuant thereto, the department may institute a
13 civil action in a court of competent jurisdiction for injunctive or
14 other appropriate relief to prohibit and prevent the licensed site
15 professional from engaging in remediation activities.

16
17 17. (New section) a. Within 30 days from the receipt of
18 notification from the department suspending or revoking a license,
19 or receipt of an administrative order, or a notice of civil
20 administrative penalty issued by the department pursuant to section
21 16 of P.L. , c. (C.) (pending before the Legislature as this
22 bill), the person may request an adjudicatory hearing to contest the
23 action by submitting a written request therefor to the department.
24 The request shall include the following information:

- 25 (1) The name, address, and telephone number of the licensee;
26 (2) The license number (if applicable);
27 (3) The licensee's factual position on each question alleged to
28 be at issue, its relevance to the department's decision, specific
29 reference to contested conditions as well as suggested revised or
30 alternative conditions;
31 (4) The date the licensee received the document from the
32 department containing the decision being contested;
33 (5) A copy of the decision document and a list of all issues
34 being appealed;
35 (6) An admission or denial of each of the findings of fact, or a
36 statement of insufficient knowledge;
37 (7) The defenses to each of the findings of fact contained in the
38 document that the licensee received from the department containing
39 the decision being contested;
40 (8) Information supporting the licensee's factual position and
41 proposed conditions and copies of other written documents relied
42 upon to support the request for a hearing;
43 (9) An estimate of the time required for the hearing, expressed
44 in days or hours; and
45 (10) request, if necessary, for a barrier-free hearing location for
46 disabled persons.

47 b. If a written request for a hearing is not received within 30
48 days from the receipt of notification from the department

1 suspending or revoking a license, the department shall deny the
2 request for a hearing.

3 c. A written request for a hearing shall be deemed to be filed
4 with the department in accordance with the procedures set forth
5 herein:

6 (1) If hand-delivered during regular business hours, it shall be
7 deemed filed on the day delivered;

8 (2) If hand-delivered during non-business hours, it shall be
9 deemed filed on the next regular business day;

10 (3) If mailed by placing in U.S. mail, it shall be deemed filed on
11 the date so post-marked; and

12 (4) A delivery by a bonded delivery service shall be treated as a
13 hand delivery.

14 d. If the licensee fails to include all the information required
15 pursuant to subsection a. of this section, the department may deny
16 the request for a hearing.

17 e. If a request for a hearing is granted, the department shall file
18 the request for a hearing with the Office of Administrative Law.
19 The hearing shall be held before an administrative law judge,
20 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
21 (C.52:14B-1 et seq.), or any rules or regulations adopted pursuant
22 thereto.

23 f. Pending the decision on appeal to the department a person
24 shall not act, advertise, or otherwise make representations as being
25 a licensed site professional.

26

27 18. (New section) The owner or operator of an industrial
28 establishment or any other person required to perform remediation
29 activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), or a
30 discharger, a person in any way responsible for a hazardous
31 substance, or a person otherwise liable for cleanup and removal
32 costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall
33 comply with the oversight requirements established pursuant to
34 rules and regulations adopted pursuant to the provisions of section 4
35 of P.L. , c. (C.) (pending before the Legislature as this bill),
36 unless the person is required to enter into an administrative consent
37 order or a judicial consent order. The oversight requirements shall
38 include but shall not be limited to, the following requirements:

39 a. the person shall hire a licensed site professional or
40 subsurface evaluator certified to conduct all remediation at the site;

41 b. the person shall remediate all contamination at, or emanating
42 from, the site in accordance with the technical requirements
43 established by the department;

44 c. the person shall perform the remediation in accordance with
45 the mandatory timeframes established pursuant to the provisions of
46 section 19 of P.L. , c. (C.) (pending before the Legislature as
47 this bill);

1 d. the person shall conduct the remediation pursuant to the
2 department's oversight;

3 e. the person shall establish a remediation funding source
4 pursuant to the provisions of section 25 of P.L.1993, c.139
5 (C.58:10B-3);

6 f. the person shall pay all applicable fees and oversight costs as
7 required by the department;

8 g. the person shall provide access to the department to all areas
9 of the contaminated site; and

10 h. the person shall provide access to the department to all
11 documents associated with the remediation of the contaminated
12 site.

13

14 19. (New section) a. The owner or operator of an industrial
15 establishment or any other person required to perform remediation
16 activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), or a
17 discharger, a person in any way responsible for a hazardous
18 substance, or a person otherwise liable for cleanup and removal
19 costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), and the
20 designated licensed site professional or certified subsurface
21 evaluator shall comply with the mandatory timeframes for
22 remediation and reporting as provided in subsection b. of this
23 section and as established pursuant to rules and regulations adopted
24 pursuant to the provisions of section 4 of P.L. , c. (C.)
25 (pending before the Legislature as this bill).

26 b. The department shall establish mandatory timeframes for, at
27 a minimum, the following:

28 (1) The initial evaluation of the risks that the contaminated site
29 poses to the public health and safety and to the environment;

30 (2) Interim remedial measures to eliminate immediate risks to
31 the public health and safety and to the environment, and any
32 contaminant removal or stabilization of the contaminated site
33 necessary to properly manage the risks the contamination poses;

34 (3) Reports for each phase of the remediation; and

35 (4) Other activities necessary to effectuate timely remediation to
36 protect the public health and safety and the environment.

37 c. In establishing the timeframes as required in subsection b. of
38 this section, the department shall differentiate conditions that
39 warrant different response times and expedited actions. When
40 establishing timeframes as required in subsection b. of this section,
41 the department shall take into account the following factors:

42 (1) the risk to the public health and safety and to the
43 environment the contamination poses based on (a) potential and
44 actual exposure of humans to the contamination, via direct contact,
45 exposure to drinking water and air, and (b) the proximity of the
46 contaminated site to wellhead protection areas, potable wells,
47 structures where vapor intrusion could be a source of unacceptable
48 exposure, and to sensitive populations including, but not limited to,

1 persons in daycare facilities, educational facilities, hospitals, and
2 nursing homes; and

3 (2) the complexity of the contaminated site based on media
4 impacted, ground water contamination in bedrock and multiple
5 aquifers, contaminant toxicity, presence of free and residual product
6 or radiological materials, buried drums or chemical production or
7 other high contaminant level waste in soil, the magnitude of
8 contamination, and offsite migration of contamination.

9 d. The department may grant extensions from the mandatory
10 timeframes based upon a demonstration by the person subject to this
11 section, and the designated licensed site professional or certified
12 subsurface evaluator, that extraordinary cause beyond the
13 reasonable control of the person subject to the provisions of this
14 section, exists and that the extension of time would not extend any
15 unacceptable risk to the public health and safety or to the
16 environment. The department may grant an extension for additional
17 time necessary:

18 (1) as a result of a delay in receiving state funding for
19 remediation, provided that there was a timely filing of the
20 application for such funding;

21 (2) to obtain access to property, provided the person subject to
22 the provisions of this section can demonstrate that access was
23 denied, and a complaint was filed with Superior Court, in
24 accordance with department rules; and

25 (3) extraordinary circumstances when the person subject to the
26 provisions of this section can demonstrate that that person has been
27 implementing the remediation in a timely manner.

28 e. The person requesting the extension of a mandatory
29 timeframe shall specify the precise cause of any delay, the
30 measures taken to minimize the delay, and the risks associated with
31 the contamination, along with an explanation of how much
32 additional time is necessary to complete the task.

33 f. The department may require, on a site-specific basis, the
34 expedited performance of:

35 (1) a remedial investigation at a site or area of concern that
36 poses a significant risk to the public health and safety, or to the
37 environment, based on the complexity of the contaminated site; or

38 (2) a remedial action that is necessary to protect the public
39 health and safety, or the environment.

40 g. If the person subject to the provisions of this section and the
41 designated licensed site professional or certified subsurface
42 evaluator fail to comply with the mandatory timeframes or site-
43 specific timeframes established by the department, the person
44 subject to the provisions of this section and the designated licensed
45 site professional or certified subsurface evaluator shall be subject to
46 an enforcement action. The department may also reclassify the site
47 as a tier 1 contaminated site, and the department may evaluate the
48 performance of licensed site professional in accordance with the

1 licensing provisions of section 2 of P.L. , c. (C.) (pending
2 before the Legislature as this bill).

3
4 20. (New section) For any site for which a grant, loan or other
5 financial assistance is awarded from a public fund for the
6 remediation, a licensed site professional or subsurface evaluator, as
7 appropriate, shall provide written documentation to the Department
8 of Environmental Protection of any work performed by a person
9 other than the licensed site professional or subsurface evaluator, as
10 appropriate. The licensed site professional or subsurface evaluator,
11 as appropriate, shall certify that the work was properly completed in
12 accordance with the requirements of all applicable laws, rules and
13 regulations.

14
15 21. (New section) No person shall take retaliatory action if a
16 licensed site professional:

17 a. discloses, or threatens to disclose to the department an
18 activity, policy or practice of the licensed site professional that the
19 licensed site professional reasonably believes; (1) is in violation of
20 a law, or a rule or regulation adopted pursuant to law, including any
21 violation involving deception of, or misrepresentation to, any client
22 customer, the department or any governmental entity; or (2) is
23 fraudulent or criminal, including any activity, policy or practice of
24 deception or misrepresentation that the licensed site professional
25 reasonably believes may defraud any client, customer, the
26 department, or any governmental entity;

27 b. provides information to, or testifies before, any public body
28 conducting an investigation, hearing, or inquiry into any violation
29 of law, or a rule or regulation adopted pursuant to law, by the client
30 or customer, with whom there is a business relationship, including
31 any violation involving deception of, or misrepresentation to, any
32 client, customer, the department or any governmental entity, or, in
33 the case of a licensed site professional, provides information to, or
34 testifies before, any public body conducting an investigation,
35 hearing or inquiry into the quality of remediation of a contaminated
36 site; or

37 c. objects to, or refuses to participate in any activity, policy or
38 practice which the licensed site professional reasonably believes;
39 (1) is in violation of a law, or a rule or regulation adopted pursuant
40 to law, including any violation involving deception of, or
41 misrepresentation to, any, client, customer, the department or any
42 governmental entity, (2) is fraudulent or criminal, including any
43 activity, policy or practice of deception or misrepresentation which
44 the licensed site professional reasonably believes may defraud any
45 client, customer, the department, or any governmental entity, or (3)
46 is incompatible with a clear mandate of public policy concerning
47 the public health, safety or welfare or protection of the
48 environment.

22. (New section) No person shall knowingly employ a person who is not a licensed site professional pursuant to the provisions of P.L. , c. (C.) (pending before the Legislature as this bill) or who is not otherwise authorized to perform remedial activities pursuant to this act, or a business firm that has not been issued a certification of authorization pursuant to section 8 of P.L. , c. (C.) to conduct the remediation of a contaminated site or submit any documents regarding a remediation to the department for approval on that person's behalf. Any person violating provisions of this section shall be subject to penalties as prescribed in section 16 of P.L. , c. (C.) (pending before the Legislature as this bill).

23. Section 6 of P.L.1976, c.141 (C.58:10-23.11e) is amended to read as follows:

6. a. Any person who may be subject to liability for a discharge which occurred prior to or after the effective date of [the act of which this act is amendatory] P.L.1976, c. 141 (C.58:10-23.11 et seq.) shall immediately notify the department. Failure to so notify shall make persons liable to the penalty provisions of section 22 of [this act] P.L.1976, c.141 (C.58:23.11u).

b. Any person who may be subject to liability for a discharge that occurred prior to or after the effective date of P.L.1976, c. 141 (C.58:10-23.11 et seq.), shall clean up and remove the discharge pursuant to rules adopted by the department, unless the department, pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f), has directed a person who may be subject to liability for the discharge to arrange for the cleanup and removal of the discharge. If the person who may be subject to liability for the discharge fails to submit a report of the remedial action to the department within 180 days after the discharge occurred, the department may order that person to clean up and remove the discharge pursuant to rules adopted by the department. If the discharge occurred prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), a report of the remedial action undertaken shall be submitted to the department no more than 180 days after the effective date of P.L. , c. (pending before the Legislature as this bill) .

(cf: P.L.1979, c.346, s.3)

24. Section 25 of P.L.1993, c.139 (C.58:10B-3) is amended to read as follows:

25. a. [The] Except as provided below, the owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), [or] a discharger, a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and

1 removal costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.)
2 who has been issued a directive or an order by a State agency, who
3 has entered into an administrative consent order with a State
4 agency, or who has been ordered by a court to clean up and remove
5 a hazardous substance or hazardous waste discharge pursuant to
6 P.L.1976, c.141 (C.58:10-23.11 et seq.), or any person who
7 voluntarily conducts a remediation, shall establish and maintain a
8 remediation funding source in the amount necessary to pay the
9 estimated cost of the required remediation. [A person who
10 voluntarily undertakes a remediation pursuant to a memorandum of
11 agreement with the department, or without the department's
12 oversight, or who performs a remediation in an environmental
13 opportunity zone is not required to establish or maintain a
14 remediation funding source. A person who uses an innovative
15 technology or who, in a timely fashion, implements an unrestricted
16 use remedial action or a limited restricted use remedial action for all
17 or part of a remedial action is not required to establish a
18 remediation funding source for the cost of the remediation
19 involving the innovative technology or permanent remedy.] A
20 person responsible for conducting the remediation at the site of an
21 unregulated heating oil tank, a childcare facility, an educational
22 facility, or at any site that is classified as tier 4 pursuant to section
23 10 of P.L. , c. (C.) (pending before the Legislature as this
24 bill), is not required to establish a remediation funding source. A
25 person required to establish a remediation funding source pursuant
26 to this section shall provide to the department satisfactory
27 documentation that the requirement has been met.

28 The remediation funding source shall be established in an
29 amount equal to or greater than the cost estimate of the
30 implementation of the remediation (1) as approved by the
31 department for tier 1 sites, (2) as determined by the licensed site
32 professional pursuant to guidance established by the department for
33 tier 2 and tier 3 sites, (3) as provided in an administrative consent
34 order or remediation agreement as required pursuant to subsection
35 e. of section 4 of P.L.1983, c.330, [(3)] (4) as stated in a
36 departmental order or directive, or [(4)] (5) as agreed to by a court,
37 and shall be in effect for a term not less than the actual time
38 necessary to perform the remediation at the site. Whenever the
39 remediation cost estimate increases, the person required to establish
40 the remediation funding source shall cause the amount of the
41 remediation funding source to be increased to an amount at least
42 equal to the new estimate. Whenever the remediation or cost
43 estimate decreases, the person required to obtain the remediation
44 funding source may file a written request to the department to
45 decrease the amount in the remediation funding source. The
46 remediation funding source may be decreased to the amount of the
47 new estimate upon written approval by the department delivered to
48 the person who established the remediation funding source and to

1 the trustee or the person or institution providing the remediation
2 trust, the environmental insurance policy, [or] the line of credit, the
3 letter of credit or the surety bond, as applicable. The department
4 shall approve the request upon a finding that the remediation cost
5 estimate decreased by the requested amount. The department shall
6 review and respond to the request to decrease the remediation
7 funding source within 45 days of receipt of the request. Upon
8 submission of a remedial action workplan that proposes to
9 implement a restricted use remedial action or a limited restricted
10 use remedial action, the person responsible for performing the
11 remediation shall, on an annual basis, estimate the costs of the
12 remediation required for 20 years after the approval of the remedial
13 action workplan, including the costs of operation, monitoring and
14 maintenance of the remedial action proposed and shall include those
15 costs in the remediation funding source.

16 b. The person responsible for performing the remediation and
17 who established the remediation funding source may use the
18 remediation funding source to pay for the actual cost of the
19 remediation. [The department may not require any other financial
20 assurance by the person responsible for performing the remediation
21 other than that required in this section. In the case of a remediation
22 performed pursuant to P.L.1983, c.330, the remediation funding
23 source shall be established no more than 14 days after the approval
24 by the department of a remedial action workplan or upon approval
25 of a remediation agreement pursuant to subsection e. of section 4 of
26 P.L.1983, c.330 (C.13:1K-9), unless the department approves an
27 extension. In the case of a remediation performed pursuant to
28 P.L.1976, c.141, the remediation funding source shall be established
29 as provided in an administrative consent order signed by the parties,
30 as provided by a court, or as directed or ordered by the
31 department.] The remediation funding source shall be established
32 (1) for tier 1 sites, no more than 60 days after departmental
33 approval of the plan for the remedial investigation, (2) for sites
34 subject to an administrative consent order, prior to the execution of
35 the order, (3) for sites subject to a remediation agreement pursuant
36 to subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), no
37 more than 60 days after the approval of the remediation agreement;
38 and (4) for all other sites, prior to the implementation of the
39 remedial investigation. The establishment of a remediation funding
40 source for that part of the remediation funding source to be
41 established by a grant or financial assistance from the remediation
42 fund may be established for the purposes of this subsection by the
43 application for a grant or financial assistance from the remediation
44 fund and satisfactory evidence submitted to the department that the
45 grant or financial assistance will be awarded. However, if the
46 financial assistance or grant is denied or the department finds that
47 the person responsible for establishing the remediation funding
48 source did not take reasonable action to obtain the grant or financial

1 assistance, the department shall require that the full amount of the
2 remediation funding source be established within 14 days of the
3 denial or finding. The remediation funding source shall be
4 evidenced by the establishment and maintenance of (1) a
5 remediation trust fund, (2) an environmental insurance policy,
6 issued by an entity licensed by the Department of Banking and
7 Insurance to transact business in the State of New Jersey, to fund
8 the remediation, (3) a line of credit from a ~~person or~~ financial
9 institution regulated pursuant to State or federal law and
10 satisfactory to the department authorizing the person responsible for
11 performing the remediation to borrow money, [or] (4) a self-
12 guarantee, (5) a letter of credit from a financial institution regulated
13 pursuant to State or federal law and satisfactory to the department
14 authorizing the person responsible for performing the remediation
15 to borrow money, or (6) a surety bond guaranteeing payment, issued
16 by an entity licensed by the Department of Banking and Insurance
17 to transact business in the State, or by any combination thereof.
18 Where it can be demonstrated that a person cannot establish and
19 maintain a remediation funding source for the full cost of the
20 remediation by a method specified in this subsection, that person
21 may establish the remediation funding source for all or a portion of
22 the remediation, by securing financial assistance from the
23 Hazardous Discharge Site Remediation Fund as provided in section
24 29 of P.L.1993, c.139 (C.58:10B-7).

25 c. A remediation trust fund shall be established pursuant to the
26 provisions of this subsection. An originally signed duplicate of the
27 trust agreement shall be delivered to the department by certified
28 mail within ~~14 days of receipt of notice from the department that~~
29 ~~the remedial action workplan or remediation agreement as provided~~
30 ~~in subsection e. of section 4 of P.L.1983, c.330 is approved]~~ within
31 the time as required pursuant to subsection b. of this section or as
32 specified in an administrative consent order, civil order, or order of
33 the department, as applicable. The remediation trust fund
34 agreement shall conform to a model trust fund agreement as
35 established by the department and shall be accompanied by a
36 certification of acknowledgment that conforms to a model
37 established by the department. The trustee shall be an entity which
38 has the authority to act as a trustee and whose trust operations are
39 regulated and examined by a federal or New Jersey agency.

40 The trust fund agreement shall provide that the remediation trust
41 fund may not be revoked or terminated by the person required to
42 establish the remediation funding source or by the trustee without
43 the written consent of the department. The trustee shall release to
44 the person required to establish the remediation funding source, or
45 to the department or transferee of the property, as appropriate, only
46 those moneys as the department authorizes, in writing, to be
47 released. The person entitled to receive money from the
48 remediation trust fund shall submit documentation to the

1 department detailing the costs incurred or to be incurred as part of
2 the remediation. Upon a determination by the department that the
3 costs are consistent with the remediation of the site, the department
4 shall, in writing, authorize a disbursement of moneys from the
5 remediation trust fund in the amount of the documented costs.

6 The department shall return the original remediation trust fund
7 agreement to the trustee for termination after the person required to
8 establish the remediation funding source substitutes an alternative
9 remediation funding source as specified in this section or the
10 department notifies the person that that person is no longer required
11 to maintain a remediation funding source for remediation of the
12 contaminated site.

13 d. An environmental insurance policy shall be established
14 pursuant to the provisions of this subsection. An originally signed
15 duplicate of the insurance policy shall be delivered to the
16 department by certified mail, overnight delivery, or personal service
17 within [30 days of receipt of notice from the department that the
18 remedial action workplan or remediation agreement, as provided in
19 subsection e. of section 4 of P.L.1983, c.330, is approved] the time
20 as required pursuant to subsection b. of this section, or as specified
21 in an administrative consent order, civil order, or order of the
22 department, as applicable. The environmental insurance policy may
23 not be revoked or terminated without the written consent of the
24 department. The insurance company shall release to the person
25 required to establish the remediation funding source, or to the
26 department or transferee of the property, as appropriate, only those
27 moneys as the department authorizes, in writing, to be released.
28 The person entitled to receive money from the environmental
29 insurance policy shall submit documentation to the department
30 detailing the costs incurred or to be incurred as part of the
31 remediation.

32 e. A line of credit shall be established pursuant to the
33 provisions of this subsection. A line of credit shall allow the person
34 establishing it to borrow money up to a limit established in a written
35 agreement in order to pay for the cost of the remediation for which
36 the line of credit was established. An originally signed duplicate of
37 the line of credit agreement shall be delivered to the department by
38 certified mail, overnight delivery, or personal service within [14
39 days of receipt of notice from the department that the remedial
40 action workplan or remediation agreement as provided in subsection
41 e. of section 4 of P.L.1983, c.330 is approved,] the time as required
42 pursuant to subsection b. of this section, or as specified in an
43 administrative consent order, civil order, or order of the department,
44 as applicable. The line of credit agreement shall conform to a
45 model agreement as established by the department and shall be
46 accompanied by a certification of acknowledgment that conforms to
47 a model established by the department.

1 A line of credit agreement shall provide that the line of credit
2 may not be revoked or terminated by the person required to obtain
3 the remediation funding source or the person or institution
4 providing the line of credit without the written consent of the
5 department. The person or institution providing the line of credit
6 shall release to the person required to establish the remediation
7 funding source, or to the department or transferee of the property as
8 appropriate, only those moneys as the department authorizes, in
9 writing, to be released. The person entitled to draw upon the line of
10 credit shall submit documentation to the department detailing the
11 costs incurred or to be incurred as part of the remediation. Upon a
12 determination that the costs are consistent with the remediation of
13 the site, the department shall, in writing, authorize a disbursement
14 from the line of credit in the amount of the documented costs.

15 The department shall return the original line of credit agreement
16 to the person or institution providing the line of credit for
17 termination after the person required to establish the remediation
18 funding source substitutes an alternative remediation funding source
19 as specified in this section, or after the department notifies the
20 person that that person is no longer required to maintain a
21 remediation funding source for remediation of the contaminated
22 site.

23 f. A person may apply to the department to self-guarantee a
24 remediation funding source for up to \$1,000,000. [upon the
25 submittal of] The person shall submit documentation to the
26 department demonstrating that the estimated cost of the remediation
27 [as estimated in the remedial action workplan, in the remediation
28 agreement as provided in subsection e. of section 4 of P.L.1983,
29 c.330, in an administrative consent order, or as provided in a
30 departmental or court order, would] does not exceed [one-third]
31 one-tenth of the [tangible net worth] equity of the person required
32 to establish the remediation funding source, and that the person has
33 a cash flow sufficient to assure the availability of sufficient moneys
34 for the remediation during the time necessary for the remediation.
35 [Satisfactory documentation of a person's capacity to self-guarantee
36 a remediation funding source shall consist of] A person who
37 applies to self-guarantee a remediation funding source pursuant to
38 this subsection, shall satisfactorily document their capacity to self-
39 guarantee by submitting audited financial statements, in which the
40 auditor expresses an unqualified opinion, including a statement of
41 income and expenses or similar statement of that person and the
42 balance sheet or similar statement of assets and liabilities as used by
43 that person for the fiscal year of the person making the application
44 that ended closest in time to the date of the self-guarantee
45 application[, or in] . In the case of a special purpose entity
46 established specifically for the purpose of acquiring and
47 redeveloping a contaminated site, and for which a statement of

1 income and expenses is not available, the person shall submit a
2 statement of assets and liabilities certified by a certified public
3 accountant. The self-guarantee application shall be certified as true
4 to the best of the applicant's information, knowledge, and belief, by
5 the chief financial, or similar officer or employee, or general
6 partner, or principal of the person making the self-guarantee
7 application. The department's approval of an application to self-
8 guarantee a remediation funding source shall be based upon a
9 review of the financial statements provided, including, but not
10 limited to, an evaluation of the net cash provided by operating
11 activities included in the cash flow statement. A person shall be
12 deemed by the department to possess the required cash flow
13 pursuant to this section if that person's **gross receipts exceed its**
14 **gross payments** net cash provided by operating activities in that
15 fiscal year is in an amount at least equal to the estimated costs of
16 completing the **remedial action workplan schedule** remediation
17 activities scheduled to be performed in the 12-month period
18 following the date on which the application for self-guarantee is
19 made. In the event that a self-guarantee is required for a period of
20 more than one year, applications for a self-guarantee shall be
21 renewed annually pursuant to this subsection for each successive
22 year. The department may establish requirements and reporting
23 obligations to ensure that the person proposing to self-guarantee a
24 remediation funding source meets the criteria for self-guaranteeing
25 prior to the initiation of remedial action and until completion of the
26 remediation.

27 g. (1) If the person required to establish the remediation
28 funding source fails to perform the remediation as required, the
29 department shall make a written determination of this fact. A copy
30 of the determination by the department shall be delivered to the
31 person required to establish the remediation funding source and, in
32 the case of a remediation conducted pursuant to P.L.1983, c.330
33 (C.13:1K-6 et al.), to any transferee of the property. Following this
34 written determination, the department may perform the remediation
35 in place of the person required to establish the remediation funding
36 source. In order to finance the cost of the remediation the
37 department may make disbursements from the remediation trust
38 fund **or** , the line of credit , the letter, the surety bond
39 guaranteeing payment, or claims upon the environmental insurance
40 policy, or may make a demand for monies provided by a self-
41 guarantee, as appropriate[, or, if sufficient moneys are not available
42 from those funds, from the remediation guarantee fund created
43 pursuant to section 45 of P.L.1993, c.139 (C.58:10B-20)].

44 (2) **The** transferee of property subject to a remediation
45 conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), may, at
46 any] Any time after the department's determination of
47 nonperformance by the **owner or operator** person required to

1 establish the remediation funding source, any other person may
2 petition the department, in writing, with a copy being sent to the
3 owner **[and operator]** of the property and the person required to
4 establish the remediation funding source, for **[authority]** approval
5 to perform the remediation at the **[industrial establishment]** site.
6 The department, upon a determination that the **[transferee]** person
7 who filed the petition is competent to do so, may grant that petition
8 which shall authorize the **[transferee]** person to perform the
9 remediation **[as specified in an approved remedial action workplan,**
10 **or to perform the activities as required in a remediation agreement,]**
11 and to avail itself of the moneys **[in the remediation trust fund or**
12 **line of credit or to make claims upon the environmental insurance**
13 **policy for these purposes]** available in the remediation funding
14 source established by the person who failed to perform the
15 remediation . The petition **[of the transferee]** shall not be granted
16 by the department if the **[owner or operator]** person who
17 established the remediation funding source continues or begins to
18 perform its obligations within 14 days of the petition being filed
19 with the department.

20 (3) After the department has begun to perform the remediation
21 in the place of the person required to establish the remediation
22 funding source or has granted the petition of **[the transferee]**
23 another person to perform the remediation, the person required to
24 establish the remediation funding source shall not be permitted by
25 the department to continue its performance obligations except upon
26 the agreement of the department or the **[transferee]** other person, as
27 applicable, or except upon a determination by the department that
28 the **[transferee]** other person is not adequately performing the
29 remediation.

30 h. A letter of credit shall be established pursuant to the
31 provisions of this subsection. A letter of credit shall allow a person
32 to borrow money up to a limit established in a written agreement in
33 order to pay for the cost of the remediation for which the letter of
34 credit was established. An originally signed duplicate of the letter
35 of credit agreement shall be delivered to the department by certified
36 mail, overnight delivery, or personal service within 14 days of
37 receipt of notice from the department that the remedial action
38 workplan or remediation agreement as provided in subsection e. of
39 section 4 of P.L. 1983, c. 330 (C.13:1K-9) is approved, or as
40 specified in an administrative consent order, civil order, order of the
41 department, or restricted use cleanup, as applicable. The letter of
42 credit agreement shall conform to a model agreement as established
43 by the department and shall be accompanied by a certification of
44 acknowledgment that conforms to a model established by the
45 department.

46 A letter of credit agreement shall provide that institution
47 providing the letter of credit shall release to the person required to

1 establish the remediation funding source, or to the department or
2 transferee of the property as appropriate, only those moneys as the
3 department authorizes, in writing, to be released. The person
4 entitled to draw upon the letter of credit shall submit documentation
5 to the department detailing the costs incurred or to be incurred as
6 part of the remediation. Upon a determination that the costs are
7 consistent with the remediation of the site, the department shall, in
8 writing, authorize a disbursement from the letter of credit in the
9 amount of the documented costs.

10 The department shall return the duplicate original letter of credit
11 agreement to the institution providing the letter of credit for
12 termination after the person required to establish the remediation
13 funding source substitutes an alternative remediation funding source
14 as specified in this section, or after the department notifies the
15 person that that person is no longer required to maintain a
16 remediation funding source for remediation of the contaminated
17 site.

18 i. A surety bond for a payment guarantee shall be established
19 pursuant to the provisions of this subsection. An originally signed
20 duplicate of the surety bond shall be delivered to the department by
21 certified mail within 14 days of receipt of notice from the
22 department that the remedial action workplan or remediation
23 agreement as provided in subsection e. of section 4 of P.L. 1983, c.
24 330 (C.13:1K-9) is approved or as specified in an administrative
25 consent order, civil order, order of the department, or restricted use
26 cleanup, as applicable. Under the terms of the bond, the surety will
27 become liable on the bond obligation when the person establishing
28 it fails to perform as guaranteed by the bond. Under the terms of
29 the bond, all amounts paid by the surety under the bond will be
30 deposited directly into the standby trust fund in accordance with
31 instructions from the department. The surety bond guaranteeing
32 payment shall conform to a model surety bond guaranteeing
33 payment as established by the department and shall be accompanied
34 by a certification of acknowledgment that conforms to a model
35 established by the department. The surety company issuing the
36 bond must be among those listed as acceptable sureties on federal
37 bonds in the latest Circular 570 of the United States Department of
38 the Treasury.

39 The surety bond guaranteeing payment shall provide that the
40 insurer shall release to the person required to establish the
41 remediation funding source, or to the department or transferee of
42 the property, as appropriate, only those monies as the department
43 authorizes, in writing, to be released. The person entitled to receive
44 money from the surety bond guaranteeing payment shall submit
45 documentation to the department detailing the costs incurred or to
46 be incurred as part of the remediation. Upon a determination by the
47 department that the costs are consistent with the remediation of the
48 site, the department shall, in writing, authorize a disbursement of

1 moneys from the remediation surety bond guaranteeing payment in
2 the amount of the documented costs.

3 The department shall return the original surety bond
4 guaranteeing payment to the insurer for termination after the person
5 required to establish the remediation funding source substitutes an
6 alternative remediation funding source as provided in this section or
7 the department notifies the person that that person is no longer
8 required to maintain a remediation funding source for remediation
9 of the contaminated site.

10 j. Any person who has established a remediation funding
11 source or financial assurance prior to the effective date of P.L. ,
12 c. (C.) (pending before the Legislature as this bill) shall make
13 any changes as required by the department pursuant to the
14 provisions of P.L. , c. (pending before the Legislature as this
15 bill) upon the renewal date of the currently posted remediation
16 funding source or financial assurance.

17 k. Upon the issuance of a no further action letter for the entire
18 site, the department may authorize termination of the remediation
19 funding source if an unrestricted use remedial action was
20 implemented for the site. Upon implementation of a limited
21 restricted use remedial action or a restricted use remedial action, the
22 person responsible for conducting the remediation shall pay a
23 surcharge equal to 5% of the actual cost of the remedial action,
24 except that an owner or operator of an unregulated heating oil tank
25 or an underground storage tank used to store heating oil for on-site
26 consumption in a one to four family residential building or the
27 owner of a site on which a regulated childcare facility or
28 educational institution is located shall not be required to pay the 5%
29 surcharge. The 5% surcharge shall be deposited into the
30 Remediation Guarantee Fund. Upon payment of the 5% surcharge,
31 the 1% annual surcharge shall no longer be imposed. Except as
32 provided in this subsection, the person responsible for conducting
33 the remediation shall make this 5% surcharge payment regardless of
34 case type or tier and regardless of whether a remediation funding
35 source is required to be established.

36 (cf: P.L.2003, c.224, s.2)

37

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

40 26. a. There is established in the New Jersey Economic
41 Development Authority a special, revolving fund to be known as
42 the Hazardous Discharge Site Remediation Fund. Except as
43 provided in section 4 of P.L.2007, c.135 (C.52:27D-130.7), moneys
44 in the remediation fund shall be dedicated for the provision of
45 financial assistance or grants to municipalities, counties,
46 redevelopment entities authorized to exercise redevelopment
47 powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), and
48 persons, for the purpose of financing remediation activities at sites

1 at which there is, or is suspected of being, a discharge of hazardous
2 substances or hazardous wastes.

3 b. The remediation fund shall be credited with:

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

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

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

8 (4) **【remediation funding source surcharges imposed pursuant to**
9 **section 33 of P.L.1993, c.139 (C.58:10B-11)】** Deleted by
10 amendment, P.L. , c. (pending before the Legislature as this bill);

11 (5) moneys deposited in the fund as repayment of recoverable
12 grants made by the New Jersey Redevelopment Authority for
13 brownfield redevelopment;

14 (6) moneys deposited into the fund from cost recovery
15 subrogation actions; and

16 (7) moneys made available to the authority for the purposes of
17 the fund.

18 (cf: 2007, c.135, s.1)

19

20 26. Section 33 of P.L.1993, c.139 (58:10B-11) is amended to
21 read as follows:

22 33. a. There is imposed upon every person who is required to
23 establish a remediation funding source pursuant to section 25 of
24 P.L.1993, c.139 (C.58:10B-3) a remediation funding source
25 surcharge. The remediation funding source surcharge shall be in an
26 amount equal to 1% of the required amount of the remediation
27 funding source required by the department to be maintained. No
28 surcharge, however, may be imposed upon **【(1) that amount of the**
29 **remediation funding source that is met by a self-guarantee as**
30 **provided in subsection f. of section 25 of P.L.1993, c.139**
31 **(C.58:10B-3), (2)】** that amount of the remediation funding source
32 that is met by financial assistance or a grant from the remediation
33 fund**【, (3) any person who voluntarily performs a remediation**
34 **pursuant to an administrative consent order, (4) any person who**
35 **entered voluntarily into a memorandum of understanding with the**
36 **department to remediate real property, as long as that person**
37 **continues the remediation in a reasonable manner, or as required by**
38 **law, even if subsequent to initiation of the memorandum of**
39 **understanding, the person received an order by the department or**
40 **entered into an administrative consent order to perform the**
41 **remediation, (5) any person performing a remediation in an**
42 **environmental opportunity zone, or (6) that portion of the cost of**
43 **the remediation that is specifically for the use of an innovative**
44 **technology or to implement a limited restricted use remedial action**
45 **or an unrestricted use remedial action】**. The surcharge shall be
46 based on the **【cost of remediation work remaining to be completed】**
47 amount of the required remediation funding source and shall be paid

1 on an annual basis as long as the remediation continues and until
2 (1) the Department of Environmental Protection [issues a no further
3 action letter for the] determines that an unrestricted use remedial
4 action has been implemented for the entire property subject to the
5 remediation , or (2) the 5% surcharge has been paid as required
6 pursuant to subsection k. of section 25 of P.L.1993, c.139
7 (C.58:10B-3). The remediation funding source surcharge shall be
8 due and payable [within 14 days of the time of the department's
9 approval of a remedial action workplan or signing an administrative
10 consent order or as otherwise provided by law] upon the
11 establishment of the remediation funding source and annually
12 thereafter, on the date on which the remediation funding source was
13 established . The department shall collect the surcharge and shall
14 remit all moneys collected [to the Economic Development
15 Authority] for deposit into the [Hazardous Discharge Site
16 Remediation] Remediation Guarantee Fund.

17 b. By February 1 of each year, the department shall issue a
18 report to the Senate Environment Committee and to the Assembly
19 [Agriculture and Waste Management] Environment and Solid
20 Waste Committee, or their successors, listing, for the prior calendar
21 year, each person who owed the remediation funding source
22 surcharge, the amount of the surcharge paid, and the total amount
23 collected.

24 (cf: P.L.1997, c.278, s.16)

25
26 27. Section 35 of P.L.1993, c.139 (C.58:10B-12) is amended to
27 read as follows:

28 35. a. The Department of Environmental Protection shall adopt
29 minimum remediation standards for soil, groundwater, and surface
30 water quality necessary for the remediation of contamination of real
31 property. The remediation standards shall be developed to ensure
32 that the potential for harm to public health and safety and to the
33 environment is minimized to acceptable levels, taking into
34 consideration the location, the surroundings, the intended use of the
35 property, the potential exposure to the discharge, and the
36 surrounding ambient conditions, whether naturally occurring or
37 man-made.

38 Until the minimum remediation standards for the protection of
39 public health and safety as described herein are adopted, the
40 department shall apply public health and safety remediation
41 standards for contamination at a site on a case-by-case basis based
42 upon the considerations and criteria enumerated in this section.

43 The department shall not propose or adopt remediation standards
44 protective of the environment pursuant to this section, except
45 standards for groundwater or surface water, until recommendations
46 are made by the Environment Advisory Task Force created pursuant
47 to section 37 of P.L.1993, c.139. Until the Environment Advisory

1 Task Force issues its recommendations and the department adopts
2 remediation standards protective of the environment as required by
3 this section, the department shall continue to determine the need for
4 and the application of remediation standards protective of the
5 environment on a case-by-case basis in accordance with the
6 guidance and regulations of the United States Environmental
7 Protection Agency pursuant to the "Comprehensive Environmental
8 Response, Compensation and Liability Act of 1980," 42 U.S.C.
9 s.9601 et seq. and other statutory authorities as applicable.

10 The department may not require any person to perform an
11 ecological evaluation of any area of concern that consists of an
12 underground storage tank storing heating oil for on-site
13 consumption in a one to four family residential building.

14 b. In developing minimum remediation standards the
15 department shall:

16 (1) base the standards on generally accepted and peer reviewed
17 scientific evidence or methodologies;

18 (2) base the standards upon reasonable assumptions of exposure
19 scenarios as to amounts of contaminants to which humans or other
20 receptors will be exposed, when and where those exposures will
21 occur, and the amount of that exposure;

22 (3) avoid the use of redundant conservative assumptions. The
23 department shall avoid the use of redundant conservative
24 assumptions by the use of parameters that provide an adequate
25 margin of safety and which avoid the use of unrealistic conservative
26 exposure parameters and which guidelines make use of the guidance
27 and regulations for exposure assessment developed by the United
28 States Environmental Protection Agency pursuant to the
29 "Comprehensive Environmental Response, Compensation, and
30 Liability Act of 1980," 42 U.S.C. s.9601 et seq. and other statutory
31 authorities as applicable;

32 (4) where feasible, establish the remediation standards as
33 numeric or narrative standards setting forth acceptable levels or
34 concentrations for particular contaminants; and

35 (5) consider and utilize, in the absence of other standards used
36 or developed by the Department of Environmental Protection and
37 the United States Environmental Protection Agency, the toxicity
38 factors, slope factors for carcinogens and reference doses for non-
39 carcinogens from the United States Environmental Protection
40 Agency's Integrated Risk Information System (IRIS).

41 c. (1) The department shall develop residential and
42 nonresidential soil remediation standards that are protective of
43 public health and safety. For contaminants that are mobile and
44 transportable to groundwater or surface water, the residential and
45 nonresidential soil remediation standards shall be protective of
46 groundwater and surface water. Residential soil remediation
47 standards shall be set at levels or concentrations of contamination
48 for real property based upon the use of that property for residential

1 or similar uses and which will allow the unrestricted use of that
2 property without the need of engineering devices or any
3 institutional controls and without exceeding a health risk standard
4 greater than that provided in subsection d. of this section.
5 Nonresidential soil remediation standards shall be set at levels or
6 concentrations of contaminants that recognize the lower likelihood
7 of exposure to contamination on property that will not be used for
8 residential or similar uses, which will allow for the unrestricted use
9 of that property for nonresidential purposes, and that can be met
10 without the need of engineering controls. Whenever real property is
11 remediated to a nonresidential soil remediation standard, except as
12 otherwise provided in paragraph (3) of subsection g. of this section,
13 the department shall require, pursuant to section 36 of P.L.1993,
14 c.139 (C.58:10B-13), that the use of the property be restricted to
15 nonresidential or other uses compatible with the extent of the
16 contamination of the soil and that access to that site be restricted in
17 a manner compatible with the allowable use of that property.

18 (2) The department may develop differential remediation
19 standards for surface water or groundwater that take into account
20 the current, planned, or potential use of that water in accordance
21 with the "Clean Water Act" (33 U.S.C. s.1251 et seq.) and the
22 "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.).

23 d. The department shall develop minimum remediation
24 standards for soil, groundwater, and surface water intended to be
25 protective of public health and safety taking into account the
26 provisions of this section. In developing these minimum health risk
27 remediation standards the department shall identify the hazards
28 posed by a contaminant to determine whether exposure to that
29 contaminant can cause an increase in the incidence of an adverse
30 health effect and whether the adverse health effect may occur in
31 humans. The department shall set minimum soil remediation health
32 risk standards for both residential and nonresidential uses that:

33 (1) for human carcinogens, as categorized by the United States
34 Environmental Protection Agency, will result in an additional
35 cancer risk of one in one million;

36 (2) for noncarcinogens, will limit the Hazard Index for any
37 given effect to a value not exceeding one.

38 The health risk standards established in this subsection are for
39 any particular contaminant and not for the cumulative effects of
40 more than one contaminant at a site.

41 e. Remediation standards and other remediation requirements
42 established pursuant to this section and regulations adopted
43 pursuant thereto shall apply to remediation activities required
44 pursuant to the "Spill Compensation and Control Act," P.L.1976,
45 c.141 (C.58:10-23.11 et seq.), the "Water Pollution Control Act,"
46 P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21
47 et seq.), the "Industrial Site Recovery Act," P.L.1983, c.330
48 (C.13:1K-6 et al.), the "Solid Waste Management Act," P.L.1970,

1 c.39 (C.13:1E-1 et seq.), the "Comprehensive Regulated Medical
2 Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the
3 "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279
4 (C.13:1E-49 et seq.), the "Sanitary Landfill Facility Closure and
5 Contingency Fund Act," P.L.1981, c.306 (C.13:1E-100 et seq.), the
6 "Regional Low-Level Radioactive Waste Disposal Facility Siting
7 Act," P.L.1987, c.333 (C.13:1E-177 et seq.), or any other law or
8 regulation by which the State may compel a person to perform
9 remediation activities on contaminated property. However, nothing
10 in this subsection shall be construed to limit the authority of the
11 department to establish discharge limits for pollutants or to
12 prescribe penalties for violations of those limits pursuant to
13 P.L.1977, c.74 (C.58:10A-1 et seq.), or to require the complete
14 removal of nonhazardous solid waste pursuant to law.

15 f. (1) A person performing a remediation of contaminated real
16 property, in lieu of using the established minimum soil remediation
17 standard for either residential use or nonresidential use adopted by
18 the department pursuant to subsection c. of this section, may submit
19 to the department a request to use an alternative residential use or
20 nonresidential use soil remediation standard. The use of an
21 alternative soil remediation standard shall be based upon site
22 specific factors which may include (1) physical site characteristics
23 which may vary from those used by the department in the
24 development of the soil remediation standards adopted pursuant to
25 this section; or (2) a site specific risk assessment. If a person
26 performing a remediation requests to use an alternative soil
27 remediation standard based upon a site specific risk assessment, that
28 person shall demonstrate to the department that the requested
29 deviation from the risk assessment protocol used by the department
30 in the development of soil remediation standards pursuant to this
31 section is consistent with the guidance and regulations for exposure
32 assessment developed by the United States Environmental
33 Protection Agency pursuant to the "Comprehensive Environmental
34 Response, Compensation, and Liability Act of 1980," 42
35 U.S.C.s.9601 et seq. and other statutory authorities as applicable. A
36 site specific risk assessment may consider exposure scenarios and
37 assumptions that take into account the form of the contaminant
38 present, natural biodegradation, fate and transport of the
39 contaminant, available toxicological data that are based upon
40 generally accepted and peer reviewed scientific evidence or
41 methodologies, and physical characteristics of the site, including,
42 but not limited to, climatic conditions and topographic conditions.
43 Nothing in this subsection shall be construed to authorize the use of
44 an alternative soil remediation standard in those instances where an
45 engineering control is the appropriate remedial action, as
46 determined by the department, to prevent exposure to
47 contamination.

1 Upon a determination by the department that the requested
2 alternative remediation standard satisfies the department's
3 regulations, is protective of public health and safety, as established
4 in subsection d. of this section, and is protective of the environment
5 pursuant to subsection a. of this section, the alternative residential
6 use or nonresidential use soil remediation standard shall be
7 approved by the department. The burden to demonstrate that the
8 requested alternative remediation standard is protective rests with
9 the person requesting the alternative standard and the department
10 may require the submission of any documentation as the department
11 determines to be necessary in order for the person to meet that
12 burden.

13 (2) The department may, upon its own initiative, require an
14 alternative remediation standard for a particular contaminant for a
15 specific real property site, in lieu of using the established minimum
16 residential use or nonresidential use soil remediation standard
17 adopted by the department for a particular contaminant pursuant to
18 this section. The department may require an alternative remediation
19 standard pursuant to this paragraph upon a determination by the
20 department, based on the weight of the scientific evidence, that due
21 to specific physical site characteristics of the subject real property,
22 including, but not limited to, its proximity to surface water, the use
23 of the adopted residential use or nonresidential use soil remediation
24 standards would not be protective , or would be unnecessarily
25 overprotective, of public health or safety or of the environment, as
26 appropriate.

27 g. The development, selection, and implementation of any
28 remediation standard or remedial action shall ensure that it is
29 protective of public health, safety, and the environment, as
30 applicable, as provided in this section. In determining the
31 appropriate remediation standard or remedial action that shall occur
32 at a site, the department and any person performing the remediation,
33 shall base the decision on the following factors:

34 (1) Unrestricted use remedial actions, limited restricted use
35 remedial actions and restricted use remedial actions shall be
36 allowed except that unrestricted use remedial actions and limited
37 restricted use remedial actions shall be preferred over restricted use
38 remedial actions. [The department, however, may not disapprove
39 the use of a restricted use remedial action or a limited restricted use
40 remedial action so long as the selected remedial action meets the
41 health risk standard established in subsection d. of this section, and
42 where, as applicable, is protective of the environment.] The
43 department shall give a higher priority to any site where the person
44 responsible for conducting the remediation proposes to implement
45 an unrestricted use remedial action. The department shall require
46 the use of an unrestricted use remedial action, a presumptive
47 remedy, or an enhanced remedy at a site where there is new
48 residential construction, new construction involving a sensitive

1 population such as a childcare facility or a school, or where there is
2 a change in use of the site to residential, school purposes, or
3 childcare purposes. The choice of the remedial action to be
4 implemented shall be made by the person performing the
5 remediation in accordance with regulations adopted by the
6 department and that choice of the remedial action shall be approved
7 by the department if all the criteria for remedial action selection
8 enumerated in this section, as applicable, are met. The department
9 may not require a person to compare or investigate any alternative
10 remedial action as part of its review of the selected remedial action
11 The department shall have the authority to disapprove the selection
12 of a remedial action for a site on which the proposed remedial
13 action will render the real property inappropriate for future use;

14 (2) Contamination may, upon the department's approval, be left
15 onsite at levels or concentrations that exceed the minimum soil
16 remediation standards for residential use if the implementation of
17 institutional or engineering controls at that site will result in the
18 protection of public health, safety and the environment at the health
19 risk standard established in subsection d. of this section and if the
20 requirements established in subsections a., b., c. and d. of section 36
21 of P.L.1993, c.139 (C.58:10B-13) are met . The department may
22 require the removal or treatment of contaminated material that
23 poses an acute hazard in the event of failure of an engineering
24 control;

25 (3) Real property on which there is soil that has not been
26 remediated to the residential soil remediation standards, or real
27 property on which the soil, groundwater, or surface water has been
28 remediated to meet the required health risk standard by the use of
29 engineering or institutional controls, may be developed or used for
30 residential purposes, or for any other similar purpose, if (a) all areas
31 of that real property at which a person may come into contact with
32 soil are remediated to meet the residential soil remediation
33 standards **[and]** , (b) it is clearly demonstrated that for all areas of
34 the real property, other than those described in subparagraph (a)
35 above, engineering and institutional controls can be implemented
36 and maintained on the real property sufficient to meet the health
37 risk standard as established in subsection d. of this section , and (c)
38 a presumptive remedy or an enhanced remedy as established by the
39 department has been approved as required in paragraph (1) of this
40 subsection;

41 (4) Remediation shall not be required beyond the regional
42 natural background levels for any particular contaminant. The
43 department shall develop regulations that set forth a process to
44 identify background levels of contaminants for a particular region.
45 For the purpose of this paragraph "regional natural background
46 levels" means the concentration of a contaminant consistently
47 present in the environment of the region of the site and which has
48 not been influenced by localized human activities;

1 (5) Remediation shall not be required of the owner or operator
2 of real property for contamination coming onto the site from
3 another property owned and operated by another person, unless the
4 owner or operator is the person who is liable for cleanup and
5 removal costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.);

6 (6) Groundwater that is contaminated shall not be required to be
7 remediated to a level or concentration for any particular
8 contaminant lower than the level or concentration that is migrating
9 onto the property from another property owned and operated by
10 another person;

11 (7) The technical performance, effectiveness and reliability of
12 the proposed remedial action in attaining and maintaining
13 compliance with applicable remediation standards and required
14 health risk standards shall be considered. In reviewing a proposed
15 remedial action, the department shall also consider the ability of the
16 owner or operator to implement the proposed remedial action within
17 a reasonable time frame without jeopardizing public health, safety
18 or the environment;

19 (8) The use of a remedial action for soil contamination that is
20 determined by the department to be effective in its guidance
21 document created pursuant to section 38 of P.L.1993, c.139
22 (C.58:10B-14), is presumed to be an appropriate remedial action if
23 it is to be implemented on a site in the manner described by the
24 department in the guidance document and applicable regulations
25 and if all of the conditions for remedy selection provided for in this
26 section are met. The burden to prove compliance with the criteria
27 in the guidance document is with the person performing the
28 remediation;

29 (9) (Deleted by amendment, P.L.1997, c.278).

30 The burden to demonstrate that a remedial action is protective of
31 public health, safety and the environment, as applicable, and has
32 been selected in conformance with the provisions of this subsection
33 is with the person proposing the remedial action.

34 The department may require the person performing the
35 remediation to conduct expanded public participation or to supply
36 the information required pursuant to this subsection , as is necessary
37 for the department to make a determination.

38 h. (1) The department shall adopt regulations which establish a
39 procedure for a person to demonstrate that a particular parcel of
40 land contains large quantities of historical fill material. Upon a
41 determination by the department that large quantities of historic fill
42 material exist on that parcel of land, there is a rebuttable
43 presumption that the department shall not require any person to
44 remove or treat the fill material in order to comply with applicable
45 health risk or environmental standards. In these areas the
46 department shall establish by regulation the requirement for
47 engineering or institutional controls that are designed to prevent
48 exposure of these contaminants to humans, that allow for the

1 continued use of the property, that are less costly than removal or
2 treatment, which maintain the health risk standards as established in
3 subsection d. of this section, and, as applicable, are protective of the
4 environment. The department may rebut the presumption only upon
5 a finding by the preponderance of the evidence that the use of
6 engineering or institutional controls would not be effective in
7 protecting public health, safety, and the environment. The
8 department may not adopt any rule or regulation that has the effect
9 of shifting the burden of rebutting the presumption. For the
10 purposes of this paragraph "historic fill material" means generally
11 large volumes of non-indigenous material, no matter what date they
12 were emplaced on the site, used to raise the topographic elevation
13 of a site, which were contaminated prior to emplacement and are in
14 no way connected with the operations at the location of
15 emplacement and which include, but are not limited to, construction
16 debris, dredge spoils, incinerator residue, demolition debris, fly ash,
17 and non-hazardous solid waste. Historic fill material shall not
18 include any material which is substantially chromate chemical
19 production waste or any other chemical production waste or waste
20 from processing of metal or mineral ores, residues, slags or tailings.

21 (2) The department shall develop recommendations for remedial
22 actions in large areas of historic industrial contamination. These
23 recommendations shall be designed to meet the health risk
24 standards established in subsection d. of this section, and to be
25 protective of the environment and shall take into account the
26 industrial history of these sites, the extent of the contamination that
27 may exist, the costs of remedial actions, the economic impacts of
28 these policies, and the anticipated uses of these properties. The
29 department shall issue a report to the Senate Environment
30 Committee and to the Assembly Agriculture and Waste
31 Management Committee, or their successors, explaining these
32 recommendations and making any recommendations for legislative
33 or regulatory action.

34 (3) The department may not, as a condition of allowing the use
35 of a nonresidential use soil remediation standard, or the use of
36 institutional or engineering controls, require the owner of that real
37 property, except as provided in section 36 of P.L.1993, c.139
38 (C.58:10B-13), to restrict the use of that property through the filing
39 of a deed easement, covenant, or condition.

40 i. The department may not require a remedial action workplan
41 to be prepared or implemented or engineering or institutional
42 controls to be imposed upon any real property unless sampling
43 performed at that real property demonstrates the existence of
44 contamination above the applicable remediation standards.

45 j. Upon the approval by the department of a remedial action
46 workplan, or similar plan that describes the extent of contamination
47 at a site and the remedial action to be implemented to address that
48 contamination, the department may not subsequently require a

1 change to that workplan or similar plan in order to compel a
2 different remediation standard due to the fact that the established
3 remediation standards have changed; however, the department may
4 compel a different remediation standard if the difference between
5 the new remediation standard and the remediation standard
6 approved in the workplan or other plan differs by an order of
7 magnitude. The limitation to the department's authority to change a
8 workplan or similar plan pursuant to this subsection shall only
9 apply if the workplan or similar plan is being implemented in a
10 reasonable timeframe, as may be indicated in the approved remedial
11 action workplan or similar plan.

12 k. Notwithstanding any other provisions of this section, all
13 remediation standards and remedial actions that involve real
14 property located in the Pinelands area shall be consistent with the
15 provisions of the "Pinelands Protection Act," P.L.1979, c.111
16 (C.13:18A-1 et seq.), any rules and regulations promulgated
17 pursuant thereto, and with section 502 of the "National Parks and
18 Recreation Act of 1978," 16 U.S.C. s.471i; and all remediation
19 standards and remedial actions that involve real property located in
20 the Highlands preservation area shall be consistent with the
21 provisions of the "Highlands Water Protection and Planning Act,"
22 P.L.2004, c.120 (C.13:20-1 et al.), and any rules and regulations
23 and the Highland regional master plan adopted pursuant thereto.

24 l. Upon the adoption of a remediation standard for a particular
25 contaminant in soil, groundwater, or surface water pursuant to this
26 section, the department may amend that remediation standard only
27 upon a finding that a new standard is necessary to maintain the
28 health risk standards established in subsection d. of section 35 of
29 P.L.1993, c.139 (C.58:10B-12) or to protect the environment, as
30 applicable. The department may not amend a public health based
31 soil remediation standard to a level that would result in a health risk
32 standard more protective than that provided for in subsection d. of
33 section 35 of P.L.1993, c.139 (C.58:10B-12).

34 m. Nothing in P.L.1993, c.139 shall be construed to restrict or
35 in any way diminish the public participation which is otherwise
36 provided under the provisions of the "Spill Compensation and
37 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.).

38 n. Notwithstanding any provision of subsection a. of section 36
39 of P.L.1993, c.139 (C.58:10B-13) to the contrary, the department
40 may not require a person intending to implement a remedial action
41 at an underground storage tank facility storing heating oil for on-
42 site consumption at a one to four family residential dwelling to
43 provide advance notice to a municipality prior to implementing that
44 remedial action.

45 o. A person who has remediated a site pursuant to the
46 provisions of this section, who was liable for the cleanup and
47 removal costs of that discharge pursuant to the provisions of
48 paragraph (1) of subsection c. of section 8 of P.L.1976, c.141

1 (C.58:10-23.11g), and who remains liable for the discharge on that
2 site due to a possibility that a remediation standard may change,
3 undiscovered contamination may be found, or because an
4 engineering control was used to remediate the discharge, shall
5 maintain with the department a current address at which that person
6 may be contacted in the event additional remediation needs to be
7 performed at the site. The requirement to maintain the current
8 address shall be made part of the conditions of the no further action
9 letter issued by the department.

10 (cf: P.L.2004, c.120, s.81)

11
12 28. Section 36 of P.L.1993, c.139 (C.58:10B-13) is amended to
13 read as follows:

14 36. a. When real property is remediated to a nonresidential soil
15 remediation standard or engineering or institutional controls are
16 used in lieu of remediating a site to meet an established remediation
17 standard for soil, groundwater, or surface water, the department
18 shall, as a condition of the use of that standard or control measure:

19 (1) require the establishment of any engineering or institutional
20 controls the department determines are reasonably necessary to
21 prevent exposure to the contaminants, require maintenance, as
22 necessary, of those controls, and require the restriction of the use of
23 the property in a manner that prevents exposure;

24 (2) require, with the consent of the owner of the real property,
25 the recording with the office of the county recording officer, in the
26 county in which the property is located, a notice to inform
27 prospective holders of an interest in the property that contamination
28 exists on the property at a level that may statutorily restrict certain
29 uses of or access to all or part of that property, a delineation of
30 those restrictions, a description of all specific engineering or
31 institutional controls at the property that exist and that shall be
32 maintained in order to prevent exposure to contaminants remaining
33 on the property, and the written consent to the notice by the owner
34 of the property. The notice shall be recorded in the same manner as
35 are deeds and other interests in real property. The department shall
36 develop a uniform deed notice that ensures the proper filing of the
37 deed notice. The provisions of this paragraph do not apply to
38 restrictions on the use of surface water or groundwater;

39 (3) require a notice to the governing body of each municipality
40 in which the property is located that contaminants will exist at the
41 property above residential use soil remediation standards or any
42 other remediation standards and specifying the restrictions on the
43 use of or access to all or part of that property and of the specific
44 engineering or institutional controls at the property that exist and
45 that shall be maintained;

46 (4) require, when determined necessary by the department, that
47 signs be posted at any location at the site where access is restricted
48 or in those areas that must be maintained in a prescribed manner, to

1 inform persons on the property that there are restrictions on the use
2 of that property or restrictions on access to any part of the site;

3 (5) require that a list of the restrictions be kept on site for
4 inspection by governmental enforcement officials; and

5 (6) require a person, prior to commencing a remedial action, to
6 notify the governing body of each municipality wherein the
7 property being remediated is located. The notice shall include, but
8 not be limited to, the commencement date for the remedial action;
9 the name, mailing address and business telephone number of the
10 person implementing the remedial action, or his designated
11 representative; and a brief description of the remedial action.

12 b. If the owner of the real property does not consent to the
13 recording of a notice pursuant to paragraph (2) of subsection a. of
14 this section, the department shall require the use of a residential soil
15 remediation standard in the remediation of that real property.

16 c. Whenever engineering or institutional controls on property
17 as provided in subsection a. of this section are no longer required,
18 or whenever the engineering or institutional controls are changed
19 because of the performance of subsequent remedial activities, a
20 change in conditions at the site, or the adoption of revised
21 remediation standards, the department shall require that the owner
22 or operator of that property record with the office of the county
23 recording officer a notice that the use of the property is no longer
24 restricted or delineating the new restrictions. The department shall
25 also require that the owner or operator notify, in writing, the
26 municipality in which the property is located of the removal or
27 change of the restrictive use conditions.

28 d. The owner or lessee of any real property, or any person
29 operating a business on real property, which has been remediated to
30 a nonresidential use soil remediation standard or on which the
31 department has allowed engineering or institutional controls for
32 soil, groundwater, or surface water to protect the public health,
33 safety, or the environment, as applicable, shall maintain the
34 engineering or institutional controls as required by the department.
35 An owner, lessee, or operator who takes any action that results in
36 the improper alteration or removal of engineering or institutional
37 controls or who fails to maintain the engineering or institutional
38 controls as required by the department, shall be subject to the
39 penalties and actions set forth in section 22 of P.L.1976, c.141
40 (C.58:10-23.11u) and, where applicable, shall be liable for any
41 additional remediation and damages pursuant to the provisions of
42 section 8 of P.L.1976, c.141 (C.58:10-23.11g). The provisions of
43 this subsection shall not apply if a notification received pursuant to
44 subsection b. of this section authorizes all restrictions or controls to
45 be removed from the subject property.

46 e. Notwithstanding the provisions of any other law, or any rule,
47 regulation, or order adopted pursuant thereto to the contrary,
48 whenever contamination at a property is remediated in compliance

1 with any soil, or any groundwater or surface water remediation
2 standards that were in effect or approved by the department at the
3 completion of the remediation, no person, except as otherwise
4 provided in this section, shall be liable for the cost of any additional
5 remediation that may be required by a subsequent adoption by the
6 department of a more stringent remediation standard for a particular
7 contaminant. Upon the adoption of a regulation that amends a
8 remediation standard, or where the adoption of a regulation would
9 change a remediation standard which was otherwise approved by
10 the department, only a person who is liable to clean up and remove
11 that contamination pursuant to section 8 of P.L.1976, c.141
12 (C.58:10-23.11g), and who does not have a defense to liability
13 pursuant to subsection d. of that section, shall be liable for any
14 additional remediation costs necessary to bring the site into
15 compliance with the new remediation standards except that no
16 person shall be so liable unless the difference between the new
17 remediation standard and the level or concentration of a
18 contaminant at the property differs by an order of magnitude and
19 that person did not implement an unrestricted use remedial action.
20 The department may compel a person who is liable for the
21 additional remediation costs to perform additional remediation
22 activities to meet the new remediation standard except that a person
23 may not be compelled to perform any additional remediation
24 activities on the site if that person can demonstrate that the existing
25 engineering or institutional controls on the site prevent exposure to
26 the contamination and that the site remains protective of public
27 health , safety and the environment pursuant to section 35 of
28 P.L.1993, c.139 (C.58:10B-12). The burden to prove that a site
29 remains protective is on the person liable for the additional
30 remediation costs. A person liable for the additional remediation
31 costs who is relying on engineering or institutional controls to make
32 a site protective, shall comply with the provisions of subsections a.,
33 b., c. and d. of this section.

34 Nothing in the provisions of this subsection shall be construed to
35 affect the authority of the department, pursuant to subsection f. of
36 this section, to require additional remediation on real property
37 where engineering controls were implemented.

38 Nothing in the provisions of this subsection shall limit the rights
39 of a person, other than the State, or any department or agency
40 thereof, to bring a civil action for damages, contribution, or
41 indemnification as provided by statutory or common law.

42 f. Whenever the department approves or has approved the use
43 of engineering controls for the remediation of soil, groundwater, or
44 surface water, to protect public health, safety or the environment,
45 the department may require additional remediation of that site only
46 if the engineering controls no longer are protective of public health,
47 safety, or the environment.

1 g. Whenever the department approves or has approved the use
2 of engineering or institutional controls for the remediation of soil,
3 groundwater, or surface water, to protect public health, safety or the
4 environment, the department shall inspect that site at least once
5 every five years in order to ensure that the engineering and
6 institutional controls are being properly maintained and that the
7 controls remain protective of public health and safety and of the
8 environment.

9 h. A property owner of a site on which a deed notice has been
10 recorded shall notify any person who intends to excavate on the site
11 of the nature and location of any contamination existing on the site
12 and of any conditions or measures necessary to prevent exposure to
13 contaminants.

14 (cf: P.L. 1997, c.278, s.18)

15
16 29. Section 45 of P.L.1993, c.139 (C.58:10B-20) is amended to
17 read as follows:

18 45. a. There is created in the Department of Environmental
19 Protection **and Energy** a special, revolving fund to be known as
20 the Remediation Guarantee Fund. The fund shall be credited with
21 the 5% surcharge imposed pursuant to section 25 of P.L.1993, c.139
22 (C.58:10B-3), the remediation funding source surcharge imposed
23 pursuant to section 33 of P.L.1993, c.139 (C.58:10B-11), all
24 moneys appropriated to it by law, all moneys collected in
25 subrogation actions to recover moneys expended from the fund, and
26 all moneys earned from the investment of the moneys in the fund.

27 b. **【The Commissioner of Environmental Protection and**
28 **Energy shall appoint and supervise an administrator of the fund.**
29 **The administrator shall be the chief executive of the fund, shall**
30 **approve all disbursements of moneys from the fund, and shall**
31 **ensure the proper deposit of all moneys authorized to be deposited**
32 **into the fund.】 Deleted by amendment, P.L. , c. (pending before**
33 **the Legislature as this bill) .**

34 c. (1) Moneys in the fund shall be used by the Department of
35 Environmental Protection **and Energy** to remediate, or contract
36 for the remediation of, any real property for which a person was
37 required to establish a remediation funding source pursuant to
38 section 25 of P.L.1993, c.139 (C.58:10B-3) and where that person
39 fails to conduct or properly conduct that remediation.

40 (2) Moneys in the fund may be disbursed by the department as
41 grants to persons, homeowner associations, or government entities:

42 (a) who own property for which the department has issued a no
43 further action letter for a restricted use remedial action and (i) there
44 is a failure of the remedy, (ii) the person, homeowner or
45 government entity did not cause the discharge of the hazardous
46 substance that is the subject of the no further action letter, (iii) the
47 person, homeowner or government entity maintained the
48 engineering control that was implemented as part of the remedial

1 action at the site, and (iv) there is no financially viable or existing
2 responsible party. The person, homeowner association, or
3 government entity may use only use the grant money to evaluate
4 and repair the failed remedy;

5 (b) who own property for which the department has issued a no
6 further action letter for an unrestricted use or limited restricted use
7 remedial action and a remediation standard upon which the no
8 further action letter was based has changed by an order of
9 magnitude or more, to conduct remediation activities to determine if
10 the remedial action is no longer protective of public health, safety
11 and the environment due to the change in the remediation standard.
12 Persons, homeowner associations, or government entities may
13 obtain grants from the fund to implement another remedial action at
14 the property pursuant to this paragraph, provided that the
15 remediation activities reveal that the remedial action is no longer
16 protective of public health, safety and the environment due to the
17 change in the remediation standard;

18 (c) who own property for which the department has issued a no
19 further action letter for a restricted use remedial action where a
20 remediation standard upon which the no further action letter was
21 based has changed by an order of magnitude or more, to conduct
22 remediation activities to determine if the remedial action is no
23 longer protective of public health, safety and the environment due
24 to the change in the remediation standard provided that the person,
25 homeowners association or government entity did not cause the
26 discharge of the hazardous substance that is the subject of the no
27 further action letter and there is no financially viable or existing
28 responsible party. Persons, homeowner associations, or government
29 entities may use money from the fund to implement another
30 remedial action at the property provided that the remediation
31 activities reveal that the remedial action is no longer protective of
32 public health, safety and the environment due to the change in the
33 remediation standard.

34 d. Any moneys expended by the department from the fund
35 pursuant to this section shall constitute a debt of (1) the person
36 required to establish the remediation funding source if the person
37 fails to perform the remediation and the person bars the department
38 from gaining access to the moneys in the remediation funding
39 source to conduct the remediation, and (2) against the discharger if
40 the discharger implemented a restricted use remedial action at the
41 site. The debt shall constitute a lien on all property owned by the
42 person required to establish the remediation funding source and
43 against the discharger to the same extent and in the same manner as
44 provided for liens in subsection f. of section 7 of P.L.1976, c.141
45 (C.58:10-23.11f).

46 e. Whenever the department expends moneys from the fund for
47 a remediation, it shall have a cause of action to recover from the
48 person required to establish the remediation funding source or from

1 any other person liable for the discharge pursuant to section 8 of
2 P.L.1976, c.141 (C.58:10-23.11g) triple the amount of moneys
3 expended for the remediation.

4 f. Moneys in the fund may be appropriated to pay for the costs
5 to administer the fund except that those appropriations may not
6 exceed the amount of moneys deposited into the fund earned from
7 the investment of moneys in the fund.

8 g. The balance of the fund shall not exceed \$100,000,000.
9 When the balance of the fund equals \$100,000,000, all surcharges
10 collected pursuant to subsection k. of section 25 of P.L.1993, c.139
11 (C.58:10B-3) and the remediation funding source surcharge
12 imposed pursuant to 33 of P.L.1993, c.139 (C.58:10B-11) shall be
13 deposited into the Hazardous Discharge Site Remediation Fund and
14 shall be used for the purposes of that fund. When the balance of the
15 Remediation Guarantee Fund is reduced to \$100,000, all surcharges
16 shall be deposited in the Remediation Guarantee Fund.

17 (cf: P.L.1993,c.139, s.45)

18
19 30. This act shall take effect immediately.
20
21

22 STATEMENT

23
24 This bill would establish a licensed site professional program
25 within the Department of Environmental Protection (DEP). No
26 more than 90 days after the effective date, any submissions
27 concerning the remediation of a contaminated site shall be signed
28 and certified by a licensed site professional, or by a certified
29 subsurface evaluator. The bill also authorizes the issuance of a
30 temporary site remediation professional license that would be
31 effective upon issuance and would remain effective for 180 days
32 after the adoption of rules establishing permanent standards for the
33 licensed site professional program. The bill establishes a code of
34 professional conduct for licensed site professionals and subsurface
35 evaluators and provisions for license suspension or revocation.
36 Further, the bill provides for penalties for violations of the act.

37 The bill would also establish criteria for a ranking system for
38 contaminated sites. The bill provides for varying levels of
39 oversight depending on the ranking of the site. The bill allows the
40 DEP to audit a licensed site professional at least once during the
41 three year licensing period and provides for the audit of cases.

42 The bill would also make changes to the provisions of the
43 "Brownfield and Contaminated Site Remediation Act" to change the
44 oversight requirements for persons who clean up contaminated sites
45 and the requirements for the establishment of a remediation funding
46 source. The bill would impose a 1% annual surcharge on persons
47 responsible for conducting a remediation and would require the
48 payment of a surcharge of 5% of the total cost of the remedial

1 action when a limited restricted use or a restricted use remedial
2 action is implemented. The surcharges would be deposited in the
3 Remediation Guarantee Fund and may be used by the department to
4 conduct remediation when a person fails to do so. The moneys in
5 the fund may also be awarded as grants by the department to an
6 individual, homeowner association or government entity for
7 additional remediation activities required due to changes in the
8 remediation standards, or when an engineering control is no longer
9 protective of the public health, safety and the environment. The bill
10 would also make numerous other changes to the laws concerning
11 the cleanup of contaminated sites.