

SENATE, No. 3682

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MAY 13, 2019

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Senator Singleton

SYNOPSIS

Makes various changes to laws governing remediation of contaminated sites.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/18/2019)

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

3

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

6

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

9 3. As used in this act:

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

17 "Closing operations" means:

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

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

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

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

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

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

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

Matter underlined thus is new matter.

1 "Transferring ownership or operations" means:

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

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

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

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

14 "Change in ownership" means:

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

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

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

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

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

31 "Change in ownership" shall not include:

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

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

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

- 1 (4) a transfer where the transferor is the sibling, spouse, child,
2 parent, grandparent, child of a sibling, or sibling of a parent of the
3 transferee;
- 4 (5) a transfer to confirm or correct any deficiencies in the
5 recorded title of an industrial establishment;
- 6 (6) a transfer to release a contingent or reversionary interest
7 except for any transfer of a lessor's reversionary interest in leased
8 real property;
- 9 (7) a transfer of an industrial establishment by devise or
10 intestate succession;
- 11 (8) the granting or termination of an easement or a license to
12 any portion of an industrial establishment;
- 13 (9) the sale or transfer of real property pursuant to a
14 condemnation proceeding initiated pursuant to the "Eminent
15 Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);
- 16 (10) execution, delivery and filing or recording of any mortgage,
17 security interest, collateral assignment or other lien on real or
18 personal property; or
- 19 (11) any transfer of personal property pursuant to a valid security
20 agreement, collateral assignment or other lien, including, but not
21 limited to, seizure or replevin of such personal property which
22 transfer is for the purpose of implementing the secured party's
23 rights in the personal property which is the collateral;
- 24 "Department" means the Department of Environmental
25 Protection;
- 26 "Hazardous substances" means those elements and compounds,
27 including petroleum products, which are defined as such by the
28 department, after public hearing, and which shall be consistent to
29 the maximum extent possible with, and which shall include, the list
30 of hazardous substances adopted by the Environmental Protection
31 Agency pursuant to Section 311 of the "Federal Water Pollution
32 Control Act Amendments of 1972" (33 U.S.C. s.1321) and the list
33 of toxic pollutants designated by Congress or the Environmental
34 Protection Agency pursuant to Section 307 of that act (33 U.S.C.
35 s.1317); except that sewage and sewage sludge shall not be
36 considered as hazardous substances for the purposes of this act;
- 37 "Hazardous waste" shall have the same meaning as provided in
38 section 1 of P.L.1976, c.99 (C.13:1E-38);
- 39 "Industrial establishment" means any place of business engaged
40 in operations which involve the generation, manufacture, refining,
41 transportation, treatment, storage, handling, or disposal of
42 hazardous substances or hazardous wastes on-site, above or below
43 ground, having a Standard Industrial Classification number within
44 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in the
45 Standard Industrial Classifications Manual prepared by the Office
46 of Management and Budget in the Executive Office of the President
47 of the United States. Those facilities or parts of facilities subject to
48 operational closure and post-closure maintenance requirements
49 pursuant to the "Solid Waste Management Act," P.L.1970, c.39

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

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

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

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

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

45 "Direct owner or operator" means any person that directly owns
46 or operates an industrial establishment. A holder of a mortgage or
47 other security interest in the industrial establishment shall not be
48 deemed to be a direct owner or operator of the industrial
49 establishment unless or until it loses its exemption under P.L.1993,

1 c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial
2 establishment by deed of foreclosure, by other deed, or by court
3 order or other process;

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

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

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

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

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

44 "Remediation" or "remediate" means all **[necessary]** actions to
45 investigate **[and]** , clean up , or respond to any known, suspected,
46 or threatened discharge of hazardous substances or hazardous
47 wastes, including **[, as necessary,]** the preliminary assessment, site
48 investigation, remedial investigation, and remedial action , or any
49 portion thereof;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 "Site investigation" means the collection and evaluation of data
46 adequate to determine whether or not discharged contaminants exist
47 at a site or have migrated or are migrating from the site at levels in
48 excess of the applicable remediation standards. A site investigation

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

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

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

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

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

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

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

22

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (e) For the purposes of this subparagraph the person must have
40 (i) acquired the property subsequent to a hazardous substance being
41 discharged on the site and which discharge was discovered at the
42 time of acquisition as a result of the appropriate inquiry, as defined
43 in this paragraph (2), (ii) performed, following the effective date of
44 P.L.1997, c.278, a remediation of the site or discharge consistent
45 with the provisions of section 35 of P.L.1993, c.139 (C.58:10B-12),
46 or, relied upon a valid final remediation document for a remediation
47 performed prior to acquisition, or, obtained a remedial action
48 workplan certified by a licensed site remediation professional
49 retained for the site after the date of enactment of P.L.2009, c.60

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

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

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

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

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

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

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

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

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

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

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

47 e. Neither the fund nor the Sanitary Landfill Contingency Fund
48 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall
49 be liable for any damages incurred by any person who is relieved

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19

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

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

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

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

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

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

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

40 (1) a temporary or permanent injunction;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31

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

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

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

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

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

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

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

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

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

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

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

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

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

26 "Financial assistance" means loans or loan guarantees;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19

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

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

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

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

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

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

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

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

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

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

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

4 (9) obtain all necessary permits.

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

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

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

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

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

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

45

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

48 25. a. Except as otherwise provided in section 27 of P.L.2009,
49 c.60 (C.58:10C-27), the owner or operator of an industrial

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

34 The remediation funding source shall be established in an
35 amount equal to or greater than the cost estimate of the
36 implementation of the remediation (1) as approved by the
37 department or as determined by the licensed site remediation
38 professional, as applicable, in accordance with rules and regulations
39 adopted by the department pursuant to section 29 of P.L.2009, c.60
40 (C.58:10C-29), (2) as provided in an administrative consent order or
41 remediation agreement or remediation certification as required
42 pursuant to subsection e. of section 4 of P.L.1983, c.330, (3) as
43 stated in a departmental order or directive, or (4) as agreed to by a
44 court, and shall be in effect for a term not less than the actual time
45 necessary to perform the remediation at the site. Whenever the
46 remediation cost estimate increases, the person required to establish
47 the remediation funding source shall cause the amount of the
48 remediation funding source to be increased to an amount at least
49 equal to the new estimate. Whenever the remediation cost estimate

1 decreases, the person required to obtain the remediation funding
2 source may file a written request to the department to decrease the
3 amount in the remediation funding source or may submit written
4 documentation to the department certified by the licensed site
5 remediation professional of the details of the decrease in the cost
6 estimate, as applicable. The remediation funding source may be
7 decreased to the amount of the new estimate upon written approval
8 by the department delivered to the person who established the
9 remediation funding source or upon submission of the certification
10 by the licensed site remediation professional, as applicable.

11 b. **【**The person who established the remediation funding source
12 may use the remediation funding source to pay for the actual cost of
13 the remediation.**】** The department may not require any other
14 financial assurance by the person responsible for conducting the
15 remediation other than that required in this section. In the case of a
16 remediation performed pursuant to P.L.1983, c.330, the remediation
17 funding source shall be established no more than 14 days after the
18 approval by the department or the certification by the licensed site
19 remediation professional of a remedial action workplan, upon
20 approval of a remediation agreement pursuant to subsection e. of
21 section 4 of P.L.1983, c.330 (C.13:1K-9), or upon submission of a
22 remediation certification pursuant to subsection e. of P.L.1983,
23 c.330, unless the department approves an extension. In the case of
24 a remediation performed pursuant to P.L.1976, c.141, the
25 remediation funding source shall be established as provided in an
26 administrative consent order signed by the parties, as provided by a
27 court, or as directed or ordered by the department. In the case of a
28 remediation performed under the department's oversight pursuant to
29 section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation
30 funding source shall be established at the time the person becomes
31 subject to the department's oversight. The establishment of a
32 remediation funding source for that part of the remediation funding
33 source to be established by a grant or financial assistance from the
34 remediation fund may be established for the purposes of this
35 subsection by the application for a grant or financial assistance from
36 the remediation fund and satisfactory evidence submitted to the
37 department that the grant or financial assistance will be awarded.
38 However, if the financial assistance or grant is denied or the
39 department finds that the person responsible for establishing the
40 remediation funding source did not take reasonable action to obtain
41 the grant or financial assistance, the department shall require that
42 the full amount of the remediation funding source be established
43 within 14 days of the denial or finding. Except as provided in
44 section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation
45 funding source shall be evidenced by the establishment and
46 maintenance of (1) a remediation trust fund, administered by an
47 entity that has the authority to act as a trustee and whose trust
48 operations are regulated and examined by a federal or State agency,
49 or governed by court rule, (2) an environmental insurance policy,

1 issued by an entity licensed by the Department of Banking and
2 Insurance to transact business in the State of New Jersey, to fund
3 the remediation, (3) a line of credit from a financial institution
4 regulated pursuant to State or federal law and satisfactory to the
5 department authorizing the person responsible for performing the
6 remediation to borrow money, (4) a self-guarantee, **【or】** (5) a letter
7 of credit from a financial institution regulated pursuant to State or
8 federal law that guarantees the performance of the remediation by
9 the person to the satisfaction of the department, or (6) a surety bond
10 from an entity that is listed as an acceptable surety on federal
11 bonds in United States Treasury Department Circular 570, or by any
12 combination thereof. Where it can be demonstrated that a person
13 cannot establish and maintain a remediation funding source for the
14 full cost of the remediation by a method specified in this subsection,
15 that person may establish the remediation funding source for all or a
16 portion of the remediation, by securing financial assistance from the
17 Hazardous Discharge Site Remediation Fund as provided in section
18 29 of P.L.1993, c.139 (C.58:10B-7).

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

39 The trust fund agreement shall provide that the remediation trust
40 fund may not be revoked or terminated by the person required to
41 establish the remediation funding source or by the trustee without
42 the written consent of the department. The person who establishes
43 the remediation funding source in the form of a trust fund may use
44 the remediation funding source to pay for the actual cost of the
45 remediation. The trustee shall **【release】** disburse to the person
46 required to establish the remediation funding source, or to the
47 department or transferee of the property, as appropriate, only those
48 moneys as the department or the licensed site remediation
49 professional authorizes, in writing, to be **【released】** disbursed. The

1 trustee shall release to the person who established the remediation
2 funding source, or to the department or transferee of the property,
3 as appropriate, only those moneys as the department authorizes, in
4 writing, to be released. For any remediation subject to the oversight
5 of the department pursuant to section 27 of P.L.2009, c.60
6 (C.58:10C-27), the person entitled to receive money from the
7 remediation trust fund shall submit documentation to the
8 department detailing the costs incurred or to be incurred as part of
9 the remediation. Upon a determination by the department that the
10 costs are consistent with the remediation of the site, the department
11 shall, in writing, authorize a disbursement of moneys from the
12 remediation trust fund in the amount of the documented costs.

13 The department shall return the original remediation trust fund
14 agreement to the trustee for termination after the **【**person required
15 to establish the remediation funding source substitutes **】** department
16 receives an alternative remediation funding source as specified in
17 this section or the department notifies the person required to
18 establish and maintain the remediation funding source that that
19 person is no longer required to maintain a remediation funding
20 source for remediation of the contaminated site.

21 d. An environmental insurance policy shall be established
22 pursuant to the provisions of this subsection. An originally signed
23 duplicate of the insurance policy shall be delivered to the
24 department (1) by certified mail, overnight delivery, or personal
25 service within **【30】** 14 days of receipt of notice from the
26 department that the remedial action workplan or remediation
27 agreement, as provided in subsection e. of section 4 of P.L.1983,
28 c.330, is approved, (2) within 14 days of submission to the
29 department of a remedial action workplan certified by a licensed
30 site remediation professional as provided in subsection e. of section
31 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon submission of a
32 remediation certification to the department as provided in
33 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or (4) as
34 specified in an administrative consent order, civil order, or order of
35 the department, as applicable. **【**The insurance company shall
36 release to the person required to establish the remediation funding
37 source, or to the department or transferee of the property, as
38 appropriate, only those moneys as the department or the licensed
39 site remediation professional authorizes, in writing, to be released.
40 The person entitled to receive money from the environmental
41 insurance policy shall submit documentation to the department
42 detailing the costs incurred or to be incurred as part of the
43 remediation. **】** The environmental insurance policy shall be issued
44 by an entity that is licensed by the New Jersey Department of
45 Banking and Insurance to transact business in the State.

46 An environmental insurance policy cannot be revoked or
47 terminated without the prior written approval of the department,
48 except upon failure by the insured to pay the premium. The issuer
49 of the environmental insurance policy may revoke or terminate the

1 policy for failure to pay the premium only after notifying the person
2 who established the remediation funding source and the department,
3 by certified mail, of the decision to revoke or terminate the policy.

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

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

42 The line of credit shall not be allowed to expire, unless the
43 institution provides the appropriate notification to the department
44 and the borrower, as defined in a model agreement established by
45 the department. The person who establishes the remediation
46 funding source in the form of a line of credit may use the
47 remediation funding source to pay for the actual cost of the
48 remediation. The institution providing the line of credit shall
49 disburse to the person required to establish the remediation funding

1 source, or to the department or transferee of the property, as
2 appropriate, only those moneys as the department or the licensed
3 site remediation professional authorizes, in writing, to be disbursed.
4 The **【person or】** institution providing the line of credit shall release
5 to the person **【required to establish】** who established the
6 remediation funding source, or to the department or transferee of
7 the property as appropriate, only those moneys as the department
8 **【or the licensed site remediation professional】** authorizes, in
9 writing, to be released. **【The person entitled to draw upon the line**
10 **of credit shall submit documentation to the department detailing the**
11 **costs incurred or to be incurred as part of the remediation. Upon a**
12 **determination that the costs are consistent with the remediation of**
13 **the site, the department shall, in writing, authorize a disbursement**
14 **from the line of credit in the amount of the documented costs.】**

15 The department shall return the original line of credit agreement
16 to the **【person or】** institution providing the line of credit for
17 termination after the **【person required to establish the remediation**
18 **funding source substitutes】** department receives an alternative
19 remediation funding source as specified in this section, or after the
20 department notifies the person required to establish and maintain
21 the remediation funding source that that person is no longer
22 required to maintain a remediation funding source for remediation
23 of the contaminated site.

24 f. A person may self-guarantee a remediation funding source
25 upon the submittal of documentation to the department
26 demonstrating that the cost of the remediation **【as estimated in the**
27 **remedial action workplan, in the remediation agreement as provided**
28 **in subsection e. of section 4 of P.L.1983, c.330, in a remediation**
29 **certification submitted pursuant to subsection e. of P.L.1983, c.330,**
30 **in an administrative consent order, or as provided in a departmental**
31 **or court order,】** would not exceed one-third of the tangible net
32 worth of the person required to establish the remediation funding
33 source, and that the person has a cash flow sufficient to assure the
34 availability of sufficient moneys for the remediation during the time
35 necessary for the remediation. Documentation shall be delivered to
36 the department (1) by certified mail, overnight delivery, or personal
37 service within 14 days of receipt of notice from the department that
38 the remedial action workplan or remediation agreement as provided
39 in subsection e. of section 4 of P.L.1983, c.330 is approved, (2)
40 within 14 days of submission to the department of a remedial action
41 workplan certified by a licensed site remediation professional as
42 provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-
43 9), (3) upon submission of a remediation certification pursuant to
44 the department as provided in subsection e. of section 4 of
45 P.L.1983, c.330 (C.13:1K-9), or (4) as specified in an
46 administrative consent order, civil order, or order of the department,
47 as applicable. Satisfactory documentation of a person's capacity to
48 self-guarantee a remediation funding source shall consist of audited

1 financial statements, in which the auditor expresses an unqualified
2 opinion, that includes a statement of income and expenses or similar
3 statement of that person and the balance sheet or similar statement
4 of assets and liabilities as used by that person for the fiscal year of
5 the person making the application that ended closest in time to the
6 date of the self-guarantee application. In the case of a special
7 purpose entity established specifically for the purpose of acquiring
8 and redeveloping a contaminated site, and for which a statement of
9 income and expenses is not available, the documentation shall
10 include a statement of assets and liabilities certified by a certified
11 public accountant. The self-guarantee application shall be certified
12 as true to the best of the applicant's information, knowledge, and
13 belief, by the chief financial, or similar officer or employee, or
14 general partner, or principal of the person making the self-guarantee
15 application. A person shall be deemed by the department to possess
16 the required cash flow pursuant to this section if that person's gross
17 receipts exceed its gross payments in that fiscal year in an amount
18 at least equal to the estimated costs of completing the remedial
19 action workplan schedule to be performed in the 12-month period
20 following the date on which the application for self-guarantee is
21 made and the individual or entity possesses a net cash flow
22 provided by operating activities in an amount at least equal to the
23 estimated costs of completing the remediation in the 12-month
24 period following the date the application is made. In the event that
25 a self-guarantee is required for a period of more than one year,
26 applications for a self-guarantee shall be renewed annually pursuant
27 to this subsection for each successive year. The department may
28 establish requirements and reporting obligations to ensure that the
29 person proposing to self-guarantee a remediation funding source
30 meets the criteria for self-guaranteeing prior to the initiation of
31 remedial action and until completion of the remediation.

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

1 remediation guarantee fund created pursuant to section 45 of
2 P.L.1993, c.139 (C.58:10B-20).

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

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

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

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

6 The letter of credit shall not be allowed to expire unless the
7 financial institution provides the appropriate notification to the
8 department and the application, as defined by a model agreement
9 established by the department. The financial institution that
10 provides the letter of credit shall release to the department or to a
11 person authorized to perform the remediation pursuant to subsection
12 g. of this section, only moneys authorized by the department, **[**or
13 the authorized licensed site remediation professional,**]** in writing, to
14 be released. The department shall return the original letter of credit
15 to the financial institution providing the letter of credit for
16 termination after the **[**person required to establish the remediation
17 funding source substitutes**]** department receives an alternative
18 remediation funding source as authorized in this section, or after the
19 department notifies the person required to establish and maintain
20 the remediation funding source that that person is no longer
21 required to maintain a remediation funding source for the
22 remediation of the contaminated site.

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

47 The surety bond shall not be cancelled unless the surety company
48 provides the appropriate notice of cancellation to the department
49 and the principal, as defined in a model agreement established by

1 the department. The surety company that provides the surety bond
2 shall release to the department, or to a person authorized to perform
3 the remediation pursuant to subsection g. of this section, only
4 monies authorized by the department, in writing, to be released.
5 The department shall return the original surety bond to the surety
6 company for termination after the department receives an
7 alternative remediation funding source as specified in this section or
8 the department notifies the person that that person is no longer
9 required to maintain a remediation funding source for remediation
10 of the contaminated site.

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

12

13 9. (New section) The department shall encourage the use of
14 green and sustainable practices during the remediation of a
15 contaminated site. The use of green and sustainable practices shall
16 not alter the requirement that the remediation be protective of the
17 public health and safety and of the environment.

18

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

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

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

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

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

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

46 b. Notwithstanding the provisions of subsection a. of this
47 subsection, any person who enters into [a memorandum of
48 agreement or] an administrative consent order pursuant to this
49 section and fails to remediate the discharge in accordance with the

1 **【**memorandum of agreement or**】** administrative consent order, shall
2 be subject to all penalties for violations that occurred before the
3 effective date of P.L.1993, c.139 (C.13:1K-9.6 et al.) as well as any
4 penalties for subsequent violations.

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

7 d. Any documents or information provided to the department
8 pursuant to this section may not be used in a criminal investigation
9 or criminal prosecution against the person providing the
10 information or documents for those violations that occurred before
11 the effective date of **【this act】** P.L.1993, c.139 as long as the person
12 remediates the discharge in conformance with the administrative
13 consent order **【or memorandum of agreement】** entered into
14 pursuant to subsection a. of this section.

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

16

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

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

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

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

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

3 2. Upon request of a municipality, any person who is
4 responsible for conducting a remediation of a contaminated site
5 shall submit a copy of a remedial action workplan , any other
6 workplan, report, or validated data required by the department, and
7 any updates or status reports pursuant to the "Industrial Site
8 Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), the "Brownfield
9 and Contaminated Site Remediation Act," P.L.1997, c.278
10 (C.58:10B-1.1 et al.), or the "Spill Compensation and Control Act,"
11 P.L.1976, c.141 (C.58:10-23.11 et seq.), and a copy of the site
12 health and safety plan, to the clerk of the municipality wherein the
13 contaminated site is located at the same time as **【the workplan is】**
14 those documents are submitted to the **【Department of**
15 **Environmental Protection】** department. Upon request of a county
16 health department or a local health agency, the person who is
17 responsible for conducting a remediation of a contaminated site
18 shall also submit a copy of the remedial action workplan **【and】** ,
19 any other workplan, report, or validated data required by the
20 department, any updates or status reports, and a copy of the site
21 health and safety plan, to the county health department or local
22 health agency, respectively.

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

24

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

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

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

46 c. A person responsible for conducting a remediation shall
47 respond to any inquiries from the public that the person receives, or
48 that the department receives and forwards to the person responsible
49 for conducting the remediation, by providing either: (1) specific

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

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

9

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

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

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

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

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

46 (1) in estimating the amount of State taxes that are anticipated to
47 be derived from a redevelopment project the director shall only
48 consider tax revenues generated subsequent to the date of the
49 redevelopment agreement from a phase of the redevelopment

1 project that has not generated tax revenues prior to January 1, 2006;
2 and

3 (2) a developer has entered into **【a memorandum of agreement**
4 **or other】** an oversight document with the Commissioner of
5 Environmental Protection for the remediation of a contaminated site
6 located on the site of the redevelopment project and the developer is
7 in compliance with the **【memorandum of agreement or】** oversight
8 document.

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

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

16

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

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

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

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

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

43 (2) the developer had (i) entered into **【a memorandum of**
44 **agreement, or other】** an oversight document, with the
45 Commissioner of Environmental Protection, after the developer
46 entered into the redevelopment agreement, for the remediation of
47 contamination located on the site of the redevelopment project
48 pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29) and the

1 developer is in compliance with the **【**memorandum of agreement**】**
2 oversight document, or (ii) complied with the requirements set forth
3 in subsection b. of section 30 of P.L.2009, c.60 (C.58:10B-1.3); and

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

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

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

18

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

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

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

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

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

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

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

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

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

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

40

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

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

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

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

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

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

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

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

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

26 "Environmental crime" means any criminal violation of one of
27 the following State laws: R.S.12:5-1 et seq.; P.L.1975, c.232
28 (C.13:1D-29 et al.); the "Solid Waste Management Act," P.L.1970,
29 c.39 (C.13:1E-1 et seq.); section 17 of P.L.1975, c.326 (C.13:1E-
30 26); the "Comprehensive Regulated Medical Waste Management
31 Act," sections 1 **【though】** through 25 of P.L.1989, c.34 (C.13:1E-
32 48.1 et seq.); P.L.1989, c.151 (C.13:1E-99.21a et al.); the "New
33 Jersey Statewide Mandatory Source Separation and Recycling Act,"
34 P.L.1987, c.102 (C.13:1E-99.11 et al.); the "Pesticide Control Act
35 of 1971," P.L.1971, c.176 (C.13:1F-1 et seq.); the "Industrial Site
36 Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.); the "Toxic
37 Catastrophe Prevention Act," P.L.1985, c.403 (C.13:1K-19 et seq.);
38 "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.);
39 the "Freshwater Wetlands Protection Act," P.L.1987, c.156
40 (C.13:9B-1 et al.); the "Coastal Area Facility Review Act,"
41 P.L.1973, c.185 (C.13:19-1 et seq.); the "Air Pollution Control Act
42 (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.); the "Water Supply
43 Management Act," P.L.1981, c.262 (C.58:1A-1 et al.); P.L.1947,
44 c.377 (C.58:4A-5 et seq.); the "Spill Compensation and Control
45 Act," P.L.1976, c.141 (C.58:10-23.11 et seq.); the "Water Pollution
46 Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.); P.L.1986, c.102
47 (C.58:10A-21 et seq.); the "Safe Drinking Water Act," P.L.1977,
48 c.224 (C.58:12A-1 et al.); the "Flood Hazard Area Control Act,"
49 P.L.1962, c.19 (C.58:16A-50 et seq.).

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

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

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

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

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

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

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

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

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

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

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

47 "Remedial action workplan" means a plan for the remedial action
48 to be undertaken at a site, or at any area to which a discharge
49 originating at a site is migrating or has migrated; a description of

1 the remedial action to be used to remediate a site; a time schedule
2 and cost estimate of the implementation of the remedial action; and
3 any other information the department deems necessary.

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

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

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

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

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

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

48 "Site investigation" means the collection and evaluation of data
49 adequate to determine whether or not discharged contaminants exist

1 at a site or have migrated or are migrating from the site at levels in
2 excess of the applicable remediation standards. A site investigation
3 shall be developed based upon the information collected pursuant to
4 the preliminary assessment.

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

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

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

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

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

28

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

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

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

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

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

9 (1) holds a bachelor's degree or higher in natural, chemical or
10 physical science, or an engineering degree in a discipline related to
11 site remediation, from an accredited institution of higher education,
12 or has been issued a temporary license to remediate discharges from
13 underground storage tanks only pursuant to subsection d. of section
14 13 of P.L.2009, c.60 (C.58:10C-13) and meets the other
15 requirements established in this subsection and in subsection f. of
16 this section;

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

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

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

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

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

46 (7) has not had a professional license or certification revoked by
47 any state licensing board or any other professional licensing agency
48 within the previous 10 years , and has not surrendered a

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

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

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

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

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

33

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

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

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

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

46

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

1 14. a. For any site for which a licensed site remediation
2 professional is required to be **【hired】** retained pursuant to the
3 provisions of section 30 of P.L.2009, c.60 (C.58:10B-1.3), the
4 person responsible for conducting the remediation shall certify all
5 documents submitted to the department concerning the remediation
6 of the contaminated site. The licensed site remediation professional
7 shall certify that the work was performed, the licensed site
8 remediation professional managed, supervised, or performed the
9 work that is the basis of the submission, and that the work and the
10 submitted documents are consistent with all applicable remediation
11 requirements adopted by the department.

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

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

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

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

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

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

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

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

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

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

40 **【(b)】** (c) mandatory remediation timeframes and expedited site
41 specific timeframes adopted by the department pursuant to section
42 28 of P.L.2009, c.60 (C.58:10C-28); **【and】**

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

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

47 (3) The licensed site remediation professional shall apply any
48 available and appropriate technical guidelines concerning site
49 remediation as issued by the department. The department shall

1 provide interested parties the opportunity to participate in the
2 development and review of technical guidelines issued for the
3 remediation of contaminated sites.

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

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

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

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

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

30

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

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

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

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

- 1 d. A licensed site remediation professional retained by a person
2 responsible for conducting the remediation shall notify the
3 department within 15 calendar days after being retained. In
4 addition, a licensed site remediation professional shall notify the
5 department within 15 calendar days after being released from
6 responsibility for a remediation if the release occurs prior to
7 issuance of the response action outcome for the site by the licensed
8 site remediation professional.
- 9 e. A licensed site remediation professional and the person
10 responsible for conducting the remediation shall correct any
11 deficiency the department identifies in a document submitted
12 concerning a remediation. The deficiency shall be corrected in
13 accordance with timeframes established by the department.
- 14 f. A licensed site remediation professional may complete any
15 phase of remediation based on remediation work performed under
16 the supervision of another licensed site remediation professional,
17 provided that the licensed site remediation professional: (1)
18 reviews all available documentation on which he relies; (2)
19 conducts a site visit to observe current conditions and to verify the
20 status of as much of the work as is reasonably observable; and (3)
21 concludes, in the exercise of independent professional judgment,
22 that there is sufficient information upon which to complete any
23 additional phase of remediation and prepare workplans and reports
24 related thereto.
- 25 g. A licensed site remediation professional who has taken over
26 the responsibility for the remediation of a contaminated site from
27 another licensed site remediation professional shall correct all
28 deficiencies in a document submitted by the previous licensed site
29 remediation professional identified by the department in accordance
30 with timeframes established by the department.
- 31 h. A licensed site remediation professional shall not certify any
32 document submitted to the department unless the licensed site
33 remediation professional : (1) believes that the information in the
34 submission is true, accurate, and complete; and (2) has managed,
35 supervised or performed the work that is the basis of the
36 submission, or has periodically reviewed and evaluated the work
37 performed by other persons that forms the basis for the information
38 in the submission, or has completed the work of another licensed
39 site remediation professional and has concluded such work is
40 reliable pursuant to subsection f. of this section. A licensed site
41 remediation professional shall not knowingly make any false
42 statement, representation, or certification in any document or
43 information required to be submitted to the board or the department.
- 44 i. A licensed site remediation professional shall exercise
45 independent professional judgment, comply with the requirements
46 and procedures set forth in the provisions of P.L.2009, c.60
47 (C.58:10C-1 et al.), make a good faith and reasonable effort to
48 identify and obtain the relevant and material facts, data, reports and
49 other information evidencing conditions at a contaminated site for

1 which he is **【responsible】** retained that is in possession of the
2 owner of the property, or that is otherwise available, and identify
3 and obtain whatever additional data and other information as the
4 licensed site remediation professional deems necessary. The
5 licensed site remediation professional shall disclose and explain in
6 any document submitted to the department any facts, data,
7 information, qualifications, or limitations known by the licensed
8 site remediation professional that are not supportive of the
9 conclusions reached in the document.

10 j. If a licensed site remediation professional **【identifies】**
11 obtains specific knowledge of a condition **【at a contaminated site】**
12 that in his independent professional judgment is an immediate
13 environmental concern, then the licensed site remediation
14 professional shall: (1) immediately verbally advise , and confirm in
15 writing to, the person responsible for conducting the remediation of
16 that person's duty to notify the department of the condition ,
17 provided the person is known to the licensed site remediation
18 professional; and (2) immediately notify the department of the
19 condition by calling the department's telephone hotline.

20 k. If a licensed site remediation professional retained to
21 perform remediation at a site or any portion of a site obtains
22 specific knowledge that a discharge has occurred **【on a**
23 **contaminated site for which he is responsible】** at any location on
24 the site, the licensed site remediation professional shall: (1) notify
25 the person responsible for conducting the remediation of the
26 existence of the discharge; and (2) notify the department of the
27 discharge by calling the department's telephone hotline. The person
28 responsible for conducting the remediation shall also be responsible
29 for notifying the department of the existence of the discharge. The
30 provisions of this subsection shall not apply to a discharge that may
31 be a result of the existence of historic fill material.

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

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

45 n. A licensed site remediation professional who learns of
46 material facts, data or other information subsequent to the
47 completion of a report concerning a phase of remediation, which
48 would result in a report with material differences from the report

1 submitted, shall promptly notify the client and the department in
2 writing of those facts, data, information, and circumstances.

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

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

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

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

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

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

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

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

41 (1) the licensed site remediation professional orders, directs, or
42 agrees to the provision of professional services conducted or
43 prepared by another licensed site remediation professional under his
44 supervision;

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

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

- 1 s. A licensed site remediation professional shall comply with
2 all conditions imposed by the board as a result of a license
3 suspension or other disciplinary proceeding conducted by the board.
- 4 t. A licensed site remediation professional shall inform a client
5 or prospective client of any relevant and material assumptions,
6 limitations, or qualifications underlying their communication.
7 Evidence that a licensed site remediation professional has provided
8 the client or prospective client with timely written documentation of
9 these assumptions, limitations, or qualifications shall be deemed by
10 the board or the department to have satisfied the requirements of
11 this subsection.
- 12 u. A licensed site remediation professional shall not state or
13 imply, as an inducement or a threat to a client or prospective client,
14 an ability to improperly influence a government agency or official.
- 15 v. In any description of qualifications, experience, or ability to
16 provide services, a licensed site remediation professional shall not
17 knowingly:
- 18 (1) make a material misrepresentation of fact;
19 (2) omit a fact when the omission results in a materially
20 misleading description; or
21 (3) make a statement that, in the opinion of the board, is likely
22 to create an unjustified expectation about results the licensed site
23 remediation professional may achieve, or state or imply that the
24 licensed site remediation professional may achieve results by means
25 that violate the provisions of applicable environmental statutes,
26 rules or regulations, including the provisions of P.L.2009, c.60
27 (C.58:10C-1 et al.).
- 28 w. A licensed site remediation professional shall provide any
29 notification to the board or the department required pursuant to this
30 section, even if the licensed site remediation professional is
31 discharged by the client prior to doing so.
- 32 x. A licensed site remediation professional shall not accept
33 compensation, financial or otherwise, for professional services
34 pertaining to a contaminated site from two or more persons whose
35 interests are adverse or conflicting unless the circumstances are
36 fully disclosed and agreed to by all clients engaging the licensed
37 site remediation professional.
- 38 y. A licensed site remediation professional shall not be a
39 salaried employee of the person responsible for conducting the
40 remediation, or any related entities, for which the licensed site
41 remediation professional is providing remediation services.
- 42 z. A licensed site remediation professional shall not allow any
43 ownership interest, compensation, or promise of continued
44 employment, of the licensed site remediation professional or any
45 immediate family member, to affect the professional services
46 provided by the licensed site remediation professional.
- 47 aa. Except as provided in subsection d. of section 30 of
48 P.L.2009, c.60 (C.58:10B-1.3), a licensed site remediation
49 professional shall not facilitate, aid, assist, or cooperate with any

1 person in retaining or arranging for the retention of any person who
2 is not a licensed site remediation professional to perform
3 remediation, unless the remediation is managed, supervised, or
4 periodically reviewed and evaluated by a licensed site remediation
5 professional retained for that purpose, and the department has been
6 notified of the retention.

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

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

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

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

20

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

38

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

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

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

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

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

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

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

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

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

3 20. A licensed site remediation professional shall , for each
4 contaminated site, maintain and preserve all data, documents and
5 information concerning the remediation **【activities at each**
6 **contaminated site】** that the licensed site remediation professional
7 has **【worked on】** prepared or relied upon, including but not limited
8 to, technical records and contractual documents, raw sampling and
9 monitoring data, whether or not the data and information, including
10 technical records and contractual documents, were developed by the
11 licensed site remediation professional or the licensee's divisions,
12 employees, agents, accountants, contractors, or attorneys, that relate
13 in any way to the contamination at the site. **【Three】** An electronic
14 **【copies】** copy of the records shall be submitted to the department at
15 the time the response action outcome is filed with the department.
16 (cf: P.L.2009, c.60, s.20)

17
18 26. Section 27 of P.L.2009, c.60 (C.58:10C-27) is amended to
19 read as follows:

20 27. a. Except as provided in section 1 of P.L.2013, c.283 (C.
21 58:10C-27.1), and this section, the department shall undertake
22 direct oversight of a remediation of a contaminated site under the
23 following conditions:

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

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

37 (3) unless a longer period has been ordered by a court, the
38 person responsible for conducting the remediation has, prior to the
39 date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), failed to
40 complete the remedial investigation of the entire contaminated site
41 10 years after the discovery of a discharge at the site and has failed
42 to complete the remedial investigation of the entire contaminated
43 site within five years after the date of enactment of P.L.2009, c.60
44 (C.58:10C-1 et al.).

45 If a person responsible for conducting a remediation fails to meet
46 the conditions established in paragraph (3) of this subsection, or a
47 requirement established pursuant to subsection a. of section 1 of
48 P.L.2013, c.283 (C.58:10C-27.1), the department shall not

1 undertake direct oversight of the contaminated site if the person
2 demonstrates, and the department finds, that:

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (5) all disbursements of funds from the remediation **【trust fund】**
42 funding source shall require prior approval by the department;

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

47 (7) the person responsible for conducting the remediation shall
48 implement a public participation plan approved by the department

1 to solicit public comment from the members of the surrounding
2 community concerning the remediation of the site.

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

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

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

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

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

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

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

37 (2) The department may modify the direct oversight
38 requirements of subsection c. of this section for a contaminated site
39 if the department makes a written determination that the
40 modification is in the public interest and protective of the public
41 health and safety and the environment. At least 60 days prior to
42 making a modification pursuant to this paragraph, the department
43 shall publish its written determination and the proposed
44 modification to the requirements of direct oversight, including the
45 reasons for its determination, on the department's Internet website.
46 The department shall solicit and accept public comments on the
47 proposed modification for a period of at least 30 days after the date
48 of publication. The department shall consider the public comments

1 received during the comment period prior to making a modification
2 pursuant to this paragraph.

3 (3) The department may, prior to a change in ownership of a
4 contaminated site, enter into an administrative consent order with
5 the prospective purchaser of the contaminated site providing for the
6 modification of any or all of the direct oversight requirements of
7 subsection c. of this section for the contaminated site.

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

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

17

18 27. This act shall take effect immediately.

19

20

21

STATEMENT

22

23 This bill would make various changes to the laws governing the
24 remediation of contaminated sites and licensed site remediation
25 professionals (LSRPs).

26 The bill would require a plaintiff, in any action for damages for
27 personal injuries, wrongful death, or property damage resulting
28 from an alleged act of malpractice or negligence by an LSRP, to
29 provide each defendant with an affidavit of merit. An affidavit of
30 merit is a sworn statement from an appropriate licensed person
31 stating that there exists a reasonable probability that the care, skill,
32 or knowledge exercised or exhibited in the practice or work that is
33 the subject of the complaint fell outside acceptable professional or
34 occupational standards. If a plaintiff fails to file an affidavit of
35 merit, his case would be dismissed for failure to state a cause of
36 action. The State currently requires an affidavit of merit for suits
37 against various other licensed professionals including doctors,
38 accountants, attorneys, and engineers.

39 The bill would authorize the Superior Court and the municipal
40 courts to impose a civil penalty for a violation of the "Spill
41 Compensation and Control Act," P.L.1976, c.141 (C. 58:10-23.11 et
42 seq.), to be assessed in accordance with the "Penalty Enforcement
43 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

44 The bill makes several changes to laws governing the
45 establishment of remediation funding sources, and when and how
46 those remediation funding sources may be used, dispersed, and
47 released. The bill provides that a person may establish, as a
48 remediation funding source, a surety bond from an entity that is
49 listed as an acceptable surety on federal bonds in United States

1 Treasury Department Circular 570. The bill also establishes
2 requirements for utilizing a surety bond as a remediation funding
3 source.

4 The bill would require the Department of Environmental
5 Protection (DEP) to encourage the use of green and sustainable
6 practices during the remediation of a contaminated site. However,
7 the use of green and sustainable practices would not alter the
8 requirement that the remediation be protective of the public health
9 and safety and of the environment.

10 Current law requires a person responsible for conducting a
11 remediation to provide written notice of the remediation to the
12 municipality and county in which the contaminated site is located
13 prior to initiating the remedial action. The bill would require that
14 such written notice be provided earlier in the site remediation
15 process – prior to the initiation of the remedial investigation. The
16 bill would also expand the types of documents a person responsible
17 for conducting a remediation is required to provide to a
18 municipality or county, upon request.

19 The bill would require a person responsible for conducting a
20 remediation to respond to any inquiries from the public that the
21 person receives or that the DEP receives and forwards to that
22 person. Under the bill, the person's response must include either:
23 (1) specific information or documents that are responsive to the
24 public inquiry; or (2) a written status report for the remediation in a
25 form and manner as determined by the DEP. A person responsible
26 for conducting a remediation would be permitted to designate an
27 LSRP to respond to public inquiries under the bill.

28 Current law provides that an "immediate environmental concern"
29 includes "confirmed contamination that has migrated into an
30 occupied structure..." The bill would expand the definition to
31 include "confirmed contamination that has migrated into a structure
32 currently used or able to be used for human occupancy..." Under
33 existing law, the DEP has established expedited timeframes to
34 address immediate environmental concerns. However, under the
35 bill, no further remediation relative to an immediate environmental
36 concern that affects an unoccupied structure would be required if a
37 person responsible for conducting the remediation provides to the
38 DEP a written certification from the property owner that the
39 building: (1) is not occupied; (2) will not be occupied; and (3) will
40 be demolished.

41 Under existing law, if an LSRP identifies a condition that, in his
42 independent professional judgment, is an immediate environmental
43 concern, then the LSRP must, among other things, immediately
44 verbally advise the person responsible for conducting the
45 remediation of that person's duty to notify the DEP. The bill would
46 require an LSRP to notify the person responsible for conducting the
47 remediation, in writing, of the person's duty to notify the DEP of
48 the condition.

1 The bill provides that, if an LSRP who is retained to perform
2 remediation at a site or any portion of a site obtains specific
3 knowledge that a discharge has occurred at any location on the site,
4 the LSRP must notify the person responsible for conducting the
5 remediation and the DEP.

6 The bill makes certain changes to the licensing requirements for
7 LSRPs. Under current law, an applicant for an LSRP license must
8 demonstrate, among other things, that the applicant has the requisite
9 number of years of full-time professional experience in the field of
10 site remediation, of which five years must have occurred in New
11 Jersey, and at least three years must have occurred in the State
12 immediately prior to submission of the application. The bill would
13 change this requirement to provide that an applicant must have
14 worked at least three years in the State within the five years
15 immediately prior to submission of the application, to account for
16 applicants who may have been absent from work for personal
17 reasons.

18 Current law specifies the crimes and other offenses that
19 disqualify a person from becoming an LSRP. This bill would
20 expand that list to include any criminal offense involving breach of
21 trust, and any offense that would qualify the person for registration
22 on the State's sex offender registry, or any other crime or offense
23 involving moral turpitude. Under the bill, an applicant for an LSRP
24 license would need to demonstrate that he has not had a
25 professional certification revoked, and has not surrendered a
26 professional license or certification in response to a disciplinary
27 investigation, within the previous 10 years.

28 The bill provides that a person who is not an LSRP may not
29 perform remediation unless the remediation is managed, supervised,
30 or periodically reviewed and evaluated by an LSRP. The bill
31 specifies that an LSRP, when providing professional services for
32 the remediation of a contaminated site, must apply the rules and
33 regulations adopted by the Site Remediation Professional Licensing
34 Board (board), and any other applicable rules and regulations
35 concerning the remediation.

36 The bill specifies that an LSRP may not certify any document
37 submitted to the DEP unless the LSRP believes that the information
38 in the submission is true, accurate, and complete. The bill would
39 also explicitly prohibit an LSRP from knowingly making any false
40 statement, representation, or certification in any document or
41 information required to be submitted to the DEP or the board.

42 The bill provides that an LSRP is prohibited from facilitating,
43 aiding, assisting, or cooperating with any person in retaining or
44 arranging for the retention of any person who is not an LSRP to
45 perform remediation, unless the remediation is managed,
46 supervised, or periodically reviewed and evaluated by an LSRP
47 retained for that purpose, and the DEP has been notified of the
48 retention. Additionally, under the bill, an LSRP would be
49 prohibited from managing, supervising, performing, engaging, or

1 participating in a remediation unless: (1) the LSRP has been
2 retained by a person responsible for conducting the remediation,
3 and the DEP has been notified of the retention; or (2) the
4 remediation is being managed, supervised, or performed by another
5 LSRP retained by the person responsible for conducting the
6 remediation, and the DEP has been notified of the retention of the
7 other LSRP.

8 The bill requires a person who is issued a remedial action permit
9 for the operation, maintenance, and inspection of engineering or
10 institutional controls and related systems installed as part of a
11 remedial action to retain an LSRP to manage, supervise, or perform
12 the requirements of the permit for the duration of the permit.

13 Under the bill, if a person responsible for conducting a
14 remediation fails to meet certain conditions, the DEP would not
15 undertake direct oversight of the contaminated site if the person
16 demonstrates, and the DEP finds, that: (1) the person was unable to
17 meet the applicable timeframe because he was unable to enter the
18 contaminated site because he does not own the property, and the
19 person took all appropriate and timely action to gain access to the
20 site; or (2) the contaminated site is subject to federal oversight, the
21 person has made timely submissions to the DEP, and the person was
22 unable to meet the applicable timeframe due to the performance of
23 additional review by the DEP.

24 The bill provides that, when a contaminated site is subject to
25 direct oversight, the requirements of direct oversight run with the
26 site, regardless of who owns the property, and regardless of whether
27 there is a transfer of ownership of the property.

28 The bill authorizes the DEP to modify the requirements of direct
29 oversight if: (1) the person responsible for conducting the
30 remediation demonstrates financial hardship that prevents the
31 performance of the remediation due to the imposition of direct
32 oversight; or (2) there is a public emergency resulting from a
33 natural disaster, as declared by the State or federal government, that
34 resulted in a delay in meeting the mandatory or expedited site-
35 specific timeframe or other condition that triggered direct oversight.
36 The DEP would also be authorized to modify the requirements of
37 direct oversight for a contaminated site if the DEP makes a written
38 determination that the modification is in the public interest and
39 protective of the public health and safety and the environment. The
40 DEP would be required to publish its written determination,
41 including the reasons for its determination, on the DEP's Internet
42 website, and solicit and consider public comments on the proposed
43 modification.

44 The bill also authorizes the DEP, prior to a change in ownership
45 of a contaminated site, to enter into an administrative consent order
46 with the prospective purchaser of the contaminated site providing
47 for the modification of the requirements of direct oversight. The
48 DEP would be authorized to reinstate the direct oversight
49 requirements that it modifies under the bill if, after the

1 modification, the DEP finds that the person responsible for
2 conducting the remediation failed to comply with any applicable
3 timeframe, administrative consent order, or any law, rule, or
4 regulation concerning site remediation.

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

10 The bill deletes various references in the site remediation laws to
11 the term “memorandum of agreement.”