

ASSEMBLY, No. 5293

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 13, 2019

Sponsored by:

Assemblywoman NANCY J. PINKIN

District 18 (Middlesex)

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

SYNOPSIS

Makes various changes to laws governing remediation of contaminated sites.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/11/2019)

1 AN ACT concerning the remediation of contaminated sites, and
2 amending and 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. Section 3 of P.L.1983, c.330 (C.13:1K-8) is amended to read
8 as follows:

9 3. As used in this act:

10 "Remedial action workplan" means a plan for the remedial action
11 to be undertaken at an industrial establishment, or at any area to
12 which a discharge originating at the industrial establishment is
13 migrating or has migrated; a description of the remedial action to be
14 used to remediate the industrial establishment; a time schedule and
15 cost estimate of the implementation of the remedial action; and any
16 other relevant information the department deems necessary;

17 "Closing operations" means:

18 (1) the cessation of operations resulting in at least a 90 percent
19 reduction in the total value of the product output from the entire
20 industrial establishment, as measured on a constant, annual date-
21 specific basis, within any five-year period, or, for industrial
22 establishments for which the product output is undefined, a 90
23 percent reduction in the number of employees or a 90 percent
24 reduction in the area of operations of an industrial establishment
25 within any five-year period; provided, however, the department may
26 approve a waiver of the provisions of this paragraph for any owner
27 or operator who, upon application and review, evidences a good
28 faith effort to maintain and expand product output, the number of
29 employees, or area of operations of the affected industrial
30 establishment;

31 (2) any temporary cessation of operations of an industrial
32 establishment for a period of not less than two years;

33 (3) any judicial proceeding or final agency action through which
34 an industrial establishment becomes nonoperational for health or
35 safety reasons;

36 (4) the initiation of bankruptcy proceedings pursuant to Chapter
37 7 of the federal Bankruptcy Code, 11 U.S.C. s.701 et seq. or the
38 filing of a plan of reorganization that provides for a liquidation
39 pursuant to Chapter 11 of the federal Bankruptcy Code, 11 U.S.C.
40 s.1101 et seq.;

41 (5) any change in operations of an industrial establishment that
42 changes the industrial establishment's Standard Industrial
43 Classification number to one that is not subject to this act; or

44 (6) the termination of a lease unless there is no disruption in
45 operations of the industrial establishment, or the assignment of a
46 lease;

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 "Transferring ownership or operations" means:

2 (1) any transaction or proceeding through which an industrial
3 establishment undergoes a change in ownership;

4 (2) the sale or transfer of more than 50 **【%】** percent of the assets
5 of an industrial establishment within any five-year period, as
6 measured on a constant, annual date-specific basis;

7 (3) the execution of a lease for a period of 99 years or longer for
8 an industrial establishment; or

9 (4) the dissolution of an entity that is an owner or operator or an
10 indirect owner of an industrial establishment, except for any
11 dissolution of an indirect owner of an industrial establishment
12 whose assets would have been unavailable for the remediation of
13 the industrial establishment if the dissolution had not occurred;

14 "Change in ownership" means:

15 (1) the sale or transfer of the business of an industrial
16 establishment or any of its real property;

17 (2) the sale or transfer of stock in a corporation resulting in a
18 merger or consolidation involving the direct owner or operator or
19 indirect owner of the industrial establishment;

20 (3) the sale or transfer of stock in a corporation, or the transfer
21 of a partnership interest, resulting in a change in the person holding
22 the controlling interest in the direct owner or operator or indirect
23 owner of an industrial establishment;

24 (4) the sale or transfer of title to an industrial establishment or
25 the real property of an industrial establishment by exercising an
26 option to purchase; or

27 (5) the sale or transfer of a partnership interest in a partnership
28 that owns or operates an industrial establishment, that would
29 reduce, by 10 **【%】** percent or more, the assets available for
30 remediation of the industrial establishment;

31 "Change in ownership" shall not include:

32 (1) a corporate reorganization not substantially affecting the
33 ownership of the industrial establishment;

34 (2) a transaction or series of transactions involving the transfer
35 of stock, assets or both, among corporations under common
36 ownership, if the transaction or transactions will not result in the
37 diminution of the net worth of the corporation that directly owns or
38 operates the industrial establishment by more than 10 **【%】** percent,
39 or if an equal or greater amount in assets is available for the
40 remediation of the industrial establishment before and after the
41 transaction or transactions;

42 (3) a transaction or series of transactions involving the transfer
43 of stock, assets or both, resulting in the merger or de facto merger
44 or consolidation of the indirect owner with another entity, or in a
45 change in the person holding the controlling interest of the indirect
46 owner of an industrial establishment, when the indirect owner's
47 assets would have been unavailable for cleanup if the transaction or
48 transactions had not occurred;

- 1 (4) a transfer where the transferor is the sibling, spouse, child,
2 parent, grandparent, child of a sibling, or sibling of a parent of the
3 transferee;
- 4 (5) a transfer to confirm or correct any deficiencies in the
5 recorded title of an industrial establishment;
- 6 (6) a transfer to release a contingent or reversionary interest
7 except for any transfer of a lessor's reversionary interest in leased
8 real property;
- 9 (7) a transfer of an industrial establishment by devise or
10 intestate succession;
- 11 (8) the granting or termination of an easement or a license to
12 any portion of an industrial establishment;
- 13 (9) the sale or transfer of real property pursuant to a
14 condemnation proceeding initiated pursuant to the "Eminent
15 Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);
- 16 (10) execution, delivery and filing or recording of any
17 mortgage, security interest, collateral assignment or other lien on
18 real or personal property; or
- 19 (11) any transfer of personal property pursuant to a valid
20 security agreement, collateral assignment or other lien, including,
21 but not limited to, seizure or replevin of such personal property
22 which transfer is for the purpose of implementing the secured
23 party's rights in the personal property which is the collateral;
- 24 "Department" means the Department of Environmental
25 Protection;
- 26 "Hazardous substances" means those elements and compounds,
27 including petroleum products, which are defined as such by the
28 department, after public hearing, and which shall be consistent to
29 the maximum extent possible with, and which shall include, the list
30 of hazardous substances adopted by the Environmental Protection
31 Agency pursuant to Section 311 of the "Federal Water Pollution
32 Control Act Amendments of 1972" (33 U.S.C. s.1321) and the list
33 of toxic pollutants designated by Congress or the Environmental
34 Protection Agency pursuant to Section 307 of that act (33 U.S.C.
35 s.1317); except that sewage and sewage sludge shall not be
36 considered as hazardous substances for the purposes of this act;
- 37 "Hazardous waste" shall have the same meaning as provided in
38 section 1 of P.L.1976, c.99 (C.13:1E-38);
- 39 "Industrial establishment" means any place of business engaged
40 in operations which involve the generation, manufacture, refining,
41 transportation, treatment, storage, handling, or disposal of
42 hazardous substances or hazardous wastes on-site, above or below
43 ground, having a Standard Industrial Classification number within
44 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in the
45 Standard Industrial Classifications Manual prepared by the Office
46 of Management and Budget in the Executive Office of the President
47 of the United States. Those facilities or parts of facilities subject to
48 operational closure and post-closure maintenance requirements

1 pursuant to the "Solid Waste Management Act," P.L.1970, c.39
2 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting
3 Act," sections 1 through 43 of P.L.1981, c.279 (C.13:1E-49 et seq.)
4 or the "Solid Waste Disposal Act" (42 U.S.C. s.6901 et seq.), or any
5 establishment engaged in the production or distribution of
6 agricultural commodities, shall not be considered industrial
7 establishments for the purposes of this act. The department may,
8 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
9 (C.52:14B-1 et seq.), exempt certain sub-groups or classes of
10 operations within those sub-groups within the Standard Industrial
11 Classification major group numbers listed in this subsection upon a
12 finding that the operation of the industrial establishment does not
13 pose a risk to public health and safety;

14 "Negative declaration" means a written declaration, submitted by
15 the owner or operator of an industrial establishment or other person
16 assuming responsibility for the remediation under paragraph (3) of
17 subsection b. of section 4 of P.L.1983, c.330 to the department,
18 certifying that there has been no discharge of hazardous substances
19 or hazardous wastes on the site, or that any such discharge on the
20 site or discharge that has migrated or is migrating from the site has
21 been remediated in accordance with procedures approved by the
22 department and in accordance with any applicable remediation
23 regulations;

24 "Discharge" means an intentional or unintentional action or
25 omission resulting in the releasing, spilling, leaking, pumping,
26 pouring, emitting, emptying, or dumping of a hazardous substance
27 or hazardous waste into the waters or onto the lands of the State;

28 "No further action letter" means a written determination by the
29 department that, based upon an evaluation of the historical use of
30 the industrial establishment and the property, or of an area of
31 concern or areas of concern, as applicable, and any other
32 investigation or action the department deems necessary, there are no
33 discharged hazardous substances or hazardous wastes present at the
34 site of the industrial establishment, at the area of concern or areas of
35 concern, or at any other site to which discharged hazardous
36 substances or hazardous wastes originating at the industrial
37 establishment have migrated, and that any discharged hazardous
38 substances or hazardous wastes present at the industrial
39 establishment or that have migrated from the site have been
40 remediated in accordance with applicable remediation regulations;

41 "Indirect owner" means any person who holds a controlling
42 interest in a direct owner or operator, holds a controlling interest in
43 another indirect owner, or holds an interest in a partnership which is
44 an indirect owner or a direct owner or operator, of an industrial
45 establishment;

46 "Direct owner or operator" means any person that directly owns
47 or operates an industrial establishment. A holder of a mortgage or
48 other security interest in the industrial establishment shall not be

1 deemed to be a direct owner or operator of the industrial
2 establishment unless or until it loses its exemption under P.L.1993,
3 c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial
4 establishment by deed of foreclosure, by other deed, or by court
5 order or other process;

6 "Area of concern" means any location where hazardous
7 substances or hazardous wastes are or were known or suspected to
8 have been discharged, generated, manufactured, refined,
9 transported, stored, handled, treated, or disposed, or where
10 hazardous substances or hazardous wastes have or may have
11 migrated;

12 "Licensed site remediation professional" means an individual
13 who is licensed by the Site Remediation Professional Licensing
14 Board pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) or the
15 department pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12);

16 "Owner" means any person who owns the real property of an
17 industrial establishment or who owns the industrial establishment.
18 A holder of a mortgage or other security interest in the industrial
19 establishment shall not be deemed to be an owner of the industrial
20 establishment unless or until it loses its exemption under P.L.1993,
21 c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial
22 establishment by deed of foreclosure, by other deed, or by court
23 order or other process;

24 "Operator" means any person, including users, tenants, or
25 occupants, having and exercising direct actual control of the
26 operations of an industrial establishment. A holder of a mortgage
27 or other security interest in the industrial establishment shall not be
28 deemed to be an operator of the industrial establishment unless or
29 until it loses its exemption under P.L.1993, c.112 (C.58:10-
30 23.11g4 et al.) or obtains title to the industrial establishment by
31 deed of foreclosure, by other deed, or by court order or other
32 process;

33 "Preliminary assessment" means the first phase in the process of
34 identifying areas of concern and determining whether hazardous
35 substances or hazardous wastes are or were present at an industrial
36 establishment or have migrated or are migrating from the industrial
37 establishment, and shall include the initial search for and evaluation
38 of, existing site specific operational and environmental information,
39 both current and historic, to determine if further investigation
40 concerning the documented, alleged, suspected or latent discharge
41 of any hazardous substance or hazardous waste is required. The
42 evaluation of historic information shall be conducted from 1932 to
43 the present, except that the department may require the search for
44 and evaluation of additional information relating to ownership and
45 use of the site prior to 1932 if such information is available through
46 diligent inquiry of public records;

47 "Remediation" or "remediate" means all **[necessary]** actions to
48 investigate **[and]** , clean up , or respond to any known, suspected,

1 or threatened discharge of hazardous substances or hazardous
2 wastes, including [, as necessary,] the preliminary assessment, site
3 investigation, remedial investigation, and remedial action , or any
4 portion thereof;

5 "Remediation standards" means the combination of numeric
6 standards that establish a level or concentration and narrative
7 standards, to which hazardous substances or hazardous wastes must
8 be treated, removed, or otherwise cleaned for soil, groundwater, or
9 surface water, as provided by the department pursuant to section 35
10 of P.L.1993, c.139 (C.58:10B-12) in order to meet the health risk or
11 environmental standards;

12 "Remedial action" means those actions taken at an industrial
13 establishment or offsite of an industrial establishment if hazardous
14 substances or hazardous wastes have migrated or are migrating
15 therefrom, as may be required by the department to protect public
16 health, safety, and the environment. These actions may include the
17 removal, treatment, containment, transportation, securing, or other
18 engineering measures, whether to an unrestricted use or otherwise,
19 designed to ensure that any discharged hazardous substances or
20 hazardous wastes at the site or that have migrated or are migrating
21 from the site, are remediated in compliance with the applicable
22 health risk or environmental standards;

23 "Remedial investigation" means a process to determine the
24 nature and extent of a discharge of hazardous substances or
25 hazardous wastes at an industrial establishment or a discharge of
26 hazardous substances or hazardous wastes that have migrated or are
27 migrating from the site and the problems presented by a discharge,
28 and may include data collection, site characterization, sampling,
29 monitoring, and the gathering of any other sufficient and relevant
30 information necessary to determine the necessity for remedial
31 action and to support the evaluation of remedial actions if
32 necessary;

33 "Response action outcome" means a written determination by a
34 licensed site remediation professional that the contaminated site
35 was remediated in accordance with all applicable statutes and
36 regulations, and based upon an evaluation of the historical use of
37 the site, or of any area of concern at that site, as applicable, and any
38 other investigation or action the department deems necessary, there
39 are no contaminants present at the site, or at any area of concern, at
40 any other site to which a discharge originating at the site has
41 migrated, or that any contaminants present at the site or that have
42 migrated from the site have been remediated in accordance with
43 applicable remediation regulations, and all applicable permits and
44 authorizations have been obtained;

45 "Site investigation" means the collection and evaluation of data
46 adequate to determine whether or not discharged hazardous
47 substances or hazardous wastes exist at the industrial establishment
48 or have migrated or are migrating from the site at levels in excess of

1 the applicable remediation standards. A site investigation shall be
2 developed based upon the information collected pursuant to the
3 preliminary assessment.

4 (cf: P.L.2009, c.60, s.33)

5

6 2. Section 1 of P.L.1995, c.139 (C.2A:53A-26) is amended to
7 read as follows:

8 1. As used in this act, "licensed person" means any person who
9 is licensed as:

10 a. an accountant pursuant to P.L.1997, c.259 (C.45:2B-
11 42 et seq.);

12 b. an architect pursuant to R.S.45:3-1 et seq.;

13 c. an attorney admitted to practice law in New Jersey;

14 d. a dentist pursuant to R.S.45:6-1 et seq.;

15 e. an engineer pursuant to P.L.1938, c.342 (C.45:8-27 et seq.);

16 f. a physician in the practice of medicine or surgery pursuant
17 to R.S.45:9-1 et seq.;

18 g. a podiatrist pursuant to R.S.45:5-1 et seq.;

19 h. a chiropractor pursuant to P.L.1989, c.153 (C.45:9-
20 41.17 et seq.);

21 i. a registered professional nurse pursuant to P.L.1947, c.262
22 (C.45:11-23 et seq.);

23 j. a health care facility as defined in section 2 of P.L.1971,
24 c.136 (C.26:2H-2);

25 k. a physical therapist pursuant to P.L.1983, c.296 (C.45:9-
26 37.11 et seq.);

27 l. a land surveyor pursuant to P.L.1938, c.342 (C.45:8-
28 27 et seq.);

29 m. a registered pharmacist pursuant to P.L.2003, c.280
30 (C.45:14-40 et seq.);

31 n. a veterinarian pursuant to R.S.45:16-1 et seq.;

32 o. an insurance producer pursuant to P.L.2001, c.210
33 (C.17:22A-26 et seq.); **【and】**

34 p. a certified midwife, certified professional midwife, or
35 certified nurse midwife pursuant to R.S.45:10-1 et seq.; and

36 q. a licensed site remediation professional pursuant to section 7
37 of P.L.2009, c.60 (C.58:10C-7).

38 (cf: P.L.2010, c.88, s.1)

39

40 3. Section 3 of P.L.1976, c.141 (C.58:10-23.11b) is amended to
41 read as follows:

42 3. Unless the context clearly indicates otherwise, the following
43 terms shall have the following meanings:

44 "Act of God" means an act exclusively occasioned by an
45 unanticipated, grave natural disaster without the interference of any
46 human agency;

47 "Administrator" means the chief executive of the New Jersey
48 Spill Compensation Fund;

1 "Barrel" means 42 United States gallons or 159.09 liters or an
2 appropriate equivalent measure set by the director for hazardous
3 substances which are other than fluid or which are not commonly
4 measured by the barrel;

5 "Board" means a board of arbitration convened by the
6 administrator to settle disputed disbursements from the fund;

7 "Cleanup and removal costs" means all direct costs associated
8 with a discharge, and those indirect costs that may be imposed by
9 the department pursuant to section 1 of P.L.2002, c.37 associated
10 with a discharge, incurred by the State or its political subdivisions
11 or their agents or any person with written approval from the
12 department in the: (1) removal or attempted removal of hazardous
13 substances, or (2) taking of reasonable measures to prevent or
14 mitigate damage to the public health, safety, or welfare, including,
15 but not limited to, public and private property, shorelines, beaches,
16 surface waters, water columns and bottom sediments, soils and
17 other affected property, including wildlife and other natural
18 resources, and shall include costs incurred by the State for the
19 indemnification and legal defense of contractors pursuant to
20 sections 1 through 11 of P.L.1991, c.373 (C.58:10-23.11f8 et seq.);

21 "Commissioner" means the Commissioner of Environmental
22 Protection;

23 "Contamination" or "contaminant" means any discharged
24 hazardous substance, hazardous waste as defined pursuant to
25 section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined
26 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

27 "Department" means the Department of Environmental
28 Protection;

29 "Director" means the Director of the Division of Taxation in the
30 Department of the Treasury;

31 "Discharge" means any intentional or unintentional action or
32 omission resulting in the releasing, spilling, leaking, pumping,
33 pouring, emitting, emptying or dumping of hazardous substances
34 into the waters or onto the lands of the State, or into waters outside
35 the jurisdiction of the State when damage may result to the lands,
36 waters or natural resources within the jurisdiction of the State;

37 "Emergency response action" means those activities conducted
38 by a local unit to clean up, remove, prevent, contain, or mitigate a
39 discharge that poses an immediate threat to the environment or to
40 the public health, safety, or welfare;

41 "Fair market value" means the invoice price of the hazardous
42 substances transferred, including transportation charges; but where
43 no price is so fixed, "fair market value" shall mean the market price
44 as of the close of the nearest day to the transfer, paid for similar
45 hazardous substances, as shall be determined by the taxpayer
46 pursuant to rules of the director;

1 "Final remediation document" means a no further action letter
2 issued by the department pursuant to P.L.1993, c.139 (C.58:10B-
3 1 et al.), or a response action outcome issued by a licensed site
4 remediation professional pursuant to section 14 of P.L.2009, c.60
5 (C.58:10C-14);

6 "Fund" means the New Jersey Spill Compensation Fund;

7 "Hazardous substances" means the "environmental hazardous
8 substances" on the environmental hazardous substance list adopted
9 by the department pursuant to section 4 of P.L.1983, c.315
10 (C.34:5A-4); such elements and compounds, including petroleum
11 products, which are defined as such by the department, after public
12 hearing, and which shall be consistent to the maximum extent
13 possible with, and which shall include, the list of hazardous
14 substances adopted by the federal Environmental Protection Agency
15 pursuant to section 311 of the Federal Water Pollution Control Act
16 Amendments of 1972, Pub.L.92-500, as amended by the Clean
17 Water Act of 1977, Pub.L.95-217 (33 U.S.C.s.1251 et seq.); the list
18 of toxic pollutants designated by Congress or the **[EPA]** United
19 States Environmental Protection Agency pursuant to section 307 of
20 that act; and the list of hazardous substances adopted by the federal
21 Environmental Protection Agency pursuant to section 101 of the
22 "Comprehensive Environmental Response, Compensation and
23 Liability Act of 1980," Pub.L.96-510 (42 U.S.C.s.9601 et seq.);
24 provided, however, that sewage and sewage sludge shall not be
25 considered as hazardous substances for the purposes of P.L.1976,
26 c.141 (C.58:10-23.11 et seq.);

27 "Licensed site remediation professional" means an individual
28 who is licensed by the Site Remediation Professional Licensing
29 Board pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) or the
30 department pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12);

31 "Local unit" means any county or municipality, or any agency or
32 other instrumentality thereof, or a duly incorporated volunteer fire,
33 ambulance, first aid, emergency, or rescue company or squad;

34 "Major facility" includes, but is not limited to, any refinery,
35 storage or transfer terminal, pipeline, deep-water port, drilling
36 platform or any appurtenance related to any of the preceding that is
37 used or is capable of being used to refine, produce, store, handle,
38 transfer, process or transport hazardous substances. "Major
39 facility" shall include a vessel only when that vessel is engaged in a
40 transfer of hazardous substances between it and another vessel, and
41 in any event shall not include a vessel used solely for activities
42 directly related to recovering, containing, cleaning up or removing
43 discharges of petroleum in the surface waters of the State, including
44 training, research, and other activities directly related to spill
45 response.

46 A facility shall not be considered a major facility for the purpose
47 of P.L.1976, c.141 unless it has total combined aboveground or
48 buried storage capacity of:

1 (1) 20,000 gallons or more for hazardous substances which are
2 other than petroleum or petroleum products, or

3 (2) 200,000 gallons or more for hazardous substances of all
4 kinds.

5 In determining whether a facility is a major facility for the
6 purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.), any
7 underground storage tank at the facility used solely to store heating
8 oil for on-site consumption shall not be considered when
9 determining the combined storage capacity of the facility.

10 For the purposes of this definition, "storage capacity" shall mean
11 only that total combined capacity which is dedicated to, used for or
12 intended to be used for storage of hazardous substances of all kinds.
13 Where appropriate to the nature of the facility, storage capacity may
14 be determined by the intended or actual use of open land or
15 unenclosed space as well as by the capacities of tanks or other
16 enclosed storage spaces;

17 "Natural resources" means all land, fish, shellfish, wildlife, biota,
18 air, waters and other such resources owned, managed, held in trust
19 or otherwise controlled by the State;

20 "Owner" or "operator" means, with respect to a vessel, any
21 person owning, operating or chartering by demise such vessel; with
22 respect to any major facility, any person owning such facility, or
23 operating it by lease, contract or other form of agreement; with
24 respect to abandoned or derelict major facilities, the person who
25 owned or operated such facility immediately prior to such
26 abandonment, or the owner at the time of discharge;

27 "Person" means public or private corporations, companies,
28 associations, societies, firms, partnerships, joint stock companies,
29 individuals, the United States, the State of New Jersey and any of
30 its political subdivisions or agents;

31 "Person responsible for conducting the remediation" means (1)
32 any person who executes or is otherwise subject to an oversight
33 document to remediate a contaminated site, (2) the owner or
34 operator of an industrial establishment subject to P.L.1983, c.330
35 (C.13:1K-6 et al.), for the remediation of a discharge, (3) the owner
36 or operator of an underground storage tank subject to P.L.1986,
37 c.102 (C.58:10A-21 et seq.), for the remediation of a discharge, (4)
38 any other person who discharges a hazardous substance or is in any
39 way responsible for a hazardous substance, pursuant to section 8 of
40 P.L.1976, c.141 (C.58:10-23.11g), that was discharged at a
41 contaminated site, or (5) any other person who is remediating a site;

42 "Petroleum" or "petroleum products" means oil or petroleum of
43 any kind and in any form, including, but not limited to, oil,
44 petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil
45 mixed with other wastes, crude oils, and substances or additives to
46 be utilized in the refining or blending of crude petroleum or
47 petroleum stock in this State; however, any compound designated
48 by specific chemical name on the list of hazardous substances

1 adopted by the department pursuant to this section shall not be
2 considered petroleum or a petroleum product for the purposes of
3 P.L.1976, c.141, unless such compound is to be utilized in the
4 refining or blending of crude petroleum or petroleum stock in this
5 State;

6 "Preliminary assessment" means the first phase in the process of
7 identifying areas of concern and determining whether contaminants
8 are or were present at a site or have migrated or are migrating from
9 a site, and shall include the initial search for and evaluation of,
10 existing site specific operational and environmental information,
11 both current and historic, to determine if further investigation
12 concerning the documented, alleged, suspected or latent discharge
13 of any contaminant is required. The evaluation of historic
14 information shall be conducted from 1932 to the present, except that
15 the department may require the search for and evaluation of
16 additional information relating to ownership and use of the site
17 prior to 1932 if such information is available through diligent
18 inquiry of the public records;

19 "Remedial action" means those actions taken at a site or offsite if
20 a contaminant has migrated or is migrating therefrom, as may be
21 required by the department, including the removal, treatment,
22 containment, transportation, securing, or other engineering or
23 treatment measures, whether to an unrestricted use or otherwise,
24 designed to ensure that any discharged contaminant at the site or
25 that has migrated or is migrating from the site, is remediated in
26 compliance with the applicable health risk or environmental
27 standards;

28 "Remedial investigation" means a process to determine the
29 nature and extent of a discharge of a contaminant at a site or a
30 discharge of a contaminant that has migrated or is migrating from
31 the site and the problems presented by a discharge, and may include
32 data collected, site characterization, sampling, monitoring, and the
33 gathering of any other sufficient and relevant information necessary
34 to determine the necessity for remedial action and to support the
35 evaluation of remedial actions if necessary;

36 "Remediation" or "remediate" means all **【necessary】** actions to
37 investigate **【and】** , clean up , or respond to any known, suspected,
38 or threatened discharge, including **【, as necessary,】** the preliminary
39 assessment, site investigation, remedial investigation, and remedial
40 action, or any portion thereof, provided, however, that
41 "remediation" or "remediate" shall not include the payment of
42 compensation for damage to, or loss of, natural resources;

43 "Response action outcome" means a written determination by a
44 licensed site remediation professional that the contaminated site
45 was remediated in accordance with all applicable statutes and
46 regulations, and based upon an evaluation of the historical use of
47 the site, or of any area of concern at that site, as applicable, and any
48 other investigation or action the department deems necessary, there

1 are no contaminants present at the site, or at any area of concern, at
2 any other site to which a discharge originating at the site has
3 migrated, or that any contaminants present at the site or that have
4 migrated from the site have been remediated in accordance with
5 applicable remediation regulations, and all applicable permits and
6 authorizations have been obtained;

7 "Site investigation" means the collection and evaluation of data
8 adequate to determine whether or not discharged contaminants exist
9 at a site or have migrated or are migrating from the site at levels in
10 excess of the applicable remediation standards. A site investigation
11 shall be developed based upon the information collected pursuant to
12 the preliminary assessment;

13 "Taxpayer" means the owner or operator of a major facility
14 subject to the tax provisions of P.L.1976, c.141;

15 "Tax period" means every calendar month on the basis of which
16 the taxpayer is required to report under P.L.1976, c.141;

17 "Transfer" means unloading or offloading between major
18 facilities and vessels, or vessels and major facilities, and from
19 vessel to vessel or major facility to major facility, except for fueling
20 or refueling operations and except that with regard to the movement
21 of hazardous substances other than petroleum, it shall also include
22 any unloading of or offloading from a major facility;

23 "Vessel" means every description of watercraft or other
24 contrivance that is practically capable of being used as a means of
25 commercial transportation of hazardous substances upon the water,
26 whether or not self-propelled;

27 "Waters" means the ocean and its estuaries to the seaward limit
28 of the State's jurisdiction, all springs, streams and bodies of surface
29 or groundwater, whether natural or artificial, within the boundaries
30 of this State.

31 (cf: P.L.2009, c.60, s.35)

32

33 4. Section 8 of P.L.1976, c.141 (C.58:10-23.11g) is amended to
34 read as follows:

35 8. a. The fund shall be strictly liable, without regard to fault,
36 for all cleanup and removal costs and for all direct and indirect
37 damages no matter by whom sustained, including but not limited to:

38 (1) The cost of restoring, repairing, or replacing any real or
39 personal property damaged or destroyed by a discharge, any income
40 lost from the time such property is damaged to the time such
41 property is restored, repaired or replaced, and any reduction in
42 value of such property caused by such discharge by comparison
43 with its value prior thereto;

44 (2) The cost of restoration and replacement, where possible, of
45 any natural resource damaged or destroyed by a discharge;

46 (3) Loss of income or impairment of earning capacity due to
47 damage to real or personal property, including natural resources
48 destroyed or damaged by a discharge; provided that such loss or

1 impairment exceeds 10 **【%】** percent of the amount which claimant
2 derives, based upon income or business records, exclusive of other
3 sources of income, from activities related to the particular real or
4 personal property or natural resources damaged or destroyed by
5 such discharge during the week, month or year for which the claim
6 is filed;

7 (4) Loss of tax revenue by the State or local governments for a
8 period of one year due to damage to real or personal property
9 proximately resulting from a discharge;

10 (5) Interest on loans obtained or other obligations incurred by a
11 claimant for the purpose of ameliorating the adverse effects of a
12 discharge pending the payment of a claim in full as provided by this
13 act.

14 b. The damages which may be recovered by the fund, without
15 regard to fault, subject to the defenses enumerated in subsection d.
16 of this section against the owner or operator of a major facility or
17 vessel, shall not exceed \$50,000,000.00 for each major facility or
18 \$1,200 per gross ton for each vessel, except that such maximum
19 limitation shall not apply and the owner or operator shall be liable,
20 jointly and severally, for the full amount of such damages if it can
21 be shown that such discharge was the result of (1) gross negligence
22 or willful misconduct, within the knowledge and privity of the
23 owner, operator or person in charge, or (2) a gross or willful
24 violation of applicable safety, construction or operating standards or
25 regulations. Damages which may be recovered from, or by, any
26 other person shall be limited to those authorized by common or
27 statutory law.

28 c. (1) Except as provided in section 2 of P.L.2005, c.43
29 (C.58:10-23.11g12), any person who has discharged a hazardous
30 substance, or is in any way responsible for any hazardous
31 substance, shall be strictly liable, jointly and severally, without
32 regard to fault, for all cleanup and removal costs no matter by
33 whom incurred. Such person shall also be strictly liable, jointly and
34 severally, without regard to fault, for all cleanup and removal costs
35 incurred by the department or a local unit pursuant to subsection b.
36 of section 7 of P.L.1976, c.141 (C.58:10-23.11f).

37 (2) In addition to the persons liable pursuant to this subsection,
38 in the case of a discharge of a hazardous substance from a vessel
39 into the waters of the State, the owner or operator of a refinery,
40 storage, transfer, or pipeline facility to which the vessel was en
41 route to deliver the hazardous substance who, by contract,
42 agreement, or otherwise, was scheduled to assume ownership of the
43 discharged hazardous substance, and any other person who was so
44 scheduled to assume ownership of the discharged hazardous
45 substance, shall be strictly liable, jointly and severally, without
46 regard to fault, for all cleanup and removal costs if the owner or
47 operator of the vessel did not have the evidence of financial

1 responsibility required pursuant to section 2 of P.L.1991, c.58
2 (C.58:10-23.11g2).

3 Where a person is liable for cleanup and removal costs as
4 provided in this paragraph, any expenditures made by the
5 administrator for that cleanup and removal shall constitute a debt of
6 that person to the fund. The debt shall constitute a lien on all
7 property owned by that person when a notice of lien identifying the
8 nature of the discharge and the amount of the cleanup, removal and
9 related costs expended from the fund is duly filed with the clerk of
10 the Superior Court. The clerk shall promptly enter upon the civil
11 judgment or order docket the name and address of the liable person
12 and the amount of the lien as set forth in the notice of lien. Upon
13 entry by the clerk, the lien, to the amount committed by the
14 administrator for cleanup and removal, shall attach to the revenues
15 and all real and personal property of the liable person, whether or
16 not that person is insolvent.

17 For the purpose of determining priority of this lien over all other
18 claims or liens which are or have been filed against the property of
19 an owner or operator of a refinery, storage, transfer, or pipeline
20 facility, the lien on the facility to which the discharged hazardous
21 substance was en route shall have priority over all other claims or
22 liens which are or have been filed against the property. The notice
23 of lien filed pursuant to this paragraph which affects any property
24 of a person liable pursuant to this paragraph other than the property
25 of an owner or operator of a refinery, storage, transfer, or pipeline
26 facility to which the discharged hazardous substance was en route,
27 shall have priority from the day of the filing of the notice of the lien
28 over all claims and liens filed against the property, but shall not
29 affect any valid lien, right, or interest in the property filed in
30 accordance with established procedure prior to the filing of a notice
31 of lien pursuant to this paragraph.

32 To the extent that a person liable pursuant to this paragraph is
33 not otherwise liable pursuant to paragraph (1) of this subsection, or
34 under any other provision of law or under common law, that person
35 may bring an action for indemnification for costs paid pursuant to
36 this paragraph against any other person who is strictly liable
37 pursuant to paragraph (1) of this subsection.

38 Nothing in this paragraph shall be construed to extend or negate
39 the right of any person to bring an action for contribution that may
40 exist under P.L.1976, c.141, or any other act or under common law.

41 (3) In addition to the persons liable pursuant to this subsection,
42 any person who owns real property acquired on or after September
43 14, 1993 on which there has been a discharge prior to the person's
44 acquisition of that property and who knew or should have known
45 that a hazardous substance had been discharged at the real property,
46 shall be strictly liable, jointly and severally, without regard to fault,
47 for all cleanup and removal costs no matter by whom incurred.
48 Such person shall also be strictly liable, jointly and severally,

1 without regard to fault, for all cleanup and removal costs incurred
2 by the department or a local unit pursuant to subsection b. of
3 section 7 of P.L.1976, c.141 (C.58:10-23.11f). Nothing in this
4 paragraph shall be construed to alter liability of any person who
5 acquired real property prior to September 14, 1993.

6 d. (1) In addition to those defenses provided in this
7 subsection, an act or omission caused solely by war, sabotage, or
8 God, or a combination thereof, shall be the only defenses which
9 may be raised by any owner or operator of a major facility or vessel
10 responsible for a discharge in any action arising under the
11 provisions of this act.

12 (2) A person, including an owner or operator of a major facility,
13 who owns real property acquired on or after September 14, 1993 on
14 which there has been a discharge, shall not be liable for cleanup and
15 removal costs or for any other damages to the State or to any other
16 person for the discharged hazardous substance pursuant to
17 subsection c. of this section or pursuant to civil common law, if that
18 person can establish by a preponderance of the evidence that
19 subparagraphs (a) through (d) apply, or if applicable, subparagraphs
20 (a) through (e) apply:

21 (a) the person acquired the real property after the discharge of
22 that hazardous substance at the real property;

23 (b) (i) at the time the person acquired the real property, the
24 person did not know and had no reason to know that any hazardous
25 substance had been discharged at the real property, or (ii) the person
26 acquired the real property by devise or succession, except that any
27 other funds or property received by that person from the deceased
28 real property owner who discharged a hazardous substance or was
29 in any way responsible for a hazardous substance, shall be made
30 available to satisfy the requirements of P.L.1976, c.141, or (iii) the
31 person complies with the provisions of subparagraph (e) of
32 paragraph (2) of this subsection;

33 (c) the person did not discharge the hazardous substance, is not
34 in any way responsible for the hazardous substance, and is not a
35 corporate successor to the discharger or to any person in any way
36 responsible for the hazardous substance or to anyone liable for
37 cleanup and removal costs pursuant to this section;

38 (d) the person gave notice of the discharge to the department
39 upon actual discovery of that discharge.

40 To establish that a person had no reason to know that any
41 hazardous substance had been discharged for the purposes of this
42 paragraph (2), the person must have undertaken, at the time of
43 acquisition, all appropriate inquiry into the previous ownership and
44 uses of the property. For the purposes of this paragraph (2), all
45 appropriate inquiry shall mean the performance of a preliminary
46 assessment, and site investigation, if the preliminary assessment
47 indicates that a site investigation is necessary, as defined in section
48 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance

1 with rules and regulations promulgated by the department defining
2 these terms.

3 Nothing in this paragraph (2) shall be construed to alter liability
4 of any person who acquired real property prior to September 14,
5 1993; and

6 (e) For the purposes of this subparagraph the person must have
7 (i) acquired the property subsequent to a hazardous substance being
8 discharged on the site and which discharge was discovered at the
9 time of acquisition as a result of the appropriate inquiry, as defined
10 in this paragraph (2), (ii) performed, following the effective date of
11 P.L.1997, c.278, a remediation of the site or discharge consistent
12 with the provisions of section 35 of P.L.1993, c.139 (C.58:10B-12),
13 or, relied upon a valid final remediation document for a remediation
14 performed prior to acquisition, or, obtained a remedial action
15 workplan certified by a licensed site remediation professional
16 retained for the site after the date of enactment of P.L.2009, c.60
17 (C.58:10C-1 et al.) and continued to comply with the conditions of
18 that workplan, or obtained approval of a remedial action workplan
19 by the department after the effective date of P.L.1997, c.278 and
20 continued to comply with the conditions of that workplan, and (iii)
21 established and maintained all engineering and institutional controls
22 as may be required pursuant to sections 35 and 36 of P.L.1993,
23 c.139. A person who complies with the provisions of this
24 subparagraph by actually performing a remediation of the site or
25 discharge as set forth in (ii) above shall be issued, upon application,
26 a no further action letter by the department or a response action
27 outcome by a licensed site remediation professional, as applicable.
28 A person who complies with the provisions of this subparagraph
29 either by receipt of a final remediation document following the
30 effective date of P.L.1997, c.278, or by relying on a previously
31 issued final remediation document shall not be liable for any further
32 remediation including any changes in a remediation standard or for
33 the subsequent discovery of a hazardous substance, at the site, or
34 emanating from the site, if the remediation was for the entire site,
35 and the hazardous substance was discharged prior to the person
36 acquiring the property. Notwithstanding any other provisions of
37 this subparagraph, a person who complies with the provisions of
38 this subparagraph only by virtue of the existence of a previously
39 issued final remediation document shall receive no liability
40 protections for any discharge which occurred during the time period
41 between the issuance of the final remediation document and the
42 property acquisition. Compliance with the provisions of this
43 subparagraph (e) shall not relieve any person of any liability for a
44 discharge that is off the site of the property covered by the final
45 remediation document, for a discharge that occurs at that property
46 after the person acquires the property, for any actions that person
47 negligently takes that aggravates or contributes to a discharge of a
48 hazardous substance, for failure to comply in the future with laws

1 and regulations, or if that person fails to maintain the institutional
2 or engineering controls on the property or to otherwise comply with
3 the provisions of the final remediation document.

4 (3) Notwithstanding the provisions of paragraph (2) of this
5 subsection to the contrary, if a person who owns real property
6 obtains actual knowledge of a discharge of a hazardous substance at
7 the real property during the period of that person's ownership and
8 subsequently transfers ownership of the property to another person
9 without disclosing that knowledge, the transferor shall be strictly
10 liable for the cleanup and removal costs of the discharge and no
11 defense under this subsection shall be available to that person.

12 (4) Any federal, State, or local governmental entity which
13 acquires ownership of real property through bankruptcy, tax
14 delinquency, abandonment, escheat, eminent domain, condemnation
15 or any circumstance in which the governmental entity involuntarily
16 acquires title by virtue of its function as sovereign, or where the
17 governmental entity acquires the property by any means for the
18 purpose of promoting the redevelopment of that property, shall not
19 be liable, pursuant to subsection c. of this section or pursuant to
20 common law, to the State or to any other person for any discharge
21 which occurred or began prior to that ownership. This paragraph
22 shall not provide any liability protection to any federal, State or
23 local governmental entity which has caused or contributed to the
24 discharge of a hazardous substance. This paragraph shall not
25 provide any liability protection to any federal, State, or local
26 government entity that acquires ownership of real property by
27 condemnation or eminent domain where the real property is being
28 remediated in a timely manner at the time of the condemnation or
29 eminent domain action.

30 (5) A person, including an owner or operator of a major facility,
31 who owns real property acquired prior to September 14, 1993 on
32 which there has been a discharge, shall not be liable for cleanup and
33 removal costs or for any other damages to the State or to any other
34 person for the discharged hazardous substance pursuant to
35 subsection c. of this section or pursuant to civil common law, if that
36 person can establish by a preponderance of the evidence that
37 subparagraphs (a) through (d) apply:

38 (a) the person acquired the real property after the discharge of
39 that hazardous substance at the real property;

40 (b) (i) at the time the person acquired the real property, the
41 person did not know and had no reason to know that any hazardous
42 substance had been discharged at the real property, or (ii) the person
43 acquired the real property by devise or succession, except that any
44 other funds or property received by that person from the deceased
45 real property owner who discharged a hazardous substance or was
46 in any way responsible for a hazardous substance, shall be made
47 available to satisfy the requirements of P.L.1976, c.141;

1 (c) the person did not discharge the hazardous substance, is not
2 in any way responsible for the hazardous substance, and is not a
3 corporate successor to the discharger or to any person in any way
4 responsible for the hazardous substance or to anyone liable for
5 cleanup and removal costs pursuant to this section;

6 (d) the person gave notice of the discharge to the department
7 upon actual discovery of that discharge.

8 To establish that a person had no reason to know that any
9 hazardous substance had been discharged for the purposes of this
10 paragraph (5), the person must have undertaken, at the time of
11 acquisition, all appropriate inquiry on the previous ownership and
12 uses of the property based upon generally accepted good and
13 customary standards.

14 Nothing in this paragraph (5) shall be construed to alter liability
15 of any person who acquired real property on or after September 14,
16 1993.

17 e. Neither the fund nor the Sanitary Landfill Contingency Fund
18 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall
19 be liable for any damages incurred by any person who is relieved
20 from liability pursuant to subsection d. or f. of this section for a
21 remediation that involves the use of engineering controls but the
22 fund and the Sanitary Landfill Contingency Fund shall be liable for
23 any remediation that involves only the use of institutional controls
24 if after a valid final remediation document has been issued the
25 department orders additional remediation except that the fund and
26 the Sanitary Landfill Contingency Fund shall not be liable for any
27 additional remediation that is required to remove an institutional
28 control.

29 f. Notwithstanding any other provision of this section, a
30 person, who owns real property acquired on or after the effective
31 date of P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for
32 any cleanup and removal costs or damages, under this section or
33 pursuant to any other statutory or civil common law, to any person,
34 other than the State and the federal government, harmed by any
35 hazardous substance discharged on that property prior to
36 acquisition, and any migration off that property related to that
37 discharge, provided all the conditions of this subsection are met:

38 (1) the person acquired the real property after the discharge of
39 that hazardous substance at the real property;

40 (2) the person did not discharge the hazardous substance, is not
41 in any way responsible for the hazardous substance, and is not a
42 corporate successor to the discharger or to any person in any way
43 responsible for the hazardous substance or to anyone liable for a
44 discharge pursuant to this section;

45 (3) the person gave notice of the discharge to the department
46 upon actual discovery of that discharge;

47 (4) (a) within 30 days after acquisition of the property, the
48 person commenced a remediation of the discharge, including any

1 migration, pursuant to a department oversight document executed
2 prior to acquisition, or (b) for property acquired after the date of
3 enactment of P.L.2009, c.60 (C.58:10C-1 et al.), the person
4 provides written notice of the acquisition to the department prior to
5 or on the date of acquisition and the person remediates the property
6 pursuant to the provisions of section 30 of P.L.2009, c.60
7 (C.58:10B-1.3), and (c) the department is satisfied that remediation
8 was completed in a timely and appropriate fashion; and

9 (5) Within ten days after acquisition of the property, or within
10 30 days after the expiration of the period or periods allowed for the
11 right of redemption pursuant to tax foreclosure law, the person
12 agrees in writing to provide access to the State for remediation and
13 related activities, as determined by the State.

14 The provisions of this subsection shall not relieve any person of
15 any liability:

16 (1) for a discharge that occurs at that property after the person
17 acquired the property;

18 (2) for any actions that person negligently takes that aggravates
19 or contributes to the harm inflicted upon any person;

20 (3) if that person fails to maintain the institutional or
21 engineering controls on the property or to otherwise comply with
22 the provisions of a final remediation document or a remedial action
23 workplan and a person is harmed thereby;

24 (4) for any liability to clean up and remove, pursuant to the
25 department's regulations and directions, any hazardous substances
26 that may have been discharged on the property or that may have
27 migrated therefrom; and

28 (5) for that person's failure to comply in the future with laws
29 and regulations.

30 g. Nothing in the amendatory provisions to this section adopted
31 pursuant to P.L.1997, c.278 shall be construed to remove any
32 defense to liability that a person may have had pursuant to
33 subsection e. of this section that existed prior to the effective date
34 of P.L.1997, c.278.

35 h. Nothing in this section shall limit the requirements of any
36 person to comply with P.L.1983, c.330 (C.13:1K-6 et al.).
37 (cf: P.L.2009, c.60, s.38)

38
39 5. Section 22 of P.L.1976, c.141 (C.58:10-23.11u) is amended
40 to read as follows:

41 22. a. (1) Whenever, on the basis of available information, the
42 department determines that a person is in violation of a provision of
43 P.L.1976, c.141 (C.58:10-23.11 et seq.), including any rule,
44 regulation, plan, information request, access request, order or
45 directive promulgated or issued pursuant thereto, or that a person
46 knowingly has given false testimony, documents or information to
47 the department, the department may:

1 (a) bring a civil action in accordance with subsection b. of this
2 section;

3 (b) levy a civil administrative penalty in accordance with
4 subsection c. of this section; or

5 (c) bring an action for a civil penalty in accordance with
6 subsection d. of this section.

7 Use of any remedy specified in this section shall not preclude use
8 of any other remedy. The department may simultaneously pursue
9 administrative and judicial remedies provided in this section.

10 b. The department may commence a civil action in Superior
11 Court for, singly or in combination:

12 (1) a temporary or permanent injunction;

13 (2) the costs of any investigation, cleanup or removal, and for
14 the reasonable costs of preparing and successfully litigating an
15 action under this subsection;

16 (3) the cost of restoring, repairing, or replacing real or personal
17 property damaged or destroyed by a discharge, any income lost
18 from the time the property is damaged to the time it is restored,
19 repaired or replaced, and any reduction in value of the property
20 caused by the discharge by comparison with its value prior thereto;

21 (4) the cost of restoration and replacement, where practicable, of
22 any natural resource damaged or destroyed by a discharge; and

23 (5) any other costs incurred by the department pursuant to
24 P.L.1976, c.141.

25 Compensatory damages for damages awarded to a person other
26 than the State shall be paid to the person injured by the discharge.

27 c. (1) The department may assess a civil administrative
28 penalty of not more than \$50,000 for each violation, and each day
29 of violation shall constitute an additional, separate and distinct
30 violation. A civil administrative penalty shall not be levied until a
31 violator has been notified by certified mail or personal service of:

32 (a) the statutory or regulatory basis of the violation;

33 (b) the specific citation of the act or omission constituting the
34 violation;

35 (c) the amount of the civil administrative penalty to be imposed;

36 (d) the right of the violator to a hearing on any matter contained
37 in the notice and the procedures for requesting a hearing.

38 (2) (a) A violator shall have 20 calendar days following receipt
39 of notice within which to request a hearing on any matter contained
40 in the notice, and shall comply with all procedures for requesting a
41 hearing. Failure to submit a timely request or to comply with all
42 departmental procedures shall constitute grounds for denial of a
43 hearing request. After a hearing and upon a finding that a violation
44 has occurred, the department shall issue a final order assessing the
45 amount of the civil administrative penalty specified in the notice. If
46 a violator does not request a hearing or fails to satisfy the statutory
47 and administrative requirements for requesting a hearing, the notice
48 of assessment of a civil administrative penalty shall become a final

1 order on the 21st calendar day following receipt of the notice by the
2 violator. If the department denies a hearing request, the notice of
3 denial shall become a final order upon receipt of the notice by the
4 violator.

5 (b) A civil administrative penalty may be settled by the
6 department on such terms and conditions as the department may
7 determine.

8 (c) Payment of a civil administrative penalty shall not be
9 deemed to affect the availability of any other enforcement remedy
10 in connection with the violation for which the penalty was levied.

11 (3) If a civil administrative penalty imposed pursuant to this
12 section is not paid within 30 days of the date that the penalty is due
13 and owing, and the penalty is not contested by the person against
14 whom the penalty has been assessed, or the person fails to make a
15 payment pursuant to a payment schedule entered into with the
16 department, an interest charge shall accrue on the amount of the
17 penalty from the 30th day that amount was due and owing. In the
18 case of an appeal of a civil administrative penalty, if the amount of
19 the penalty is upheld, in whole or in part, the rate of interest shall be
20 calculated on that amount as of the 30th day from the date the
21 amount was due and owing under the administrative order. The rate
22 of interest shall be that established by the New Jersey Supreme
23 Court for interest rates on judgments, as set forth in the Rules
24 Governing the Courts of the State of New Jersey.

25 (4) The department may assess and recover, by civil
26 administrative order, the costs of any investigation, cleanup or
27 removal, and the reasonable costs of preparing and successfully
28 enforcing a civil administrative penalty pursuant to this subsection.
29 The assessment may be recovered at the same time as a civil
30 administrative penalty, and shall be in addition to the penalty
31 assessment.

32 d. Any person who violates a provision of P.L.1976, c.141
33 (C.58:10-23.11 et seq.), or a court order issued pursuant thereto, or
34 who fails to pay a civil administrative penalty in full or to agree to a
35 schedule of payments therefor, shall be subject to a civil penalty not
36 to exceed \$50,000.00 per day for each violation, and each day's
37 continuance of the violation shall constitute a separate violation.
38 Any penalty incurred under this subsection may be recovered with
39 costs in a summary proceeding pursuant to **["the penalty**
40 **enforcement law" (N.J.S.2A:58-1 et seq.)]** the "Penalty
41 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in
42 the Superior Court or a municipal court. The Superior Court and
43 the municipal courts shall have jurisdiction to impose a civil penalty
44 for a violation of P.L.1976, c.141 (C.58:10-23.11 et seq.) pursuant
45 to this subsection and in accordance with the procedures set forth in
46 the "Penalty Enforcement Law of 1999."

1 e. All conveyances used or intended for use in the willful
2 discharge of any hazardous substance are subject to forfeiture to the
3 State pursuant to the provisions of P.L.1981, c.387 (C.13:1K-
4 1 et seq.).

5 (cf: P.L.1990, c.75, s.1)

6

7 6. Section 23 of P.L.1993, c.139 (C.58:10B-1) is amended to
8 read as follows:

9 23. As used in sections 23 through 43 and section 45 of
10 P.L.1993, c.139 (C.58:10B-1 et seq.), as may be amended and
11 supplemented:

12 "Area of concern" means any location where contaminants are or
13 were known or suspected to have been discharged, generated,
14 manufactured, refined, transported, stored, handled, treated, or
15 disposed, or where contaminants have or may have migrated;

16 "Authority" means the New Jersey Economic Development
17 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et
18 seq.);

19 "Brownfield development area" means an area that has been so
20 designated by the department, in writing, pursuant to the provisions
21 of section 7 of P.L.2005, c.223 (C.58:10B-25.1);

22 "Brownfield site" means any former or current commercial or
23 industrial site that is currently vacant or underutilized and on which
24 there has been, or there is suspected to have been, a discharge of a
25 contaminant;

26 "Contamination" or "contaminant" means any discharged
27 hazardous substance as defined pursuant to section 3 of P.L.1976,
28 c.141 (C.58:10-23.11b), hazardous waste as defined pursuant to
29 section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined
30 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

31 "Department" means the Department of Environmental
32 Protection;

33 "Discharge" means an intentional or unintentional action or
34 omission resulting in the releasing, spilling, leaking, pumping,
35 pouring, emitting, emptying, or dumping of a contaminant onto the
36 land or into the waters of the State;

37 "Engineering controls" means any mechanism to contain or
38 stabilize contamination or ensure the effectiveness of a remedial
39 action. Engineering controls may include, without limitation, caps,
40 covers, dikes, trenches, leachate collection systems, signs, fences
41 and physical access controls;

42 "Environmental opportunity zone" has the meaning given that
43 term pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);

44 "Final remediation document" means a no further action letter
45 issued by the department pursuant to P.L.1993, c.139 (C.58:10B-1
46 et al.), or a response action outcome issued by a licensed site
47 remediation professional pursuant to section 14 of P.L.2009, c.60
48 (C.58:10C-14);

1 "Financial assistance" means loans or loan guarantees;

2 "Institutional controls" means a mechanism used to limit human
3 activities at or near a contaminated site, or to ensure the
4 effectiveness of the remedial action over time, when contaminants
5 remain at a contaminated site in levels or concentrations above the
6 applicable remediation standard that would allow unrestricted use
7 of that property. Institutional controls may include, without
8 limitation, structure, land, and natural resource use restrictions, well
9 restriction areas, and deed notices;

10 "Licensed site remediation professional" means an individual
11 who is licensed by the Site Remediation Professional Licensing
12 Board pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) or the
13 department pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12);

14 "Limited restricted use remedial action" means any remedial
15 action that requires the continued use of institutional controls but
16 does not require the use of an engineering control;

17 "No further action letter" means a written determination by the
18 department that based upon an evaluation of the historical use of a
19 particular site, or of an area of concern or areas of concern at that
20 site, as applicable, and any other investigation or action the
21 department deems necessary, there are no discharged contaminants
22 present at the site, at the area of concern or areas of concern, at any
23 other site to which a discharge originating at the site has migrated,
24 or that any discharged contaminants present at the site or that have
25 migrated from the site have been remediated in accordance with
26 applicable remediation regulations;

27 "Person" means an individual, corporation, company,
28 partnership, firm, or other private business entity;

29 "Person responsible for conducting the remediation" means (1)
30 any person who executes or is otherwise subject to an oversight
31 document to remediate a contaminated site, (2) the owner or
32 operator of an industrial establishment subject to P.L.1983, c.330
33 (C.13:1K-6 et al.), for the remediation of a discharge, (3) the owner
34 or operator of an underground storage tank subject to P.L.1986,
35 c.102 (C.58:10A-21 et seq.), for the remediation of a discharge, (4)
36 any other person who discharges a hazardous substance or is in any
37 way responsible for a hazardous substance, pursuant to section 8 of
38 P.L.1976, c.141 (C.58:10-23.11g), that was discharged at a
39 contaminated site, or (5) any other person who is remediating a site;

40 "Preliminary assessment" means the first phase in the process of
41 identifying areas of concern and determining whether contaminants
42 are or were present at a site or have migrated or are migrating from
43 a site, and shall include the initial search for and evaluation of,
44 existing site specific operational and environmental information,
45 both current and historic, to determine if further investigation
46 concerning the documented, alleged, suspected or latent discharge
47 of any contaminant is required. The evaluation of historic
48 information shall be conducted from 1932 to the present, except that

1 the department may require the search for and evaluation of
2 additional information relating to ownership and use of the site
3 prior to 1932 if such information is available through diligent
4 inquiry of the public records;

5 "Presumptive remedy" means a remedial action established by
6 the department pursuant to paragraph (10) of subsection g. of
7 section 35 of P.L.1993, c.139 (C.58:10B-12);

8 "Recreation and conservation purposes" means the use of lands
9 for beaches, biological or ecological study, boating, camping,
10 fishing, forests, greenways, hunting, natural areas, parks,
11 playgrounds, protecting historic properties, water reserves,
12 watershed protection, wildlife preserves, active sports, or a similar
13 use for either public outdoor recreation or conservation of natural
14 resources, or both;

15 "Remedial action" means those actions taken at a site or offsite if
16 a contaminant has migrated or is migrating therefrom, as may be
17 required by the department, including the removal, treatment,
18 containment, transportation, securing, or other engineering or
19 treatment measures, whether to an unrestricted use or otherwise,
20 designed to ensure that any discharged contaminant at the site or
21 that has migrated or is migrating from the site, is remediated in
22 compliance with the applicable health risk or environmental
23 standards;

24 "Remedial action workplan" means a plan for the remedial action
25 to be undertaken at a site, or at any area to which a discharge
26 originating at a site is migrating or has migrated; a description of
27 the remedial action to be used to remediate a site; a time schedule
28 and cost estimate of the implementation of the remedial action; and
29 any other information the department deems necessary;

30 "Remedial investigation" means a process to determine the
31 nature and extent of a discharge of a contaminant at a site or a
32 discharge of a contaminant that has migrated or is migrating from
33 the site and the problems presented by a discharge, and may include
34 data collected, site characterization, sampling, monitoring, and the
35 gathering of any other sufficient and relevant information necessary
36 to determine the necessity for remedial action and to support the
37 evaluation of remedial actions if necessary;

38 "Remediation" or "remediate" means all **【necessary】** actions to
39 investigate **【and】** , clean up , or respond to any known, suspected,
40 or threatened discharge of contaminants, including **【, as necessary,】**
41 the preliminary assessment, site investigation, remedial
42 investigation, and remedial action, or any portion thereof, provided,
43 however, that "remediation" or "remediate" shall not include the
44 payment of compensation for damage to, or loss of, natural
45 resources;

46 "Remediation fund" means the Hazardous Discharge Site
47 Remediation Fund established pursuant to section 26 of P.L.1993,
48 c.139 (C.58:10B-4);

1 "Remediation funding source" means the methods of financing
2 the remediation of a discharge required to be established by a
3 person performing the remediation pursuant to section 25 of
4 P.L.1993, c.139 (C.58:10B-3);

5 "Remediation standards" means the combination of numeric
6 standards that establish a level or concentration, and narrative
7 standards to which contaminants must be treated, removed, or
8 otherwise cleaned for soil, groundwater, or surface water, as
9 provided by the department pursuant to section 35 of P.L.1993,
10 c.139 (C.58:10B-12) in order to meet the health risk or
11 environmental standards;

12 "Response action outcome" means a written determination by a
13 licensed site remediation professional that the contaminated site
14 was remediated in accordance with all applicable statutes and
15 regulations, and based upon an evaluation of the historical use of
16 the site, or of any area of concern at that site, as applicable, and any
17 other investigation or action the department deems necessary, there
18 are no contaminants present at the site, or at any area of concern, at
19 any other site to which a discharge originating at the site has
20 migrated, or that any contaminants present at the site or that have
21 migrated from the site have been remediated in accordance with
22 applicable remediation regulations, and all applicable permits and
23 authorizations have been obtained;

24 "Restricted use remedial action" means any remedial action that
25 requires the continued use of engineering and institutional controls
26 in order to meet the established health risk or environmental
27 standards;

28 "Site investigation" means the collection and evaluation of data
29 adequate to determine whether or not discharged contaminants exist
30 at a site or have migrated or are migrating from the site at levels in
31 excess of the applicable remediation standards. A site investigation
32 shall be developed based upon the information collected pursuant to
33 the preliminary assessment;

34 "Unrestricted use remedial action" means any remedial action
35 that does not require the continued use of engineering or
36 institutional controls in order to meet the established health risk or
37 environmental standards;

38 "Voluntarily perform a remediation" means performing a
39 remediation without having been ordered or directed to do so by the
40 department or by a court and without being compelled to perform a
41 remediation pursuant to the provisions of P.L.1983, c.330
42 (C.13:1K-6 et al.).

43 (cf: P.L.2009, c.60, s.40)

44

45 7. Section 30 of P.L.2009, c.60 (C.58:10B-1.3) is amended to
46 read as follows:

47 30. a. An owner or operator of an industrial establishment
48 subject to the provisions of P.L.1983, c.330 (C.13:1K-6 et al.), the

1 discharger of a hazardous substance or a person in any way
2 responsible for a hazardous substance pursuant to the provisions of
3 subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), or
4 the owner or operator of an underground storage tank regulated
5 pursuant to the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.),
6 that has discharged a hazardous substance, shall remediate the
7 discharge of a hazardous substance.

8 b. A person who initiates a remediation **of a contaminated**
9 **site** at least 180 days after the date of enactment of P.L.2009, c.60
10 (C.58:10C-1 et al.) shall:

11 (1) **hire** retain a licensed site remediation professional to
12 perform the remediation;

13 (2) notify the department of the name and license information of
14 the licensed site remediation professional who has been **hired**
15 retained to perform the remediation;

16 (3) conduct the remediation without the prior approval of the
17 department, unless directed otherwise by the department;

18 (4) establish a remediation funding source if a remediation
19 funding source is required pursuant to the provisions of section 25
20 of P.L.1993, c.139 (C.58:10B-3);

21 (5) pay all applicable fees and oversight costs as required by the
22 department;

23 (6) provide access to the contaminated site to the department;

24 (7) provide access to all applicable documents concerning the
25 remediation to the department;

26 (8) meet the mandatory remediation timeframes and expedited
27 site specific timeframes established by the department pursuant to
28 section 28 of P.L.2009, c.60 (C.58:10C-28); and

29 (9) obtain all necessary permits.

30 c. (1) Any person who initiates a remediation prior to the date
31 of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), or prior to the
32 issuance of temporary licenses to site remediation professionals
33 pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12), shall
34 comply with the provisions of paragraphs (4) through (9) of
35 subsection b. of this section.

36 (2) The department may require a person required to perform a
37 remediation pursuant to subsection a. of this section, or a person
38 who has initiated a remediation prior to the date of enactment of
39 P.L.2009, c.60 (C.58:10C-1 et al.), to comply with the provisions of
40 subsection b. of this section if, after the date of enactment of
41 P.L.2009, c.60 (C.58:10C-1 et al.), the department (a) issues a final
42 order or a penalty becomes due and payable, concerning the
43 performance of the remediation, or (b) issues a demand for
44 stipulated penalties pursuant to the provisions of an oversight
45 document in which the person waived a right to a hearing on the
46 penalties.

47 (3) No later than three years after the date of enactment of
48 P.L.2009, c.60 (C.58:10C-1 et al.), a person responsible for

1 conducting the remediation, no matter when the remediation is
2 initiated, shall comply with the provisions of subsection b. of this
3 section.

4 d. (1) The provisions of this section shall not apply to any
5 person who remediates a discharge from an unregulated heating oil
6 tank. For any person who remediates a discharge from an
7 unregulated heating oil tank, the provisions of section 15 of
8 P.L.2009, c.60 (C.58:10C-15) shall apply.

9 (2) The provisions of this section shall not apply to any person
10 who: (a) does not own a contaminated site, (b) conducts a
11 preliminary assessment or site investigation of the contaminated site
12 for the purpose of conducting all appropriate inquiry into the
13 previous ownership and uses of the property as provided in section
14 8 of P.L.1976, c.141 (C.58:10-23.11g), and (c) has not discharged a
15 hazardous substance at the site or is not in any way responsible for
16 a hazardous substance discharged at the site pursuant to section 8 of
17 P.L.1976, c.141 (C.58:10-23.11g).

18 e. Any person who fails to comply with the provisions of this
19 section shall be liable to the enforcement provisions established
20 pursuant to section 22 of P.L.1976, c.141 (C.58:10-23.11u).
21 (cf: P.L.2009, c.60, s.30)

22

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

25 25. a. Except as otherwise provided in section 27 of P.L.2009,
26 c.60 (C.58:10C-27), the owner or operator of an industrial
27 establishment or any other person required to perform remediation
28 activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), or a
29 discharger, a person in any way responsible for a hazardous
30 substance, or a person otherwise liable for cleanup and removal
31 costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) who has
32 been issued a directive or an order by a State agency, who has
33 entered into an administrative consent order with a State agency, or
34 who has been ordered by a court to clean up and remove a
35 hazardous substance or hazardous waste discharge pursuant to
36 P.L.1976, c.141 (C.58:10-23.11 et seq.), shall establish and
37 maintain a remediation funding source in the amount necessary to
38 pay the estimated cost of the required remediation. A person who
39 **【**voluntarily undertakes a remediation pursuant to a memorandum
40 of agreement with the department, or without the department's
41 oversight, or who**】** performs a remediation in an environmental
42 opportunity zone is not required to establish or maintain a
43 remediation funding source. A person who uses an innovative
44 technology or who, in a timely fashion, implements an unrestricted
45 use remedial action or a limited restricted use remedial action for all
46 or part of a remedial action is not required to establish a
47 remediation funding source for the cost of the remediation
48 involving the innovative technology or permanent remedy. A

1 government entity, a person who undertakes a remediation at their
2 primary or secondary residence, the owner or operator of a child
3 care center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.)
4 who performs a remediation at the licensed child care center, or the
5 person responsible for conducting a remediation at a public school
6 or private school as defined in N.J.S.18A:1-1, or a charter school
7 established pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.), shall
8 not be required to establish or maintain a remediation funding
9 source. A person required to establish a remediation funding source
10 pursuant to this section shall provide to the department satisfactory
11 documentation that the requirement has been met.

12 The remediation funding source shall be established in an
13 amount equal to or greater than the cost estimate of the
14 implementation of the remediation (1) as approved by the
15 department or as determined by the licensed site remediation
16 professional, as applicable, in accordance with rules and regulations
17 adopted by the department pursuant to section 29 of P.L.2009, c.60
18 (C.58:10C-29), (2) as provided in an administrative consent order or
19 remediation agreement or remediation certification as required
20 pursuant to subsection e. of section 4 of P.L.1983, c.330, (3) as
21 stated in a departmental order or directive, or (4) as agreed to by a
22 court, and shall be in effect for a term not less than the actual time
23 necessary to perform the remediation at the site. Whenever the
24 remediation cost estimate increases, the person required to establish
25 the remediation funding source shall cause the amount of the
26 remediation funding source to be increased to an amount at least
27 equal to the new estimate. Whenever the remediation cost estimate
28 decreases, the person required to obtain the remediation funding
29 source may file a written request to the department to decrease the
30 amount in the remediation funding source or may submit written
31 documentation to the department certified by the licensed site
32 remediation professional of the details of the decrease in the cost
33 estimate, as applicable. The remediation funding source may be
34 decreased to the amount of the new estimate upon written approval
35 by the department delivered to the person who established the
36 remediation funding source or upon submission of the certification
37 by the licensed site remediation professional, as applicable.

38 b. **【**The person who established the remediation funding source
39 may use the remediation funding source to pay for the actual cost of
40 the remediation.**】** The department may not require any other
41 financial assurance by the person responsible for conducting the
42 remediation other than that required in this section. In the case of a
43 remediation performed pursuant to P.L.1983, c.330, the remediation
44 funding source shall be established no more than 14 days after the
45 approval by the department or the certification by the licensed site
46 remediation professional of a remedial action workplan, upon
47 approval of a remediation agreement pursuant to subsection e. of
48 section 4 of P.L.1983, c.330 (C.13:1K-9), or upon submission of a

1 remediation certification pursuant to subsection e. of P.L.1983,
2 c.330, unless the department approves an extension. In the case of
3 a remediation performed pursuant to P.L.1976, c.141, the
4 remediation funding source shall be established as provided in an
5 administrative consent order signed by the parties, as provided by a
6 court, or as directed or ordered by the department. In the case of a
7 remediation performed under the department's oversight pursuant to
8 section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation
9 funding source shall be established at the time the person becomes
10 subject to the department's oversight. The establishment of a
11 remediation funding source for that part of the remediation funding
12 source to be established by a grant or financial assistance from the
13 remediation fund may be established for the purposes of this
14 subsection by the application for a grant or financial assistance from
15 the remediation fund and satisfactory evidence submitted to the
16 department that the grant or financial assistance will be awarded.
17 However, if the financial assistance or grant is denied or the
18 department finds that the person responsible for establishing the
19 remediation funding source did not take reasonable action to obtain
20 the grant or financial assistance, the department shall require that
21 the full amount of the remediation funding source be established
22 within 14 days of the denial or finding. Except as provided in
23 section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation
24 funding source shall be evidenced by the establishment and
25 maintenance of (1) a remediation trust fund, administered by an
26 entity that has the authority to act as a trustee and whose trust
27 operations are regulated and examined by a federal or State agency,
28 or governed by court rule, (2) an environmental insurance policy,
29 issued by an entity licensed by the Department of Banking and
30 Insurance to transact business in the State of New Jersey, to fund
31 the remediation, (3) a line of credit from a financial institution
32 regulated pursuant to State or federal law and satisfactory to the
33 department authorizing the person responsible for performing the
34 remediation to borrow money, (4) a self-guarantee, **【or】** (5) a letter
35 of credit from a financial institution regulated pursuant to State or
36 federal law that guarantees the performance of the remediation by
37 the person to the satisfaction of the department, or (6) a surety bond
38 from an entity that is listed as an acceptable surety on federal
39 bonds in United States Treasury Department Circular 570, or by any
40 combination thereof. Where it can be demonstrated that a person
41 cannot establish and maintain a remediation funding source for the
42 full cost of the remediation by a method specified in this subsection,
43 that person may establish the remediation funding source for all or a
44 portion of the remediation, by securing financial assistance from the
45 Hazardous Discharge Site Remediation Fund as provided in section
46 29 of P.L.1993, c.139 (C.58:10B-7).

47 c. A remediation trust fund shall be established pursuant to the
48 provisions of this subsection. An originally signed duplicate of the

1 trust agreement shall be delivered to the department (1) by certified
2 mail, overnight delivery, or personal service within 14 days of
3 receipt of notice from the department that the remedial action
4 workplan or remediation agreement as provided in subsection e. of
5 section 4 of P.L.1983, c.330 (C.13:1K-9) is approved, (2) within 14
6 days of submission to the department of a remedial action workplan
7 certified by a licensed site remediation professional as provided in
8 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon
9 submission of a remediation certification to the department as
10 provided in subsection e. of section 4 of P.L.1983, c.330, or (4) as
11 specified in an administrative consent order, civil order, or order of
12 the department, as applicable. The remediation trust fund agreement
13 shall conform to a model trust fund agreement as established by the
14 department and shall be accompanied by a certification of
15 acknowledgment that conforms to a model established by the
16 department. The trustee shall be an entity which has the authority
17 to act as a trustee and whose trust operations are regulated and
18 examined by a federal or New Jersey agency.

19 The trust fund agreement shall provide that the remediation trust
20 fund may not be revoked or terminated by the person required to
21 establish the remediation funding source or by the trustee without
22 the written consent of the department. The person who establishes
23 the remediation funding source in the form of a trust fund may use
24 the remediation funding source to pay for the actual cost of the
25 remediation. The trustee shall **[release]** disburse to the person
26 required to establish the remediation funding source, or to the
27 department or transferee of the property, as appropriate, only those
28 moneys as the department or the licensed site remediation
29 professional authorizes, in writing, to be **[released]** disbursed. The
30 trustee shall release to the person who established the remediation
31 funding source, or to the department or transferee of the property,
32 as appropriate, only those moneys as the department authorizes, in
33 writing, to be released. For any remediation subject to the oversight
34 of the department pursuant to section 27 of P.L.2009, c.60
35 (C.58:10C-27), the person entitled to receive money from the
36 remediation trust fund shall submit documentation to the
37 department detailing the costs incurred or to be incurred as part of
38 the remediation. Upon a determination by the department that the
39 costs are consistent with the remediation of the site, the department
40 shall, in writing, authorize a disbursement of moneys from the
41 remediation trust fund in the amount of the documented costs.

42 The department shall return the original remediation trust fund
43 agreement to the trustee for termination after the **[person required**
44 **to establish the remediation funding source substitutes]** department
45 receives an alternative remediation funding source as specified in
46 this section or the department notifies the person required to
47 establish and maintain the remediation funding source that that

1 person is no longer required to maintain a remediation funding
2 source for remediation of the contaminated site.

3 d. An environmental insurance policy shall be established
4 pursuant to the provisions of this subsection. An originally signed
5 duplicate of the insurance policy shall be delivered to the
6 department (1) by certified mail, overnight delivery, or personal
7 service within **[30]** 14 days of receipt of notice from the
8 department that the remedial action workplan or remediation
9 agreement, as provided in subsection e. of section 4 of P.L.1983,
10 c.330, is approved, (2) within 14 days of submission to the
11 department of a remedial action workplan certified by a licensed
12 site remediation professional as provided in subsection e. of section
13 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon submission of a
14 remediation certification to the department as provided in
15 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or (4) as
16 specified in an administrative consent order, civil order, or order of
17 the department, as applicable. [The insurance company shall
18 release to the person required to establish the remediation funding
19 source, or to the department or transferee of the property, as
20 appropriate, only those moneys as the department or the licensed
21 site remediation professional authorizes, in writing, to be released.
22 The person entitled to receive money from the environmental
23 insurance policy shall submit documentation to the department
24 detailing the costs incurred or to be incurred as part of the
25 remediation.] The environmental insurance policy shall be issued
26 by an entity that is licensed by the New Jersey Department of
27 Banking and Insurance to transact business in the State.

28 An environmental insurance policy cannot be revoked or
29 terminated without the prior written approval of the department,
30 except upon failure by the insured to pay the premium. The issuer
31 of the environmental insurance policy may revoke or terminate the
32 policy for failure to pay the premium only after notifying the person
33 who established the remediation funding source and the department,
34 by certified mail, of the decision to revoke or terminate the policy.

35 The insurance company that provides the environmental
36 insurance policy shall reduce the policy only as the department
37 directs in writing. The insurance company that provides the
38 environmental insurance policy shall release to the department or to
39 a person authorized to perform the remediation pursuant to
40 subsection g. of this section only moneys authorized by the
41 department, in writing, to be released. The department shall
42 authorize, in writing, the termination of the environmental
43 insurance policy after the department receives an alternative
44 remediation funding source as specified in this section or the
45 department notifies the person required to establish and maintain
46 the funding source that the person is no longer required to maintain
47 a remediation funding source for the remediation of the
48 contaminated site.

1 e. A line of credit shall be established pursuant to the
2 provisions of this subsection. A line of credit shall allow the person
3 establishing it to borrow money up to a limit established in a written
4 agreement in order to pay for the cost of the remediation for which
5 the line of credit was established. An originally signed duplicate of
6 the line of credit agreement shall be delivered to the department (1)
7 by certified mail, overnight delivery, or personal service within 14
8 days of receipt of notice from the department that the remedial
9 action workplan or remediation agreement as provided in subsection
10 e. of section 4 of P.L.1983, c.330 is approved, (2) within 14 days of
11 submission to the department of a remedial action workplan
12 certified by a licensed site remediation professional as provided in
13 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon
14 submission of a remediation certification [pursuant to] to the
15 department as provided in subsection e. of section 4 of P.L.1983,
16 c.330 (C.13:1K-9), or (4) as specified in an administrative consent
17 order, civil order, or order of the department, as applicable. The
18 line of credit agreement shall conform to a model agreement as
19 established by the department and shall be accompanied by a
20 certification of acknowledgment that conforms to a model
21 established by the department. The line of credit shall be issued by
22 an institution that is licensed by the New Jersey Department of
23 Banking and Insurance to transact business in the State, or by a
24 federally regulated bank.

25 The line of credit shall not be allowed to expire, unless the
26 institution provides the appropriate notification to the department
27 and the borrower, as defined in a model agreement established by
28 the department. The person who establishes the remediation
29 funding source in the form of a line of credit may use the
30 remediation funding source to pay for the actual cost of the
31 remediation. The institution providing the line of credit shall
32 disburse to the person required to establish the remediation funding
33 source, or to the department or transferee of the property, as
34 appropriate, only those moneys as the department or the licensed
35 site remediation professional authorizes, in writing, to be disbursed.
36 The [person or] institution providing the line of credit shall release
37 to the person [required to establish] who established the
38 remediation funding source, or to the department or transferee of
39 the property as appropriate, only those moneys as the department
40 [or the licensed site remediation professional] authorizes, in
41 writing, to be released. [The person entitled to draw upon the line
42 of credit shall submit documentation to the department detailing the
43 costs incurred or to be incurred as part of the remediation. Upon a
44 determination that the costs are consistent with the remediation of
45 the site, the department shall, in writing, authorize a disbursement
46 from the line of credit in the amount of the documented costs.]

1 The department shall return the original line of credit agreement
2 to the **person or** institution providing the line of credit for
3 termination after the **person required to establish the remediation**
4 **funding source substitutes** department receives an alternative
5 remediation funding source as specified in this section, or after the
6 department notifies the person required to establish and maintain
7 the remediation funding source that that person is no longer
8 required to maintain a remediation funding source for remediation
9 of the contaminated site.

10 f. A person may self-guarantee a remediation funding source
11 upon the submittal of documentation to the department
12 demonstrating that the cost of the remediation **as estimated in the**
13 **remedial action workplan, in the remediation agreement as provided**
14 **in subsection e. of section 4 of P.L.1983, c.330, in a remediation**
15 **certification submitted pursuant to subsection e. of P.L.1983, c.330,**
16 **in an administrative consent order, or as provided in a departmental**
17 **or court order,** would not exceed one-third of the tangible net
18 worth of the person required to establish the remediation funding
19 source, and that the person has a cash flow sufficient to assure the
20 availability of sufficient moneys for the remediation during the time
21 necessary for the remediation. Documentation shall be delivered to
22 the department (1) by certified mail, overnight delivery, or personal
23 service within 14 days of receipt of notice from the department that
24 the remedial action workplan or remediation agreement as provided
25 in subsection e. of section 4 of P.L.1983, c.330 is approved, (2)
26 within 14 days of submission to the department of a remedial action
27 workplan certified by a licensed site remediation professional as
28 provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-
29 9), (3) upon submission of a remediation certification pursuant to
30 the department as provided in subsection e. of section 4 of
31 P.L.1983, c.330 (C.13:1K-9), or (4) as specified in an
32 administrative consent order, civil order, or order of the department,
33 as applicable. Satisfactory documentation of a person's capacity to
34 self-guarantee a remediation funding source shall consist of audited
35 financial statements, in which the auditor expresses an unqualified
36 opinion, that includes a statement of income and expenses or similar
37 statement of that person and the balance sheet or similar statement
38 of assets and liabilities as used by that person for the fiscal year of
39 the person making the application that ended closest in time to the
40 date of the self-guarantee application. In the case of a special
41 purpose entity established specifically for the purpose of acquiring
42 and redeveloping a contaminated site, and for which a statement of
43 income and expenses is not available, the documentation shall
44 include a statement of assets and liabilities certified by a certified
45 public accountant. The self-guarantee application shall be certified
46 as true to the best of the applicant's information, knowledge, and
47 belief, by the chief financial, or similar officer or employee, or

1 general partner, or principal of the person making the self-guarantee
2 application. A person shall be deemed by the department to possess
3 the required cash flow pursuant to this section if that person's gross
4 receipts exceed its gross payments in that fiscal year in an amount
5 at least equal to the estimated costs of completing the remedial
6 action workplan schedule to be performed in the 12-month period
7 following the date on which the application for self-guarantee is
8 made and the individual or entity possesses a net cash flow
9 provided by operating activities in an amount at least equal to the
10 estimated costs of completing the remediation in the 12-month
11 period following the date the application is made. In the event that a
12 self-guarantee is required for a period of more than one year,
13 applications for a self-guarantee shall be renewed annually pursuant
14 to this subsection for each successive year. The department may
15 establish requirements and reporting obligations to ensure that the
16 person proposing to self-guarantee a remediation funding source
17 meets the criteria for self-guaranteeing prior to the initiation of
18 remedial action and until completion of the remediation.

19 g. (1) If the person required to establish the remediation
20 funding source fails to perform the remediation as required, or fails
21 to meet the conditions established pursuant to paragraph (3) of
22 subsection a. of section 27 of P.L.2009, c.60 (C.58:10C-27) or
23 section 1 of P.L.2013, c.283 (C.58:10C-27.1), or the mandatory
24 remediation timeframes or expedited site specific timeframes
25 established pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28)
26 for the performance of the remedial action, the department shall
27 make a written determination of this fact. A copy of the
28 determination by the department shall be delivered to the person
29 required to establish the remediation funding source and, in the case
30 of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-
31 6 et al.), to any transferee of the property. Following this written
32 determination, the department may perform the remediation in place
33 of the person required to establish the remediation funding source.
34 In order to finance the cost of the remediation the department may
35 make disbursements from the remediation funding source, or, if
36 sufficient moneys are not available from those funds, from the
37 remediation guarantee fund created pursuant to section 45 of
38 P.L.1993, c.139 (C.58:10B-20).

39 (2) The transferee of property subject to a remediation
40 conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), may, at
41 any time after the department's determination of nonperformance by
42 the owner or operator required to establish the remediation funding
43 source, petition the department, in writing, with a copy being sent to
44 the owner and operator, for authority to perform the remediation at
45 the industrial establishment. The department, upon a determination
46 that the transferee is competent to do so, may grant that petition
47 which shall authorize the transferee to perform the remediation as
48 specified in an approved remedial action workplan, or to perform

1 the activities as required in a remediation agreement, or as provided
2 in a remediation certification, and to avail itself of the moneys in
3 the remediation trust fund, letter of credit, **[or]** line of credit , or
4 surety bond, or to make claims upon the environmental insurance
5 policy for these purposes. The petition of the transferee shall not be
6 granted by the department if the owner or operator continues or
7 begins to perform its obligations within 14 days of the petition
8 being filed with the department.

9 (3) After the department has begun to perform the remediation
10 in the place of the person required to establish the remediation
11 funding source or has granted the petition of the transferee to
12 perform the remediation, the person required to establish the
13 remediation funding source shall not be permitted by the
14 department to continue its performance obligations except upon the
15 agreement of the department or the transferee, as applicable, or
16 except upon a determination by the department that the transferee is
17 not adequately performing the remediation.

18 h. A letter of credit shall be established pursuant to the
19 provisions of this subsection. A letter of credit shall allow a person
20 to guarantee the availability of funds up to a limit established in a
21 written agreement in order to guarantee the payment of the cost of
22 the remediation for which the letter of credit was established. An
23 originally signed duplicate of the letter of credit agreement shall be
24 delivered to the department (1) by certified mail, overnight
25 delivery, or personal service within 14 days of receipt of notice
26 from the department that the remedial action workplan or
27 remediation agreement as provided in subsection e. of section 4 of
28 P.L.1983, c.330 (C.13:1K-9) is approved, (2) within 14 days of
29 submission to the department of a remedial action workplan
30 certified by a licensed site remediation professional as provided in
31 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon
32 submission of a remediation certification [pursuant to] to the
33 department as provided in subsection e. of section 4 of P.L.1983,
34 c.330 (C.13:1K-9), or (4) as specified in an administrative consent
35 order, civil order, or order of the department, as applicable. The
36 letter of credit agreement shall conform to a model agreement as
37 established by the department and shall be accompanied by a
38 certification of acknowledgment that conforms to a model
39 established by the department. The letter of credit shall be issued
40 by an entity that is licensed by the New Jersey Department of
41 Banking and Insurance to transact business in the State, or by a
42 federally regulated bank.

43 The letter of credit shall not be allowed to expire unless the
44 financial institution provides the appropriate notification to the
45 department and the application, as defined by a model agreement
46 established by the department. The financial institution that
47 provides the letter of credit shall release to the department or to a
48 person authorized to perform the remediation pursuant to subsection

1 g. of this section, only moneys authorized by the department, [or
2 the authorized licensed site remediation professional,] in writing, to
3 be released. The department shall return the original letter of credit
4 to the financial institution providing the letter of credit for
5 termination after the [person required to establish the remediation
6 funding source substitutes] department receives an alternative
7 remediation funding source as authorized in this section, or after the
8 department notifies the person required to establish and maintain
9 the remediation funding source that that person is no longer
10 required to maintain a remediation funding source for the
11 remediation of the contaminated site.

12 i. A surety bond shall be established pursuant to the provisions of
13 this subsection. A surety bond shall allow a person to guarantee the
14 availability of funds up to a limit established in a written agreement
15 in order to guarantee the payment of the cost of the remediation for
16 which the surety bond was established. An originally signed
17 duplicate of the surety bond agreement shall be delivered to the
18 department (1) by certified mail, overnight delivery, or personal
19 service within 14 days of receipt of notice from the department that
20 the remedial action workplan or remediation agreement as provided
21 in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9) is
22 approved, (2) within 14 days of submission to the department of a
23 licensed site remediation professional certified remedial action
24 workplan as provided in subsection e. of section 4 of P.L.1983,
25 c.330 (C.13:1K-9), (3) upon submission of a remediation
26 certification to the department as provided in subsection e. of
27 section 4 of P.L.1983, c.330 (C.13:1K-9), or (4) as specified in an
28 administrative consent order, civil order, or order of the department,
29 as applicable. The surety bond agreement shall conform to a model
30 agreement established by the department and shall be accompanied
31 by a certification of acknowledgment that conforms to a model
32 established by the department. The surety company issuing the
33 bond must be a company that is listed as an acceptable surety on
34 federal bonds in United States Treasury Department Circular 570.

35 The surety bond shall not be cancelled unless the surety company
36 provides the appropriate notice of cancellation to the department
37 and the principal, as defined in a model agreement established by
38 the department. The surety company that provides the surety bond
39 shall release to the department, or to a person authorized to perform
40 the remediation pursuant to subsection g. of this section, only
41 monies authorized by the department, in writing, to be released.
42 The department shall return the original surety bond to the surety
43 company for termination after the department receives an
44 alternative remediation funding source as specified in this section or
45 the department notifies the person that that person is no longer
46 required to maintain a remediation funding source for remediation
47 of the contaminated site.

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

1 9. (New section) The department shall encourage the use of
2 green and sustainable practices during the remediation of a
3 contaminated site. The use of green and sustainable practices shall
4 not alter the requirement that the remediation be protective of the
5 public health and safety and of the environment.

6
7 10. Section 39 of P.L.1993, c.139 (C.58:10B-15) is amended to
8 read as follows:

9 39. a. Any person who, before the effective date of P.L.1993,
10 c.139 (C.13:1K-9.6 et al.), has discharged a hazardous substance in
11 violation of P.L.1976, c.141, and:

12 (1) has not been issued a directive to remove or arrange for the
13 removal of the discharge pursuant to section 7 of P.L.1976, c.141
14 (C.58:10-23.11f);

15 (2) has not been assessed a civil penalty, a civil administrative
16 penalty, or is not the subject of an action pursuant to the provisions
17 of section 22 of P.L.1976, c.141 (C.58:10-23.11u);

18 (3) has not entered into an administrative consent order to clean
19 up and remove the discharge; and

20 (4) has not been ordered by a court to clean up and remove the
21 discharge, shall not be subject to a monetary penalty for the failure
22 to report the discharge or for any civil violation of P.L.1976, c.141
23 (C.58:10-23.11 et seq.) or P.L.1977, c.74 (C.58:10A-1 et seq.) that
24 resulted in the discharge if the person notifies the department of the
25 discharge and enters into an administrative consent order **【**or a
26 memorandum of agreement**】** with the department to remediate the
27 discharge in accordance with the provisions of P.L.1976, c.141
28 (C.58:10-23.11 et seq.), or any rules or regulations adopted
29 pursuant thereto, within one year of the effective date of P.L.1993,
30 c.139 (C.13:1K-9.6 et al.). Any person who notifies the department
31 of the discharge pursuant to this section shall be liable for all
32 cleanup and removal costs as provided in section 8 of P.L.1976,
33 c.141 (C.58:10-23.11g).

34 b. Notwithstanding the provisions of subsection a. of this
35 subsection, any person who enters into **【**a memorandum of
36 agreement or**】** an administrative consent order pursuant to this
37 section and fails to remediate the discharge in accordance with the
38 **【**memorandum of agreement or**】** administrative consent order, shall
39 be subject to all penalties for violations that occurred before the
40 effective date of P.L.1993, c.139 (C.13:1K-9.6 et al.) as well as any
41 penalties for subsequent violations.

42 c. The provisions of this section shall not apply to violations of
43 a permit issued pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.).

44 d. Any documents or information provided to the department
45 pursuant to this section may not be used in a criminal investigation
46 or criminal prosecution against the person providing the
47 information or documents for those violations that occurred before

1 the effective date of **【this act】** P.L.1993, c.139 as long as the person
2 remediates the discharge in conformance with the administrative
3 consent order **【or memorandum of agreement】** entered into
4 pursuant to subsection a. of this section.

5 (cf: P.L.1993, c.139, s.39)
6

7 11. Section 1 of P.L.2006, c.65 (C.58:10B-24.1) is amended to
8 read as follows:

9 1. a. Prior to the initiation of the remedial **【action】**
10 investigation phase of the remediation of a contaminated site, any
11 person who is responsible for conducting a remediation of the
12 contaminated site, including the Department of Environmental
13 Protection when it conducts a remediation of a contaminated site
14 using public monies, shall provide written notification describing
15 the activities that are to take place at the contaminated site to the
16 clerk of the municipality and to the county health department and
17 the local health agency wherein the site is located. The written
18 notice shall include notice of the location of the contaminated site,
19 including address and the lot and block number of the contaminated
20 site. The written notice shall also inform the municipality, county
21 health department, and local health agency that they may receive a
22 copy of the remedial action workplan **【and any updates or status**
23 **reports】** , any other workplan, report, or validated data required by
24 the department, and any updates thereto, and a copy of the site
25 health and safety plan, from the responsible party, upon request.
26 For any remediation of a contaminated site that will take longer
27 than two years to complete, the person responsible for conducting
28 the remediation shall provide the notification **【shall be provided】**
29 required by this section every two years until remediation is
30 complete.

31 b. Notice required pursuant to this section shall not be required
32 when the remediation of a contaminated site is caused by a leaking
33 residential underground storage tank used to store heating oil for
34 on-site consumption in a one to four family residential building or
35 an emergency response action.

36 (cf: P.L.2007, c.276, s.1)
37

38 12. Section 2 of P.L.2006, c.65 (C.58:10B-24.2) is amended to
39 read as follows:

40 2. Upon request of a municipality, any person who is
41 responsible for conducting a remediation of a contaminated site
42 shall submit a copy of a remedial action workplan , any other
43 workplan, report, or validated data required by the department, and
44 any updates or status reports pursuant to the "Industrial Site
45 Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), the "Brownfield
46 and Contaminated Site Remediation Act," P.L.1997, c.278
47 (C.58:10B-1.1 et al.), or the "Spill Compensation and Control Act,"

1 P.L.1976, c.141 (C.58:10-23.11 et seq.), and a copy of the site
2 health and safety plan, to the clerk of the municipality wherein the
3 contaminated site is located at the same time as **the workplan is**
4 those documents are submitted to the **Department of**
5 **Environmental Protection** department. Upon request of a county
6 health department or a local health agency, the person who is
7 responsible for conducting a remediation of a contaminated site
8 shall also submit a copy of the remedial action workplan **and** ,
9 any other workplan, report, or validated data required by the
10 department, any updates or status reports, and a copy of the site
11 health and safety plan, to the county health department or local
12 health agency, respectively.

13 (cf: P.L.2007, c.276, s.2)

14

15 13. Section 3 of P.L.2006, c.65 (C.58:10B-24.3) is amended to
16 read as follows:

17 3. a. Any person who is responsible for conducting a
18 remediation of a contaminated site shall be responsible for notifying
19 the public of the remediation of the contaminated site pursuant to
20 rules and regulations adopted by the Department of Environmental
21 Protection pursuant to subsection b. of this section.

22 b. Within six months after the date of enactment of this act, the
23 Department of Environmental Protection shall adopt, pursuant to
24 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
25 1 et seq.), rules and regulations setting forth the notice requirements
26 pursuant to subsection a. of this section. The rules and regulations
27 to be adopted by the department pursuant to this section shall
28 require any person who is responsible for conducting a remediation
29 of a contaminated site to provide written notification to any local
30 property owners and tenants who reside within 200 feet of the
31 contaminated site. The notification shall summarize site conditions
32 and provide information about actions being taken to remediate the
33 site and may require written notification **or** and the posting of a
34 sign visible to the public which shall be located on the boundaries
35 of the contaminated site.

36 c. A person responsible for conducting a remediation shall
37 respond to any inquiries from the public that the person receives, or
38 that the department receives and forwards to the person responsible
39 for conducting the remediation, by providing either: (1) specific
40 information or documents that are responsive to the public inquiry;
41 or (2) a written status report for the remediation, which shall be
42 made in a form and manner as prescribed by the department
43 pursuant to rules and regulations. A person responsible for
44 conducting a remediation may designate a licensed site remediation
45 professional to respond to public inquiries pursuant to this
46 subsection.

47 (cf: P.L.2006, c.65, s.3)

1 14. Section 1 of P.L.2005, c.360 (C.58:10B-27.2) is amended to
2 read as follows:

3 1. a. The provisions of any other law, or rule or regulation
4 adopted pursuant thereto, to the contrary notwithstanding, the State
5 may enter into a redevelopment agreement pursuant to sections 35
6 and 36 of P.L.1997, c. 278 (C.58:10B-27 and 58:10B-28) for a
7 redevelopment project that was commenced prior to the effective
8 date of sections 34 through 39 of P.L.1997, c.278 (C.58:10B-26
9 through 58:10B-31) in which the State may agree to reimburse a
10 developer for 75 **【%】** percent of remediation costs incurred
11 subsequent to entering into the redevelopment agreement, provided
12 that the **【Chief Executive Officer and Secretary of the Commerce**
13 **and Economic Growth Commission】** Executive Director of the New
14 Jersey Economic Development Authority, in consultation with the
15 State Treasurer, finds that:

16 (1) the remediation that has not yet been performed on the
17 subject real property is necessary to ensure that the public health
18 and safety and the environment are protected; and

19 (2) (a) the cost or extent of remediation was unanticipated at the
20 time the redevelopment project was commenced; (b) changes to the
21 rules and regulations governing site remediation were adopted after
22 the redevelopment project was commenced; (c) principles of
23 fairness and consistency indicate that the reimbursement of
24 remediation costs provided by P.L.1997, c.278 should be made
25 available to the developer who agreed to remediate and redevelop a
26 brownfield prior to the enactment of P.L.1997, c.278; (d) an
27 estimate of the cost of the remediation to be performed subsequent
28 to entry into the redevelopment agreement as approved by the
29 Department of Environmental Protection exceeds \$10 million; (e)
30 the subject real property is situated within a Planning Area 1 as
31 designated in the State Development and Redevelopment Plan; and
32 (f) a phase of the redevelopment project has not been commenced.

33 b. A developer that enters into a redevelopment agreement
34 pursuant to this section shall be eligible for reimbursement of
35 remediation costs pursuant to sections 36 and 37 of P.L.1997, c.278
36 (C.58:10B-28 and 58:10B-29), provided that:

37 (1) in estimating the amount of State taxes that are anticipated to
38 be derived from a redevelopment project the director shall only
39 consider tax revenues generated subsequent to the date of the
40 redevelopment agreement from a phase of the redevelopment
41 project that has not generated tax revenues prior to January 1, 2006;
42 and

43 (2) a developer has entered into **【a memorandum of agreement**
44 **or other】** an oversight document with the Commissioner of
45 Environmental Protection for the remediation of a contaminated site
46 located on the site of the redevelopment project and the developer is

1 in compliance with the **【**memorandum of agreement or**】** oversight
2 document.

3 c. Nothing in this section shall require that a no further action
4 letter be obtained by a developer for remediation of groundwater
5 beneath the subject real property prior to reimbursement of the
6 remediation costs, provided that the developer has completed any
7 capital construction or infrastructure required for the remediation of
8 groundwater on the site.

9 (cf: P.L.2005, c.360, s.1)

10

11 15. Section 36 of P.L.1997, c.278 (C.58:10B-28) is amended to
12 read as follows:

13 36. a. The provisions of any other law, or rule or regulation
14 adopted pursuant thereto, to the contrary notwithstanding, any
15 developer that enters into a redevelopment agreement pursuant to
16 section 35 of P.L.1997, c.278 (C.58:10B-27), may be eligible for
17 reimbursement of up to 75 **【%** percent**】** of the costs of the
18 remediation of the subject real property pursuant to the provisions
19 of this section upon the commencement of a business operation, or
20 the completion of the construction of one or more new residences,
21 within a redevelopment project.

22 b. To be eligible for reimbursement of the costs of remediation,
23 a developer shall submit an application, in writing, to the director
24 for review and certification of the reimbursement. The director
25 shall review the request for the reimbursement upon receipt of an
26 application therefor, and shall approve or deny the application for
27 certification on a timely basis. The director shall also make a
28 finding of the occupancy rate of the property subject to the
29 redevelopment agreement in the frequency set forth in the
30 redevelopment agreement as provided in section 35 of P.L.1997,
31 c.278 (C.58:10B-27).

32 The director shall certify a developer to be eligible for the
33 reimbursement if the director finds that:

34 (1) residential construction is complete, or a place of business is
35 located, in the area subject to the redevelopment agreement that has
36 generated new tax revenues;

37 (2) the developer had (i) entered into **【**a memorandum of
38 agreement, or other**】** an oversight document, with the
39 Commissioner of Environmental Protection, after the developer
40 entered into the redevelopment agreement, for the remediation of
41 contamination located on the site of the redevelopment project
42 pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29) and the
43 developer is in compliance with the **【**memorandum of agreement**】**
44 oversight document, or (ii) complied with the requirements set forth
45 in subsection b. of section 30 of P.L.2009, c.60 (C.58:10B-1.3); and

1 (3) the costs of the remediation were actually and reasonably
2 incurred. In making this finding the director may consult with the
3 Department of Environmental Protection.

4 c. When filing an application for certification for a
5 reimbursement pursuant to this section, the developer shall submit
6 to the director a certification of the total remediation costs incurred
7 by the developer for the remediation of the subject property located
8 at the site of the redevelopment project as provided in the
9 redevelopment agreement, information concerning the occupancy
10 rate of the buildings or other work areas located on the property
11 subject to the redevelopment agreement, and such other information
12 as the director deems necessary in order to make the certifications
13 and findings pursuant to this section.

14 (cf: P.L.2009, c.60, s.53)

15
16 16. Section 37 of P.L.1997, c.278 (C.58:10B-29) is amended to
17 read as follows:

18 37. a. To qualify for the certification of reimbursement of the
19 remediation costs authorized pursuant to section 36 of
20 P.L.1997, c.278 (C.58:10B-28), a developer shall: (1) enter into **[a**
21 memorandum of agreement, or other] an oversight document with
22 the Commissioner of Environmental Protection; or (2) comply with
23 the requirements set forth in subsection b. of section 30 of
24 P.L.2009, c.60 (C.58:10B-1.3), for the remediation of the site of the
25 redevelopment project.

26 b. Under the **[memorandum of agreement, or other]** oversight
27 document, the developer shall agree to perform and complete any
28 remediation activity as may be required by the Department of
29 Environmental Protection to ensure the remediation is conducted
30 pursuant to the regulations adopted by the Department of
31 Environmental Protection pursuant to P.L.1993, c.139 (C.58:10B-
32 1 et al.).

33 c. After the developer has entered into **[a memorandum of**
34 agreement, or other] an oversight document with the Commissioner
35 of Environmental Protection, or after the developer has notified the
36 Department of Environmental Protection of the name and license
37 information of the licensed site remediation professional who has
38 been **[hired]** retained to perform the remediation as required
39 pursuant to subsection b. of section 30 of P.L.2009, c.60 (C.58:10B-
40 1.3), the commissioner shall submit a copy thereof to the developer,
41 the clerk of the municipality in which the subject property is
42 located, the Division of Business Assistance, Marketing and
43 International Trade in the New Jersey Economic Development
44 Authority, and the director.

45 (cf: P.L.2009, c.60, s.54)

1 17. Section 39 of P.L.1997, c.278 (C.58:10B-31) is amended to
2 read as follows:

3 39. a. The State Treasurer shall reimburse the developer the
4 amount of the remediation costs agreed upon in the redevelopment
5 agreement, and as provided in sections 35 and 36 of P.L.1997, c.278
6 (C.58:10B-27 and C.58:10B-28) upon issuance of the certification
7 by the director pursuant to section 36 of P.L.1997, c.278 (C.58:10B-
8 28). The developer shall be entitled to periodic payments from the
9 fund in an amount, in the frequency, and over the time period as
10 provided in the redevelopment agreement. Notwithstanding any
11 other provision of sections 34 through 39 of P.L.1997, c.278
12 (C.58:10B-26 through C.58:10B-31), the State Treasurer may not
13 reimburse the developer any amount of the remediation costs from
14 the fund until the State Treasurer is satisfied that the anticipated tax
15 revenues from the redevelopment project have been realized by the
16 State in an amount sufficient to pay for the cost of the
17 reimbursements.

18 b. A developer shall submit to the director updated remediation
19 costs actually incurred by the developer for the remediation of the
20 contaminated property located at the site of the redevelopment
21 project as provided in the redevelopment agreement. The
22 reimbursement authorized pursuant to this section shall continue
23 until such time as the aggregate dollar amount of the agreed upon
24 reimbursement. To remain entitled to the reimbursement authorized
25 pursuant to this section, the developer shall perform and complete
26 all remediation activities as may be required pursuant to the
27 **【memorandum of agreement or other】** oversight **【agreement】**
28 **document** entered into with the Commissioner of Environmental
29 Protection pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29)
30 or as may be required by the licensed site remediation professional
31 in order to issue a response action outcome for the site. The
32 Department of Environmental Protection may review the
33 remediation costs incurred by the developer to determine if they are
34 reasonable.

35 Reimbursable remediation costs shall include costs that are
36 incurred in preparing the area of land whereon the contaminated site
37 is located for remediation and may include costs of dynamic
38 compaction of soil necessary for the remediation.

39 (cf: P.L.2009, c.60, s.55)

40

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

43 2. As used in sections 1 through 29 of P.L.2009, c.60
44 (C.58:10C-1 et seq.):

45 "Area of concern" means any location where contaminants are or
46 were known or suspected to have been discharged, generated,
47 manufactured, refined, transported, stored, handled, treated, or
48 disposed, or where contaminants have or may have migrated.

1 "Board" means the Site Remediation Professional Licensing
2 Board established pursuant to section 3 of P.L.2009, c.60
3 (C.58:10C-3).

4 "Certified subsurface evaluator" means a person certified to
5 perform services at the site of an unregulated heating oil tank
6 pursuant to P.L.1991, c.123 (C.58:10A-24.1 et seq.) as a subsurface
7 evaluator.

8 "Contamination" or "contaminant" means any discharged
9 hazardous substance as defined pursuant to section 3 of P.L.1976,
10 c.141 (C.58:10-23.11b), hazardous waste as defined pursuant to
11 section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined
12 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3).

13 "Department" means the Department of Environmental
14 Protection.

15 "Discharge" means any intentional or unintentional action or
16 omission resulting in the releasing, spilling, leaking, pumping,
17 pouring, emitting, emptying or dumping of hazardous substances
18 into the waters or onto the lands of the State, or into waters outside
19 the jurisdiction of the State when damage may result to the lands,
20 waters or natural resources within the jurisdiction of the State.

21 "Engineering controls" means any mechanism to contain or
22 stabilize contamination or ensure the effectiveness of a remedial
23 action. Engineering controls may include, without limitation, caps,
24 covers, dikes, trenches, leachate collection systems, signs, fences
25 and physical access controls.

26 "Environmental crime" means any criminal violation of one of
27 the following State laws: R.S.12:5-1 et seq.; P.L.1975, c.232
28 (C.13:1D-29 et al.); the "Solid Waste Management Act," P.L.1970,
29 c.39 (C.13:1E-1 et seq.); section 17 of P.L.1975, c.326 (C.13:1E-
30 26); the "Comprehensive Regulated Medical Waste Management
31 Act," sections 1 **【though】** through 25 of P.L.1989, c.34 (C.13:1E-
32 48.1 et seq.); P.L.1989, c.151 (C.13:1E-99.21a et al.); the "New
33 Jersey Statewide Mandatory Source Separation and Recycling Act,"
34 P.L.1987, c.102 (C.13:1E-99.11 et al.); the "Pesticide Control Act
35 of 1971," P.L.1971, c.176 (C.13:1F-1 et seq.); the "Industrial Site
36 Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.); the "Toxic
37 Catastrophe Prevention Act," P.L.1985, c.403 (C.13:1K-19 et seq.);
38 "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.);
39 the "Freshwater Wetlands Protection Act," P.L.1987, c.156
40 (C.13:9B-1 et al.); the "Coastal Area Facility Review Act,"
41 P.L.1973, c.185 (C.13:19-1 et seq.); the "Air Pollution Control Act
42 (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.); the "Water Supply
43 Management Act," P.L.1981, c.262 (C.58:1A-1 et al.); P.L.1947,
44 c.377 (C.58:4A-5 et seq.); the "Spill Compensation and Control
45 Act," P.L.1976, c.141 (C.58:10-23.11 et seq.); the "Water Pollution
46 Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.); P.L.1986, c.102
47 (C.58:10A-21 et seq.); the "Safe Drinking Water Act,"

1 P.L.1977, c.224 (C.58:12A-1 et al.); the "Flood Hazard Area
2 Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.).

3 "Feasibility study" means a study to develop and evaluate
4 options for remedial action using data gathered during the remedial
5 investigation to develop the objectives of the remedial action, and
6 to develop possible remedial action alternatives, to evaluate those
7 alternatives and create a list of feasible alternatives, and to analyze
8 the engineering, scientific, institutional, human health,
9 environmental, and cost of each selected alternative.

10 "Hazardous substance" means the "environmental hazardous
11 substances" on the environmental hazardous substance list adopted
12 by the department pursuant to section 4 of P.L.1983, c.315
13 (C.34:5A-4); such elements and compounds, including petroleum
14 products, which are defined as such by the department, after public
15 hearing, and which shall be consistent to the maximum extent
16 possible with, and which shall include, the list of hazardous
17 substances adopted by the federal Environmental Protection Agency
18 pursuant to section 311 of the Federal Water Pollution Control Act
19 Amendments of 1972, Pub. L.92-500, as amended by the Clean
20 Water Act of 1977, Pub. L.95-217 (33 U.S.C. s.1251 et seq.); the
21 list of toxic pollutants designated by Congress or the federal
22 Environmental Protection Agency pursuant to section 307 of that
23 act; and the list of hazardous substances adopted by the federal
24 Environmental Protection Agency pursuant to section 101 of the
25 "Comprehensive Environmental Response, Compensation and
26 Liability Act of 1980," Pub. L.96-510 (42 U.S.C. s.9601 et seq.);
27 provided, however, that sewage and sewage sludge shall not be
28 considered as hazardous substances for the purposes of P.L.1976,
29 c.141 (C.58:10-23.11 et seq.).

30 "Immediate environmental concern" means **【a condition at a**
31 **contaminated site where there is】**: (1) confirmed contamination in a
32 well used for potable purposes at concentrations **【at or】** above the
33 ground water remediation standards; (2) confirmed contamination
34 that has migrated into **【an occupied】** a structure currently used or
35 able to be used for human occupancy or a confined space producing
36 a toxic or harmful atmosphere resulting in an unacceptable human
37 health exposure, or producing an oxygen-deficient atmosphere, or
38 resulting in demonstrated physical damage to essential underground
39 services; (3) confirmed contamination at the site of a nature that
40 either dermal contact, ingestion, or inhalation of the contamination
41 could result in an acute human health exposure; or (4) any other
42 **【condition】** confirmed contamination that poses an immediate
43 threat to the environment or to the public health and safety.

44 "Institutional controls" means a mechanism used to limit human
45 activities at or near a contaminated site, or to ensure the
46 effectiveness of the remedial action over time, when contaminants
47 remain at a contaminated site in levels or concentrations above the

1 applicable remediation standard that would allow unrestricted use
2 of that property. Institutional controls may include, without
3 limitation, structure, land, and natural resource use restrictions, well
4 restriction areas, and deed notices.

5 "Licensed site remediation professional" means an individual
6 who is licensed by the board pursuant to section 7 of P.L.2009, c.60
7 (C.58:10C-7) or the department pursuant to section 12 of P.L.2009,
8 c.60 (C.58:10C-12).

9 "Limited restricted use remedial action" means any remedial
10 action that requires the continued use of institutional controls but
11 does not require the use of an engineering control.

12 "Person" means an individual, public or private corporation,
13 company, association, society, firm, partnership, joint stock
14 company, the State, and any of its political subdivisions or agents.

15 "Person responsible for conducting the remediation" means (1)
16 any person who executes or is otherwise subject to an oversight
17 document to remediate a contaminated site, (2) the owner or
18 operator of an industrial establishment subject to P.L.1983, c.330
19 (C.13:1K-6 et al.), for the remediation of a discharge, (3) the owner
20 or operator of an underground storage tank subject to P.L.1986,
21 c.102 (C.58:10A-21 et seq.), for the remediation of a discharge, (4)
22 any other person who discharges a hazardous substance or is in any
23 way responsible for a hazardous substance, pursuant to section 8 of
24 P.L.1976, c.141 (C.58:10-23.11g), that was discharged at a
25 contaminated site, or (5) any other person who is remediating a site.

26 "Preliminary assessment" means the first phase in the process of
27 identifying areas of concern and determining whether contaminants
28 are or were present at a site or have migrated or are migrating from
29 a site, and shall include the initial search for and evaluation of,
30 existing site specific operational and environmental information,
31 both current and historic, to determine if further investigation
32 concerning the documented, alleged, suspected or latent discharge
33 of any contaminant is required. The evaluation of historic
34 information shall be conducted from 1932 to the present, except that
35 the department may require the search for and evaluation of
36 additional information relating to ownership and use of the site
37 prior to 1932 if such information is available through diligent
38 inquiry of the public records.

39 "Receptor evaluation" means an evaluation of the potential
40 impact of contamination on humans and environmentally sensitive
41 natural resources.

42 "Remedial action" means those actions taken at a site or offsite if
43 a contaminant has migrated or is migrating therefrom, as may be
44 required by the department, including the removal, treatment,
45 containment, transportation, securing, or other engineering or
46 treatment measures, whether to an unrestricted use or otherwise,
47 designed to ensure that any discharged contaminant at the site or
48 that has migrated or is migrating from the site, is remediated in

1 compliance with the applicable health risk or environmental
2 standards.

3 "Remedial action workplan" means a plan for the remedial action
4 to be undertaken at a site, or at any area to which a discharge
5 originating at a site is migrating or has migrated; a description of
6 the remedial action to be used to remediate a site; a time schedule
7 and cost estimate of the implementation of the remedial action; and
8 any other information the department deems necessary.

9 "Remedial investigation" means a process to determine the
10 nature and extent of a discharge of a contaminant at a site or a
11 discharge of a contaminant that has migrated or is migrating from
12 the site and the problems presented by a discharge, and may include
13 data collected, site characterization, sampling, monitoring, and the
14 gathering of any other sufficient and relevant information necessary
15 to determine the necessity for remedial action and to support the
16 evaluation of remedial actions if necessary.

17 "Remediation" or "remediate" means all **【necessary】** actions to
18 investigate **【and】** , clean up , or respond to any known, suspected,
19 or threatened discharge of contaminants, including **【, as necessary,】**
20 the preliminary assessment, site investigation, remedial
21 investigation, and remedial action, or any portion thereof, provided,
22 however, that "remediation" or "remediate" shall not include the
23 payment of compensation for damage to, or loss of, natural
24 resources.

25 "Remediation standards" means the combination of numeric
26 standards that establish a level or concentration, and narrative
27 standards to which contaminants must be treated, removed, or
28 otherwise cleaned for soil, groundwater, or surface water, as
29 provided by the department pursuant to section 35 of P.L.1993,
30 c.139 (C.58:10B-12) in order to meet the health risk or
31 environmental standards.

32 "Response action outcome" means a written determination by a
33 licensed site remediation professional that the contaminated site
34 was remediated in accordance with all applicable statutes and
35 regulations, and based upon an evaluation of the historical use of
36 the site, or of any area of concern at that site, as applicable, and any
37 other investigation or action the department deems necessary, there
38 are no contaminants present at the site, or at any area of concern, at
39 any other site to which a discharge originating at the site has
40 migrated, or that any contaminants present at the site or that have
41 migrated from the site have been remediated in accordance with
42 applicable remediation regulations, and all applicable permits and
43 authorizations have been obtained.

44 "Restricted use remedial action" means any remedial action that
45 requires the continued use of engineering and institutional controls
46 in order to meet the established health risk or environmental
47 standards.

1 “Retained” means hired, individually or through a firm or other
2 person, by or on behalf of a person responsible for conducting
3 remediation, to perform, manage, or supervise remediation or to
4 periodically review and evaluate a remediation performed by other
5 persons.

6 "Site investigation" means the collection and evaluation of data
7 adequate to determine whether or not discharged contaminants exist
8 at a site or have migrated or are migrating from the site at levels in
9 excess of the applicable remediation standards. A site investigation
10 shall be developed based upon the information collected pursuant to
11 the preliminary assessment.

12 "Small business" means a business entity that does not acquire
13 property for development or redevelopment, and that, during the
14 prior three tax years, employed not more than 50 full-time
15 employees or the equivalent thereof, and qualifies as a small
16 business concern within the meaning of the federal "Small Business
17 Act," 15 U.S.C. s.631 et seq.

18 "Temporary license" means a license issued by the department
19 pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12) to conduct
20 business as a licensed site remediation professional in the State.

21 "Unregulated heating oil tank" means any one or combination of
22 tanks, including appurtenant pipes, lines, fixtures, and other related
23 equipment, used to contain an accumulation of heating oil for on-
24 site consumption in a residential building, or those tanks with a
25 capacity of 2,000 gallons or less used to store heating oil for on-site
26 consumption in a nonresidential building, the volume of which,
27 including the volume of the appurtenant pipes, lines, fixtures and
28 other related equipment, is 10 **【%】** percent or more below the
29 ground.

30 "Waters" means the ocean and its estuaries to the seaward limit
31 of the State's jurisdiction, all springs, streams and bodies of surface
32 or groundwater, whether natural or artificial, within the boundaries
33 of the State.

34 (cf: P.L.2009, c.60, s.2)

35

36 19. Section 7 of P.L.2009, c.60 (C.58:10C-7) is amended to read
37 as follows:

38 7. a. The board shall establish a licensing program and
39 licensing requirements for site remediation professionals, and shall
40 oversee their licensing and performance.

41 b. The board shall establish standards for education, training
42 and experience that shall be required of any person who applies for
43 a license or a license renewal. The board shall conduct
44 examinations to certify that an applicant possesses sufficient
45 knowledge of the State laws, rules and regulations, standards and
46 requirements applicable to site remediation and that the applicant is
47 qualified to obtain a license or a license renewal. The board shall
48 also adopt standards for the professional conduct of licensed site

1 remediation professionals pursuant to the provisions of section 16
2 of P.L.2009, c.60 (C.58:10C-16). The board shall require an
3 applicant to submit references to ensure that the applicant meets the
4 standards and requirements established for training, experience and
5 professional conduct by licensed site remediation professionals. No
6 person may take the licensing examination until the board
7 determines that the applicant meets the standards for education,
8 training and experience.

9 c. An application for a license shall be made in a manner and
10 on such forms as may be prescribed by the board. The filing of an
11 application shall be accompanied by an application fee that shall
12 cover the costs of processing the application and developing and
13 conducting the examinations. The board may also charge an annual
14 license fee that shall cover the costs of the licensing program.

15 d. An applicant for a site remediation professional license shall
16 demonstrate to the board that the applicant:

17 (1) holds a bachelor's degree or higher in natural, chemical or
18 physical science, or an engineering degree in a discipline related to
19 site remediation, from an accredited institution of higher education,
20 or has been issued a temporary license to remediate discharges from
21 underground storage tanks only pursuant to subsection d. of section
22 13 of P.L.2009, c.60 (C.58:10C-13) and meets the other
23 requirements established in this subsection and in subsection f. of
24 this section;

25 (2) has eight years of full-time professional experience, as
26 described in subsection e. of this section, in the field of site
27 remediation, of which five years shall have occurred in New Jersey
28 and at least three years shall have occurred in New Jersey
29 **【immediately】** within the five years prior to submission of the
30 application;

31 (3) has a minimum of 5,000 hours of relevant professional
32 experience within the State over the five years immediately prior to
33 submission of the application that is of a professional grade and
34 character that indicates the applicant is competent to issue a
35 response action outcome;

36 (4) has attended and completed the minimum environmental
37 health and safety education and training provided pursuant to 29
38 C.F.R. Section 1910.120 no more than one year prior to submission
39 of an application for a license pursuant to this section;

40 (5) has attended and completed a course approved by the
41 department on the State's rules and regulations concerning the
42 technical requirements for site remediation no more than three years
43 prior to submission of the application;

44 (6) has not been convicted of, or plead guilty to, an
45 environmental crime, any similar or related criminal offense under
46 federal or state law, or any crime involving fraud, breach of trust,
47 theft by deception, forgery , or any offense that would qualify the
48 person for registration pursuant to section 2 of P.L.1994, c.133

1 (C.2C:7-2), or any other crime or offense involving moral turpitude,
2 or any similar or related offense under federal or state law . For the
3 purposes of this section, a conviction or plea of guilty shall include
4 a non vult, nolo contendere, no contest, or finding of guilt by a
5 judge or jury; and

6 (7) has not had a professional license or certification revoked by
7 any state licensing board or any other professional licensing agency
8 within the previous 10 years , and has not surrendered a
9 professional license or certification in response to a disciplinary
10 investigation within the previous 10 years.

11 e. For the purposes of this section, "full-time professional
12 experience" includes experience in which the applicant is required
13 to apply scientific or engineering principles to contaminated site
14 remediation where the resulting conclusions form the basis for
15 reports, studies or other documents connected with the remediation
16 of a contaminated site. The board may consider the applicant's
17 work activities, field of practice, duration of employment, and work
18 products prepared in determining the credit to be allowed for
19 professional experience. The board may allow applicants with
20 relevant advanced degrees up to two years of credit for professional
21 experience, of which one year of credit may be awarded for
22 applicants who have earned a master's degree in a relevant field of
23 study and up to two years of credit may be awarded for applicants
24 who have earned a doctorate degree in a relevant field of study.

25 f. The board shall authorize an applicant who has been issued a
26 temporary license pursuant to subsection d. of section 13 of
27 P.L.2009, c.60 (C.58:10C-13), who meets all other requirements
28 established pursuant to this section but does not hold a bachelor's
29 degree from an accredited institution of higher education to take the
30 licensing examination to qualify for a license pursuant to this
31 section. An applicant who does not satisfactorily complete the
32 examination authorized pursuant to this subsection shall not be
33 authorized to reapply for a license.

34 g. No person may obtain a license unless that person meets the
35 standards established for education, training and experience
36 required in subsection b. of this section, satisfactorily passes the
37 examination, and satisfies any other requirements established by the
38 board to ensure that licensed site remediation professionals meet the
39 requirements established pursuant to this section.

40 (cf: P.L.2009, c.60, s.7)

41

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

44 11. a. No person shall be, act as, advertise as, or hold himself
45 out to be, or represent himself as being, a licensed site remediation
46 professional unless that person has been issued a valid license
47 pursuant to P.L.2009, c.60 (C.58:10C-1 et al.).

1 b. Except as provided in subsection d. of section 30 of
2 P.L.2009, c.60 (C.58:10B-1.3), a person who is not a licensed site
3 remediation professional shall not perform remediation unless the
4 remediation is managed, supervised, or periodically reviewed and
5 evaluated by a licensed site remediation professional.

6 (cf: P.L.2009, c.60, s.11)

7
8 21. Section 14 of P.L.2009, c.60 (C.58:10C-14) is amended to
9 read as follows:

10 14. a. For any site for which a licensed site remediation
11 professional is required to be **[hired]** retained pursuant to the
12 provisions of section 30 of P.L.2009, c.60 (C.58:10B-1.3), the
13 person responsible for conducting the remediation shall certify all
14 documents submitted to the department concerning the remediation
15 of the contaminated site. The licensed site remediation professional
16 shall certify that the work was performed, the licensed site
17 remediation professional managed, supervised, or performed the
18 work that is the basis of the submission, and that the work and the
19 submitted documents are consistent with all applicable remediation
20 requirements adopted by the department.

21 b. A licensed site remediation professional shall certify
22 electronic submissions made to the department concerning the
23 remediation of a contaminated site. The licensed site remediation
24 professional shall attest that no other person is authorized or able to
25 use any password, encryption method, or electronic signature
26 provided to the licensed site remediation professional by the board
27 or the department.

28 c. The licensed site remediation professional shall employ the
29 following remediation requirements in providing professional
30 services for the remediation of contaminated sites:

31 (1) The licensed site remediation professional shall make each
32 decision concerning a contaminated site in order to meet the
33 following standards:

34 (a) health risk and environmental standards established pursuant
35 to section 35 of P.L.1993, c.139 (C.58:10B-12);

36 (b) remediation standards adopted by the department pursuant to
37 section 35 of P.L.1993, c.139 (C.58:10B-12);

38 (c) maximum contaminant levels for building interiors adopted
39 by the Department of Health and Senior Services pursuant to
40 section 1 of P.L.2007, c.1 (C.52:27D-130.4) as applicable; and

41 (d) any other applicable standards adopted pursuant to law.

42 (2) The licensed site remediation professional shall apply the
43 following regulations:

44 (a) rules and regulations adopted by the Site Remediation
45 Professional Licensing Board pursuant to section 6 of P.L.2009,
46 c.60 (C.58:10C-6);

47 (b) technical standards for site remediation adopted by the
48 department pursuant to P.L.1993, c.139 (C.58:10B-1 et al.);

1 **[(b)]** (c) mandatory remediation timeframes and expedited site
2 specific timeframes adopted by the department pursuant to section
3 28 of P.L.2009, c.60 (C.58:10C-28); **[and]**

4 **[(c)]** (d) presumptive remedies adopted by the department
5 pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12); and

6 (e) any other applicable rules and regulations concerning the
7 remediation.

8 (3) The licensed site remediation professional shall apply any
9 available and appropriate technical guidelines concerning site
10 remediation as issued by the department. The department shall
11 provide interested parties the opportunity to participate in the
12 development and review of technical guidelines issued for the
13 remediation of contaminated sites.

14 (4) When there is no specific requirement provided by the
15 technical standards for site remediation adopted by the department,
16 and guidelines issued by the department are not appropriate or
17 necessary, in the professional judgment of the licensed site
18 remediation professional, to meet the remediation requirements
19 listed in paragraph (1) of this subsection, the licensed site
20 remediation professional may use the following additional
21 guidelines to make decisions regarding a remediation, and shall set
22 forth justification , including, if applicable, the scientific, technical,
23 or other justification, for such use, in the relevant submittal to the
24 department:

25 (a) relevant guidance from the federal Environmental Protection
26 Agency or other states; and

27 (b) other relevant, applicable, and appropriate methods and
28 practices that ensure the protection of the public health and safety,
29 and of the environment.

30 d. Upon completion of the remediation, the licensed site
31 remediation professional shall issue a response action outcome to
32 the person responsible for conducting the remediation when, in the
33 opinion of the licensed site remediation professional, the site has
34 been remediated so that it is in compliance with all applicable
35 statutes, rules and regulations protective of public health and safety
36 and the environment. The licensed site remediation professional
37 shall file the response action outcome with the department when it
38 is issued to the person responsible for conducting the remediation.

39 (cf: P.L.2009, c.60, s.14)

40
41 22. Section 16 of P.L.2009, c.60 (C.58:10C-16) is amended to
42 read as follows:

43 16. a. A licensed site remediation professional's highest priority
44 in the performance of professional services shall be the protection
45 of public health and safety and the environment.

46 b. A licensed site remediation professional shall exercise
47 reasonable care and diligence, and shall apply the knowledge and
48 skill ordinarily exercised by licensed site remediation professionals

1 in good standing practicing in the State at the time the services are
2 performed.

3 c. A licensed site remediation professional shall not provide
4 professional services outside the areas of professional competency,
5 unless the licensed site remediation professional has relied upon the
6 technical assistance of another professional whom the licensed site
7 remediation professional has reasonably determined to be qualified
8 by education, training, and experience. A licensed site remediation
9 professional shall not perform services that constitute the practice
10 of professional engineering unless the licensed site remediation
11 professional is a professional engineer licensed in the State.

12 d. A licensed site remediation professional retained by a person
13 responsible for conducting the remediation shall notify the
14 department within 15 calendar days after being retained. In
15 addition, a licensed site remediation professional shall notify the
16 department within 15 calendar days after being released from
17 responsibility for a remediation if the release occurs prior to
18 issuance of the response action outcome for the site by the licensed
19 site remediation professional.

20 e. A licensed site remediation professional and the person
21 responsible for conducting the remediation shall correct any
22 deficiency the department identifies in a document submitted
23 concerning a remediation. The deficiency shall be corrected in
24 accordance with timeframes established by the department.

25 f. A licensed site remediation professional may complete any
26 phase of remediation based on remediation work performed under
27 the supervision of another licensed site remediation professional,
28 provided that the licensed site remediation professional: (1) reviews
29 all available documentation on which he relies; (2) conducts a site
30 visit to observe current conditions and to verify the status of as
31 much of the work as is reasonably observable; and (3) concludes, in
32 the exercise of independent professional judgment, that there is
33 sufficient information upon which to complete any additional phase
34 of remediation and prepare workplans and reports related thereto.

35 g. A licensed site remediation professional who has taken over
36 the responsibility for the remediation of a contaminated site from
37 another licensed site remediation professional shall correct all
38 deficiencies in a document submitted by the previous licensed site
39 remediation professional identified by the department in accordance
40 with timeframes established by the department.

41 h. A licensed site remediation professional shall not certify any
42 document submitted to the department unless the licensed site
43 remediation professional : (1) believes that the information in the
44 submission is true, accurate, and complete; and (2) has managed,
45 supervised or performed the work that is the basis of the
46 submission, or has periodically reviewed and evaluated the work
47 performed by other persons that forms the basis for the information
48 in the submission, or has completed the work of another licensed

1 site remediation professional and has concluded such work is
2 reliable pursuant to subsection f. of this section. A licensed site
3 remediation professional shall not knowingly make any false
4 statement, representation, or certification in any document or
5 information required to be submitted to the board or the department.

6 i. A licensed site remediation professional shall exercise
7 independent professional judgment, comply with the requirements
8 and procedures set forth in the provisions of P.L.2009, c.60
9 (C.58:10C-1 et al.), make a good faith and reasonable effort to
10 identify and obtain the relevant and material facts, data, reports and
11 other information evidencing conditions at a contaminated site for
12 which he is **【responsible】** retained that is in possession of the
13 owner of the property, or that is otherwise available, and identify
14 and obtain whatever additional data and other information as the
15 licensed site remediation professional deems necessary. The
16 licensed site remediation professional shall disclose and explain in
17 any document submitted to the department any facts, data,
18 information, qualifications, or limitations known by the licensed
19 site remediation professional that are not supportive of the
20 conclusions reached in the document.

21 j. If a licensed site remediation professional **【identifies】**
22 obtains specific knowledge of a condition **【at a contaminated site】**
23 that in his independent professional judgment is an immediate
24 environmental concern, then the licensed site remediation
25 professional shall: (1) immediately verbally advise , and confirm in
26 writing to, the person responsible for conducting the remediation of
27 that person's duty to notify the department of the condition ,
28 provided the person is known to the licensed site remediation
29 professional; and (2) immediately notify the department of the
30 condition by calling the department's telephone hotline.

31 k. If a licensed site remediation professional retained to
32 perform remediation at a site or any portion of a site obtains
33 specific knowledge that a discharge has occurred **【on a**
34 **contaminated site for which he is responsible】** at any location on
35 the site, the licensed site remediation professional shall: (1) notify
36 the person responsible for conducting the remediation of the
37 existence of the discharge; and (2) notify the department of the
38 discharge by calling the department's telephone hotline. The person
39 responsible for conducting the remediation shall also be responsible
40 for notifying the department of the existence of the discharge. The
41 provisions of this subsection shall not apply to a discharge that may
42 be a result of the existence of historic fill material.

43 l. If a licensed site remediation professional learns of an action
44 or decision by a client that results in a deviation from the remedial
45 action workplan or other report concerning the remediation
46 developed by the licensed site remediation professional, the

1 licensed site remediation professional shall promptly notify the
2 client and the department, in writing, of the deviation.

3 m. A licensed site remediation professional shall not reveal
4 information obtained in a professional capacity, except as may be
5 authorized or required by law, without the prior consent of the
6 client, if the client has notified the licensed site remediation
7 professional, in writing, that the information is confidential. The
8 provisions of this subsection shall not apply to information that is in
9 the public domain.

10 n. A licensed site remediation professional who learns of
11 material facts, data or other information subsequent to the
12 completion of a report concerning a phase of remediation, which
13 would result in a report with material differences from the report
14 submitted, shall promptly notify the client and the department in
15 writing of those facts, data, information, and circumstances.

16 o. A licensed site remediation professional who succeeds
17 another licensed site remediation professional before the issuance of
18 a response action outcome, and who learns of material facts, data or
19 other information concerning a phase of the remediation for which a
20 report was submitted to the department and the material facts, data
21 or other information were not disclosed in the report, shall promptly
22 notify the client and the department in writing of those facts, data,
23 information, and circumstances.

24 p. A licensed site remediation professional shall not allow the
25 use of his name by a person, and shall not associate with a person in
26 a business venture, if the licensed site remediation professional
27 knows or should know that the person engages in fraudulent or
28 dishonest business or professional practices regarding the
29 professional responsibilities of a licensed site remediation
30 professional.

31 q. A licensed site remediation professional shall cooperate in
32 an investigation by the board or the department by promptly
33 furnishing, in response to formal requests, orders or subpoenas, any
34 information the board or the department, or persons duly authorized
35 by the board or the department, deems necessary to perform its
36 duties. In an investigation by the board of a license application or a
37 license suspension or revocation, a licensed site remediation
38 professional shall not:

39 (1) knowingly make a false statement of material fact;

40 (2) fail to disclose a fact necessary to correct a material
41 misunderstanding known by the licensed site remediation
42 professional to have arisen in the matter;

43 (3) knowingly and materially falsify, tamper with, alter, conceal,
44 or destroy any document, data record, remedial system, or
45 monitoring device that is relevant to the investigation, without
46 obtaining the prior approval of the department; or

1 (4) knowingly allow or tolerate any employee, agent, or
2 contractor of the licensed site remediation professional to engage in
3 any of the foregoing activities.

4 r. A licensed site remediation professional shall be jointly
5 responsible for a violation of any provision of this section
6 committed by another licensed site remediation professional whose
7 work he supervises or reviews if:

8 (1) the licensed site remediation professional orders, directs, or
9 agrees to the provision of professional services conducted or
10 prepared by another licensed site remediation professional under his
11 supervision;

12 (2) the licensed site remediation professional knows that the
13 professional services constitute a violation of this section; and

14 (3) the licensed site remediation professional fails to take
15 reasonable steps to avoid or mitigate the violation.

16 s. A licensed site remediation professional shall comply with
17 all conditions imposed by the board as a result of a license
18 suspension or other disciplinary proceeding conducted by the board.

19 t. A licensed site remediation professional shall inform a client
20 or prospective client of any relevant and material assumptions,
21 limitations, or qualifications underlying their communication.
22 Evidence that a licensed site remediation professional has provided
23 the client or prospective client with timely written documentation of
24 these assumptions, limitations, or qualifications shall be deemed by
25 the board or the department to have satisfied the requirements of
26 this subsection.

27 u. A licensed site remediation professional shall not state or
28 imply, as an inducement or a threat to a client or prospective client,
29 an ability to improperly influence a government agency or official.

30 v. In any description of qualifications, experience, or ability to
31 provide services, a licensed site remediation professional shall not
32 knowingly:

33 (1) make a material misrepresentation of fact;

34 (2) omit a fact when the omission results in a materially
35 misleading description; or

36 (3) make a statement that, in the opinion of the board, is likely
37 to create an unjustified expectation about results the licensed site
38 remediation professional may achieve, or state or imply that the
39 licensed site remediation professional may achieve results by means
40 that violate the provisions of applicable environmental statutes,
41 rules or regulations, including the provisions of P.L.2009, c.60
42 (C.58:10C-1 et al.).

43 w. A licensed site remediation professional shall provide any
44 notification to the board or the department required pursuant to this
45 section, even if the licensed site remediation professional is
46 discharged by the client prior to doing so.

47 x. A licensed site remediation professional shall not accept
48 compensation, financial or otherwise, for professional services

1 pertaining to a contaminated site from two or more persons whose
2 interests are adverse or conflicting unless the circumstances are
3 fully disclosed and agreed to by all clients engaging the licensed
4 site remediation professional.

5 y. A licensed site remediation professional shall not be a
6 salaried employee of the person responsible for conducting the
7 remediation, or any related entities, for which the licensed site
8 remediation professional is providing remediation services.

9 z. A licensed site remediation professional shall not allow any
10 ownership interest, compensation, or promise of continued
11 employment, of the licensed site remediation professional or any
12 immediate family member, to affect the professional services
13 provided by the licensed site remediation professional.

14 aa. Except as provided in subsection d. of section 30 of
15 P.L.2009, c.60 (C.58:10B-1.3), a licensed site remediation
16 professional shall not facilitate, aid, assist, or cooperate with any
17 person in retaining or arranging for the retention of any person who
18 is not a licensed site remediation professional to perform
19 remediation, unless the remediation is managed, supervised, or
20 periodically reviewed and evaluated by a licensed site remediation
21 professional retained for that purpose, and the department has been
22 notified of the retention.

23 bb. Except as provided in subsection d. of section 30 of
24 P.L.2009, c.60 (C.58:10B-1.3), a licensed site remediation
25 professional shall not manage, supervise, perform, engage, or
26 participate in remediation unless:

27 (1) the licensed site remediation professional has been retained
28 by a person responsible for conducting the remediation, and the
29 department has been notified of the retention; or

30 (2) the remediation is being managed, supervised, or performed
31 by another licensed site remediation professional retained by the
32 person responsible for conducting the remediation, and the
33 department has been notified of the retention of the other licensed
34 site remediation professional.

35 (cf: P.L.2009, c.60, s.16)

36

37 23. (New section) If a licensed site remediation professional
38 obtains specific knowledge of a condition in an unoccupied
39 structure, that, in his independent professional judgment, constitutes
40 an immediate environmental concern, and the person responsible
41 for conducting the remediation provides to the department a written
42 certification from the property owner that the building (i) is not
43 occupied, (ii) will not be occupied, and (iii) will be demolished,
44 then no further remediation relative to the immediate environmental
45 concern in the unoccupied structure shall be required, provided the
46 conditions of the certification are maintained. Nothing in this
47 section shall be construed to limit the responsibility of a license site
48 remediation professional to comply with the notification

1 requirements of subsection j. of section 16 of P.L.2009, c.60
2 (C.58:10C-16), or the responsibility of a person to report a
3 discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.). The
4 department shall prescribe the form and manner of the written
5 certification pursuant to this section.

6

7 24. Section 19 of P.L.2009, c.60 (C.58:10C-19) is amended to
8 read as follows:

9 19. a. The department shall establish a permit program to
10 regulate the operation, maintenance and inspection of engineering
11 or institutional controls and related systems installed as part of a
12 remedial action of a contaminated site. The department may require
13 periodic monitoring, inspections, and maintenance by the person
14 responsible for the engineering or institutional controls and the
15 submission of certifications regarding those activities. The
16 department may issue a permit, permit by rule, or general permit
17 pursuant to this section.

18 b. The department may require any person who is responsible
19 for the monitoring, operation, and maintenance of an engineering or
20 institutional control implemented before the date of enactment of
21 P.L.2009, c.60 (C.58:10C-1 et al.), and any person required to
22 submit a certification on a biennial basis pursuant to section 6 of
23 P.L.1997, c.278 (C.58:10B-13.1), that engineering or institutional
24 controls and related systems are properly maintained and that
25 periodic monitoring for compliance is conducted, to obtain a permit
26 pursuant to this section.

27 c. (1) Except as provided in paragraph (2) of this subsection,
28 the department may require that a person issued a permit pursuant
29 to this section maintain insurance, financial assurance or another
30 financial instrument to guarantee that funding is available to
31 operate, maintain, and inspect the engineering controls installed as
32 part of a remedial action of a contaminated site for the period that
33 such controls are required. The person required to maintain the
34 funding source pursuant to this section may petition the department
35 on an annual basis to decrease the amount of funding required to be
36 maintained.

37 (2) A government entity, a person who is not otherwise liable
38 for cleanup and removal costs pursuant to P.L.1976, c.141
39 (C.58:10-23.11 et seq.) who purchases contaminated property
40 before the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.)
41 and undertakes a remediation of the property, a person who
42 undertakes a remediation at their primary or secondary residence,
43 the owner or operator of a child care center licensed pursuant to
44 P.L.1983, c.492 (C.30:5B-1 et seq.) who performs a remediation at
45 the licensed child care center, the person responsible for conducting
46 a remediation at a public school or private school as defined in
47 N.J.S.18A:1-1, or a charter school established pursuant to P.L.1995,
48 c.426 (C.18A:36A-1 et seq.), or the owner or operator of a small

1 business responsible for performing a remediation at their business
2 property, shall not be required to establish or maintain a funding
3 source pursuant to this section, for the operation, maintenance, and
4 inspection of the engineering controls installed as part of a remedial
5 action of a contaminated site.

6 d. A person who is issued a permit pursuant to this section
7 shall retain a licensed site remediation professional to manage,
8 supervise, or perform the requirements of the permit for the
9 duration of the permit.

10 e. The department may charge, in accordance with a schedule
11 adopted pursuant to the "Administrative Procedure Act," P.L.1968,
12 c.410 (C.52:14B-1 et seq.), reasonable application fees to cover the
13 costs of processing the application, and reasonable annual fees to
14 cover the costs of the administration and enforcement of the
15 permits.

16 (cf: P.L.2009, c.60, s.19)

17

18 25. Section 20 of P.L.2009, c.60 (C.58:10C-20) is amended to
19 read as follows:

20 20. A licensed site remediation professional shall , for each
21 contaminated site, maintain and preserve all data, documents and
22 information concerning the remediation **【activities at each**
23 **contaminated site】** that the licensed site remediation professional
24 has **【worked on】** prepared or relied upon, including but not limited
25 to, technical records and contractual documents, raw sampling and
26 monitoring data, whether or not the data and information, including
27 technical records and contractual documents, were developed by the
28 licensed site remediation professional or the licensee's divisions,
29 employees, agents, accountants, contractors, or attorneys, that relate
30 in any way to the contamination at the site. **【Three】** An electronic
31 **【copies】** copy of the records shall be submitted to the department at
32 the time the response action outcome is filed with the department.

33 (cf: P.L.2009, c.60, s.20)

34

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

37 27. a. Except as provided in section 1 of P.L.2013, c.283
38 (C. 58:10C-27.1), and this section, the department shall undertake
39 direct oversight of a remediation of a contaminated site under the
40 following conditions:

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

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

8 (3) unless a longer period has been ordered by a court, the
9 person responsible for conducting the remediation has, prior to the
10 date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), failed to
11 complete the remedial investigation of the entire contaminated site
12 10 years after the discovery of a discharge at the site and has failed
13 to complete the remedial investigation of the entire contaminated
14 site within five years after the date of enactment of P.L.2009, c.60
15 (C.58:10C-1 et al.).

16 If a person responsible for conducting a remediation fails to meet
17 the conditions established in paragraph (3) of this subsection, or a
18 requirement established pursuant to subsection a. of section 1 of
19 P.L.2013, c.283 (C.58:10C-27.1), the department shall not
20 undertake direct oversight of the contaminated site if the person
21 demonstrates, and the department finds, that:

22 (1) the person was unable to meet the applicable timeframe
23 because he was unable to enter the contaminated site because he
24 does not own the property, and the person took all appropriate and
25 timely action pursuant to section 40 of P.L.1993, c.139 (C.58:10B-
26 16) prior to the applicable timeframe; or

27 (2) the contaminated site is subject to federal oversight, the
28 person has made timely submissions to the department, and the
29 person was unable to meet the applicable timeframe due to the
30 performance of additional review by the department pursuant to
31 subsection c. of section 21 of P.L. 2009, c. 60 (C.58:10C-21).

32 As used in this subsection, "enforcement action" means an
33 administrative order, a notice of civil administrative penalty, or a
34 court order.

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

37 (1) the contamination at the site includes chromate chemical
38 production waste;

39 (2) the department determines that more than one
40 environmentally sensitive natural resource has been injured by
41 contamination from the site;

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

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

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

1 from an alleged act of malpractice or negligence by an LSRP, to
2 provide each defendant with an affidavit of merit. An affidavit of
3 merit is a sworn statement from an appropriate licensed person
4 stating that there exists a reasonable probability that the care, skill,
5 or knowledge exercised or exhibited in the practice or work that is
6 the subject of the complaint fell outside acceptable professional or
7 occupational standards. If a plaintiff fails to file an affidavit of
8 merit, his case would be dismissed for failure to state a cause of
9 action. The State currently requires an affidavit of merit for suits
10 against various other licensed professionals including doctors,
11 accountants, attorneys, and engineers.

12 The bill would authorize the Superior Court and the municipal
13 courts to impose a civil penalty for a violation of the “Spill
14 Compensation and Control Act,” P.L.1976, c. 141 (C. 58:10-
15 23.11 et seq.), to be assessed in accordance with the “Penalty
16 Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.).

17 The bill makes several changes to laws governing the
18 establishment of remediation funding sources, and when and how
19 those remediation funding sources may be used, dispersed, and
20 released. The bill provides that a person may establish, as a
21 remediation funding source, a surety bond from an entity that is
22 listed as an acceptable surety on federal bonds in United States
23 Treasury Department Circular 570. The bill also establishes
24 requirements for utilizing a surety bond as a remediation funding
25 source.

26 The bill would require the Department of Environmental
27 Protection (DEP) to encourage the use of green and sustainable
28 practices during the remediation of a contaminated site. However,
29 the use of green and sustainable practices would not alter the
30 requirement that the remediation be protective of the public health
31 and safety and of the environment.

32 Current law requires a person responsible for conducting a
33 remediation to provide written notice of the remediation to the
34 municipality and county in which the contaminated site is located
35 prior to initiating the remedial action. The bill would require that
36 such written notice be provided earlier in the site remediation
37 process – prior to the initiation of the remedial investigation. The
38 bill would also expand the types of documents a person responsible
39 for conducting a remediation is required to provide to a
40 municipality or county, upon request.

41 The bill would require a person responsible for conducting a
42 remediation to respond to any inquiries from the public that the
43 person receives or that the DEP receives and forwards to that
44 person. Under the bill, the person’s response must include either:
45 (1) specific information or documents that are responsive to the
46 public inquiry; or (2) a written status report for the remediation in a
47 form and manner as determined by the DEP. A person responsible

1 for conducting a remediation would be permitted to designate an
2 LSRP to respond to public inquiries under the bill.

3 Current law provides that an “immediate environmental concern”
4 includes “confirmed contamination that has migrated into an
5 occupied structure...” The bill would expand the definition to
6 include “confirmed contamination that has migrated into a structure
7 currently used or able to be used for human occupancy...” Under
8 existing law, the DEP has established expedited timeframes to
9 address immediate environmental concerns. However, under the
10 bill, no further remediation relative to an immediate environmental
11 concern that affects an unoccupied structure would be required if a
12 person responsible for conducting the remediation provides to the
13 DEP a written certification from the property owner that the
14 building: (1) is not occupied; (2) will not be occupied; and (3) will
15 be demolished.

16 Under existing law, if an LSRP identifies a condition that, in his
17 independent professional judgment, is an immediate environmental
18 concern, then the LSRP must, among other things, immediately
19 verbally advise the person responsible for conducting the
20 remediation of that person’s duty to notify the DEP. The bill would
21 require an LSRP to notify the person responsible for conducting the
22 remediation, in writing, of the person’s duty to notify the DEP of
23 the condition.

24 The bill provides that, if an LSRP who is retained to perform
25 remediation at a site or any portion of a site obtains specific
26 knowledge that a discharge has occurred at any location on the site,
27 the LSRP must notify the person responsible for conducting the
28 remediation and the DEP.

29 The bill makes certain changes to the licensing requirements for
30 LSRPs. Under current law, an applicant for an LSRP license must
31 demonstrate, among other things, that the applicant has the requisite
32 number of years of full-time professional experience in the field of
33 site remediation, of which five years must have occurred in New
34 Jersey, and at least three years must have occurred in the State
35 immediately prior to submission of the application. The bill would
36 change this requirement to provide that an applicant must have
37 worked at least three years in the State within the five years
38 immediately prior to submission of the application, to account for
39 applicants who may have been absent from work for personal
40 reasons.

41 Current law specifies the crimes and other offenses that
42 disqualify a person from becoming an LSRP. This bill would
43 expand that list to include any criminal offense involving breach of
44 trust, and any offense that would qualify the person for registration
45 on the State’s sex offender registry, or any other crime or offense
46 involving moral turpitude. Under the bill, an applicant for an LSRP
47 license would need to demonstrate that he has not had a
48 professional certification revoked, and has not surrendered a

1 professional license or certification in response to a disciplinary
2 investigation, within the previous 10 years.

3 The bill provides that a person who is not an LSRP may not
4 perform remediation unless the remediation is managed, supervised,
5 or periodically reviewed and evaluated by an LSRP. The bill
6 specifies that an LSRP, when providing professional services for
7 the remediation of a contaminated site, must apply the rules and
8 regulations adopted by the Site Remediation Professional Licensing
9 Board (board), and any other applicable rules and regulations
10 concerning the remediation.

11 The bill specifies that an LSRP may not certify any document
12 submitted to the DEP unless the LSRP believes that the information
13 in the submission is true, accurate, and complete. The bill would
14 also explicitly prohibit an LSRP from knowingly making any false
15 statement, representation, or certification in any document or
16 information required to be submitted to the DEP or the board.

17 The bill provides that an LSRP is prohibited from facilitating,
18 aiding, assisting, or cooperating with any person in retaining or
19 arranging for the retention of any person who is not an LSRP to
20 perform remediation, unless the remediation is managed,
21 supervised, or periodically reviewed and evaluated by an LSRP
22 retained for that purpose, and the DEP has been notified of the
23 retention. Additionally, under the bill, an LSRP would be
24 prohibited from managing, supervising, performing, engaging, or
25 participating in a remediation unless: (1) the LSRP has been
26 retained by a person responsible for conducting the remediation,
27 and the DEP has been notified of the retention; or (2) the
28 remediation is being managed, supervised, or performed by another
29 LSRP retained by the person responsible for conducting the
30 remediation, and the DEP has been notified of the retention of the
31 other LSRP.

32 The bill requires a person who is issued a remedial action permit
33 for the operation, maintenance, and inspection of engineering or
34 institutional controls and related systems installed as part of a
35 remedial action to retain an LSRP to manage, supervise, or perform
36 the requirements of the permit for the duration of the permit.

37 Under the bill, if a person responsible for conducting a
38 remediation fails to meet certain conditions, the DEP would not
39 undertake direct oversight of the contaminated site if the person
40 demonstrates, and the DEP finds, that: (1) the person was unable to
41 meet the applicable timeframe because he was unable to enter the
42 contaminated site because he does not own the property, and the
43 person took all appropriate and timely action to gain access to the
44 site; or (2) the contaminated site is subject to federal oversight, the
45 person has made timely submissions to the DEP, and the person was
46 unable to meet the applicable timeframe due to the performance of
47 additional review by the DEP.

1 The bill provides that, when a contaminated site is subject to
2 direct oversight, the requirements of direct oversight run with the
3 site, regardless of who owns the property, and regardless of whether
4 there is a transfer of ownership of the property.

5 The bill authorizes the DEP to modify the requirements of direct
6 oversight if: (1) the person responsible for conducting the
7 remediation demonstrates financial hardship that prevents the
8 performance of the remediation due to the imposition of direct
9 oversight; or (2) there is a public emergency resulting from a
10 natural disaster, as declared by the State or federal government, that
11 resulted in a delay in meeting the mandatory or expedited site-
12 specific timeframe or other condition that triggered direct oversight.
13 The DEP would also be authorized to modify the requirements of
14 direct oversight for a contaminated site if the DEP makes a written
15 determination that the modification is in the public interest and
16 protective of the public health and safety and the environment. The
17 DEP would be required to publish its written determination,
18 including the reasons for its determination, on the DEP's Internet
19 website, and solicit and consider public comments on the proposed
20 modification.

21 The bill also authorizes the DEP, prior to a change in ownership
22 of a contaminated site, to enter into an administrative consent order
23 with the prospective purchaser of the contaminated site providing
24 for the modification of the requirements of direct oversight. The
25 DEP would be authorized to reinstate the direct oversight
26 requirements that it modifies under the bill if, after the
27 modification, the DEP finds that the person responsible for
28 conducting the remediation failed to comply with any applicable
29 timeframe, administrative consent order, or any law, rule, or
30 regulation concerning site remediation.

31 The bill makes certain changes to the definition of the term
32 "remediation," used in various existing site remediation laws. The
33 bill also adds a definition for the term "retained" in the "Site
34 Remediation Reform Act," P.L.2009, c.60 (C.58:10C-1 et seq.), and
35 makes consistent the use of that term throughout that law.

36 The bill deletes various references in the site remediation laws to
37 the term "memorandum of agreement."