

CHAPTER 263

AN ACT concerning the remediation of contaminated sites, and amending and supplementing various parts of the statutory law.

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

1. Section 3 of P.L.1983, c.330 (C.13:1K-8) is amended to read as follows:

C.13:1K-8 Definitions.

3. As used in this act:

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

"Closing operations" means:

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

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

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

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

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

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

"Transferring ownership or operations" means:

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

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

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

or

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

"Change in ownership" means:

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

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

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

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

(5) the sale or transfer of a partnership interest in a partnership that owns or operates an industrial establishment, that would reduce, by 10 percent or more, the assets available for remediation of the industrial establishment;

"Change in ownership" shall not include:

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

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

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

(4) a transfer where the transferor is the sibling, spouse, child, parent, grandparent, child of a sibling, or sibling of a parent of the transferee;

(5) a transfer to confirm or correct any deficiencies in the recorded title of an industrial establishment;

(6) a transfer to release a contingent or reversionary interest except for any transfer of a lessor's reversionary interest in leased real property;

(7) a transfer of an industrial establishment by devise or intestate succession;

(8) the granting or termination of an easement or a license to any portion of an industrial establishment;

(9) the sale or transfer of real property pursuant to a condemnation proceeding initiated pursuant to the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);

(10) execution, delivery and filing or recording of any mortgage, security interest, collateral assignment or other lien on real or personal property; or

(11) any transfer of personal property pursuant to a valid security agreement, collateral assignment or other lien, including, but not limited to, seizure or replevin of such personal property which transfer is for the purpose of implementing the secured party's rights in the personal property which is the collateral;

"Department" means the Department of Environmental Protection;

"Hazardous substances" means those elements and compounds, including petroleum products, which are defined as such by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the Environmental Protection Agency pursuant to Section 311 of the "Federal Water Pollution Control Act Amendments of 1972" (33 U.S.C. s.1321) and the list of toxic pollutants designated by Congress or the Environmental Protection Agency pursuant to

Section 307 of that act (33 U.S.C. s.1317); except that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of this act;

"Hazardous waste" shall have the same meaning as provided in section 1 of P.L.1976, c.99 (C.13:1E-38);

"Industrial establishment" means any place of business engaged in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or hazardous wastes on-site, above or below ground, having a Standard Industrial Classification number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard Industrial Classifications Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States. Those facilities or parts of facilities subject to operational closure and post-closure maintenance requirements pursuant to the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting Act," sections 1 through 43 of P.L.1981, c.279 (C.13:1E-49 et seq.) or the "Solid Waste Disposal Act" (42 U.S.C. s.6901 et seq.), or any establishment engaged in the production or distribution of agricultural commodities, shall not be considered industrial establishments for the purposes of this act. The department may, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), exempt certain sub-groups or classes of operations within those sub-groups within the Standard Industrial Classification major group numbers listed in this subsection upon a finding that the operation of the industrial establishment does not pose a risk to public health and safety;

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

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

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

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

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

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

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

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

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

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

"Remediation" or "remediate" means all actions to investigate, clean up, or respond to any known, suspected, or threatened discharge of hazardous substances or hazardous wastes, including the preliminary assessment, site investigation, remedial investigation, and remedial action, or any portion thereof, provided, however, that "remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources;

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

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

"Remedial investigation" means a process to determine the nature and extent of a discharge of hazardous substances or hazardous wastes at an industrial establishment or a discharge of

hazardous substances or hazardous wastes that have migrated or are migrating from the site and the problems presented by a discharge, and may include data collection, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the evaluation of remedial actions if necessary;

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

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

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

C.2A:53A-26 "Licensed person" defined.

1. As used in this act, "licensed person" means any person who is licensed as:
 - a. an accountant pursuant to P.L.1997, c.259 (C.45:2B-42 et seq.);
 - b. an architect pursuant to R.S.45:3-1 et seq.;
 - c. an attorney admitted to practice law in New Jersey;
 - d. a dentist pursuant to R.S.45:6-1 et seq.;
 - e. an engineer pursuant to P.L.1938, c.342 (C.45:8-27 et seq.);
 - f. a physician in the practice of medicine or surgery pursuant to R.S.45:9-1 et seq.;
 - g. a podiatrist pursuant to R.S.45:5-1 et seq.;
 - h. a chiropractor pursuant to P.L.1989, c.153 (C.45:9-41.17 et seq.);
 - i. a registered professional nurse pursuant to P.L.1947, c.262 (C.45:11-23 et seq.);
 - j. a health care facility as defined in section 2 of P.L.1971, c.136 (C.26:2H-2);
 - k. a physical therapist pursuant to P.L.1983, c.296 (C.45:9-37.11 et seq.);
 - l. a land surveyor pursuant to P.L.1938, c.342 (C.45:8-27 et seq.);
 - m. a registered pharmacist pursuant to P.L.2003, c.280 (C.45:14-40 et seq.);
 - n. a veterinarian pursuant to R.S.45:16-1 et seq.;
 - o. an insurance producer pursuant to P.L.2001, c.210 (C.17:22A-26 et seq.);
 - p. a certified midwife, certified professional midwife, or certified nurse midwife pursuant to R.S.45:10-1 et seq.; and
 - q. a licensed site remediation professional pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7).

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

C.58:10-23.11b Definitions.

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

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

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

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

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

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

"Commissioner" means the Commissioner of Environmental Protection;

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

"Department" means the Department of Environmental Protection;

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

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

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

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

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

"Fund" means the New Jersey Spill Compensation Fund;

"Hazardous substances" means the "environmental hazardous substances" on the environmental hazardous substance list adopted by the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4); such elements and compounds, including petroleum products, which are defined as such by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to

section 311 of the Federal Water Pollution Control Act Amendments of 1972, Pub.L.92-500, as amended by the Clean Water Act of 1977, Pub.L.95-217 (33 U.S.C.s.1251 et seq.); the list of toxic pollutants designated by Congress or the United States Environmental Protection Agency pursuant to section 307 of that act; and the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 101 of the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L.96-510 (42 U.S.C.s.9601 et seq.); provided, however, that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.);

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

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

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

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

- (1) 20,000 gallons or more for hazardous substances which are other than petroleum or petroleum products, or
- (2) 200,000 gallons or more for hazardous substances of all kinds.

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

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

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

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

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

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

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

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

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

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

"Remediation" or "remediate" means all actions to investigate, clean up, or respond to any known, suspected, or threatened discharge, including the preliminary assessment, site investigation, remedial investigation, and remedial action, or any portion thereof, provided, however, that "remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources;

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

in accordance with applicable remediation regulations, and all applicable permits and authorizations have been obtained;

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

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

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

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

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

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

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

C.58:10-23.11g Liability for cleanup and removal costs.

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

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

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

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

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

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

b. The damages which may be recovered by the fund, without regard to fault, subject to the defenses enumerated in subsection d. of this section against the owner or operator of a major facility or vessel, shall not exceed \$50,000,000.00 for each major facility or \$1,200 per gross ton for each vessel, except that such maximum limitation shall not apply and the owner

or operator shall be liable, jointly and severally, for the full amount of such damages if it can be shown that such discharge was the result of (1) gross negligence or willful misconduct, within the knowledge and privity of the owner, operator or person in charge, or (2) a gross or willful violation of applicable safety, construction or operating standards or regulations. Damages which may be recovered from, or by, any other person shall be limited to those authorized by common or statutory law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) For the purposes of this subparagraph the person must have (i) acquired the property subsequent to a hazardous substance being discharged on the site and which discharge was discovered at the time of acquisition as a result of the appropriate inquiry, as defined in this paragraph (2), (ii) performed, following the effective date of P.L.1997, c.278, a remediation of the site or discharge consistent with the provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied upon a valid final remediation document for a remediation performed prior to acquisition, or, obtained a remedial action workplan certified by a licensed site remediation professional retained for the site after the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.) and continued to comply with the conditions of that workplan, or obtained approval of a remedial action workplan by the department after the effective date of P.L.1997, c.278 and continued to comply with the conditions of that workplan, and (iii) established and maintained all engineering and institutional controls as may be required pursuant to sections 35 and 36 of P.L.1993, c.139. A person who complies with the provisions of this subparagraph by actually performing a remediation of the site or discharge as set forth in (ii) above shall be issued, upon application, a no further action letter by the department or a response action outcome by a licensed site remediation professional, as applicable. A person who complies with the provisions of this subparagraph either by receipt of a final remediation document following the effective date of P.L.1997, c.278, or by relying on a previously issued final remediation document shall not be liable for any further remediation including any changes in a remediation standard or for the subsequent discovery of a hazardous substance, at the site, or emanating from the site, if the remediation was for the entire site, and the hazardous substance was discharged prior to the person acquiring the property. Notwithstanding any other provisions of this subparagraph, a person who complies with the provisions of this subparagraph only by virtue of the existence of a previously issued final remediation document shall receive no liability protections for any discharge which occurred during the time period between the issuance of the final remediation document and the property acquisition. Compliance with the provisions of this subparagraph (e) shall not relieve any person of any liability for a discharge that is off the site of the property covered by the final remediation document, for a discharge that occurs at that property after the person acquires the property, for any actions that person negligently takes that aggravates or contributes to a discharge of a hazardous substance, for failure to comply in the future with laws and regulations, or if that person fails to maintain the institutional or engineering controls on the property or to otherwise comply with the provisions of the final remediation document.

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

(4) Any federal, State, or local governmental entity which acquires ownership of real property through bankruptcy, tax delinquency, abandonment, escheat, eminent domain, condemnation or any circumstance in which the governmental entity involuntarily acquires title by virtue of its function as sovereign, or where the governmental entity acquires the property by any means for the purpose of promoting the redevelopment of that property, shall not be liable, pursuant to subsection c. of this section or pursuant to common law, to the State or to any other person for any discharge which occurred or began prior to that ownership. This paragraph shall not provide any liability protection to any federal, State or local governmental entity which has caused or contributed to the discharge of a hazardous

substance. This paragraph shall not provide any liability protection to any federal, State, or local government entity that acquires ownership of real property by condemnation or eminent domain where the real property is being remediated in a timely manner at the time of the condemnation or eminent domain action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C.58:10-23.11u Violations; remedies; enforcement.

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

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

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

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

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

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

- (1) a temporary or permanent injunction;
- (2) the costs of any investigation, cleanup or removal, and for the reasonable costs of preparing and successfully litigating an action under this subsection;
- (3) the cost of restoring, repairing, or replacing real or personal property damaged or destroyed by a discharge, any income lost from the time the property is damaged to the time it is restored, repaired or replaced, and any reduction in value of the property caused by the discharge by comparison with its value prior thereto;
- (4) the cost of restoration and replacement, where practicable, of any natural resource damaged or destroyed by a discharge; and
- (5) any other costs incurred by the department pursuant to P.L.1976, c.141.

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

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

- (a) the statutory or regulatory basis of the violation;
- (b) the specific citation of the act or omission constituting the violation;
- (c) the amount of the civil administrative penalty to be imposed;
- (d) the right of the violator to a hearing on any matter contained in the notice and the procedures for requesting a hearing.

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

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

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

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

from the date the amount was due and owing under the administrative order. The rate of interest shall be that established by the New Jersey Supreme Court for interest rates on judgments, as set forth in the Rules Governing the Courts of the State of New Jersey.

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

d. Any person who violates a provision of P.L.1976, c.141 (C.58:10-23.11 et seq.), or a court order issued pursuant thereto, or who fails to pay a civil administrative penalty in full or to agree to a schedule of payments therefor, shall be subject to a civil penalty not to exceed \$50,000.00 per day for each violation, and each day's continuance of the violation shall constitute a separate violation. Any penalty incurred under this subsection may be recovered with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in the Superior Court or a municipal court. The Superior Court and the municipal courts shall have jurisdiction to impose a civil penalty for a violation of P.L.1976, c.141 (C.58:10-23.11 et seq.) pursuant to this subsection and in accordance with the procedures set forth in the "Penalty Enforcement Law of 1999."

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

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

C.58:10B-1 Definitions.

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

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

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

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

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

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

"Department" means the Department of Environmental Protection;

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

"Engineering controls" means any mechanism to contain or stabilize contamination or ensure the effectiveness of a remedial action. Engineering controls may include, without

limitation, caps, covers, dikes, trenches, leachate collection systems, signs, fences and physical access controls;

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

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

"Financial assistance" means loans or loan guarantees;

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

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

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

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

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

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

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

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

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

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

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

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

"Remediation" or "remediate" means all actions to investigate, clean up, or respond to any known, suspected, or threatened discharge of contaminants, including the preliminary assessment, site investigation, remedial investigation, and remedial action, or any portion thereof, provided, however, that "remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources;

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

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

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

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

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

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

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

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

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

C.58:10B-1.3 Remediation of discharge of hazardous substance; requirements.

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

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

- (1) retain a licensed site remediation professional to perform the remediation;
- (2) notify the department of the name and license information of the licensed site remediation professional who has been retained to perform the remediation;
- (3) conduct the remediation without the prior approval of the department, unless directed otherwise by the department;
- (4) establish a remediation funding source if a remediation funding source is required pursuant to the provisions of section 25 of P.L.1993, c.139 (C.58:10B-3);
- (5) pay all applicable fees and oversight costs as required by the department;
- (6) provide access to the contaminated site to the department;
- (7) provide access to all applicable documents concerning the remediation to the department;
- (8) meet the mandatory remediation timeframes and expedited site specific timeframes established by the department pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28); and
- (9) obtain all necessary permits.

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

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

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

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

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

(3) A person shall not be required to retain a licensed site remediation professional pursuant to this section to conduct sampling or investigation to confirm or evaluate a remediation performed or supervised by a retained licensed site remediation professional, provided that such sampling or investigation: (1) is not required pursuant to this section or any other law, rule, regulation, or order; (2) is not conducted in order to obtain a response action outcome; and (3) is not conducted in order to investigate, clean up, or respond to any known, suspected, or threatened discharge of a contaminant. e. Any person who fails to comply with the provisions of this section shall be liable to the enforcement provisions established pursuant to section 22 of P.L.1976, c.141 (C.58:10-23.11u).

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

C.58:10B-3 Establishment, maintenance of remediation funding source.

25. a. Except as otherwise provided in section 27 of P.L.2009, c.60 (C.58:10C-27), the owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), or a discharger, a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) who has been issued a directive or an order by a State agency, who has entered into an administrative consent order with a State agency, or who has been ordered by a court to clean up and remove a hazardous substance or hazardous waste discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall establish and maintain a remediation funding source in the amount necessary to pay the estimated cost of the required remediation. A person who performs a remediation in an environmental opportunity zone is not required to establish or maintain a remediation funding source. A person who uses an innovative technology or who, in a timely fashion, implements an unrestricted use remedial action or a limited restricted use remedial action for all or part of a remedial action is not required to establish a remediation funding source for the cost of the remediation involving the innovative technology or permanent remedy. A government entity, a person who undertakes a remediation at their primary or secondary residence, the owner or operator of a child care center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.) who performs a remediation at the licensed child care center, or the person responsible for conducting a remediation at a public school or private school as defined in N.J.S.18A:1-1, or a charter school established pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.), shall not be required to establish or maintain a remediation funding source. A person required to establish a remediation funding source

pursuant to this section shall provide to the department satisfactory documentation that the requirement has been met.

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

b. The department may not require any other financial assurance by the person responsible for conducting the remediation other than that required in this section. In the case of a remediation performed pursuant to P.L.1983, c.330, the remediation funding source shall be established no more than 14 days after the approval by the department or the certification by the licensed site remediation professional of a remedial action workplan, upon approval of a remediation agreement pursuant to subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or upon submission of a remediation certification pursuant to subsection e. of P.L.1983, c.330, unless the department approves an extension. In the case of a remediation performed pursuant to P.L.1976, c.141, the remediation funding source shall be established as provided in an administrative consent order signed by the parties, as provided by a court, or as directed or ordered by the department. In the case of a remediation performed under the department's oversight pursuant to section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation funding source shall be established at the time the person becomes subject to the department's oversight. The establishment of a remediation funding source for that part of the remediation funding source to be established by a grant or financial assistance from the remediation fund may be established for the purposes of this subsection by the application for a grant or financial assistance from the remediation fund and satisfactory evidence submitted to the department that the grant or financial assistance will be awarded. However, if the financial assistance or grant is denied or the department finds that the person responsible for establishing the remediation funding source did not take reasonable action to obtain the grant or financial assistance, the department shall require that the full amount of the remediation funding source be established within 14 days of the denial or finding. Except as provided in section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation funding source shall be evidenced by the establishment and maintenance of (1) a remediation trust fund, administered by an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or State agency, or governed by court rule, (2) an environmental insurance policy, issued by an entity licensed by the Department of Banking and Insurance to transact business in the State of New Jersey, to fund

the remediation, (3) a line of credit from a financial institution regulated pursuant to State or federal law and satisfactory to the department authorizing the person responsible for performing the remediation to borrow money, (4) a self-guarantee, (5) a letter of credit from a financial institution regulated pursuant to State or federal law that guarantees the performance of the remediation by the person to the satisfaction of the department, or (6) a surety bond from an entity that is listed as an acceptable surety on federal bonds in United States Treasury Department Circular 570, or by any combination thereof. Where it can be demonstrated that a person cannot establish and maintain a remediation funding source for the full cost of the remediation by a method specified in this subsection, that person may establish the remediation funding source for all or a portion of the remediation, by securing financial assistance from the Hazardous Discharge Site Remediation Fund as provided in section 29 of P.L.1993, c.139 (C.58:10B-7).

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

The trust fund agreement shall provide that the remediation trust fund may not be revoked or terminated by the person required to establish the remediation funding source or by the trustee without the written consent of the department. The person who establishes the remediation funding source in the form of a trust fund may use the remediation funding source to pay for the actual cost of the remediation. The trustee shall disburse to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those moneys as the department or the licensed site remediation professional authorizes, in writing, to be disbursed. The trustee shall release to the person who established the remediation funding source, or to the department or transferee of the property, as appropriate, only those moneys as the department authorizes, in writing, to be released. For any remediation subject to the oversight of the department pursuant to section 27 of P.L.2009, c.60 (C.58:10C-27), the person entitled to receive money from the remediation trust fund shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation. Upon a determination by the department that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement of moneys from the remediation trust fund in the amount of the documented costs.

The department shall return the original remediation trust fund agreement to the trustee for termination after the department receives an alternative remediation funding source as specified in this section or the department notifies the person required to establish and maintain the remediation funding source that that person is no longer required to maintain a remediation funding source for remediation of the contaminated site.

d. An environmental insurance policy shall be established pursuant to the provisions of this subsection. An originally signed duplicate of the insurance policy shall be delivered to the department (1) by certified mail, overnight delivery, or personal service within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement, as provided in subsection e. of section 4 of P.L.1983, c.330, is approved, (2) within 14 days of submission to the department of a remedial action workplan certified by a licensed site remediation professional as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon submission of a remediation certification to the department as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or (4) as specified in an administrative consent order, civil order, or order of the department, as applicable. The environmental insurance policy shall be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State.

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

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

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

The line of credit shall not be allowed to expire, unless the institution provides the appropriate notification to the department and the borrower, as defined in a model agreement established by the department. The person who establishes the remediation funding source in the form of a line of credit may use the remediation funding source to pay for the actual cost

of the remediation. The institution providing the line of credit shall disburse to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those moneys as the department or the licensed site remediation professional authorizes, in writing, to be disbursed. The institution providing the line of credit shall release to the person who established the remediation funding source, or to the department or transferee of the property as appropriate, only those moneys as the department authorizes, in writing, to be released.

The department shall return the original line of credit agreement to the institution providing the line of credit for termination after the department receives an alternative remediation funding source as specified in this section, or after the department notifies the person required to establish and maintain the remediation funding source that that person is no longer required to maintain a remediation funding source for remediation of the contaminated site.

f. A person may self-guarantee a remediation funding source upon the submittal of documentation to the department demonstrating that the cost of the remediation would not exceed one-third of the tangible net worth of the person required to establish the remediation funding source, and that the person has a cash flow sufficient to assure the availability of sufficient moneys for the remediation during the time necessary for the remediation. Documentation shall be delivered to the department (1) by certified mail, overnight delivery, or personal service within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection e. of section 4 of P.L.1983, c.330 is approved, (2) within 14 days of submission to the department of a remedial action workplan certified by a licensed site remediation professional as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon submission of a remediation certification pursuant to the department as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or (4) as specified in an administrative consent order, civil order, or order of the department, as applicable. Satisfactory documentation of a person's capacity to self-guarantee a remediation funding source shall consist of audited financial statements, in which the auditor expresses an unqualified opinion, that includes a statement of income and expenses or similar statement of that person and the balance sheet or similar statement of assets and liabilities as used by that person for the fiscal year of the person making the application that ended closest in time to the date of the self-guarantee application. In the case of a special purpose entity established specifically for the purpose of acquiring and redeveloping a contaminated site, and for which a statement of income and expenses is not available, the documentation shall include a statement of assets and liabilities certified by a certified public accountant. The self-guarantee application shall be certified as true to the best of the applicant's information, knowledge, and belief, by the chief financial, or similar officer or employee, or general partner, or principal of the person making the self-guarantee application. A person shall be deemed by the department to possess the required cash flow pursuant to this section if that person's gross receipts exceed its gross payments in that fiscal year in an amount at least equal to the estimated costs of completing the remedial action workplan schedule to be performed in the 12-month period following the date on which the application for self-guarantee is made and the individual or entity possesses a net cash flow provided by operating activities in an amount at least equal to the estimated costs of completing the remediation in the 12-month period following the date the application is made. In the event that a self-guarantee is required for a period of more than one year, applications for a self-guarantee shall be renewed annually pursuant to this subsection for each successive year. The department may establish requirements and reporting obligations to ensure that the person proposing to self-guarantee a remediation funding source meets the

criteria for self-guaranteeing prior to the initiation of remedial action and until completion of the remediation.

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

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

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

h. A letter of credit shall be established pursuant to the provisions of this subsection. A letter of credit shall allow a person to guarantee the availability of funds up to a limit established in a written agreement in order to guarantee the payment of the cost of the remediation for which the letter of credit was established. An originally signed duplicate of the letter of credit agreement shall be delivered to the department (1) by certified mail, overnight delivery, or personal service within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9) is approved, (2) within 14 days of submission to the department of a remedial action workplan certified by a licensed site remediation professional as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon submission of a remediation certification to the department as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or (4) as specified in an administrative consent order, civil order, or order of the department, as applicable. The

letter of credit agreement shall conform to a model agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department. The letter of credit shall be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State, or by a federally regulated bank.

The letter of credit shall not be allowed to expire unless the financial institution provides the appropriate notification to the department and the application, as defined by a model agreement established by the department. The financial institution that provides the letter of credit shall release to the department or to a person authorized to perform the remediation pursuant to subsection g. of this section, only moneys authorized by the department, in writing, to be released. The department shall return the original letter of credit to the financial institution providing the letter of credit for termination after the department receives an alternative remediation funding source as authorized in this section, or after the department notifies the person required to establish and maintain the remediation funding source that that person is no longer required to maintain a remediation funding source for the remediation of the contaminated site.

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

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

C.58:10B-12.1 Green and sustainable practices encouraged.

9. The department shall encourage the use of green and sustainable practices during the remediation of a contaminated site. The use of green and sustainable practices shall not alter the requirement that the remediation be protective of the public health and safety and of the environment.

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

C.58:10B-15 Responsibility for prior discharges, exemptions; penalties.

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

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

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

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

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

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

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

d. Any documents or information provided to the department pursuant to this section may not be used in a criminal investigation or criminal prosecution against the person providing the information or documents for those violations that occurred before the effective date of P.L.1993, c.139 as long as the person remediates the discharge in conformance with the administrative consent order entered into pursuant to subsection a. of this section.

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

C.58:10B-24.1 Written notification of contaminated site remediation.

1. a. Prior to the initiation of the remedial investigation phase of the remediation of a contaminated site, any person who is responsible for conducting a remediation of the contaminated site, including the Department of Environmental Protection when it conducts a remediation of a contaminated site using public monies, shall provide written notification describing the activities that are to take place at the contaminated site to the clerk of the municipality and to the county health department and the local health agency wherein the site is located. The written notice shall include notice of the location of the contaminated site, including address and the lot and block number of the contaminated site. The written notice shall also inform the municipality, county health department, and local health agency that they may receive a copy of the remedial action workplan, any other workplan, report, or

validated data required by the department, and any updates thereto, and a copy of the site health and safety plan, from the responsible party, upon request. For any remediation of a contaminated site that will take longer than two years to complete, the person responsible for conducting the remediation shall provide the notification required by this section every two years until remediation is complete.

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

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

C.58:10B-24.2 Copies of documents, reports, data to municipality, county.

2. Upon request of a municipality, any person who is responsible for conducting a remediation of a contaminated site shall submit a copy of a remedial action workplan, any other workplan, report, or validated data required by the department pursuant to law, rule, or regulation, and any updates or status reports pursuant to the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), the "Brownfield and Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1 et al.), or the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), and a copy of the site health and safety plan, to the clerk of the municipality wherein the contaminated site is located at the same time as those documents are submitted to the department. Upon request of a county health department or a local health agency, the person who is responsible for conducting a remediation of a contaminated site shall also submit a copy of the remedial action workplan, any other workplan, report, or validated data required by the department pursuant to law, rule, or regulation, any updates or status reports, and a copy of the site health and safety plan, to the county health department or local health agency, respectively, wherein the contaminated site is located at the same time as those documents are submitted to the department.

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

C.58:10B-24.3 Notification to public of remediation of contaminated site, response to inquiries; requirements.

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

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

c. A person responsible for conducting a remediation shall respond to any written or email inquiries from the public regarding the status of the remediation that the person receives, or that

the department receives and forwards to the person responsible for conducting the remediation, by providing either: (1) information or documents that are responsive to the public inquiry; or (2) a written summary status report for the remediation, which shall be made in a form and manner as prescribed by the department pursuant to rules and regulations. A person responsible for conducting a remediation may designate a licensed site remediation professional to respond to public inquiries pursuant to this subsection.

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

C.58:10B-27.2 Entry of State into redevelopment agreement, certain circumstances.

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

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

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

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

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

(2) a developer has entered into an oversight document with the Commissioner of Environmental Protection for the remediation of a contaminated site located on the site of the redevelopment project and the developer is in compliance with the oversight document.

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

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

C.58:10B-28 Eligibility for reimbursement; certification.

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

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

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

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

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

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

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

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

C.58:10B-29 Qualifications for certification of reimbursement for remediation costs; oversight document.

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

b. Under the oversight document, the developer shall agree to perform and complete any remediation activity as may be required by the Department of Environmental Protection to ensure the remediation is conducted pursuant to the regulations adopted by the Department of Environmental Protection pursuant to P.L.1993, c.139 (C.58:10B-1 et al.).

c. After the developer has entered into an oversight document with the Commissioner of Environmental Protection, or after the developer has notified the Department of Environmental Protection of the name and license information of the licensed site

remediation professional who has been retained to perform the remediation as required pursuant to subsection b. of section 30 of P.L.2009, c.60 (C.58:10B-1.3), the commissioner shall submit a copy thereof to the developer, the clerk of the municipality in which the subject property is located, the Division of Business Assistance, Marketing and International Trade in the New Jersey Economic Development Authority, and the director.

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

C.58:10B-31 Reimbursement of remediation costs.

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

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

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

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

C.58:10C-2 Definitions relative to site remediation.

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

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

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

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

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

"Department" means the Department of Environmental Protection.

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

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

"Environmental crime" means any criminal violation of one of the following State laws: R.S.12:5-1 et seq.; P.L.1975, c.232 (C.13:1D-29 et al.); the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.); section 17 of P.L.1975, c.326 (C.13:1E-26); the "Comprehensive Regulated Medical Waste Management Act," sections 1 through 25 of P.L.1989, c.34 (C.13:1E-48.1 et seq.); P.L.1989, c.151 (C.13:1E-99.21a et al.); the "New Jersey Statewide Mandatory Source Separation and Recycling Act," P.L.1987, c.102 (C.13:1E-99.11 et al.); the "Pesticide Control Act of 1971," P.L.1971, c.176 (C.13:1F-1 et seq.); the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.); the "Toxic Catastrophe Prevention Act," P.L.1985, c.403 (C.13:1K-19 et seq.); "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.); the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et al.); the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.); the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.); the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et al.); P.L.1947, c.377 (C.58:4A-5 et seq.); the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.); the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.); P.L.1986, c.102 (C.58:10A-21 et seq.); the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et al.); the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.).

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

"Hazardous substance" means the "environmental hazardous substances" on the environmental hazardous substance list adopted by the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4); such elements and compounds, including petroleum products, which are defined as such by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 311 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L.92-500, as amended by the Clean Water Act of 1977, Pub. L.95-217 (33 U.S.C. s.1251 et seq.); the list of toxic pollutants designated by Congress or the federal Environmental Protection Agency pursuant to section 307 of that act; and the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 101 of the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub. L.96-510 (42 U.S.C. s.9601 et seq.); provided, however, that

sewage and sewage sludge shall not be considered as hazardous substances for the purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.).

"Immediate environmental concern" means: (1) confirmed contamination in a well used for potable purposes at concentrations above the ground water remediation standards; (2) confirmed contamination that has migrated into a structure or a confined space producing a toxic or harmful atmosphere resulting in an unacceptable human health exposure, or producing an oxygen-deficient atmosphere, or resulting in demonstrated physical damage to essential underground services; (3) confirmed contamination at the site of a nature that either dermal contact, ingestion, or inhalation of the contamination could result in an acute human health exposure; or (4) any other confirmed contamination that poses an immediate threat to the environment or to the public health and safety.

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

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

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

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

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

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

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

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

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

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

"Remediation" or "remediate" means all actions to investigate, clean up, or respond to any known, suspected, or threatened discharge of contaminants, including the preliminary assessment, site investigation, remedial investigation, and remedial action, or any portion thereof, provided, however, that "remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources.

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

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

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

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

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

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

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

"Unregulated heating oil tank" means any one or combination of tanks, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of heating oil for on-site consumption in a residential building, or those tanks with a capacity of 2,000 gallons

or less used to store heating oil for on-site consumption in a nonresidential building, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10 percent or more below the ground.

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

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

C.58:10C-7 Establishment of licensing program, requirements.

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

b. The board shall establish standards for education, training and experience that shall be required of any person who applies for a license or a license renewal. The board shall conduct examinations to certify that an applicant possesses sufficient knowledge of the State laws, rules and regulations, standards and requirements applicable to site remediation and that the applicant is qualified to obtain a license or a license renewal. The board shall also adopt standards for the professional conduct of licensed site remediation professionals pursuant to the provisions of section 16 of P.L.2009, c.60 (C.58:10C-16). The board shall require an applicant to submit references to ensure that the applicant meets the standards and requirements established for training, experience and professional conduct by licensed site remediation professionals. No person may take the licensing examination until the board determines that the applicant meets the standards for education, training and experience.

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

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

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

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

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

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

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

(6) has not been convicted of, or pled guilty to, an environmental crime, any similar or related crime under federal or state law, or any crime involving fraud, breach of trust, theft by deception, forgery, or any crime or offense that would qualify the person for registration pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2), or any other crime involving moral turpitude, or any similar or related offense under federal or state law. For the purposes of this section, a conviction or plea of guilty shall include a non vult, nolo contendere, no contest, or finding of guilt by a judge or jury; and

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

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

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

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

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

C.58:10C-11 License required; exceptions.

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

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

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

C.58:10C-14 Certification of documents by site remediation professional.

14. a. For any site for which a licensed site remediation professional is required to be retained pursuant to the provisions of section 30 of P.L.2009, c.60 (C.58:10B-1.3), the

person responsible for conducting the remediation shall certify all documents submitted to the department concerning the remediation of the contaminated site. The licensed site remediation professional shall certify that the work was performed, the licensed site remediation professional managed, supervised, or performed the work that is the basis of the submission, and that the work and the submitted documents are consistent with all applicable remediation requirements adopted by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C.58:10C-16 Protection of public health, safety, environment highest priority.

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

b. A licensed site remediation professional shall exercise reasonable care and diligence, and shall apply the knowledge and skill ordinarily exercised by licensed site remediation professionals in good standing practicing in the State at the time the services are performed.

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

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

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

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

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

h. A licensed site remediation professional shall not certify any document submitted to the department unless the licensed site remediation professional: (1) believes that the information in the submission is true, accurate, and complete; and (2) has managed,

supervised or performed the work that is the basis of the submission, or has periodically reviewed and evaluated the work performed by other persons that forms the basis for the information in the submission, or has completed the work of another licensed site remediation professional and has concluded such work is reliable pursuant to subsection f. of this section. A licensed site remediation professional shall not knowingly make any false statement, representation, or certification in any document or information required to be submitted to the board or the department.

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

j. If a licensed site remediation professional obtains specific knowledge of a condition that in his independent professional judgment is an immediate environmental concern, then the licensed site remediation professional shall: (1) immediately verbally advise, and confirm in writing to, the person responsible for conducting the remediation of that person's duty to notify the department of the condition, provided the person is known to the licensed site remediation professional; and (2) immediately notify the department of the condition by calling the department's telephone hotline.

k. If a licensed site remediation professional retained to perform remediation at a site or any portion of a site obtains specific knowledge that a discharge has occurred at any location on the site, the licensed site remediation professional shall: (1) notify the person responsible for conducting the remediation of the existence of the discharge; and (2) notify the department of the discharge by calling the department's telephone hotline. The person responsible for conducting the remediation shall also be responsible for notifying the department of the existence of the discharge. The provisions of this subsection shall not apply to a discharge that may be a result of the existence of historic fill material.

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

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

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

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

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

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

- (1) knowingly make a false statement of material fact;
- (2) fail to disclose a fact necessary to correct a material misunderstanding known by the licensed site remediation professional to have arisen in the matter;
- (3) knowingly and materially falsify, tamper with, alter, conceal, or destroy any document, data record, remedial system, or monitoring device that is relevant to the investigation, without obtaining the prior approval of the department; or
- (4) knowingly allow or tolerate any employee, agent, or contractor of the licensed site remediation professional to engage in any of the foregoing activities.

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

- (1) the licensed site remediation professional orders, directs, or agrees to the provision of professional services conducted or prepared by another licensed site remediation professional under his supervision;
- (2) the licensed site remediation professional knows that the professional services constitute a violation of this section; and
- (3) the licensed site remediation professional fails to take reasonable steps to avoid or mitigate the violation.

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

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

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

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

- (1) make a material misrepresentation of fact;
- (2) omit a fact when the omission results in a materially misleading description; or
- (3) make a statement that, in the opinion of the board, is likely to create an unjustified expectation about results the licensed site remediation professional may achieve, or state or imply that the licensed site remediation professional may achieve results by means that violate the provisions of applicable environmental statutes, rules or regulations, including the provisions of P.L.2009, c.60 (C.58:10C-1 et al.).

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

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

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

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

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

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

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

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

C.58:10C-16.1 Remediation professionals' obligations relative to unoccupied structure.

23. If a licensed site remediation professional obtains specific knowledge of a condition in an unoccupied structure, that, in the licensed site remediation professional's independent professional judgment, constitutes an immediate environmental concern, and the person responsible for conducting the remediation provides to the department a written certification from the property owner that the building (i) is not occupied, (ii) will not be occupied, and (iii) will be demolished, then no further remediation relative to the immediate environmental concern in the unoccupied structure shall be required, provided the conditions of the certification are maintained. Nothing in this section shall be construed to limit the responsibility of a licensed site remediation professional to comply with the notification requirements of subsection j. of section 16 of P.L.2009, c.60 (C.58:10C-16), or the responsibility of a person to report a discharge

pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.). The department shall prescribe the form and manner of the written certification pursuant to this section.

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

C.58:10C-19 Establishment of permit program.

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

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

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

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

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

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

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

C.58:10C-20 Maintenance of data, documents, information.

20. A licensed site remediation professional shall, for each contaminated site, maintain and preserve all data, documents and information concerning the remediation that the licensed site remediation professional has prepared or relied upon, including but not limited to, technical records and contractual documents, raw sampling and monitoring data, whether or not the data and information, including technical records and contractual documents, were developed by the licensed site remediation professional or the licensee's divisions, employees, agents, accountants, contractors, or attorneys, that relate in any way to the contamination at the site. An electronic copy of the records shall be submitted to the department at the time the response action outcome is filed with the department.

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

C.58:10C-27 Direct oversight of remediation by department; conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) the person responsible for conducting the remediation shall establish a remediation funding source other than a self-guarantee pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3) in the amount of the estimated cost of the remediation;

(5) all disbursements of funds from the remediation funding source shall require prior approval by the department;

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

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

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

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

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

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

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

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

(b) there is a public emergency, as declared by the Governor or the President of the United States, or an official authorized to act on their behalf, that resulted in a delay in meeting the mandatory or expedited site-specific timeframe or other condition that triggered direct oversight.

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

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

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

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

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

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

(4) The department may reinstate any or all of the direct oversight requirements that it modifies pursuant to paragraph (1), (2), or (3) of this subsection if, after the modification, the department finds that the person responsible for conducting the remediation has failed to comply with any applicable timeframe, administrative consent order modifying the requirements of direct oversight, or any law, rule, or regulation concerning the remediation of contaminated sites.

27. This act shall take effect immediately.

Approved August 23, 2019.