

ASSEMBLY SUBSTITUTE FOR
ASSEMBLY, No. 4543

STATE OF NEW JERSEY
215th LEGISLATURE

ADOPTED JANUARY 6, 2014

Sponsored by:

Assemblywoman L. GRACE SPENCER

District 29 (Essex)

Assemblywoman HOLLY SCHEPISI

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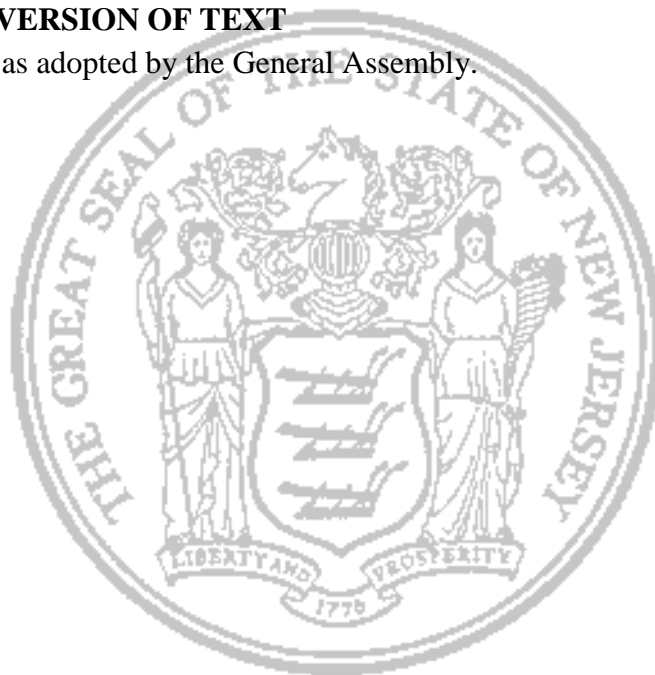
**Assemblywoman Handlin, Assemblyman Space, Assemblywoman McHose,
Senators B.Smith, Bateman, Whelan, Beck and Oroho**

SYNOPSIS

Authorizes extension of time for completion of remedial investigation of certain contaminated sites prior to DEP undertaking direct oversight.

CURRENT VERSION OF TEXT

Substitute as adopted by the General Assembly.



(Sponsorship Updated As Of: 1/14/2014)

1 **AN ACT** concerning oversight of contaminated sites, and amending
2 and supplementing P.L.2009, c.60.

3

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

6

7 1. (New section) a. Except as provided in subsection b. or c.
8 of this section, for any site subject to the provisions of paragraph
9 (3) of subsection a. of section 27 of P.L.2009, c.60 (C.58:10C-27),
10 upon application by a person responsible for conducting the
11 remediation, an extension of time until May 7, 2016 shall be
12 provided to allow for the completion of the remedial investigation
13 prior to the department taking direct oversight provided that the
14 applicant continues to comply with the conditions imposed pursuant
15 to this subsection. The applicant shall certify, in a document
16 submitted electronically by the licensed site remediation
17 professional retained by the applicant, that the following conditions
18 have been met:

19 (1) a licensed site remediation professional has been retained to
20 conduct a remediation of the site;

21 (2) any remediation requirements included in mandatory
22 remediation timeframes adopted pursuant to section 28 of P.L.2009,
23 c.60 (C.58:10C-28), for the site have been met at the time of the
24 certification;

25 (3) technically complete submissions have been made in
26 compliance with all rules and regulations for site remediation, as
27 applicable, for the (a) initial receptor evaluation, (b) immediate
28 environmental concern source control report, (c) light non-aqueous
29 phase liquid interim remedial measure report, (d) preliminary
30 assessment report, and (e) site investigation report;

31 (4) a remediation funding source has been established, if
32 required of the applicant by section 25 of P.L.1993, c.139
33 (C.58:10B-3);

34 (5) if a remediation funding source is not required to be
35 established by the applicant pursuant to law, then a remediation
36 trust fund for the estimated cost of the remedial investigation has
37 been established pursuant to the standards established in section 25
38 of P.L.1993, c.139 (C.58:10B-3);

39 (6) any oversight costs imposed by the department, known at the
40 time of the application, and not in dispute on the date of enactment
41 of P.L. , c. (C.) (pending before the Legislature as this bill),
42 have been paid to the department; and

43 (7) the annual fees imposed by the department for the
44 remediation and remediation funding source surcharges imposed

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 pursuant to section 33 of P.L.1993, c.39 (C.58:10B-11) have been
2 paid to the department, as applicable.

3 An application pursuant to this subsection shall be submitted to
4 the department by March 7, 2014 or 30 days after the date of
5 enactment of P.L. , c. (C.) (pending before the Legislature as
6 this bill), whichever is later.

7 b. For any site subject to the provisions of paragraph (3) of
8 subsection a. of section 27 of P.L.2009, c.60 (C.58:10C-27), if the
9 failure to complete the remedial investigation of the contaminated
10 site is due to a delay in the provision of State financial assistance
11 for the remediation from the Hazardous Discharge Site Remediation
12 Fund, upon application by a person responsible for conducting the
13 remediation, an extension of time shall be provided to allow for the
14 completion of the remedial investigation prior to the department
15 taking direct oversight, except as provided in subsection c. of this
16 section. The applicant shall submit to the department a certification
17 that the person responsible for conducting the remediation filed a
18 technically and administratively complete application for funding
19 prior to March 7, 2014 or 30 days after the date of enactment of
20 P.L. , c. (C.) (pending before the Legislature as this bill),
21 whichever is later, qualifies for funding, and remains eligible for
22 funding. Every six months after the submission of the application
23 for the extension of time pursuant to this subsection, the applicant
24 shall submit to the department a certification with an update on the
25 status of the funding application.

26 The extension of time for the completion of a remedial
27 investigation of a contaminated site prior to the department taking
28 direct oversight of the remediation pursuant to this subsection shall
29 be no more than two years after receipt of funding, or no more than
30 two years after the applicant is no longer eligible for funding.

31 An application for an extension of time pursuant to this
32 subsection shall be submitted to the department by March 7, 2014
33 or 30 days after the date of enactment of P.L. , c. (C.) (pending
34 before the Legislature as this bill), whichever is later.

35 c. An application submitted pursuant to subsection a. or b. of
36 this section shall be deemed approved upon receipt by the
37 department. The department may undertake direct oversight of a
38 remediation if, at any time during the extension of time: (1) the
39 conditions imposed pursuant to subsection a. or b. of this section, as
40 the case may be, are no longer met; or (2) the person responsible for
41 conducting the remediation fails to meet a mandatory remediation
42 timeframe after submission of the certification submitted pursuant
43 to this section. The department shall so notify the person
44 responsible for conducting the remediation, in writing, that the
45 extension of time for completion of the remedial investigation is
46 revoked because of the applicant's failure to continue to comply
47 with the conditions required, or the applicant's failure to submit one

1 or more of the certifications required pursuant to subsection a. or b.
2 of this section, or that the information included in a certification is
3 incomplete, incorrect, false, or otherwise deficient.

4 d. The department shall provide notice on its internet website
5 of any extensions provided pursuant to this section. In the notice,
6 the department shall provide the name and location of the site for
7 which the extension is provided and the length of the extension of
8 time.

9

10 2. Section 27 of P.L.2009, c.60 (C.58:10C-27) is amended to
11 read as follows:

12 27. a. ~~【The】~~ Except as provided in section 1 of P.L. , c. (C.)
13 (pending before the Legislature as this bill), the department shall
14 undertake direct oversight of a remediation of a contaminated site
15 under the following conditions:

16 (1) the person responsible for conducting the remediation has a
17 history of noncompliance with the laws concerning remediation, or
18 any rule or regulation adopted pursuant thereto, that includes the
19 issuance of at least two enforcement actions after the date of
20 enactment of P.L.2009, c.60 (C.58:10C-1 et al.) during any five-
21 year period concerning a remediation;

22 (2) the person responsible for conducting the remediation at a
23 contaminated site has failed to meet a mandatory remediation
24 timeframe or an expedited site specific timeframe adopted by the
25 department pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28),
26 including any extension thereof granted by the department, or a
27 schedule established pursuant to an administrative order or court
28 order; or

29 (3) unless a longer period has been ordered by a court, the
30 person responsible for conducting the remediation has, prior to the
31 date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), failed to
32 complete the remedial investigation of the entire contaminated site
33 10 years after the discovery of a discharge at the site and has failed
34 to complete the remedial investigation of the entire contaminated
35 site within five years after the date of enactment of P.L.2009, c.60
36 (C.58:10C-1 et al.).

37 As used in this subsection, "enforcement action" means an
38 administrative order, a notice of civil administrative penalty, or a
39 court order.

40 b. The department may undertake direct oversight of a
41 remediation of a contaminated site under the following conditions:

42 (1) the contamination at the site includes chromate chemical
43 production waste;

44 (2) the department determines that more than one
45 environmentally sensitive natural resource has been injured by
46 contamination from the site;

- 1 (3) the site has contributed to sediments contaminated by
2 polychlorinated biphenyl, mercury, arsenic, or dioxin in a surface
3 water body; or
- 4 (4) the site is ranked by the department in the category requiring
5 the highest priority pursuant to the ranking system developed
6 pursuant to section 2 of P.L.1982, c.202 (C.58:10-23.16).
- 7 c. For any site subject to direct oversight by the department
8 pursuant to this section:
- 9 (1) the department shall review each document submitted by a
10 licensed site remediation professional and shall approve or deny the
11 submission;
- 12 (2) a feasibility study shall be performed and submitted to the
13 department for approval;
- 14 (3) the department shall select the remedial action for the site;
- 15 (4) the person responsible for conducting the remediation shall
16 establish a remediation trust fund pursuant to section 25 of
17 P.L.1993, c.139 (C.58:10B-3) in the amount of the estimated cost of
18 the remediation;
- 19 (5) all disbursements of funds from the remediation trust fund
20 shall require prior approval by the department;
- 21 (6) all submissions prepared by the licensed site remediation
22 professional concerning the remediation required by the department
23 shall be provided simultaneously to the department and the person
24 responsible for conducting the remediation; and
- 25 (7) the person responsible for conducting the remediation shall
26 implement a public participation plan approved by the department
27 to solicit public comment from the members of the surrounding
28 community concerning the remediation of the site.
- 29 d. The department shall issue guidelines establishing specific
30 criteria for the conditions under which a site may be subject to
31 direct oversight pursuant to subsection b. of this section.
- 32 e. (1) Any oversight procedure, remedy, or other obligation in
33 P.L.2009, c.60 (C.58:10C-1 et al.) shall not affect a remediation
34 conducted pursuant to and in compliance with a settlement of
35 litigation to which the department is a party if the settlement (a)
36 occurred prior to the date of enactment of P.L.2009, c.60
37 (C.58:10C-1 et al.), or (b) is a settlement of litigation pending on
38 the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.).
- 39 (2) For any litigation pending or settled on the date of enactment
40 of P.L.2009, c.60 (C.58:10C-1 et al.), concerning a remediation
41 performed pursuant to the "Resource Conservation and Recovery
42 Act," 42 U.S.C. s.6921 et seq., nothing in P.L.2009, c.60
43 (C.58:10C-1 et al.) shall affect an oversight procedure, remedy, or
44 other obligation imposed by a federal administrative order or
45 federal court order.
- 46 (cf: P.L.2009, c.60, s.27)

1 3. This act shall take effect immediately.

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STATEMENT

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6 This floor substitute would allow an extension of time for the
7 completion of a remedial investigation to a person responsible for
8 conducting a remediation of a contaminated site under certain
9 circumstances. Current law requires the Department of
10 Environmental Protection to assume direct oversight of a cleanup if
11 the person responsible for conducting a remediation has, prior to the
12 date of enactment of P.L.2009, c.60 (C.58:10C-1 et seq.) (i.e., May
13 7, 2009), failed to complete the remedial investigation of the site
14 within 10 years after the date of discovery of a discharge at the site
15 and has failed to complete the remedial investigation of the site
16 within five years after May 7, 2009. This bill would authorize
17 additional time for the completion of the remedial investigation of a
18 site prior to the department undertaking oversight of the
19 remediation under certain circumstances.

20 First, an additional two years for the completion of the remedial
21 investigation of a site prior to the department undertaking oversight
22 of the remediation, until May 7, 2016, would be authorized if the
23 person responsible for conducting the remediation certifies, in a
24 document submitted electronically by the licensed site remediation
25 professional retained by the applicant, that certain conditions have
26 been met regarding the remediation. The applicant must certify
27 that: (1) a licensed site remediation professional has been retained
28 to conduct a remediation of the site; (2) any remediation
29 requirements included in mandatory remediation timeframes
30 adopted pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28), for
31 the site have been met at the time of the certification; (3)
32 technically complete submissions have been made in compliance
33 with all rules and regulations for site remediation, as applicable, for
34 the initial receptor evaluation, immediate environmental concern
35 source control report, light non-aqueous phase liquid interim
36 remedial measure report, preliminary assessment report, and site
37 investigation report; (4) a remediation funding source has been
38 established, if required of the applicant by section 25 of P.L.1993,
39 c.139 (C.58:10B-3); (5) if a remediation funding source is not
40 required to be established by the applicant pursuant to law, then a
41 remediation trust fund for the estimated cost of the remedial
42 investigation has been established pursuant to the standards
43 established in section 25 of P.L.1993, c.139 (C.58:10B-3); (6) any
44 oversight costs imposed by the department, known at the time of the
45 application, and not in dispute on the date of enactment of the bill
46 into law, have been paid to the department; and (7) the annual fees
47 imposed by the department for the remediation and remediation

1 funding source surcharges imposed pursuant to section 33 of
2 P.L.1993, c.39 (C.58:10B-11) have been paid to the department, as
3 applicable.

4 The floor substitute also allows additional time for the
5 completion of the remedial investigation of a site prior to the
6 department undertaking oversight of the remediation, due to a delay
7 in the provision of State financial assistance for the remediation
8 from the Hazardous Discharge Site Remediation Fund. The floor
9 substitute would allow an extension of two years after receipt of
10 funding, or no more than two years after the applicant is no longer
11 eligible for funding.

12 The floor substitute requires an application for an extension to be
13 submitted to the department by March 7, 2014 or 30 days after the
14 date of enactment of the bill into law, whichever is later.

15 The floor substitute would provide that, at any time during the
16 extension, the department may undertake direct oversight of a
17 remediation if the conditions imposed under the bill are no longer
18 met, or the person responsible for conducting the remediation fails
19 to meet a mandatory remediation timeframe.

20 Finally, the floor substitute would require the department to
21 provide notice on its website of any extension, and include the
22 name and location of the site for which the extension is granted, and
23 the length of the extension of time.