

[Second Reprint]

ASSEMBLY, No. 5293

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MAY 13, 2019

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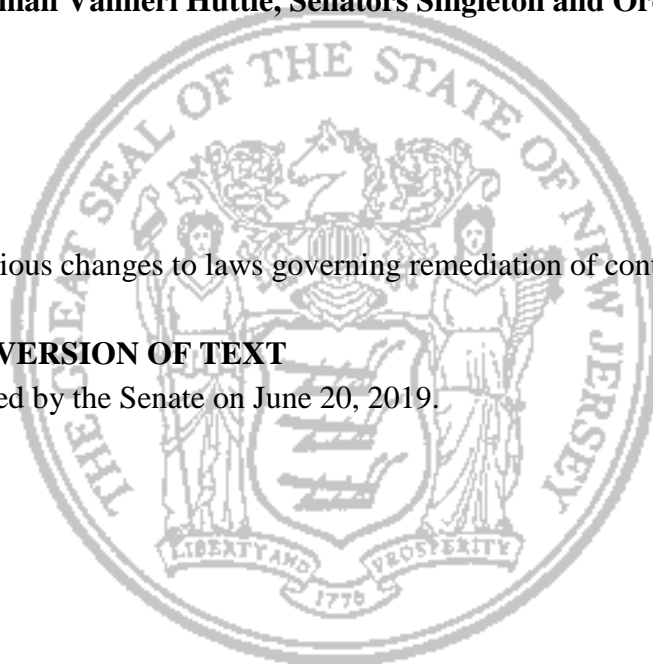
Assemblywoman Vainieri Huttle, Senators Singleton and Oroho

SYNOPSIS

Makes various changes to laws governing remediation of contaminated sites.

CURRENT VERSION OF TEXT

As amended by the Senate on June 20, 2019.



(Sponsorship Updated As Of: 6/25/2019)

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 as
8 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 which
12 a discharge originating at the industrial establishment is migrating or
13 has migrated; a description of the remedial action to be used to
14 remediate the industrial establishment; a time schedule and cost
15 estimate of the implementation of the remedial action; and any other
16 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 percent
23 reduction in the number of employees or a 90 percent reduction in the
24 area of operations of an industrial establishment within any five-year
25 period; provided, however, the department may approve a waiver of
26 the provisions of this paragraph for any owner or operator who, upon
27 application and review, evidences a good faith effort to maintain and
28 expand product output, the number of employees, or area of operations
29 of the affected industrial establishment;

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

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

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

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

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

44 "Transferring ownership or operations" means:

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

Matter underlined thus is new matter

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AEN committee amendments adopted June 10, 2019.

²Senate floor amendments adopted June 20, 2019.

- 1 (1) any transaction or proceeding through which an industrial
2 establishment undergoes a change in ownership;
 - 3 (2) the sale or transfer of more than 50 **【%】** percent of the assets
4 of an industrial establishment within any five-year period, as measured
5 on a constant, annual date-specific basis;
 - 6 (3) the execution of a lease for a period of 99 years or longer for an
7 industrial establishment; or
 - 8 (4) the dissolution of an entity that is an owner or operator or an
9 indirect owner of an industrial establishment, except for any
10 dissolution of an indirect owner of an industrial establishment whose
11 assets would have been unavailable for the remediation of the
12 industrial establishment if the dissolution had not occurred;
- 13 "Change in ownership" means:
- 14 (1) the sale or transfer of the business of an industrial
15 establishment or any of its real property;
 - 16 (2) the sale or transfer of stock in a corporation resulting in a
17 merger or consolidation involving the direct owner or operator or
18 indirect owner of the industrial establishment;
 - 19 (3) the sale or transfer of stock in a corporation, or the transfer of a
20 partnership interest, resulting in a change in the person holding the
21 controlling interest in the direct owner or operator or indirect owner of
22 an industrial establishment;
 - 23 (4) the sale or transfer of title to an industrial establishment or the
24 real property of an industrial establishment by exercising an option to
25 purchase; or
 - 26 (5) the sale or transfer of a partnership interest in a partnership that
27 owns or operates an industrial establishment, that would reduce, by 10
28 **【%】** percent or more, the assets available for remediation of the
29 industrial establishment;
- 30 "Change in ownership" shall not include:
- 31 (1) a corporate reorganization not substantially affecting the
32 ownership of the industrial establishment;
 - 33 (2) a transaction or series of transactions involving the transfer of
34 stock, assets or both, among corporations under common ownership, if
35 the transaction or transactions will not result in the diminution of the
36 net worth of the corporation that directly owns or operates the
37 industrial establishment by more than 10 **【%】** percent, or if an equal or
38 greater amount in assets is available for the remediation of the
39 industrial establishment before and after the transaction or
40 transactions;
 - 41 (3) a transaction or series of transactions involving the transfer of
42 stock, assets or both, resulting in the merger or de facto merger or
43 consolidation of the indirect owner with another entity, or in a change
44 in the person holding the controlling interest of the indirect owner of
45 an industrial establishment, when the indirect owner's assets would
46 have been unavailable for cleanup if the transaction or transactions had
47 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 recorded
5 title of an industrial establishment;
 - 6 (6) a transfer to release a contingent or reversionary interest except
7 for any transfer of a lessor's reversionary interest in leased real
8 property;
 - 9 (7) a transfer of an industrial establishment by devise or intestate
10 succession;
 - 11 (8) the granting or termination of an easement or a license to any
12 portion of an industrial establishment;
 - 13 (9) the sale or transfer of real property pursuant to a condemnation
14 proceeding initiated pursuant to the "Eminent Domain Act of 1971,"
15 P.L.1971, c.361 (C.20:3-1 et seq.);
 - 16 (10) execution, delivery and filing or recording of any mortgage,
17 security interest, collateral assignment or other lien on real or personal
18 property; or
 - 19 (11) any transfer of personal property pursuant to a valid
20 security agreement, collateral assignment or other lien, including, but
21 not limited to, seizure or replevin of such personal property which
22 transfer is for the purpose of implementing the secured party's rights in
23 the personal property which is the collateral;
- 24 "Department" means the Department of Environmental Protection;
- 25 "Hazardous substances" means those elements and compounds,
26 including petroleum products, which are defined as such by the
27 department, after public hearing, and which shall be consistent to the
28 maximum extent possible with, and which shall include, the list of
29 hazardous substances adopted by the Environmental Protection
30 Agency pursuant to Section 311 of the "Federal Water Pollution
31 Control Act Amendments of 1972" (33 U.S.C. s.1321) and the list of
32 toxic pollutants designated by Congress or the Environmental
33 Protection Agency pursuant to Section 307 of that act (33 U.S.C.
34 s.1317); except that sewage and sewage sludge shall not be considered
35 as hazardous substances for the purposes of this act;
- 36 "Hazardous waste" shall have the same meaning as provided in
37 section 1 of P.L.1976, c.99 (C.13:1E-38);
- 38 "Industrial establishment" means any place of business engaged in
39 operations which involve the generation, manufacture, refining,
40 transportation, treatment, storage, handling, or disposal of hazardous
41 substances or hazardous wastes on-site, above or below ground,
42 having a Standard Industrial Classification number within 22-39
43 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard
44 Industrial Classifications Manual prepared by the Office of
45 Management and Budget in the Executive Office of the President of
46 the United States. Those facilities or parts of facilities subject to
47 operational closure and post-closure maintenance requirements
48 pursuant to the "Solid Waste Management Act," P.L.1970, c.39
49 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting

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

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

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

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

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

43 "Direct owner or operator" means any person that directly owns or
44 operates an industrial establishment. A holder of a mortgage or other
45 security interest in the industrial establishment shall not be deemed to
46 be a direct owner or operator of the industrial establishment unless or
47 until it loses its exemption under P.L.1993, c.112 (C.58:10-
48 23.11g4 et al.) or obtains title to the industrial establishment by deed
49 of foreclosure, by other deed, or by court order or other process;

1 "Area of concern" means any location where hazardous substances
2 or hazardous wastes are or were known or suspected to have been
3 discharged, generated, manufactured, refined, transported, stored,
4 handled, treated, or disposed, or where hazardous substances or
5 hazardous wastes have or may have migrated;

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

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

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

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

40 "Remediation" or "remediate" means all **[necessary]** actions to
41 investigate **[and]** , clean up , or respond to any known, suspected, or
42 threatened discharge of hazardous substances or hazardous wastes,
43 including **[, as necessary,]** the preliminary assessment, site
44 investigation, remedial investigation, and remedial action , or any
45 portion thereof ¹, provided, however, that "remediation" or
46 "remediate" shall not include the payment of compensation for damage
47 to, or loss of, natural resources¹;

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

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

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

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

40 "Site investigation" means the collection and evaluation of data
41 adequate to determine whether or not discharged hazardous substances
42 or hazardous wastes exist at the industrial establishment or have
43 migrated or are migrating from the site at levels in excess of the
44 applicable remediation standards. A site investigation shall be
45 developed based upon the information collected pursuant to the
46 preliminary assessment.

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

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

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

5 a. an accountant pursuant to P.L.1997, c.259 (C.45:2B-
6 42 et seq.);

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

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

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

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

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

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

14 h. a chiropractor pursuant to P.L.1989, c.153 (C.45:9-
15 41.17 et seq.);

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

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

20 k. a physical therapist pursuant to P.L.1983, c.296 (C.45:9-
21 37.11 et seq.);

22 l. a land surveyor pursuant to P.L.1938, c.342 (C.45:8-
23 27 et seq.);

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

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

27 o. an insurance producer pursuant to P.L.2001, c.210
28 (C.17:22A-26 et seq.); **[and]**

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

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

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

34

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

37 3. Unless the context clearly indicates otherwise, the following
38 terms shall have the following meanings:

39 "Act of God" means an act exclusively occasioned by an
40 unanticipated, grave natural disaster without the interference of any
41 human agency;

42 "Administrator" means the chief executive of the New Jersey
43 Spill Compensation Fund;

44 "Barrel" means 42 United States gallons or 159.09 liters or an
45 appropriate equivalent measure set by the director for hazardous
46 substances which are other than fluid or which are not commonly
47 measured by the barrel;

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

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

15 "Commissioner" means the Commissioner of Environmental
16 Protection;

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

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

23 "Director" means the Director of the Division of Taxation in the
24 Department of the Treasury;

25 "Discharge" means any intentional or unintentional action or
26 omission resulting in the releasing, spilling, leaking, pumping,
27 pouring, emitting, emptying or dumping of hazardous substances
28 into the waters or onto the lands of the State, or into waters outside
29 the jurisdiction of the State when damage may result to the lands,
30 waters or natural resources within the jurisdiction of the State;

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

35 "Fair market value" means the invoice price of the hazardous
36 substances transferred, including transportation charges; but where
37 no price is so fixed, "fair market value" shall mean the market price
38 as of the close of the nearest day to the transfer, paid for similar
39 hazardous substances, as shall be determined by the taxpayer
40 pursuant to rules of the director;

41 "Final remediation document" means a no further action letter
42 issued by the department pursuant to P.L.1993, c.139 (C.58:10B-
43 1 et al.), or a response action outcome issued by a licensed site
44 remediation professional pursuant to section 14 of P.L.2009, c.60
45 (C.58:10C-14);

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

47 "Hazardous substances" means the "environmental hazardous
48 substances" on the environmental hazardous substance list adopted
49 by the department pursuant to section 4 of P.L.1983, c.315

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

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

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

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

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

40 (1) 20,000 gallons or more for hazardous substances which are
41 other than petroleum or petroleum products, or

42 (2) 200,000 gallons or more for hazardous substances of all
43 kinds.

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

1 For the purposes of this definition, "storage capacity" shall mean
2 only that total combined capacity which is dedicated to, used for or
3 intended to be used for storage of hazardous substances of all kinds.
4 Where appropriate to the nature of the facility, storage capacity may
5 be determined by the intended or actual use of open land or
6 unenclosed space as well as by the capacities of tanks or other
7 enclosed storage spaces;

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

11 "Owner" or "operator" means, with respect to a vessel, any
12 person owning, operating or chartering by demise such vessel; with
13 respect to any major facility, any person owning such facility, or
14 operating it by lease, contract or other form of agreement; with
15 respect to abandoned or derelict major facilities, the person who
16 owned or operated such facility immediately prior to such
17 abandonment, or the owner at the time of discharge;

18 "Person" means public or private corporations, companies,
19 associations, societies, firms, partnerships, joint stock companies,
20 individuals, the United States, the State of New Jersey and any of
21 its political subdivisions or agents;

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

33 "Petroleum" or "petroleum products" means oil or petroleum of
34 any kind and in any form, including, but not limited to, oil,
35 petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil
36 mixed with other wastes, crude oils, and substances or additives to
37 be utilized in the refining or blending of crude petroleum or
38 petroleum stock in this State; however, any compound designated
39 by specific chemical name on the list of hazardous substances
40 adopted by the department pursuant to this section shall not be
41 considered petroleum or a petroleum product for the purposes of
42 P.L.1976, c.141, unless such compound is to be utilized in the
43 refining or blending of crude petroleum or petroleum stock in this
44 State;

45 "Preliminary assessment" means the first phase in the process of
46 identifying areas of concern and determining whether contaminants
47 are or were present at a site or have migrated or are migrating from
48 a site, and shall include the initial search for and evaluation of,
49 existing site specific operational and environmental information,

1 both current and historic, to determine if further investigation
2 concerning the documented, alleged, suspected or latent discharge
3 of any contaminant is required. The evaluation of historic
4 information shall be conducted from 1932 to the present, except that
5 the department may require the search for and evaluation of
6 additional information relating to ownership and use of the site
7 prior to 1932 if such information is available through diligent
8 inquiry of the public records;

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

18 "Remedial investigation" means a process to determine the
19 nature and extent of a discharge of a contaminant at a site or a
20 discharge of a contaminant that has migrated or is migrating from
21 the site and the problems presented by a discharge, and may include
22 data collected, site characterization, sampling, monitoring, and the
23 gathering of any other sufficient and relevant information necessary
24 to determine the necessity for remedial action and to support the
25 evaluation of remedial actions if necessary;

26 "Remediation" or "remediate" means all **【necessary】** actions to
27 investigate **【and】** , clean up , or respond to any known, suspected,
28 or threatened discharge, including **【, as necessary,】** the preliminary
29 assessment, site investigation, remedial investigation, and remedial
30 action, or any portion thereof, provided, however, that
31 "remediation" or "remediate" shall not include the payment of
32 compensation for damage to, or loss of, natural resources;

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 contaminants exist
47 at a site or have migrated or are migrating from the site at levels in
48 excess of the applicable remediation standards. A site investigation

1 shall be developed based upon the information collected pursuant to
2 the preliminary assessment;

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

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

7 "Transfer" means onloading or offloading between major
8 facilities and vessels, or vessels and major facilities, and from
9 vessel to vessel or major facility to major facility, except for fueling
10 or refueling operations and except that with regard to the movement
11 of hazardous substances other than petroleum, it shall also include
12 any onloading of or offloading from a major facility;

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

17 "Waters" means the ocean and its estuaries to the seaward limit
18 of the State's jurisdiction, all springs, streams and bodies of surface
19 or groundwater, whether natural or artificial, within the boundaries
20 of this State.

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

22

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

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

28 (1) The cost of restoring, repairing, or replacing any real or
29 personal property damaged or destroyed by a discharge, any income
30 lost from the time such property is damaged to the time such
31 property is restored, repaired or replaced, and any reduction in
32 value of such property caused by such discharge by comparison
33 with its value prior thereto;

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

36 (3) Loss of income or impairment of earning capacity due to
37 damage to real or personal property, including natural resources
38 destroyed or damaged by a discharge; provided that such loss or
39 impairment exceeds 10 **【%】** percent of the amount which claimant
40 derives, based upon income or business records, exclusive of other
41 sources of income, from activities related to the particular real or
42 personal property or natural resources damaged or destroyed by
43 such discharge during the week, month or year for which the claim
44 is filed;

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

48 (5) Interest on loans obtained or other obligations incurred by a
49 claimant for the purpose of ameliorating the adverse effects of a

1 discharge pending the payment of a claim in full as provided by this
2 act.

3 b. The damages which may be recovered by the fund, without
4 regard to fault, subject to the defenses enumerated in subsection d.
5 of this section against the owner or operator of a major facility or
6 vessel, shall not exceed \$50,000,000.00 for each major facility or
7 \$1,200 per gross ton for each vessel, except that such maximum
8 limitation shall not apply and the owner or operator shall be liable,
9 jointly and severally, for the full amount of such damages if it can
10 be shown that such discharge was the result of (1) gross negligence
11 or willful misconduct, within the knowledge and privity of the
12 owner, operator or person in charge, or (2) a gross or willful
13 violation of applicable safety, construction or operating standards or
14 regulations. Damages which may be recovered from, or by, any
15 other person shall be limited to those authorized by common or
16 statutory law.

17 c. (1) Except as provided in section 2 of P.L.2005, c.43
18 (C.58:10-23.11g12), any person who has discharged a hazardous
19 substance, or is in any way responsible for any hazardous
20 substance, shall be strictly liable, jointly and severally, without
21 regard to fault, for all cleanup and removal costs no matter by
22 whom incurred. Such person shall also be strictly liable, jointly and
23 severally, without regard to fault, for all cleanup and removal costs
24 incurred by the department or a local unit pursuant to subsection b.
25 of section 7 of P.L.1976, c.141 (C.58:10-23.11f).

26 (2) In addition to the persons liable pursuant to this subsection,
27 in the case of a discharge of a hazardous substance from a vessel
28 into the waters of the State, the owner or operator of a refinery,
29 storage, transfer, or pipeline facility to which the vessel was en
30 route to deliver the hazardous substance who, by contract,
31 agreement, or otherwise, was scheduled to assume ownership of the
32 discharged hazardous substance, and any other person who was so
33 scheduled to assume ownership of the discharged hazardous
34 substance, shall be strictly liable, jointly and severally, without
35 regard to fault, for all cleanup and removal costs if the owner or
36 operator of the vessel did not have the evidence of financial
37 responsibility required pursuant to section 2 of P.L.1991, c.58
38 (C.58:10-23.11g2).

39 Where a person is liable for cleanup and removal costs as
40 provided in this paragraph, any expenditures made by the
41 administrator for that cleanup and removal shall constitute a debt of
42 that person to the fund. The debt shall constitute a lien on all
43 property owned by that person when a notice of lien identifying the
44 nature of the discharge and the amount of the cleanup, removal and
45 related costs expended from the fund is duly filed with the clerk of
46 the Superior Court. The clerk shall promptly enter upon the civil
47 judgment or order docket the name and address of the liable person
48 and the amount of the lien as set forth in the notice of lien. Upon
49 entry by the clerk, the lien, to the amount committed by the

1 administrator for cleanup and removal, shall attach to the revenues
2 and all real and personal property of the liable person, whether or
3 not that person is insolvent.

4 For the purpose of determining priority of this lien over all other
5 claims or liens which are or have been filed against the property of
6 an owner or operator of a refinery, storage, transfer, or pipeline
7 facility, the lien on the facility to which the discharged hazardous
8 substance was en route shall have priority over all other claims or
9 liens which are or have been filed against the property. The notice
10 of lien filed pursuant to this paragraph which affects any property
11 of a person liable pursuant to this paragraph other than the property
12 of an owner or operator of a refinery, storage, transfer, or pipeline
13 facility to which the discharged hazardous substance was en route,
14 shall have priority from the day of the filing of the notice of the lien
15 over all claims and liens filed against the property, but shall not
16 affect any valid lien, right, or interest in the property filed in
17 accordance with established procedure prior to the filing of a notice
18 of lien pursuant to this paragraph.

19 To the extent that a person liable pursuant to this paragraph is
20 not otherwise liable pursuant to paragraph (1) of this subsection, or
21 under any other provision of law or under common law, that person
22 may bring an action for indemnification for costs paid pursuant to
23 this paragraph against any other person who is strictly liable
24 pursuant to paragraph (1) of this subsection.

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

28 (3) In addition to the persons liable pursuant to this subsection,
29 any person who owns real property acquired on or after September
30 14, 1993 on which there has been a discharge prior to the person's
31 acquisition of that property and who knew or should have known
32 that a hazardous substance had been discharged at the real property,
33 shall be strictly liable, jointly and severally, without regard to fault,
34 for all cleanup and removal costs no matter by whom incurred.
35 Such person shall also be strictly liable, jointly and severally,
36 without regard to fault, for all cleanup and removal costs incurred
37 by the department or a local unit pursuant to subsection b. of
38 section 7 of P.L.1976, c.141 (C.58:10-23.11f). Nothing in this
39 paragraph shall be construed to alter liability of any person who
40 acquired real property prior to September 14, 1993.

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

47 (2) A person, including an owner or operator of a major facility,
48 who owns real property acquired on or after September 14, 1993 on
49 which there has been a discharge, shall not be liable for cleanup and

1 removal costs or for any other damages to the State or to any other
2 person for the discharged hazardous substance pursuant to
3 subsection c. of this section or pursuant to civil common law, if that
4 person can establish by a preponderance of the evidence that
5 subparagraphs (a) through (d) apply, or if applicable, subparagraphs
6 (a) through (e) apply:

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

9 (b) (i) at the time the person acquired the real property, the
10 person did not know and had no reason to know that any hazardous
11 substance had been discharged at the real property, or (ii) the person
12 acquired the real property by devise or succession, except that any
13 other funds or property received by that person from the deceased
14 real property owner who discharged a hazardous substance or was
15 in any way responsible for a hazardous substance, shall be made
16 available to satisfy the requirements of P.L.1976, c.141, or (iii) the
17 person complies with the provisions of subparagraph (e) of
18 paragraph (2) of this subsection;

19 (c) the person did not discharge the hazardous substance, is not
20 in any way responsible for the hazardous substance, and is not a
21 corporate successor to the discharger or to any person in any way
22 responsible for the hazardous substance or to anyone liable for
23 cleanup and removal costs pursuant to this section;

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

26 To establish that a person had no reason to know that any
27 hazardous substance had been discharged for the purposes of this
28 paragraph (2), the person must have undertaken, at the time of
29 acquisition, all appropriate inquiry into the previous ownership and
30 uses of the property. For the purposes of this paragraph (2), all
31 appropriate inquiry shall mean the performance of a preliminary
32 assessment, and site investigation, if the preliminary assessment
33 indicates that a site investigation is necessary, as defined in section
34 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance
35 with rules and regulations promulgated by the department defining
36 these terms.

37 Nothing in this paragraph (2) shall be construed to alter liability
38 of any person who acquired real property prior to September 14,
39 1993; and

40 (e) For the purposes of this subparagraph the person must have
41 (i) acquired the property subsequent to a hazardous substance being
42 discharged on the site and which discharge was discovered at the
43 time of acquisition as a result of the appropriate inquiry, as defined
44 in this paragraph (2), (ii) performed, following the effective date of
45 P.L.1997, c.278, a remediation of the site or discharge consistent
46 with the provisions of section 35 of P.L.1993, c.139 (C.58:10B-12),
47 or, relied upon a valid final remediation document for a remediation
48 performed prior to acquisition, or, obtained a remedial action
49 workplan certified by a licensed site remediation professional

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

37 (3) Notwithstanding the provisions of paragraph (2) of this
38 subsection to the contrary, if a person who owns real property
39 obtains actual knowledge of a discharge of a hazardous substance at
40 the real property during the period of that person's ownership and
41 subsequently transfers ownership of the property to another person
42 without disclosing that knowledge, the transferor shall be strictly
43 liable for the cleanup and removal costs of the discharge and no
44 defense under this subsection shall be available to that person.

45 (4) Any federal, State, or local governmental entity which
46 acquires ownership of real property through bankruptcy, tax
47 delinquency, abandonment, escheat, eminent domain, condemnation
48 or any circumstance in which the governmental entity involuntarily
49 acquires title by virtue of its function as sovereign, or where the

1 governmental entity acquires the property by any means for the
2 purpose of promoting the redevelopment of that property, shall not
3 be liable, pursuant to subsection c. of this section or pursuant to
4 common law, to the State or to any other person for any discharge
5 which occurred or began prior to that ownership. This paragraph
6 shall not provide any liability protection to any federal, State or
7 local governmental entity which has caused or contributed to the
8 discharge of a hazardous substance. This paragraph shall not
9 provide any liability protection to any federal, State, or local
10 government entity that acquires ownership of real property by
11 condemnation or eminent domain where the real property is being
12 remediated in a timely manner at the time of the condemnation or
13 eminent domain action.

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

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

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

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

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

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

45 Nothing in this paragraph (5) shall be construed to alter liability
46 of any person who acquired real property on or after September 14,
47 1993.

48 e. Neither the fund nor the Sanitary Landfill Contingency Fund
49 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall

1 be liable for any damages incurred by any person who is relieved
2 from liability pursuant to subsection d. or f. of this section for a
3 remediation that involves the use of engineering controls but the
4 fund and the Sanitary Landfill Contingency Fund shall be liable for
5 any remediation that involves only the use of institutional controls
6 if after a valid final remediation document has been issued the
7 department orders additional remediation except that the fund and
8 the Sanitary Landfill Contingency Fund shall not be liable for any
9 additional remediation that is required to remove an institutional
10 control.

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

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

22 (2) the person did not discharge the hazardous substance, is not
23 in any way responsible for the hazardous substance, and is not a
24 corporate successor to the discharger or to any person in any way
25 responsible for the hazardous substance or to anyone liable for a
26 discharge pursuant to this section;

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

29 (4) (a) within 30 days after acquisition of the property, the
30 person commenced a remediation of the discharge, including any
31 migration, pursuant to a department oversight document executed
32 prior to acquisition, or (b) for property acquired after the date of
33 enactment of P.L.2009, c.60 (C.58:10C-1 et al.), the person
34 provides written notice of the acquisition to the department prior to
35 or on the date of acquisition and the person remediates the property
36 pursuant to the provisions of section 30 of P.L.2009, c.60
37 (C.58:10B-1.3), and (c) the department is satisfied that remediation
38 was completed in a timely and appropriate fashion; and

39 (5) Within ten days after acquisition of the property, or within
40 30 days after the expiration of the period or periods allowed for the
41 right of redemption pursuant to tax foreclosure law, the person
42 agrees in writing to provide access to the State for remediation and
43 related activities, as determined by the State.

44 The provisions of this subsection shall not relieve any person of
45 any liability:

46 (1) for a discharge that occurs at that property after the person
47 acquired the property;

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

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

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

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

11 g. Nothing in the amendatory provisions to this section adopted
12 pursuant to P.L.1997, c.278 shall be construed to remove any
13 defense to liability that a person may have had pursuant to
14 subsection e. of this section that existed prior to the effective date
15 of P.L.1997, c.278.

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

19

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

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

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

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

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

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

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

40 (1) a temporary or permanent injunction;

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

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

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

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

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

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

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

13 (b) the specific citation of the act or omission constituting the
14 violation;

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

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

18 (2) (a) A violator shall have 20 calendar days following receipt
19 of notice within which to request a hearing on any matter contained
20 in the notice, and shall comply with all procedures for requesting a
21 hearing. Failure to submit a timely request or to comply with all
22 departmental procedures shall constitute grounds for denial of a
23 hearing request. After a hearing and upon a finding that a violation
24 has occurred, the department shall issue a final order assessing the
25 amount of the civil administrative penalty specified in the notice. If
26 a violator does not request a hearing or fails to satisfy the statutory
27 and administrative requirements for requesting a hearing, the notice
28 of assessment of a civil administrative penalty shall become a final
29 order on the 21st calendar day following receipt of the notice by the
30 violator. If the department denies a hearing request, the notice of
31 denial shall become a final order upon receipt of the notice by the
32 violator.

33 (b) A civil administrative penalty may be settled by the
34 department on such terms and conditions as the department may
35 determine.

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

39 (3) If a civil administrative penalty imposed pursuant to this
40 section is not paid within 30 days of the date that the penalty is due
41 and owing, and the penalty is not contested by the person against
42 whom the penalty has been assessed, or the person fails to make a
43 payment pursuant to a payment schedule entered into with the
44 department, an interest charge shall accrue on the amount of the
45 penalty from the 30th day that amount was due and owing. In the
46 case of an appeal of a civil administrative penalty, if the amount of
47 the penalty is upheld, in whole or in part, the rate of interest shall be
48 calculated on that amount as of the 30th day from the date the
49 amount was due and owing under the administrative order. The rate

1 of interest shall be that established by the New Jersey Supreme
2 Court for interest rates on judgments, as set forth in the Rules
3 Governing the Courts of the State of New Jersey.

4 (4) The department may assess and recover, by civil
5 administrative order, the costs of any investigation, cleanup or
6 removal, and the reasonable costs of preparing and successfully
7 enforcing a civil administrative penalty pursuant to this subsection.
8 The assessment may be recovered at the same time as a civil
9 administrative penalty, and shall be in addition to the penalty
10 assessment.

11 d. Any person who violates a provision of P.L.1976, c.141
12 (C.58:10-23.11 et seq.), or a court order issued pursuant thereto, or
13 who fails to pay a civil administrative penalty in full or to agree to a
14 schedule of payments therefor, shall be subject to a civil penalty not
15 to exceed \$50,000.00 per day for each violation, and each day's
16 continuance of the violation shall constitute a separate violation.
17 Any penalty incurred under this subsection may be recovered with
18 costs in a summary proceeding pursuant to **["the penalty**
19 **enforcement law"** (N.J.S.2A:58-1 et seq.)**]** the "Penalty
20 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in
21 the Superior Court or a municipal court. The Superior Court and
22 the municipal courts shall have jurisdiction to impose a civil penalty
23 for a violation of P.L.1976, c.141 (C.58:10-23.11 et seq.) pursuant
24 to this subsection and in accordance with the procedures set forth in
25 the "Penalty Enforcement Law of 1999."

26 e. All conveyances used or intended for use in the willful
27 discharge of any hazardous substance are subject to forfeiture to the
28 State pursuant to the provisions of P.L.1981, c.387 (C.13:1K-
29 1 et seq.).

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

31

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

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

37 "Area of concern" means any location where contaminants are or
38 were known or suspected to have been discharged, generated,
39 manufactured, refined, transported, stored, handled, treated, or
40 disposed, or where contaminants have or may have migrated;

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

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

47 "Brownfield site" means any former or current commercial or
48 industrial site that is currently vacant or underutilized and on which

1 there has been, or there is suspected to have been, a discharge of a
2 contaminant;

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

8 "Department" means the Department of Environmental
9 Protection;

10 "Discharge" means an intentional or unintentional action or
11 omission resulting in the releasing, spilling, leaking, pumping,
12 pouring, emitting, emptying, or dumping of a contaminant onto the
13 land or into the waters of the State;

14 "Engineering controls" means any mechanism to contain or
15 stabilize contamination or ensure the effectiveness of a remedial
16 action. Engineering controls may include, without limitation, caps,
17 covers, dikes, trenches, leachate collection systems, signs, fences
18 and physical access controls;

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

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

26 "Financial assistance" means loans or loan guarantees;

27 "Institutional controls" means a mechanism used to limit human
28 activities at or near a contaminated site, or to ensure the
29 effectiveness of the remedial action over time, when contaminants
30 remain at a contaminated site in levels or concentrations above the
31 applicable remediation standard that would allow unrestricted use
32 of that property. Institutional controls may include, without
33 limitation, structure, land, and natural resource use restrictions, well
34 restriction areas, and deed notices;

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

39 "Limited restricted use remedial action" means any remedial
40 action that requires the continued use of institutional controls but
41 does not require the use of an engineering control;

42 "No further action letter" means a written determination by the
43 department that based upon an evaluation of the historical use of a
44 particular site, or of an area of concern or areas of concern at that
45 site, as applicable, and any other investigation or action the
46 department deems necessary, there are no discharged contaminants
47 present at the site, at the area of concern or areas of concern, at any
48 other site to which a discharge originating at the site has migrated,
49 or that any discharged contaminants present at the site or that have

1 migrated from the site have been remediated in accordance with
2 applicable remediation regulations;

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

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

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

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

32 "Recreation and conservation purposes" means the use of lands
33 for beaches, biological or ecological study, boating, camping,
34 fishing, forests, greenways, hunting, natural areas, parks,
35 playgrounds, protecting historic properties, water reserves,
36 watershed protection, wildlife preserves, active sports, or a similar
37 use for either public outdoor recreation or conservation of natural
38 resources, or both;

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

48 "Remedial action workplan" means a plan for the remedial action
49 to be undertaken at a site, or at any area to which a discharge

1 originating at a site is migrating or has migrated; a description of
2 the remedial action to be used to remediate a site; a time schedule
3 and cost estimate of the implementation of the remedial action; and
4 any other information the department deems necessary;

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

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

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

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

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

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

47 "Restricted use remedial action" means any remedial action that
48 requires the continued use of engineering and institutional controls

1 in order to meet the established health risk or environmental
2 standards;

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

9 "Unrestricted use remedial action" means any remedial action
10 that does not require the continued use of engineering or
11 institutional controls in order to meet the established health risk or
12 environmental standards;

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

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

19

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

22 30. a. An owner or operator of an industrial establishment
23 subject to the provisions of P.L.1983, c.330 (C.13:1K-6 et al.), the
24 discharger of a hazardous substance or a person in any way
25 responsible for a hazardous substance pursuant to the provisions of
26 subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), or
27 the owner or operator of an underground storage tank regulated
28 pursuant to the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.),
29 that has discharged a hazardous substance, shall remediate the
30 discharge of a hazardous substance.

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

34 (1) **【hire】** retain a licensed site remediation professional to
35 perform the remediation;

36 (2) notify the department of the name and license information of
37 the licensed site remediation professional who has been **【hired】**
38 retained to perform the remediation;

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

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

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

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

47 (7) provide access to all applicable documents concerning the
48 remediation to the department;

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

4 (9) obtain all necessary permits.

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

11 (2) The department may require a person required to perform a
12 remediation pursuant to subsection a. of this section, or a person
13 who has initiated a remediation prior to the date of enactment of
14 P.L.2009, c.60 (C.58:10C-1 et al.), to comply with the provisions of
15 subsection b. of this section if, after the date of enactment of
16 P.L.2009, c.60 (C.58:10C-1 et al.), the department (a) issues a final
17 order or a penalty becomes due and payable, concerning the
18 performance of the remediation, or (b) issues a demand for
19 stipulated penalties pursuant to the provisions of an oversight
20 document in which the person waived a right to a hearing on the
21 penalties.

22 (3) No later than three years after the date of enactment of
23 P.L.2009, c.60 (C.58:10C-1 et al.), a person responsible for
24 conducting the remediation, no matter when the remediation is
25 initiated, shall comply with the provisions of subsection b. of this
26 section.

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

32 (2) The provisions of this section shall not apply to any person
33 who: (a) does not own a contaminated site, (b) conducts a
34 preliminary assessment or site investigation of the contaminated site
35 for the purpose of conducting all appropriate inquiry into the
36 previous ownership and uses of the property as provided in section
37 8 of P.L.1976, c.141 (C.58:10-23.11g), and (c) has not discharged a
38 hazardous substance at the site or is not in any way responsible for
39 a hazardous substance discharged at the site pursuant to section 8 of
40 P.L.1976, c.141 (C.58:10-23.11g).

41 ²(3) A person shall not be required to retain a licensed site
42 remediation professional pursuant to this section to conduct
43 sampling or investigation to confirm or evaluate a remediation
44 performed or supervised by a retained licensed site remediation
45 professional, provided that such sampling or investigation: (1) is
46 not required pursuant to this section or any other law, rule,
47 regulation, or order; (2) is not conducted in order to obtain a
48 response action outcome; and (3) is not conducted in order to

1 investigate, clean up, or respond to any known, suspected, or
2 threatened discharge of a contaminant.²

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

7

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

10 25. a. Except as otherwise provided in section 27 of P.L.2009,
11 c.60 (C.58:10C-27), the owner or operator of an industrial
12 establishment or any other person required to perform remediation
13 activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), or a
14 discharger, a person in any way responsible for a hazardous
15 substance, or a person otherwise liable for cleanup and removal
16 costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) who has
17 been issued a directive or an order by a State agency, who has
18 entered into an administrative consent order with a State agency, or
19 who has been ordered by a court to clean up and remove a
20 hazardous substance or hazardous waste discharge pursuant to
21 P.L.1976, c.141 (C.58:10-23.11 et seq.), shall establish and
22 maintain a remediation funding source in the amount necessary to
23 pay the estimated cost of the required remediation. A person who
24 [voluntarily undertakes a remediation pursuant to a memorandum
25 of agreement with the department, or without the department's
26 oversight, or who] performs a remediation in an environmental
27 opportunity zone is not required to establish or maintain a
28 remediation funding source. A person who uses an innovative
29 technology or who, in a timely fashion, implements an unrestricted
30 use remedial action or a limited restricted use remedial action for all
31 or part of a remedial action is not required to establish a
32 remediation funding source for the cost of the remediation
33 involving the innovative technology or permanent remedy. A
34 government entity, a person who undertakes a remediation at their
35 primary or secondary residence, the owner or operator of a child
36 care center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.)
37 who performs a remediation at the licensed child care center, or the
38 person responsible for conducting a remediation at a public school
39 or private school as defined in N.J.S.18A:1-1, or a charter school
40 established pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.), shall
41 not be required to establish or maintain a remediation funding
42 source. A person required to establish a remediation funding source
43 pursuant to this section shall provide to the department satisfactory
44 documentation that the requirement has been met.

45 The remediation funding source shall be established in an
46 amount equal to or greater than the cost estimate of the
47 implementation of the remediation (1) as approved by the
48 department or as determined by the licensed site remediation

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

23 b. **【**The person who established the remediation funding source
24 may use the remediation funding source to pay for the actual cost of
25 the remediation.**】** The department may not require any other
26 financial assurance by the person responsible for conducting the
27 remediation other than that required in this section. In the case of a
28 remediation performed pursuant to P.L.1983, c.330, the remediation
29 funding source shall be established no more than 14 days after the
30 approval by the department or the certification by the licensed site
31 remediation professional of a remedial action workplan, upon
32 approval of a remediation agreement pursuant to subsection e. of
33 section 4 of P.L.1983, c.330 (C.13:1K-9), or upon submission of a
34 remediation certification pursuant to subsection e. of P.L.1983,
35 c.330, unless the department approves an extension. In the case of
36 a remediation performed pursuant to P.L.1976, c.141, the
37 remediation funding source shall be established as provided in an
38 administrative consent order signed by the parties, as provided by a
39 court, or as directed or ordered by the department. In the case of a
40 remediation performed under the department's oversight pursuant to
41 section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation
42 funding source shall be established at the time the person becomes
43 subject to the department's oversight. The establishment of a
44 remediation funding source for that part of the remediation funding
45 source to be established by a grant or financial assistance from the
46 remediation fund may be established for the purposes of this
47 subsection by the application for a grant or financial assistance from
48 the remediation fund and satisfactory evidence submitted to the
49 department that the grant or financial assistance will be awarded.

1 However, if the financial assistance or grant is denied or the
2 department finds that the person responsible for establishing the
3 remediation funding source did not take reasonable action to obtain
4 the grant or financial assistance, the department shall require that
5 the full amount of the remediation funding source be established
6 within 14 days of the denial or finding. Except as provided in
7 section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation
8 funding source shall be evidenced by the establishment and
9 maintenance of (1) a remediation trust fund, administered by an
10 entity that has the authority to act as a trustee and whose trust
11 operations are regulated and examined by a federal or State agency,
12 or governed by court rule, (2) an environmental insurance policy,
13 issued by an entity licensed by the Department of Banking and
14 Insurance to transact business in the State of New Jersey, to fund
15 the remediation, (3) a line of credit from a financial institution
16 regulated pursuant to State or federal law and satisfactory to the
17 department authorizing the person responsible for performing the
18 remediation to borrow money, (4) a self-guarantee, **【or】** (5) a letter
19 of credit from a financial institution regulated pursuant to State or
20 federal law that guarantees the performance of the remediation by
21 the person to the satisfaction of the department, or (6) a surety bond
22 from an entity that is listed as an acceptable surety on federal
23 bonds in United States Treasury Department Circular 570, or by any
24 combination thereof. Where it can be demonstrated that a person
25 cannot establish and maintain a remediation funding source for the
26 full cost of the remediation by a method specified in this subsection,
27 that person may establish the remediation funding source for all or a
28 portion of the remediation, by securing financial assistance from the
29 Hazardous Discharge Site Remediation Fund as provided in section
30 29 of P.L.1993, c.139 (C.58:10B-7).

31 c. A remediation trust fund shall be established pursuant to the
32 provisions of this subsection. An originally signed duplicate of the
33 trust agreement shall be delivered to the department (1) by certified
34 mail , overnight delivery, or personal service within 14 days of
35 receipt of notice from the department that the remedial action
36 workplan or remediation agreement as provided in subsection e. of
37 section 4 of P.L.1983, c.330 (C.13:1K-9) is approved, (2) within 14
38 days of submission to the department of a remedial action workplan
39 certified by a licensed site remediation professional as provided in
40 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon
41 submission of a remediation certification to the department as
42 provided in subsection e. of section 4 of P.L.1983, c.330, or (4) as
43 specified in an administrative consent order, civil order, or order of
44 the department, as applicable. The remediation trust fund agreement
45 shall conform to a model trust fund agreement as established by the
46 department and shall be accompanied by a certification of
47 acknowledgment that conforms to a model established by the
48 department. The trustee shall be an entity which has the authority

1 to act as a trustee and whose trust operations are regulated and
2 examined by a federal or New Jersey agency.

3 The trust fund agreement shall provide that the remediation trust
4 fund may not be revoked or terminated by the person required to
5 establish the remediation funding source or by the trustee without
6 the written consent of the department. The person who establishes
7 the remediation funding source in the form of a trust fund may use
8 the remediation funding source to pay for the actual cost of the
9 remediation. The trustee shall **[release]** disburse to the person
10 required to establish the remediation funding source, or to the
11 department or transferee of the property, as appropriate, only those
12 moneys as the department or the licensed site remediation
13 professional authorizes, in writing, to be **[released]** disbursed. The
14 trustee shall release to the person who established the remediation
15 funding source, or to the department or transferee of the property,
16 as appropriate, only those moneys as the department authorizes, in
17 writing, to be released. For any remediation subject to the oversight
18 of the department pursuant to section 27 of P.L.2009, c.60
19 (C.58:10C-27), the person entitled to receive money from the
20 remediation trust fund shall submit documentation to the
21 department detailing the costs incurred or to be incurred as part of
22 the remediation. Upon a determination by the department that the
23 costs are consistent with the remediation of the site, the department
24 shall, in writing, authorize a disbursement of moneys from the
25 remediation trust fund in the amount of the documented costs.

26 The department shall return the original remediation trust fund
27 agreement to the trustee for termination after the **[person required**
28 **to establish the remediation funding source substitutes]** department
29 receives an alternative remediation funding source as specified in
30 this section or the department notifies the person required to
31 establish and maintain the remediation funding source that that
32 person is no longer required to maintain a remediation funding
33 source for remediation of the contaminated site.

34 d. An environmental insurance policy shall be established
35 pursuant to the provisions of this subsection. An originally signed
36 duplicate of the insurance policy shall be delivered to the
37 department (1) by certified mail, overnight delivery, or personal
38 service within **[30]** 14 days of receipt of notice from the
39 department that the remedial action workplan or remediation
40 agreement, as provided in subsection e. of section 4 of P.L.1983,
41 c.330, is approved, (2) within 14 days of submission to the
42 department of a remedial action workplan certified by a licensed
43 site remediation professional as provided in subsection e. of section
44 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon submission of a
45 remediation certification to the department as provided in
46 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or (4) as
47 specified in an administrative consent order, civil order, or order of
48 the department, as applicable. **[The insurance company shall**

1 release to the person required to establish the remediation funding
2 source, or to the department or transferee of the property, as
3 appropriate, only those moneys as the department or the licensed
4 site remediation professional authorizes, in writing, to be released.
5 The person entitled to receive money from the environmental
6 insurance policy shall submit documentation to the department
7 detailing the costs incurred or to be incurred as part of the
8 remediation. **】** The environmental insurance policy shall be issued
9 by an entity that is licensed by the New Jersey Department of
10 Banking and Insurance to transact business in the State.

11 An environmental insurance policy cannot be revoked or
12 terminated without the prior written approval of the department,
13 except upon failure by the insured to pay the premium. The issuer
14 of the environmental insurance policy may revoke or terminate the
15 policy for failure to pay the premium only after notifying the person
16 who established the remediation funding source and the department,
17 by certified mail, of the decision to revoke or terminate the policy.

18 The insurance company that provides the environmental
19 insurance policy shall reduce the policy only as the department
20 directs in writing. The insurance company that provides the
21 environmental insurance policy shall release to the department or to
22 a person authorized to perform the remediation pursuant to
23 subsection g. of this section only moneys authorized by the
24 department, in writing, to be released. The department shall
25 authorize, in writing, the termination of the environmental
26 insurance policy after the department receives an alternative
27 remediation funding source as specified in this section or the
28 department notifies the person required to establish and maintain
29 the funding source that the person is no longer required to maintain
30 a remediation funding source for the remediation of the
31 contaminated site.

32 e. A line of credit shall be established pursuant to the
33 provisions of this subsection. A line of credit shall allow the person
34 establishing it to borrow money up to a limit established in a written
35 agreement in order to pay for the cost of the remediation for which
36 the line of credit was established. An originally signed duplicate of
37 the line of credit agreement shall be delivered to the department (1)
38 by certified mail, overnight delivery, or personal service within 14
39 days of receipt of notice from the department that the remedial
40 action workplan or remediation agreement as provided in subsection
41 e. of section 4 of P.L.1983, c.330 is approved, (2) within 14 days of
42 submission to the department of a remedial action workplan
43 certified by a licensed site remediation professional as provided in
44 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon
45 submission of a remediation certification **】**pursuant to **】**to the
46 department as provided in subsection e. of section 4 of P.L.1983,
47 c.330 (C.13:1K-9), or (4) as specified in an administrative consent
48 order, civil order, or order of the department, as applicable. The
49 line of credit agreement shall conform to a model agreement as

1 established by the department and shall be accompanied by a
2 certification of acknowledgment that conforms to a model
3 established by the department. The line of credit shall be issued by
4 an institution that is licensed by the New Jersey Department of
5 Banking and Insurance to transact business in the State, or by a
6 federally regulated bank.

7 The line of credit shall not be allowed to expire, unless the
8 institution provides the appropriate notification to the department
9 and the borrower, as defined in a model agreement established by
10 the department. The person who establishes the remediation
11 funding source in the form of a line of credit may use the
12 remediation funding source to pay for the actual cost of the
13 remediation. The institution providing the line of credit shall
14 disburse to the person required to establish the remediation funding
15 source, or to the department or transferee of the property, as
16 appropriate, only those moneys as the department or the licensed
17 site remediation professional authorizes, in writing, to be disbursed.

18 The **person or** institution providing the line of credit shall release
19 to the person **required to establish** who established the
20 remediation funding source, or to the department or transferee of
21 the property as appropriate, only those moneys as the department
22 **or the licensed site remediation professional** authorizes, in
23 writing, to be released. **The person entitled to draw upon the line**
24 **of credit shall submit documentation to the department detailing the**
25 **costs incurred or to be incurred as part of the remediation. Upon a**
26 **determination that the costs are consistent with the remediation of**
27 **the site, the department shall, in writing, authorize a disbursement**
28 **from the line of credit in the amount of the documented costs.**

29 The department shall return the original line of credit agreement
30 to the **person or** institution providing the line of credit for
31 termination after the **person required to establish the remediation**
32 **funding source substitutes** department receives an alternative
33 remediation funding source as specified in this section, or after the
34 department notifies the person required to establish and maintain
35 the remediation funding source that that person is no longer
36 required to maintain a remediation funding source for remediation
37 of the contaminated site.

38 f. A person may self-guarantee a remediation funding source
39 upon the submittal of documentation to the department
40 demonstrating that the cost of the remediation **as estimated in the**
41 **remedial action workplan, in the remediation agreement as provided**
42 **in subsection e. of section 4 of P.L.1983, c.330, in a remediation**
43 **certification submitted pursuant to subsection e. of P.L.1983, c.330,**
44 **in an administrative consent order, or as provided in a departmental**
45 **or court order,** would not exceed one-third of the tangible net
46 worth of the person required to establish the remediation funding
47 source, and that the person has a cash flow sufficient to assure the
48 availability of sufficient moneys for the remediation during the time

1 necessary for the remediation. Documentation shall be delivered to
2 the department (1) by certified mail, overnight delivery, or personal
3 service within 14 days of receipt of notice from the department that
4 the remedial action workplan or remediation agreement as provided
5 in subsection e. of section 4 of P.L.1983, c.330 is approved, (2)
6 within 14 days of submission to the department of a remedial action
7 workplan certified by a licensed site remediation professional as
8 provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-
9 9), (3) upon submission of a remediation certification pursuant to
10 the department as provided in subsection e. of section 4 of
11 P.L.1983, c.330 (C.13:1K-9), or (4) as specified in an
12 administrative consent order, civil order, or order of the department,
13 as applicable. Satisfactory documentation of a person's capacity to
14 self-guarantee a remediation funding source shall consist of audited
15 financial statements, in which the auditor expresses an unqualified
16 opinion, that includes a statement of income and expenses or similar
17 statement of that person and the balance sheet or similar statement
18 of assets and liabilities as used by that person for the fiscal year of
19 the person making the application that ended closest in time to the
20 date of the self-guarantee application. In the case of a special
21 purpose entity established specifically for the purpose of acquiring
22 and redeveloping a contaminated site, and for which a statement of
23 income and expenses is not available, the documentation shall
24 include a statement of assets and liabilities certified by a certified
25 public accountant. The self-guarantee application shall be certified
26 as true to the best of the applicant's information, knowledge, and
27 belief, by the chief financial, or similar officer or employee, or
28 general partner, or principal of the person making the self-guarantee
29 application. A person shall be deemed by the department to possess
30 the required cash flow pursuant to this section if that person's gross
31 receipts exceed its gross payments in that fiscal year in an amount
32 at least equal to the estimated costs of completing the remedial
33 action workplan schedule to be performed in the 12-month period
34 following the date on which the application for self-guarantee is
35 made and the individual or entity possesses a net cash flow
36 provided by operating activities in an amount at least equal to the
37 estimated costs of completing the remediation in the 12-month
38 period following the date the application is made. In the event that a
39 self-guarantee is required for a period of more than one year,
40 applications for a self-guarantee shall be renewed annually pursuant
41 to this subsection for each successive year. The department may
42 establish requirements and reporting obligations to ensure that the
43 person proposing to self-guarantee a remediation funding source
44 meets the criteria for self-guaranteeing prior to the initiation of
45 remedial action and until completion of the remediation.

46 g. (1) If the person required to establish the remediation
47 funding source fails to perform the remediation as required, or fails
48 to meet the conditions established pursuant to paragraph (3) of
49 subsection a. of section 27 of P.L.2009, c.60 (C.58:10C-27) or

1 section 1 of P.L.2013, c.283 (C.58:10C-27.1), or the mandatory
2 remediation timeframes or expedited site specific timeframes
3 established pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28)
4 for the performance of the remedial action, the department shall
5 make a written determination of this fact. A copy of the
6 determination by the department shall be delivered to the person
7 required to establish the remediation funding source and, in the case
8 of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-
9 6 et al.), to any transferee of the property. Following this written
10 determination, the department may perform the remediation in place
11 of the person required to establish the remediation funding source.
12 In order to finance the cost of the remediation the department may
13 make disbursements from the remediation funding source, or, if
14 sufficient moneys are not available from those funds, from the
15 remediation guarantee fund created pursuant to section 45 of
16 P.L.1993, c.139 (C.58:10B-20).

17 (2) The transferee of property subject to a remediation
18 conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), may, at
19 any time after the department's determination of nonperformance by
20 the owner or operator required to establish the remediation funding
21 source, petition the department, in writing, with a copy being sent to
22 the owner and operator, for authority to perform the remediation at
23 the industrial establishment. The department, upon a determination
24 that the transferee is competent to do so, may grant that petition
25 which shall authorize the transferee to perform the remediation as
26 specified in an approved remedial action workplan, or to perform
27 the activities as required in a remediation agreement, or as provided
28 in a remediation certification, and to avail itself of the moneys in
29 the remediation trust fund, letter of credit, **[or]** line of credit , or
30 surety bond, or to make claims upon the environmental insurance
31 policy for these purposes. The petition of the transferee shall not be
32 granted by the department if the owner or operator continues or
33 begins to perform its obligations within 14 days of the petition
34 being filed with the department.

35 (3) After the department has begun to perform the remediation
36 in the place of the person required to establish the remediation
37 funding source or has granted the petition of the transferee to
38 perform the remediation, the person required to establish the
39 remediation funding source shall not be permitted by the
40 department to continue its performance obligations except upon the
41 agreement of the department or the transferee, as applicable, or
42 except upon a determination by the department that the transferee is
43 not adequately performing the remediation.

44 h. A letter of credit shall be established pursuant to the
45 provisions of this subsection. A letter of credit shall allow a person
46 to guarantee the availability of funds up to a limit established in a
47 written agreement in order to guarantee the payment of the cost of
48 the remediation for which the letter of credit was established. An
49 originally signed duplicate of the letter of credit agreement shall be

1 delivered to the department (1) by certified mail, overnight
2 delivery, or personal service within 14 days of receipt of notice
3 from the department that the remedial action workplan or
4 remediation agreement as provided in subsection e. of section 4 of
5 P.L.1983, c.330 (C.13:1K-9) is approved, (2) within 14 days of
6 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 **【pursuant to】** to the
10 department as provided in subsection e. of section 4 of P.L.1983,
11 c.330 (C.13:1K-9), or (4) as specified in an administrative consent
12 order, civil order, or order of the department, as applicable. The
13 letter of credit agreement shall conform to a model agreement as
14 established by the department and shall be accompanied by a
15 certification of acknowledgment that conforms to a model
16 established by the department. The letter of credit shall be issued
17 by an entity that is licensed by the New Jersey Department of
18 Banking and Insurance to transact business in the State, or by a
19 federally regulated bank.

20 The letter of credit shall not be allowed to expire unless the
21 financial institution provides the appropriate notification to the
22 department and the application, as defined by a model agreement
23 established by the department. The financial institution that
24 provides the letter of credit shall release to the department or to a
25 person authorized to perform the remediation pursuant to subsection
26 g. of this section, only moneys authorized by the department, 【or
27 the authorized licensed site remediation professional,】 in writing, to
28 be released. The department shall return the original letter of credit
29 to the financial institution providing the letter of credit for
30 termination after the 【person required to establish the remediation
31 funding source substitutes】 department receives an alternative
32 remediation funding source as authorized in this section, or after the
33 department notifies the person required to establish and maintain
34 the remediation funding source that that person is no longer
35 required to maintain a remediation funding source for the
36 remediation of the contaminated site.

37 i. A surety bond shall be established pursuant to the provisions
38 of this subsection. A surety bond shall allow a person to guarantee
39 the availability of funds up to a limit established in a written
40 agreement in order to guarantee the payment of the cost of the
41 remediation for which the surety bond was established. An
42 originally signed duplicate of the surety bond agreement shall be
43 delivered to the department (1) by certified mail, overnight
44 delivery, or personal service within 14 days of receipt of notice
45 from the department that the remedial action workplan or
46 remediation agreement as provided in subsection e. of section 4 of
47 P.L.1983, c.330 (C.13:1K-9) is approved, (2) within 14 days of
48 submission to the department of a licensed site remediation

1 professional certified remedial action workplan as provided in
2 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon
3 submission of a remediation certification to the department as
4 provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-
5 9), or (4) as specified in an administrative consent order, civil order,
6 or order of the department, as applicable. The surety bond
7 agreement shall conform to a model agreement established by the
8 department and shall be accompanied by a certification of
9 acknowledgment that conforms to a model established by the
10 department. The surety company issuing the bond must be a
11 company that is listed as an acceptable surety on federal bonds in
12 United States Treasury Department Circular 570.

13 The surety bond shall not be cancelled unless the surety company
14 provides the appropriate notice of cancellation to the department
15 and the principal, as defined in a model agreement established by
16 the department. The surety company that provides the surety bond
17 shall release to the department, or to a person authorized to perform
18 the remediation pursuant to subsection g. of this section, only
19 monies authorized by the department, in writing, to be released.
20 The department shall return the original surety bond to the surety
21 company for termination after the department receives an
22 alternative remediation funding source as specified in this section or
23 the department notifies the person that that person is no longer
24 required to maintain a remediation funding source for remediation
25 of the contaminated site.

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

27

28 9. (New section) The department shall encourage the use of
29 green and sustainable practices during the remediation of a
30 contaminated site. The use of green and sustainable practices shall
31 not alter the requirement that the remediation be protective of the
32 public health and safety and of the environment.

33

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

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

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

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

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

47 (4) has not been ordered by a court to clean up and remove the
48 discharge, shall not be subject to a monetary penalty for the failure
49 to report the discharge or for any civil violation of P.L.1976, c.141

1 (C.58:10-23.11 et seq.) or P.L.1977, c.74 (C.58:10A-1 et seq.) that
2 resulted in the discharge if the person notifies the department of the
3 discharge and enters into an administrative consent order **[**or a
4 memorandum of agreement**]** with the department to remediate the
5 discharge in accordance with the provisions of P.L.1976, c.141
6 (C.58:10-23.11 et seq.), or any rules or regulations adopted
7 pursuant thereto, within one year of the effective date of P.L.1993,
8 c.139 (C.13:1K-9.6 et al.). Any person who notifies the department
9 of the discharge pursuant to this section shall be liable for all
10 cleanup and removal costs as provided in section 8 of P.L.1976,
11 c.141 (C.58:10-23.11g).

12 b. Notwithstanding the provisions of subsection a. of this
13 subsection, any person who enters into **[**a memorandum of
14 agreement or**]** an administrative consent order pursuant to this
15 section and fails to remediate the discharge in accordance with the
16 **[**memorandum of agreement or**]** administrative consent order, shall
17 be subject to all penalties for violations that occurred before the
18 effective date of P.L.1993, c.139 (C.13:1K-9.6 et al.) as well as any
19 penalties for subsequent violations.

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

22 d. Any documents or information provided to the department
23 pursuant to this section may not be used in a criminal investigation
24 or criminal prosecution against the person providing the
25 information or documents for those violations that occurred before
26 the effective date of **[**this act**]** P.L.1993, c.139 as long as the person
27 remediates the discharge in conformance with the administrative
28 consent order **[**or memorandum of agreement**]** entered into
29 pursuant to subsection a. of this section.

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

31

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

34 1. a. Prior to the initiation of the remedial **[**action**]**
35 investigation phase of the remediation of a contaminated site, any
36 person who is responsible for conducting a remediation of the
37 contaminated site, including the Department of Environmental
38 Protection when it conducts a remediation of a contaminated site
39 using public monies, shall provide written notification describing
40 the activities that are to take place at the contaminated site to the
41 clerk of the municipality and to the county health department and
42 the local health agency wherein the site is located. The written
43 notice shall include notice of the location of the contaminated site,
44 including address and the lot and block number of the contaminated
45 site. The written notice shall also inform the municipality, county
46 health department, and local health agency that they may receive a
47 copy of the remedial action workplan **[**and any updates or status
48 reports**]** , any other workplan, report, or validated data required by

1 the department, and any updates thereto, and a copy of the site
2 health and safety plan, from the responsible party, upon request.
3 For any remediation of a contaminated site that will take longer
4 than two years to complete, the person responsible for conducting
5 the remediation shall provide the notification **【shall be provided】**
6 required by this section every two years until remediation is
7 complete.

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

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

14

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

17 2. Upon request of a municipality, any person who is responsible
18 for conducting a remediation of a contaminated site shall submit a
19 copy of a remedial action workplan , any other workplan, report, or
20 validated data required by the department ¹pursuant to law, rule, or
21 regulation¹, and any updates or status reports pursuant to the
22 "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), the
23 "Brownfield and Contaminated Site Remediation Act," P.L.1997,
24 c.278 (C.58:10B-1.1 et al.), or the "Spill Compensation and Control
25 Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), and a copy of the site
26 health and safety plan, to the clerk of the municipality wherein the
27 contaminated site is located at the same time as **【the workplan is】**
28 those documents are submitted to the **【Department of Environmental**
29 **Protection】** department. Upon request of a county health department
30 or a local health agency, the person who is responsible for conducting
31 a remediation of a contaminated site shall also submit a copy of the
32 remedial action workplan **【and】** , any other workplan, report, or
33 validated data required by the department ¹pursuant to law, rule, or
34 regulation¹, any updates or status reports, and a copy of the site health
35 and safety plan, to the county health department or local health
36 agency, respectively ¹, wherein the contaminated site is located at the
37 same time as those documents are submitted to the department¹.

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

39

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

42 3. a. Any person who is responsible for conducting a remediation
43 of a contaminated site shall be responsible for notifying the public of
44 the remediation of the contaminated site pursuant to rules and
45 regulations adopted by the Department of Environmental Protection
46 pursuant to subsection b. of this section.

47 b. Within six months after the date of enactment of this act, the
48 Department of Environmental Protection shall adopt, pursuant to the

1 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),
2 rules and regulations setting forth the notice requirements pursuant to
3 subsection a. of this section. The rules and regulations to be adopted
4 by the department pursuant to this section shall require any person
5 who is responsible for conducting a remediation of a contaminated site
6 to provide written notification to any local property owners and tenants
7 who reside within 200 feet of the contaminated site. The notification
8 shall summarize site conditions and provide information about actions
9 being taken to remediate the site ¹**[and]** . The department¹ may
10 require written notification **[or]** ¹**[and]** or¹ the posting of a sign
11 visible to the public which shall be located on the boundaries of the
12 contaminated site ¹, or both¹.

13 c. A person responsible for conducting a remediation shall
14 respond to any ¹written or email¹ inquiries from the public ¹regarding
15 the status of the remediation¹ that the person receives, or that the
16 department receives and forwards to the person responsible for
17 conducting the remediation, by providing either: (1) ¹**[specific]**¹
18 information or documents that are responsive to the public inquiry; or
19 (2) a written ¹summary¹ status report for the remediation, which shall
20 be made in a form and manner as prescribed by the department
21 pursuant to rules and regulations. A person responsible for conducting
22 a remediation may designate a licensed site remediation professional
23 to respond to public inquiries pursuant to this subsection.

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

25

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

28 1. a. The provisions of any other law, or rule or regulation
29 adopted pursuant thereto, to the contrary notwithstanding, the State
30 may enter into a redevelopment agreement pursuant to sections 35
31 and 36 of P.L.1997, c. 278 (C.58:10B-27 and 58:10B-28) for a
32 redevelopment project that was commenced prior to the effective
33 date of sections 34 through 39 of P.L.1997, c.278 (C.58:10B-26
34 through 58:10B-31) in which the State may agree to reimburse a
35 developer for 75 **[%]** percent of remediation costs incurred
36 subsequent to entering into the redevelopment agreement, provided
37 that the **[Chief Executive Officer and Secretary of the Commerce**
38 **and Economic Growth Commission]** Executive Director of the New
39 Jersey Economic Development Authority, in consultation with the
40 State Treasurer, finds that:

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

44 (2) (a) the cost or extent of remediation was unanticipated at the
45 time the redevelopment project was commenced; (b) changes to the
46 rules and regulations governing site remediation were adopted after
47 the redevelopment project was commenced; (c) principles of
48 fairness and consistency indicate that the reimbursement of

1 remediation costs provided by P.L.1997, c.278 should be made
2 available to the developer who agreed to remediate and redevelop a
3 brownfield prior to the enactment of P.L.1997, c.278; (d) an
4 estimate of the cost of the remediation to be performed subsequent
5 to entry into the redevelopment agreement as approved by the
6 Department of Environmental Protection exceeds \$10 million; (e)
7 the subject real property is situated within a Planning Area 1 as
8 designated in the State Development and Redevelopment Plan; and
9 (f) a phase of the redevelopment project has not been commenced.

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

14 (1) in estimating the amount of State taxes that are anticipated to
15 be derived from a redevelopment project the director shall only
16 consider tax revenues generated subsequent to the date of the
17 redevelopment agreement from a phase of the redevelopment
18 project that has not generated tax revenues prior to January 1, 2006;
19 and

20 (2) a developer has entered into **【**a memorandum of agreement
21 or other**】** an oversight document with the Commissioner of
22 Environmental Protection for the remediation of a contaminated site
23 located on the site of the redevelopment project and the developer is
24 in compliance with the **【**memorandum of agreement or**】** oversight
25 document.

26 c. Nothing in this section shall require that a no further action
27 letter be obtained by a developer for remediation of groundwater
28 beneath the subject real property prior to reimbursement of the
29 remediation costs, provided that the developer has completed any
30 capital construction or infrastructure required for the remediation of
31 groundwater on the site.

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

33

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

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

45 b. To be eligible for reimbursement of the costs of remediation,
46 a developer shall submit an application, in writing, to the director
47 for review and certification of the reimbursement. The director
48 shall review the request for the reimbursement upon receipt of an

1 application therefor, and shall approve or deny the application for
2 certification on a timely basis. The director shall also make a
3 finding of the occupancy rate of the property subject to the
4 redevelopment agreement in the frequency set forth in the
5 redevelopment agreement as provided in section 35 of P.L.1997,
6 c.278 (C.58:10B-27).

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

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

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

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

24 c. When filing an application for certification for a
25 reimbursement pursuant to this section, the developer shall submit
26 to the director a certification of the total remediation costs incurred
27 by the developer for the remediation of the subject property located
28 at the site of the redevelopment project as provided in the
29 redevelopment agreement, information concerning the occupancy
30 rate of the buildings or other work areas located on the property
31 subject to the redevelopment agreement, and such other information
32 as the director deems necessary in order to make the certifications
33 and findings pursuant to this section.

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

35

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

38 37. a. To qualify for the certification of reimbursement of the
39 remediation costs authorized pursuant to section 36 of
40 P.L.1997, c.278 (C.58:10B-28), a developer shall: (1) enter into **【a**
41 **memorandum of agreement, or other】** an oversight document with
42 the Commissioner of Environmental Protection; or (2) comply with
43 the requirements set forth in subsection b. of section 30 of
44 P.L.2009, c.60 (C.58:10B-1.3), for the remediation of the site of the
45 redevelopment project.

46 b. Under the **【memorandum of agreement, or other】** oversight
47 document, the developer shall agree to perform and complete any
48 remediation activity as may be required by the Department of

1 Environmental Protection to ensure the remediation is conducted
2 pursuant to the regulations adopted by the Department of
3 Environmental Protection pursuant to P.L.1993, c.139 (C.58:10B-
4 1 et al.).

5 c. After the developer has entered into **【a memorandum of**
6 **agreement, or other】** an oversight document with the Commissioner
7 of Environmental Protection, or after the developer has notified the
8 Department of Environmental Protection of the name and license
9 information of the licensed site remediation professional who has
10 been **【hired】** retained to perform the remediation as required
11 pursuant to subsection b. of section 30 of P.L.2009, c.60 (C.58:10B-
12 1.3), the commissioner shall submit a copy thereof to the developer,
13 the clerk of the municipality in which the subject property is
14 located, the Division of Business Assistance, Marketing and
15 International Trade in the New Jersey Economic Development
16 Authority, and the director.
17 (cf: P.L.2009, c.60, s.54)

18

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

21 39. a. The State Treasurer shall reimburse the developer the
22 amount of the remediation costs agreed upon in the redevelopment
23 agreement, and as provided in sections 35 and 36 of P.L.1997, c.278
24 (C.58:10B-27 and C.58:10B-28) upon issuance of the certification
25 by the director pursuant to section 36 of P.L.1997, c.278 (C.58:10B-
26 28). The developer shall be entitled to periodic payments from the
27 fund in an amount, in the frequency, and over the time period as
28 provided in the redevelopment agreement. Notwithstanding any
29 other provision of sections 34 through 39 of P.L.1997, c.278
30 (C.58:10B-26 through C.58:10B-31), the State Treasurer may not
31 reimburse the developer any amount of the remediation costs from
32 the fund until the State Treasurer is satisfied that the anticipated tax
33 revenues from the redevelopment project have been realized by the
34 State in an amount sufficient to pay for the cost of the
35 reimbursements.

36 b. A developer shall submit to the director updated remediation
37 costs actually incurred by the developer for the remediation of the
38 contaminated property located at the site of the redevelopment
39 project as provided in the redevelopment agreement. The
40 reimbursement authorized pursuant to this section shall continue
41 until such time as the aggregate dollar amount of the agreed upon
42 reimbursement. To remain entitled to the reimbursement authorized
43 pursuant to this section, the developer shall perform and complete
44 all remediation activities as may be required pursuant to the
45 **【memorandum of agreement or other】** oversight **【agreement】**
46 document entered into with the Commissioner of Environmental
47 Protection pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29)
48 or as may be required by the licensed site remediation professional

1 in order to issue a response action outcome for the site. The
2 Department of Environmental Protection may review the
3 remediation costs incurred by the developer to determine if they are
4 reasonable.

5 Reimbursable remediation costs shall include costs that are
6 incurred in preparing the area of land whereon the contaminated site
7 is located for remediation and may include costs of dynamic
8 compaction of soil necessary for the remediation.

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

10

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

13 2. As used in sections 1 through 29 of P.L.2009, c.60 (C.58:10C-
14 1 et seq.):

15 "Area of concern" means any location where contaminants are or
16 were known or suspected to have been discharged, generated,
17 manufactured, refined, transported, stored, handled, treated, or
18 disposed, or where contaminants have or may have migrated.

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

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

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

29 "Department" means the Department of Environmental Protection.

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

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

41 "Environmental crime" means any criminal violation of one of the
42 following State laws: R.S.12:5-1 et seq.; P.L.1975, c.232 (C.13:1D-
43 29 et al.); the "Solid Waste Management Act," P.L.1970, c.39
44 (C.13:1E-1 et seq.); section 17 of P.L.1975, c.326 (C.13:1E-26); the
45 "Comprehensive Regulated Medical Waste Management Act,"
46 sections 1 **【though】** through 25 of P.L.1989, c.34 (C.13:1E-
47 48.1 et seq.); P.L.1989, c.151 (C.13:1E-99.21a et al.); the "New Jersey
48 Statewide Mandatory Source Separation and Recycling Act,"
49 P.L.1987, c.102 (C.13:1E-99.11 et al.); the "Pesticide Control Act of

1 1971," P.L.1971, c.176 (C.13:1F-1 et seq.); the "Industrial Site
2 Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.); the "Toxic
3 Catastrophe Prevention Act," P.L.1985, c.403 (C.13:1K-19 et seq.);
4 "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.); the
5 "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-
6 1 et al.); the "Coastal Area Facility Review Act," P.L.1973, c.185
7 (C.13:19-1 et seq.); the "Air Pollution Control Act (1954)," P.L.1954,
8 c.212 (C.26:2C-1 et seq.); the "Water Supply Management Act,"
9 P.L.1981, c.262 (C.58:1A-1 et al.); P.L.1947, c.377 (C.58:4A-
10 5 et seq.); the "Spill Compensation and Control Act," P.L.1976, c.141
11 (C.58:10-23.11 et seq.); the "Water Pollution Control Act," P.L.1977,
12 c.74 (C.58:10A-1 et seq.); P.L.1986, c.102 (C.58:10A-21 et seq.); the
13 "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et al.); the
14 "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-
15 50 et seq.).

16 "Feasibility study" means a study to develop and evaluate options
17 for remedial action using data gathered during the remedial
18 investigation to develop the objectives of the remedial action, and to
19 develop possible remedial action alternatives, to evaluate those
20 alternatives and create a list of feasible alternatives, and to analyze the
21 engineering, scientific, institutional, human health, environmental, and
22 cost of each selected alternative.

23 "Hazardous substance" means the "environmental hazardous
24 substances" on the environmental hazardous substance list adopted by
25 the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4);
26 such elements and compounds, including petroleum products, which
27 are defined as such by the department, after public hearing, and which
28 shall be consistent to the maximum extent possible with, and which
29 shall include, the list of hazardous substances adopted by the federal
30 Environmental Protection Agency pursuant to section 311 of the
31 Federal Water Pollution Control Act Amendments of 1972, Pub. L.92-
32 500, as amended by the Clean Water Act of 1977, Pub. L.95-217
33 (33 U.S.C. s.1251 et seq.); the list of toxic pollutants designated by
34 Congress or the federal Environmental Protection Agency pursuant to
35 section 307 of that act; and the list of hazardous substances adopted by
36 the federal Environmental Protection Agency pursuant to section 101
37 of the "Comprehensive Environmental Response, Compensation and
38 Liability Act of 1980," Pub. L.96-510 (42 U.S.C. s.9601 et seq.);
39 provided, however, that sewage and sewage sludge shall not be
40 considered as hazardous substances for the purposes of P.L.1976,
41 c.141 (C.58:10-23.11 et seq.).

42 "Immediate environmental concern" means **[a condition at a**
43 **contaminated site where there is]**: (1) confirmed contamination in a
44 well used for potable purposes at concentrations **[at or]** above the
45 ground water remediation standards; (2) confirmed contamination that
46 has migrated into **[an occupied] a structure ¹[currently used or able to**
47 **be used for human occupancy]**¹ or a confined space producing a toxic
48 or harmful atmosphere resulting in an unacceptable human health

1 exposure, or producing an oxygen-deficient atmosphere, or resulting in
2 demonstrated physical damage to essential underground services; (3)
3 confirmed contamination at the site of a nature that either dermal
4 contact, ingestion, or inhalation of the contamination could result in an
5 acute human health exposure; or (4) any other **【condition】** confirmed
6 contamination that poses an immediate threat to the environment or to
7 the public health and safety.

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

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

20 "Limited restricted use remedial action" means any remedial action
21 that requires the continued use of institutional controls but does not
22 require the use of an engineering control.

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

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

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

1 "Receptor evaluation" means an evaluation of the potential impact
2 of contamination on humans and environmentally sensitive natural
3 resources.

4 "Remedial action" means those actions taken at a site or offsite if a
5 contaminant has migrated or is migrating therefrom, as may be
6 required by the department, including the removal, treatment,
7 containment, transportation, securing, or other engineering or
8 treatment measures, whether to an unrestricted use or otherwise,
9 designed to ensure that any discharged contaminant at the site or that
10 has migrated or is migrating from the site, is remediated in compliance
11 with the applicable health risk or environmental standards.

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

18 "Remedial investigation" means a process to determine the nature
19 and extent of a discharge of a contaminant at a site or a discharge of a
20 contaminant that has migrated or is migrating from the site and the
21 problems presented by a discharge, and may include data collected,
22 site characterization, sampling, monitoring, and the gathering of any
23 other sufficient and relevant information necessary to determine the
24 necessity for remedial action and to support the evaluation of remedial
25 actions if necessary.

26 "Remediation" or "remediate" means all **[necessary]** actions to
27 investigate **[and]** , clean up , or respond to any known, suspected, or
28 threatened discharge of contaminants, including **[, as necessary,]** the
29 preliminary assessment, site investigation, remedial investigation, and
30 remedial action, or any portion thereof, provided, however, that
31 "remediation" or "remediate" shall not include the payment of
32 compensation for damage to, or loss of, natural resources.

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

40 "Response action outcome" means a written determination by a
41 licensed site remediation professional that the contaminated site was
42 remediated in accordance with all applicable statutes and regulations,
43 and based upon an evaluation of the historical use of the site, or of any
44 area of concern at that site, as applicable, and any other investigation
45 or action the department deems necessary, there are no contaminants
46 present at the site, or at any area of concern, at any other site to which
47 a discharge originating at the site has migrated, or that any
48 contaminants present at the site or that have migrated from the site

1 have been remediated in accordance with applicable remediation
2 regulations, and all applicable permits and authorizations have been
3 obtained.

4 "Restricted use remedial action" means any remedial action that
5 requires the continued use of engineering and institutional controls in
6 order to meet the established health risk or environmental standards.

7 "Retained" means hired, individually or through a firm or other
8 person, by or on behalf of a person responsible for conducting
9 remediation, to perform, manage, or supervise remediation or to
10 periodically review and evaluate a remediation performed by other
11 persons.

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

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

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

26 "Unregulated heating oil tank" means any one or combination of
27 tanks, including appurtenant pipes, lines, fixtures, and other related
28 equipment, used to contain an accumulation of heating oil for on-site
29 consumption in a residential building, or those tanks with a capacity of
30 2,000 gallons or less used to store heating oil for on-site consumption
31 in a nonresidential building, the volume of which, including the
32 volume of the appurtenant pipes, lines, fixtures and other related
33 equipment, is 10 **[%]** percent or more below the ground.

34 "Waters" means the ocean and its estuaries to the seaward limit of
35 the State's jurisdiction, all springs, streams and bodies of surface or
36 groundwater, whether natural or artificial, within the boundaries of the
37 State.

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

39

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

42 7. a. The board shall establish a licensing program and licensing
43 requirements for site remediation professionals, and shall oversee their
44 licensing and performance.

45 b. The board shall establish standards for education, training and
46 experience that shall be required of any person who applies for a
47 license or a license renewal. The board shall conduct examinations to
48 certify that an applicant possesses sufficient knowledge of the State
49 laws, rules and regulations, standards and requirements applicable to

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

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

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

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

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

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

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

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

45 (6) has not been convicted of, or ¹**[plead]** pled¹ guilty to, an
46 environmental crime, any similar or related ¹**[criminal offense]** crime¹
47 under federal or state law, or any crime involving fraud, breach of
48 trust, theft by deception, forgery, or any ¹crime or¹ offense that would

1 qualify the person for registration pursuant to section 2 of P.L.1994,
2 c.133 (C.2C:7-2), or any other crime ¹[or offense]¹ involving moral
3 turpitude, or any similar or related offense under federal or state law .
4 For the purposes of this section, a conviction or plea of guilty shall
5 include a non vult, nolo contendere, no contest, or finding of guilt by a
6 judge or jury; and

7 (7) has not had a professional license or ¹professional¹
8 certification revoked by any state licensing board or any other
9 professional licensing agency within the previous 10 years , and has
10 not surrendered a professional license or ¹professional¹ certification in
11 response to a disciplinary investigation within the previous 10 years.

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

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

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

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

42

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

45 11. a. No person shall be, act as, advertise as, or hold himself
46 out to be, or represent himself as being, a licensed site remediation
47 professional unless that person has been issued a valid license
48 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
49 site remediation professional and has concluded such work is

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 r. A licensed site remediation professional shall be jointly
49 responsible for a violation of any provision of this section

1 committed by another licensed site remediation professional whose
2 work he supervises or reviews if:

3 (1) the licensed site remediation professional orders, directs, or
4 agrees to the provision of professional services conducted or
5 prepared by another licensed site remediation professional under his
6 supervision;

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

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

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

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

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

25 v. In any description of qualifications, experience, or ability to
26 provide services, a licensed site remediation professional shall not
27 knowingly:

28 (1) make a material misrepresentation of fact;

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

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

38 w. A licensed site remediation professional shall provide any
39 notification to the board or the department required pursuant to this
40 section, even if the licensed site remediation professional is
41 discharged by the client prior to doing so.

42 x. A licensed site remediation professional shall not accept
43 compensation, financial or otherwise, for professional services
44 pertaining to a contaminated site from two or more persons whose
45 interests are adverse or conflicting unless the circumstances are
46 fully disclosed and agreed to by all clients engaging the licensed
47 site remediation professional.

48 y. A licensed site remediation professional shall not be a
49 salaried employee of the person responsible for conducting the

1 remediation, or any related entities, for which the licensed site
2 remediation professional is providing remediation services.

3 z. A licensed site remediation professional shall not allow any
4 ownership interest, compensation, or promise of continued
5 employment, of the licensed site remediation professional or any
6 immediate family member, to affect the professional services
7 provided by the licensed site remediation professional.

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

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

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

24 (2) the remediation is being managed, supervised, or performed
25 by another licensed site remediation professional retained by the
26 person responsible for conducting the remediation, and the
27 department has been notified of the retention of the other licensed
28 site remediation professional.

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

30

31 23. (New section) If a licensed site remediation professional
32 obtains specific knowledge of a condition in an unoccupied structure,
33 that, in ¹his the licensed site remediation professional's¹
34 independent professional judgment, constitutes an immediate
35 environmental concern, and the person responsible for conducting the
36 remediation provides to the department a written certification from the
37 property owner that the building (i) is not occupied, (ii) will not be
38 occupied, and (iii) will be demolished, then no further remediation
39 relative to the immediate environmental concern in the unoccupied
40 structure shall be required, provided the conditions of the certification
41 are maintained. Nothing in this section shall be construed to limit the
42 responsibility of a ¹license licensed¹ site remediation professional to
43 comply with the notification requirements of subsection j. of section
44 16 of P.L.2009, c.60 (C.58:10C-16), or the responsibility of a person
45 to report a discharge pursuant to P.L.1976, c.141 (C.58:10-
46 23.11 et seq.). The department shall prescribe the form and manner of
47 the written certification pursuant to this section.

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

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

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

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

31 (2) A government entity, a person who is not otherwise liable
32 for cleanup and removal costs pursuant to P.L.1976, c.141
33 (C.58:10-23.11 et seq.) who purchases contaminated property
34 before the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.)
35 and undertakes a remediation of the property, a person who
36 undertakes a remediation at their primary or secondary residence,
37 the owner or operator of a child care center licensed pursuant to
38 P.L.1983, c.492 (C.30:5B-1 et seq.) who performs a remediation at
39 the licensed child care center, the person responsible for conducting
40 a remediation at a public school or private school as defined in
41 N.J.S.18A:1-1, or a charter school established pursuant to P.L.1995,
42 c.426 (C.18A:36A-1 et seq.), or the owner or operator of a small
43 business responsible for performing a remediation at their business
44 property, shall not be required to establish or maintain a funding
45 source pursuant to this section, for the operation, maintenance, and
46 inspection of the engineering controls installed as part of a remedial
47 action of a contaminated site.

48 d. A person who is issued a permit pursuant to this section
49 shall retain a licensed site remediation professional to manage,

1 supervise, or perform the requirements of the permit for the
2 duration of the permit.

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

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

10

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

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

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

27

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

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

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

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

47 (3) unless a longer period has been ordered by a court, the person
48 responsible for conducting the remediation has, prior to the date of

1 enactment of P.L.2009, c.60 (C.58:10C-1 et al.), failed to complete the
2 remedial investigation of the entire contaminated site 10 years after the
3 discovery of a discharge at the site and has failed to complete the
4 remedial investigation of the entire contaminated site within five years
5 after the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.).

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

12 (1) the person was unable to meet the applicable timeframe
13 because '[he] the person' was unable to enter the contaminated site
14 because '[he] the person' does not own the property, and the person
15 took all appropriate and timely action pursuant to section 40 of
16 P.L.1993, c.139 (C.58:10B-16) prior to the applicable timeframe; or

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

22 As used in this subsection, "enforcement action" means an
23 administrative order, a notice of civil administrative penalty, or a court
24 order.

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

27 (1) the contamination at the site includes chromate chemical
28 production waste;

29 (2) the department determines that more than one environmentally
30 sensitive natural resource has been injured by contamination from the
31 site;

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

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

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

40 (1) the department shall review each document submitted by a
41 licensed site remediation professional and shall approve or deny the
42 submission;

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

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

46 (4) the person responsible for conducting the remediation shall
47 establish a remediation **[trust fund]** funding source other than a self-

1 guarantee pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3) in
2 the amount of the estimated cost of the remediation;

3 (5) all disbursements of funds from the remediation **[trust fund]**
4 funding source shall require prior approval by the department;

5 (6) all submissions prepared by the licensed site remediation
6 professional concerning the remediation required by the department
7 shall be provided simultaneously to the department and the person
8 responsible for conducting the remediation; and

9 (7) the person responsible for conducting the remediation shall
10 implement a public participation plan approved by the department to
11 solicit public comment from the members of the surrounding
12 community concerning the remediation of the site.

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

16 e. (1) Any oversight procedure, remedy, or other obligation in
17 P.L.2009, c.60 (C.58:10C-1 et al.) shall not affect a remediation
18 conducted pursuant to and in compliance with a settlement of litigation
19 to which the department is a party if the settlement (a) occurred prior
20 to the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), or (b) is
21 a settlement of litigation pending on the date of enactment of
22 P.L.2009, c.60 (C.58:10C-1 et al.).

23 (2) For any litigation pending or settled on the date of enactment
24 of P.L.2009, c.60 (C.58:10C-1 et al.), concerning a remediation
25 performed pursuant to the "Resource Conservation and Recovery Act,"
26 42 U.S.C. s.6921 et seq., nothing in P.L.2009, c.60 (C.58:10C-1 et al.)
27 shall affect an oversight procedure, remedy, or other obligation
28 imposed by a federal administrative order or federal court order.

29 f. When a contaminated site is subject to direct oversight
30 pursuant to this section, the requirements of direct oversight shall run
31 with the site, regardless of who owns the property, and regardless of
32 whether there is a transfer of ownership of the property.

33 g. (1) The department may modify the direct oversight
34 requirements of subsection c. of this section for a contaminated site if:

35 (a) the person responsible for conducting the remediation
36 demonstrates financial hardship that prevents the performance of the
37 remediation due to the imposition of direct oversight pursuant to this
38 section; or

39 (b) there is a public emergency ¹[resulting from a natural
40 disaster]¹, as declared by the Governor or the President of the United
41 States, or an official authorized to act on their behalf, that resulted in a
42 delay in meeting the mandatory or expedited site-specific timeframe or
43 other condition that triggered direct oversight.

44 (2) The department may modify the direct oversight requirements
45 of subsection c. of this section for a contaminated site if the
46 department makes a written determination that the modification is in
47 the public interest and protective of the public health and safety and
48 the environment. At least 60 days prior to making a modification

1 pursuant to this paragraph, the department shall publish its written
2 determination and the proposed modification to the requirements of
3 direct oversight, including the reasons for its determination, on the
4 department's Internet website. The department shall solicit and accept
5 public comments on the proposed modification for a period of at least
6 30 days after the date of publication. The department shall consider
7 the public comments received during the comment period prior to
8 making a modification pursuant to this paragraph.

9 (3) The department may, prior to a change in ownership of a
10 contaminated site, enter into an administrative consent order with the
11 prospective purchaser of the contaminated site providing for the
12 modification of any or all of the direct oversight requirements of
13 subsection c. of this section for the contaminated site. ¹The
14 department shall not enter into an administrative consent order
15 pursuant to this paragraph with any person who:

16 (a) has discharged a hazardous substance at the contaminated site,
17 is in any way responsible for a hazardous substance at the site, or is
18 otherwise liable for cleanup and removal costs at the site;

19 (b) has owned or operated the contaminated site; or

20 (c) is a predecessor, successor, subsidiary, partner, shareholder,
21 assign, trustee in bankruptcy, responsible corporate official, or receiver
22 appointed pursuant to a proceeding in law or equity, to any person
23 described in subparagraphs (a) and (b) above.¹

24 (4) The department may reinstate any or all of the direct oversight
25 requirements that it modifies pursuant to paragraphs (1), (2), ¹**[and]**
26 or¹ (3) of this subsection if, after the modification, the department
27 finds that the person responsible for conducting the remediation has
28 failed to comply with any applicable timeframe, administrative
29 consent order modifying the requirements of direct oversight, or any
30 law, rule, or regulation concerning the remediation of contaminated
31 sites.

32 (cf: P.L.2013, c.283, s.2)

33

34 27. This act shall take effect immediately.