

SENATE, No. 3075

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED NOVEMBER 18, 2013

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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:

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7 1. (New section) a. For any site subject to the provisions of
8 paragraph (3) of subsection a. of section 27 of P.L.2009, c.60
9 (C.58:10C-27), upon application by a person responsible for
10 conducting the remediation, the department may grant an extension
11 of time pursuant to the provisions of subsection b. of this section to
12 allow for the completion of the remedial investigation prior to the
13 department taking direct oversight. The applicant shall submit:

14 (1) a certification that a licensed site remediation professional
15 was retained to conduct a remediation of the site prior to November
16 7, 2012;

17 (2) a completed receptor evaluation for the site with a
18 demonstration satisfactory to the department that any immediate
19 environmental concerns identified at the site were addressed in
20 accordance with the technical regulations for site remediation
21 adopted by the department;

22 (3) a summary of all remedial investigation activities conducted
23 at the site;

24 (4) a description of additional work necessary for the
25 completion of the remedial investigation;

26 (5) an explanation of the reason for the inability to complete the
27 remedial investigation within the statutory timeframes; and

28 (6) a schedule for the completion of the remedial investigation.

29 An application pursuant to this subsection shall be submitted no
30 later than March 7, 2014.

31 b. (1) Upon submission of a technically and administratively
32 complete application pursuant to subsection a. of this section, the
33 department may grant an extension of time of up to two years for
34 the completion of the remedial investigation upon a finding that
35 there is good cause for the extension.

36 (2) The department shall notify the applicant, in writing, no later
37 than 45 days after submission of a technically and administratively
38 complete application, of its decision concerning the application and,
39 if an extension of time for completion of the remedial investigation
40 is authorized, the length of the extension.

41 (3) The department shall provide notice in the New Jersey
42 Register of any extension granted pursuant to this section. In the
43 notice, the department shall provide the name and location of the
44 site for which the extension is granted, the rationale for the
45 extension, and the length of the extension.

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 (4) If the person responsible for conducting the remediation of
2 the contaminated site fails to complete the remedial investigation
3 within the additional time provided pursuant to this section, the
4 department shall undertake direct oversight of the remediation as
5 provided in subsection c. of section 27 of P.L.2009, c.60
6 (C.58:10C-27).

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

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

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

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

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

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

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

40 (1) the contamination at the site includes chromate chemical
41 production waste;

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

45 (3) the site has contributed to sediments contaminated by
46 polychlorinated biphenyl, mercury, arsenic, or dioxin in a surface
47 water body; or

1 (4) the site is ranked by the department in the category requiring
2 the highest priority pursuant to the ranking system developed
3 pursuant to section 2 of P.L.1982, c.202 (C.58:10-23.16).

4 c. For any site subject to direct oversight by the department
5 pursuant to this section:

6 (1) the department shall review each document submitted by a
7 licensed site remediation professional and shall approve or deny the
8 submission;

9 (2) a feasibility study shall be performed and submitted to the
10 department for approval;

11 (3) the department shall select the remedial action for the site;

12 (4) the person responsible for conducting the remediation shall
13 establish a remediation trust fund pursuant to section 25 of
14 P.L.1993, c.139 (C.58:10B-3) in the amount of the estimated cost of
15 the remediation;

16 (5) all disbursements of funds from the remediation trust fund
17 shall require prior approval by the department;

18 (6) all submissions prepared by the licensed site remediation
19 professional concerning the remediation required by the department
20 shall be provided simultaneously to the department and the person
21 responsible for conducting the remediation; and

22 (7) the person responsible for conducting the remediation shall
23 implement a public participation plan approved by the department
24 to solicit public comment from the members of the surrounding
25 community concerning the remediation of the site.

26 d. The department shall issue guidelines establishing specific
27 criteria for the conditions under which a site may be subject to
28 direct oversight pursuant to subsection b. of this section.

29 e. (1) Any oversight procedure, remedy, or other obligation in
30 P.L.2009, c.60 (C.58:10C-1 et al.) shall not affect a remediation
31 conducted pursuant to and in compliance with a settlement of
32 litigation to which the department is a party if the settlement (a)
33 occurred prior to the date of enactment of P.L.2009, c.60
34 (C.58:10C-1 et al.), or (b) is a settlement of litigation pending on
35 the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.).

36 (2) For any litigation pending or settled on the date of enactment
37 of P.L.2009, c.60 (C.58:10C-1 et al.), concerning a remediation
38 performed pursuant to the "Resource Conservation and Recovery
39 Act," 42 U.S.C. s.6921 et seq., nothing in P.L.2009, c.60
40 (C.58:10C-1 et al.) shall affect an oversight procedure, remedy, or
41 other obligation imposed by a federal administrative order or
42 federal court order.

43 (cf: P.L.2009, c.60, s.27)

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45 3. This act shall take effect immediately.

STATEMENT

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This bill would allow the Department of Environmental Protection to grant an extension of time for the completion of a remedial investigation to a person responsible for conducting a remediation of a contaminated site under certain circumstances. Current law requires the department to assume direct oversight of a cleanup if the person responsible for conducting a remediation has, prior to the date of enactment of P.L.2009, c.60 (C.58:10C-1 et seq.), (i.e., May 7, 2009), failed to complete the remedial investigation of the site 10 years after the date of discovery of a discharge at the site and has failed to complete the remedial investigation of the site within five years after May 7, 2009. This bill would authorize the department, for good cause, to allow up to an additional two years for the completion of the remedial investigation of a site prior to the department undertaking oversight of the remediation. The bill requires an application for an extension to be submitted no later than March 7, 2014 and provides the department 45 days to notify the applicant of its decision on whether to allow the extension of time for completion of the remedial investigation and the amount of additional time allowed. Under the bill, the department is required to provide notice in the New Jersey Register of any extension granted, and include in the published notice, the name and location of the site for which the extension is granted, the rationale for the extension, and the length of the extension.