

[First Reprint]

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:

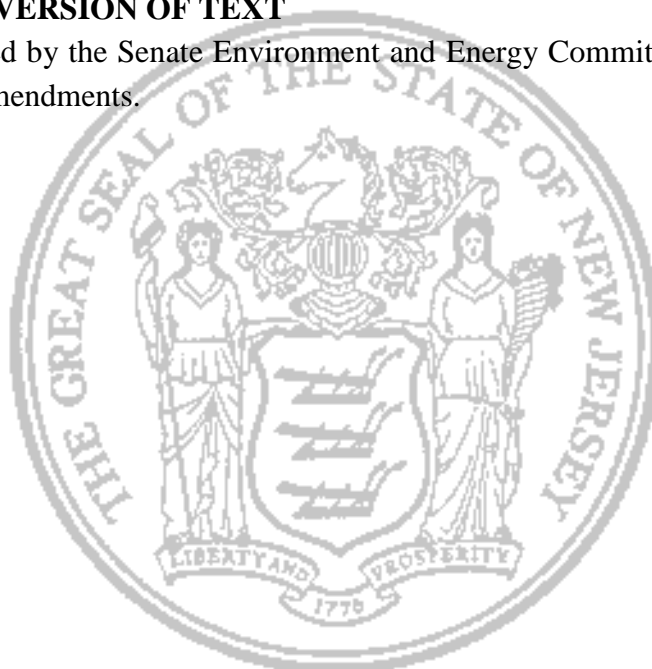
Senators Singleton and Oroho

SYNOPSIS

Makes various changes to laws governing remediation of contaminated sites.

CURRENT VERSION OF TEXT

As reported by the Senate Environment and Energy Committee on June 17, 2019, with amendments.



(Sponsorship Updated As Of: 6/21/2019)

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

3

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

6

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

9 3. As used in this act:

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

17 "Closing operations" means:

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

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

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

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

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

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

44 "Transferring ownership or operations" means:

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEN committee amendments adopted June 17, 2019.

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

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

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

11 "Change in ownership" means:

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

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

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

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

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

28 "Change in ownership" shall not include:

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

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

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

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

- 1 (5) a transfer to confirm or correct any deficiencies in the recorded
2 title of an industrial establishment;
 - 3 (6) a transfer to release a contingent or reversionary interest except
4 for any transfer of a lessor's reversionary interest in leased real
5 property;
 - 6 (7) a transfer of an industrial establishment by devise or intestate
7 succession;
 - 8 (8) the granting or termination of an easement or a license to any
9 portion of an industrial establishment;
 - 10 (9) the sale or transfer of real property pursuant to a condemnation
11 proceeding initiated pursuant to the "Eminent Domain Act of 1971,"
12 P.L.1971, c.361 (C.20:3-1 et seq.);
 - 13 (10) execution, delivery and filing or recording of any mortgage,
14 security interest, collateral assignment or other lien on real or personal
15 property; or
 - 16 (11) any transfer of personal property pursuant to a valid security
17 agreement, collateral assignment or other lien, including, but not
18 limited to, seizure or replevin of such personal property which transfer
19 is for the purpose of implementing the secured party's rights in the
20 personal property which is the collateral;
- 21 "Department" means the Department of Environmental Protection;
- 22 "Hazardous substances" means those elements and compounds,
23 including petroleum products, which are defined as such by the
24 department, after public hearing, and which shall be consistent to the
25 maximum extent possible with, and which shall include, the list of
26 hazardous substances adopted by the Environmental Protection
27 Agency pursuant to Section 311 of the "Federal Water Pollution
28 Control Act Amendments of 1972" (33 U.S.C. s.1321) and the list of
29 toxic pollutants designated by Congress or the Environmental
30 Protection Agency pursuant to Section 307 of that act (33 U.S.C.
31 s.1317); except that sewage and sewage sludge shall not be considered
32 as hazardous substances for the purposes of this act;
- 33 "Hazardous waste" shall have the same meaning as provided in
34 section 1 of P.L.1976, c.99 (C.13:1E-38);
- 35 "Industrial establishment" means any place of business engaged in
36 operations which involve the generation, manufacture, refining,
37 transportation, treatment, storage, handling, or disposal of hazardous
38 substances or hazardous wastes on-site, above or below ground,
39 having a Standard Industrial Classification number within 22-39
40 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard
41 Industrial Classifications Manual prepared by the Office of
42 Management and Budget in the Executive Office of the President of
43 the United States. Those facilities or parts of facilities subject to
44 operational closure and post-closure maintenance requirements
45 pursuant to the "Solid Waste Management Act," P.L.1970, c.39
46 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting
47 Act," sections 1 through 43 of P.L.1981, c.279 (C.13:1E-49 et seq.) or
48 the "Solid Waste Disposal Act" (42 U.S.C. s.6901 et seq.), or any
49 establishment engaged in the production or distribution of agricultural

1 commodities, shall not be considered industrial establishments for the
2 purposes of this act. The department may, pursuant to the
3 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),
4 exempt certain sub-groups or classes of operations within those sub-
5 groups within the Standard Industrial Classification major group
6 numbers listed in this subsection upon a finding that the operation of
7 the industrial establishment does not pose a risk to public health and
8 safety;

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

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

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

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

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

47 "Area of concern" means any location where hazardous substances
48 or hazardous wastes are or were known or suspected to have been
49 discharged, generated, manufactured, refined, transported, stored,

1 handled, treated, or disposed, or where hazardous substances or
2 hazardous wastes have or may have migrated;

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

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

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

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

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

45 "Remediation standards" means the combination of numeric
46 standards that establish a level or concentration and narrative
47 standards, to which hazardous substances or hazardous wastes must be
48 treated, removed, or otherwise cleaned for soil, groundwater, or
49 surface water, as provided by the department pursuant to section 35 of

1 P.L.1993, c.139 (C.58:10B-12) in order to meet the health risk or
2 environmental standards;

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

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

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

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

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

43

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

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

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

- 1 b. an architect pursuant to R.S.45:3-1 et seq.;
- 2 c. an attorney admitted to practice law in New Jersey;
- 3 d. a dentist pursuant to R.S.45:6-1 et seq.;
- 4 e. an engineer pursuant to P.L.1938, c.342 (C.45:8-27 et seq.);
- 5 f. a physician in the practice of medicine or surgery pursuant
- 6 to R.S.45:9-1 et seq.;
- 7 g. a podiatrist pursuant to R.S.45:5-1 et seq.;
- 8 h. a chiropractor pursuant to P.L.1989, c.153 (C.45:9-41.17 et
- 9 seq.);
- 10 i. a registered professional nurse pursuant to P.L.1947, c.262
- 11 (C.45:11-23 et seq.);
- 12 j. a health care facility as defined in section 2 of P.L.1971,
- 13 c.136 (C.26:2H-2);
- 14 k. a physical therapist pursuant to P.L.1983, c.296 (C.45:9-
- 15 37.11 et seq.);
- 16 l. a land surveyor pursuant to P.L.1938, c.342 (C.45:8-27 et
- 17 seq.);
- 18 m. a registered pharmacist pursuant to P.L.2003, c.280
- 19 (C.45:14-40 et seq.);
- 20 n. a veterinarian pursuant to R.S.45:16-1 et seq.;
- 21 o. an insurance producer pursuant to P.L.2001, c.210
- 22 (C.17:22A-26 et seq.); **【and】**
- 23 p. a certified midwife, certified professional midwife, or
- 24 certified nurse midwife pursuant to R.S.45:10-1 et seq.; and
- 25 q. a licensed site remediation professional pursuant to section 7
- 26 of P.L.2009, c.60 (C.58:10C-7).
- 27 (cf: P.L.2010, c.88, s.1)
- 28

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

30 read as follows:

31 3. Unless the context clearly indicates otherwise, the following

32 terms shall have the following meanings:

33 "Act of God" means an act exclusively occasioned by an

34 unanticipated, grave natural disaster without the interference of any

35 human agency;

36 "Administrator" means the chief executive of the New Jersey

37 Spill Compensation Fund;

38 "Barrel" means 42 United States gallons or 159.09 liters or an

39 appropriate equivalent measure set by the director for hazardous

40 substances which are other than fluid or which are not commonly

41 measured by the barrel;

42 "Board" means a board of arbitration convened by the

43 administrator to settle disputed disbursements from the fund;

44 "Cleanup and removal costs" means all direct costs associated

45 with a discharge, and those indirect costs that may be imposed by

46 the department pursuant to section 1 of P.L.2002, c.37 associated

47 with a discharge, incurred by the State or its political subdivisions

48 or their agents or any person with written approval from the

49 department in the: (1) removal or attempted removal of hazardous

1 substances, or (2) taking of reasonable measures to prevent or
2 mitigate damage to the public health, safety, or welfare, including,
3 but not limited to, public and private property, shorelines, beaches,
4 surface waters, water columns and bottom sediments, soils and
5 other affected property, including wildlife and other natural
6 resources, and shall include costs incurred by the State for the
7 indemnification and legal defense of contractors pursuant to
8 sections 1 through 11 of P.L.1991, c.373 (C.58:10-23.11f8 et seq.);

9 "Commissioner" means the Commissioner of Environmental
10 Protection;

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

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

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

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

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

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

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

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

41 "Hazardous substances" means the "environmental hazardous
42 substances" on the environmental hazardous substance list adopted
43 by the department pursuant to section 4 of P.L.1983, c.315
44 (C.34:5A-4); such elements and compounds, including petroleum
45 products, which are defined as such by the department, after public
46 hearing, and which shall be consistent to the maximum extent
47 possible with, and which shall include, the list of hazardous
48 substances adopted by the federal Environmental Protection Agency
49 pursuant to section 311 of the Federal Water Pollution Control Act

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

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

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

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

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

34 (1) 20,000 gallons or more for hazardous substances which are
35 other than petroleum or petroleum products, or

36 (2) 200,000 gallons or more for hazardous substances of all
37 kinds.

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

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

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

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

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

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

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

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

1 prior to 1932 if such information is available through diligent
2 inquiry of the public records;

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

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

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

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

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

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

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

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

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

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

16

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

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

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

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

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

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

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

46 b. The damages which may be recovered by the fund, without
47 regard to fault, subject to the defenses enumerated in subsection d.
48 of this section against the owner or operator of a major facility or
49 vessel, shall not exceed \$50,000,000.00 for each major facility or

1 \$1,200 per gross ton for each vessel, except that such maximum
2 limitation shall not apply and the owner or operator shall be liable,
3 jointly and severally, for the full amount of such damages if it can
4 be shown that such discharge was the result of (1) gross negligence
5 or willful misconduct, within the knowledge and privity of the
6 owner, operator or person in charge, or (2) a gross or willful
7 violation of applicable safety, construction or operating standards or
8 regulations. Damages which may be recovered from, or by, any
9 other person shall be limited to those authorized by common or
10 statutory law.

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

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

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

47 For the purpose of determining priority of this lien over all other
48 claims or liens which are or have been filed against the property of
49 an owner or operator of a refinery, storage, transfer, or pipeline

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

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

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

22 (3) In addition to the persons liable pursuant to this subsection,
23 any person who owns real property acquired on or after September
24 14, 1993 on which there has been a discharge prior to the person's
25 acquisition of that property and who knew or should have known
26 that a hazardous substance had been discharged at the real property,
27 shall be strictly liable, jointly and severally, without regard to fault,
28 for all cleanup and removal costs no matter by whom incurred.
29 Such person shall also be strictly liable, jointly and severally,
30 without regard to fault, for all cleanup and removal costs incurred
31 by the department or a local unit pursuant to subsection b. of
32 section 7 of P.L.1976, c.141 (C.58:10-23.11f). Nothing in this
33 paragraph shall be construed to alter liability of any person who
34 acquired real property prior to September 14, 1993.

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

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

- 1 (a) the person acquired the real property after the discharge of
2 that hazardous substance at the real property;
- 3 (b) (i) at the time the person acquired the real property, the
4 person did not know and had no reason to know that any hazardous
5 substance had been discharged at the real property, or (ii) the person
6 acquired the real property by devise or succession, except that any
7 other funds or property received by that person from the deceased
8 real property owner who discharged a hazardous substance or was
9 in any way responsible for a hazardous substance, shall be made
10 available to satisfy the requirements of P.L.1976, c.141, or (iii) the
11 person complies with the provisions of subparagraph (e) of
12 paragraph (2) of this subsection;
- 13 (c) the person did not discharge the hazardous substance, is not
14 in any way responsible for the hazardous substance, and is not a
15 corporate successor to the discharger or to any person in any way
16 responsible for the hazardous substance or to anyone liable for
17 cleanup and removal costs pursuant to this section;
- 18 (d) the person gave notice of the discharge to the department
19 upon actual discovery of that discharge.
- 20 To establish that a person had no reason to know that any
21 hazardous substance had been discharged for the purposes of this
22 paragraph (2), the person must have undertaken, at the time of
23 acquisition, all appropriate inquiry into the previous ownership and
24 uses of the property. For the purposes of this paragraph (2), all
25 appropriate inquiry shall mean the performance of a preliminary
26 assessment, and site investigation, if the preliminary assessment
27 indicates that a site investigation is necessary, as defined in section
28 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance
29 with rules and regulations promulgated by the department defining
30 these terms.
- 31 Nothing in this paragraph (2) shall be construed to alter liability
32 of any person who acquired real property prior to September 14,
33 1993; and
- 34 (e) For the purposes of this subparagraph the person must have
35 (i) acquired the property subsequent to a hazardous substance being
36 discharged on the site and which discharge was discovered at the
37 time of acquisition as a result of the appropriate inquiry, as defined
38 in this paragraph (2), (ii) performed, following the effective date of
39 P.L.1997, c.278, a remediation of the site or discharge consistent
40 with the provisions of section 35 of P.L.1993, c.139 (C.58:10B-12),
41 or, relied upon a valid final remediation document for a remediation
42 performed prior to acquisition, or, obtained a remedial action
43 workplan certified by a licensed site remediation professional
44 retained for the site after the date of enactment of P.L.2009, c.60
45 (C.58:10C-1 et al.) and continued to comply with the conditions of
46 that workplan, or obtained approval of a remedial action workplan
47 by the department after the effective date of P.L.1997, c.278 and
48 continued to comply with the conditions of that workplan, and (iii)
49 established and maintained all engineering and institutional controls

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

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

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

1 local governmental entity which has caused or contributed to the
2 discharge of a hazardous substance. This paragraph shall not
3 provide any liability protection to any federal, State, or local
4 government entity that acquires ownership of real property by
5 condemnation or eminent domain where the real property is being
6 remediated in a timely manner at the time of the condemnation or
7 eminent domain action.

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

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

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

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

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

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

39 Nothing in this paragraph (5) shall be construed to alter liability
40 of any person who acquired real property on or after September 14,
41 1993.

42 e. Neither the fund nor the Sanitary Landfill Contingency Fund
43 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall
44 be liable for any damages incurred by any person who is relieved
45 from liability pursuant to subsection d. or f. of this section for a
46 remediation that involves the use of engineering controls but the
47 fund and the Sanitary Landfill Contingency Fund shall be liable for
48 any remediation that involves only the use of institutional controls
49 if after a valid final remediation document has been issued the

1 department orders additional remediation except that the fund and
2 the Sanitary Landfill Contingency Fund shall not be liable for any
3 additional remediation that is required to remove an institutional
4 control.

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

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

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

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

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

33 (5) Within ten days after acquisition of the property, or within
34 30 days after the expiration of the period or periods allowed for the
35 right of redemption pursuant to tax foreclosure law, the person
36 agrees in writing to provide access to the State for remediation and
37 related activities, as determined by the State.

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

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

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

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

48 (4) for any liability to clean up and remove, pursuant to the
49 department's regulations and directions, any hazardous substances

1 that may have been discharged on the property or that may have
2 migrated therefrom; and

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

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

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

13

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

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

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

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

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

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

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

34 (1) a temporary or permanent injunction;

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

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

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

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

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

- 1 c. (1) The department may assess a civil administrative
2 penalty of not more than \$50,000 for each violation, and each day
3 of violation shall constitute an additional, separate and distinct
4 violation. A civil administrative penalty shall not be levied until a
5 violator has been notified by certified mail or personal service of:
- 6 (a) the statutory or regulatory basis of the violation;
 - 7 (b) the specific citation of the act or omission constituting the
8 violation;
 - 9 (c) the amount of the civil administrative penalty to be imposed;
 - 10 (d) the right of the violator to a hearing on any matter contained
11 in the notice and the procedures for requesting a hearing.
- 12 (2) (a) A violator shall have 20 calendar days following receipt
13 of notice within which to request a hearing on any matter contained
14 in the notice, and shall comply with all procedures for requesting a
15 hearing. Failure to submit a timely request or to comply with all
16 departmental procedures shall constitute grounds for denial of a
17 hearing request. After a hearing and upon a finding that a violation
18 has occurred, the department shall issue a final order assessing the
19 amount of the civil administrative penalty specified in the notice. If
20 a violator does not request a hearing or fails to satisfy the statutory
21 and administrative requirements for requesting a hearing, the notice
22 of assessment of a civil administrative penalty shall become a final
23 order on the 21st calendar day following receipt of the notice by the
24 violator. If the department denies a hearing request, the notice of
25 denial shall become a final order upon receipt of the notice by the
26 violator.
- 27 (b) A civil administrative penalty may be settled by the
28 department on such terms and conditions as the department may
29 determine.
 - 30 (c) Payment of a civil administrative penalty shall not be
31 deemed to affect the availability of any other enforcement remedy
32 in connection with the violation for which the penalty was levied.
- 33 (3) If a civil administrative penalty imposed pursuant to this
34 section is not paid within 30 days of the date that the penalty is due
35 and owing, and the penalty is not contested by the person against
36 whom the penalty has been assessed, or the person fails to make a
37 payment pursuant to a payment schedule entered into with the
38 department, an interest charge shall accrue on the amount of the
39 penalty from the 30th day that amount was due and owing. In the
40 case of an appeal of a civil administrative penalty, if the amount of
41 the penalty is upheld, in whole or in part, the rate of interest shall be
42 calculated on that amount as of the 30th day from the date the
43 amount was due and owing under the administrative order. The rate
44 of interest shall be that established by the New Jersey Supreme
45 Court for interest rates on judgments, as set forth in the Rules
46 Governing the Courts of the State of New Jersey.
- 47 (4) The department may assess and recover, by civil
48 administrative order, the costs of any investigation, cleanup or
49 removal, and the reasonable costs of preparing and successfully

1 enforcing a civil administrative penalty pursuant to this subsection.
2 The assessment may be recovered at the same time as a civil
3 administrative penalty, and shall be in addition to the penalty
4 assessment.

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

20 e. All conveyances used or intended for use in the willful
21 discharge of any hazardous substance are subject to forfeiture to the
22 State pursuant to the provisions of P.L.1981, c.387 (C.13:1K-1 et
23 seq.).
24 (cf: P.L.1990, c.75, s.1)

25
26 6. Section 23 of P.L.1993, c.139 (C.58:10B-1) is amended to
27 read as follows:

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

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

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

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

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

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

- 1 "Department" means the Department of Environmental
2 Protection;
- 3 "Discharge" means an intentional or unintentional action or
4 omission resulting in the releasing, spilling, leaking, pumping,
5 pouring, emitting, emptying, or dumping of a contaminant onto the
6 land or into the waters of the State;
- 7 "Engineering controls" means any mechanism to contain or
8 stabilize contamination or ensure the effectiveness of a remedial
9 action. Engineering controls may include, without limitation, caps,
10 covers, dikes, trenches, leachate collection systems, signs, fences
11 and physical access controls;
- 12 "Environmental opportunity zone" has the meaning given that
13 term pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);
- 14 "Final remediation document" means a no further action letter
15 issued by the department pursuant to P.L.1993, c.139 (C.58:10B-1
16 et al.), or a response action outcome issued by a licensed site
17 remediation professional pursuant to section 14 of P.L.2009, c.60
18 (C.58:10C-14);
- 19 "Financial assistance" means loans or loan guarantees;
- 20 "Institutional controls" means a mechanism used to limit human
21 activities at or near a contaminated site, or to ensure the
22 effectiveness of the remedial action over time, when contaminants
23 remain at a contaminated site in levels or concentrations above the
24 applicable remediation standard that would allow unrestricted use
25 of that property. Institutional controls may include, without
26 limitation, structure, land, and natural resource use restrictions, well
27 restriction areas, and deed notices;
- 28 "Licensed site remediation professional" means an individual
29 who is licensed by the Site Remediation Professional Licensing
30 Board pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) or the
31 department pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12);
- 32 "Limited restricted use remedial action" means any remedial
33 action that requires the continued use of institutional controls but
34 does not require the use of an engineering control;
- 35 "No further action letter" means a written determination by the
36 department that based upon an evaluation of the historical use of a
37 particular site, or of an area of concern or areas of concern at that
38 site, as applicable, and any other investigation or action the
39 department deems necessary, there are no discharged contaminants
40 present at the site, at the area of concern or areas of concern, at any
41 other site to which a discharge originating at the site has migrated,
42 or that any discharged contaminants present at the site or that have
43 migrated from the site have been remediated in accordance with
44 applicable remediation regulations;
- 45 "Person" means an individual, corporation, company,
46 partnership, firm, or other private business entity;
- 47 "Person responsible for conducting the remediation" means (1)
48 any person who executes or is otherwise subject to an oversight
49 document to remediate a contaminated site, (2) the owner or

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

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

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

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

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

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

47 "Remedial investigation" means a process to determine the
48 nature and extent of a discharge of a contaminant at a site or a
49 discharge of a contaminant that has migrated or is migrating from

1 the site and the problems presented by a discharge, and may include
2 data collected, site characterization, sampling, monitoring, and the
3 gathering of any other sufficient and relevant information necessary
4 to determine the necessity for remedial action and to support the
5 evaluation of remedial actions if necessary;

6 "Remediation" or "remediate" means all **[necessary]** actions to
7 investigate **[and]** , clean up , or respond to any known, suspected,
8 or threatened discharge of contaminants, including **[, as necessary,]**
9 the preliminary assessment, site investigation, remedial
10 investigation, and remedial action, or any portion thereof, provided,
11 however, that "remediation" or "remediate" shall not include the
12 payment of compensation for damage to, or loss of, natural
13 resources;

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

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

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

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

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

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

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

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

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

11
12 7. Section 30 of P.L.2009, c.60 (C.58:10B-1.3) is amended to
13 read as follows:

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

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

26 (1) **hire** retain a licensed site remediation professional to
27 perform the remediation;

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

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

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

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

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

39 (7) provide access to all applicable documents concerning the
40 remediation to the department;

41 (8) meet the mandatory remediation timeframes and expedited site
42 specific timeframes established by the department pursuant to section
43 28 of P.L.2009, c.60 (C.58:10C-28); and

44 (9) obtain all necessary permits.

45 c. (1) Any person who initiates a remediation prior to the date of
46 enactment of P.L.2009, c.60 (C.58:10C-1 et al.), or prior to the
47 issuance of temporary licenses to site remediation professionals
48 pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12), shall comply

1 with the provisions of paragraphs (4) through (9) of subsection b. of
2 this section.

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

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

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

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

31 ¹(3) A person shall not be required to retain a licensed site
32 remediation professional pursuant to this section to conduct sampling
33 or investigation to confirm or evaluate a remediation performed or
34 supervised by a retained licensed site remediation professional,
35 provided that such sampling or investigation: (1) is not required
36 pursuant to this section or any other law, rule, regulation, or order; (2)
37 is not conducted in order to obtain a response action outcome; and (3)
38 is not conducted in order to investigate, clean up, or respond to any
39 known, suspected, or threatened discharge of a contaminant.¹

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

44

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

47 25. a. Except as otherwise provided in section 27 of P.L.2009,
48 c.60 (C.58:10C-27), the owner or operator of an industrial
49 establishment or any other person required to perform remediation

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

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

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

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

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

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

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

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

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

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

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

1 who established the remediation funding source and the department,
2 by certified mail, of the decision to revoke or terminate the policy.

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

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

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

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

14 The department shall return the original line of credit agreement
15 to the **【person or】** institution providing the line 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 specified 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 remediation
22 of the contaminated site.

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

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

31 g. (1) If the person required to establish the remediation
32 funding source fails to perform the remediation as required, or fails
33 to meet the conditions established pursuant to paragraph (3) of
34 subsection a. of section 27 of P.L.2009, c.60 (C.58:10C-27) or
35 section 1 of P.L.2013, c.283 (C.58:10C-27.1), or the mandatory
36 remediation timeframes or expedited site specific timeframes
37 established pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28)
38 for the performance of the remedial action, the department shall
39 make a written determination of this fact. A copy of the
40 determination by the department shall be delivered to the person
41 required to establish the remediation funding source and, in the case
42 of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6
43 et al.), to any transferee of the property. Following this written
44 determination, the department may perform the remediation in place
45 of the person required to establish the remediation funding source.
46 In order to finance the cost of the remediation the department may
47 make disbursements from the remediation funding source, or, if
48 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 responsible
4 for conducting a remediation of a contaminated site shall submit a
5 copy of a remedial action workplan , any other workplan, report, or
6 validated data required by the department ¹pursuant to law, rule, or
7 regulation¹, and any updates or status reports pursuant to the
8 "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), the
9 "Brownfield and Contaminated Site Remediation Act," P.L.1997,
10 c.278 (C.58:10B-1.1 et al.), or the "Spill Compensation and Control
11 Act," 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 Environmental**
15 **Protection】 department**. Upon request of a county health department
16 or a local health agency, the person who is responsible for conducting
17 a remediation of a contaminated site shall also submit a copy of the
18 remedial action workplan **【and】** , any other workplan, report, or
19 validated data required by the department ¹pursuant to law, rule, or
20 regulation¹, any updates or status reports, and a copy of the site health
21 and safety plan, to the county health department or local health
22 agency, respectively ¹, wherein the contaminated site is located at the
23 same time as those documents are submitted to the department¹.

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

25

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

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

33 b. Within six months after the date of enactment of this act, the
34 Department of Environmental Protection shall adopt, pursuant to the
35 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),
36 rules and regulations setting forth the notice requirements pursuant to
37 subsection a. of this section. The rules and regulations to be adopted
38 by the department pursuant to this section shall require any person
39 who is responsible for conducting a remediation of a contaminated site
40 to provide written notification to any local property owners and tenants
41 who reside within 200 feet of the contaminated site. The notification
42 shall summarize site conditions and provide information about actions
43 being taken to remediate the site ¹**【and】** . The department¹ may
44 require written notification **【or】** ¹**【and】** or¹ the posting of a sign
45 visible to the public which shall be located on the boundaries of the
46 contaminated site ¹, or both¹.

47 c. A person responsible for conducting a remediation shall
48 respond to any ¹written or email¹ inquiries from the public ¹regarding

1 the status of the remediation¹ that the person receives, or that the
2 department receives and forwards to the person responsible for
3 conducting the remediation, by providing either: (1) ¹【specific】¹
4 information or documents that are responsive to the public inquiry; or
5 (2) a written ¹summary¹ status report for the remediation, which shall
6 be made in a form and manner as prescribed by the department
7 pursuant to rules and regulations. A person responsible for conducting
8 a remediation may designate a licensed site remediation professional
9 to respond to public inquiries pursuant to this subsection.

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

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

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

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

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

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

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

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

13 c. Nothing in this section shall require that a no further action
14 letter be obtained by a developer for remediation of groundwater
15 beneath the subject real property prior to reimbursement of the
16 remediation costs, provided that the developer has completed any
17 capital construction or infrastructure required for the remediation of
18 groundwater on the site.
19 (cf: P.L.2005, c.360, s.1)

20

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

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

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

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

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

47 (2) the developer had (i) entered into **【a memorandum of**
48 **agreement, or other】** an oversight document, with the

1 Commissioner of Environmental Protection, after the developer
2 entered into the redevelopment agreement, for the remediation of
3 contamination located on the site of the redevelopment project
4 pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29) and the
5 developer is in compliance with the **【**memorandum of agreement**】**
6 oversight document, or (ii) complied with the requirements set forth
7 in subsection b. of section 30 of P.L.2009, c.60 (C.58:10B-1.3); and
8 (3) the costs of the remediation were actually and reasonably
9 incurred. In making this finding the director may consult with the
10 Department of Environmental Protection.

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

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

22

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

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

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

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

1 located, the Division of Business Assistance, Marketing and
2 International Trade in the New Jersey Economic Development
3 Authority, and the director.
4 (cf: P.L.2009, c.60, s.54)

5
6 17. Section 39 of P.L.1997, c.278 (C.58:10B-31) is amended to
7 read as follows:

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

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

40 Reimbursable remediation costs shall include costs that are
41 incurred in preparing the area of land whereon the contaminated site
42 is located for remediation and may include costs of dynamic
43 compaction of soil necessary for the remediation.
44 (cf: P.L.2009, c.60, s.55)

45
46 18. Section 2 of P.L.2009, c.60 (C.58:10C-2) is amended to read as
47 follows:

48 2. As used in sections 1 through 29 of P.L.2009, c.60 (C.58:10C-
49 1 et seq.):

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

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

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

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

15 "Department" means the Department of Environmental Protection.

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

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

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

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

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

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

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

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

1 structure, land, and natural resource use restrictions, well restriction
2 areas, and deed notices.

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

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

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

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

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

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

39 "Remedial action" means those actions taken at a site or offsite if a
40 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 that
45 has migrated or is migrating from the site, is remediated in compliance
46 with the applicable health risk or environmental 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 the

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

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

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

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

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

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

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

46 "Site investigation" means the collection and evaluation of data
47 adequate to determine whether or not discharged contaminants exist at
48 a site or have migrated or are migrating from the site at levels in
49 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 "Small business" means a business entity that does not acquire
4 property for development or redevelopment, and that, during the prior
5 three tax years, employed not more than 50 full-time employees or the
6 equivalent thereof, and qualifies as a small business concern within the
7 meaning of the federal "Small Business Act," 15 U.S.C. s.631 et seq.

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

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

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

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

24

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

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

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

45 c. An application for a license shall be made in a manner and on
46 such forms as may be prescribed by the board. The filing of an
47 application shall be accompanied by an application fee that shall cover
48 the costs of processing the application and developing and conducting

1 the examinations. The board may also charge an annual license fee
2 that shall cover the costs of the licensing program.

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

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

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

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

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

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

31 (6) has not been convicted of, or ¹**[plead]** pled¹ guilty to, an
32 environmental crime, any similar or related ¹**[criminal offense]** crime¹
33 under federal or state law, or any crime involving fraud, breach of
34 trust, theft by deception, forgery, or any ¹crime or¹ offense that would
35 qualify the person for registration pursuant to section 2 of P.L.1994,
36 c.133 (C.2C:7-2), or any other crime ¹**[or offense]**¹ involving moral
37 turpitude, or any similar or related offense under federal or state law .
38 For the purposes of this section, a conviction or plea of guilty shall
39 include a non vult, nolo contendere, no contest, or finding of guilt by a
40 judge or jury; and

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

46 e. For the purposes of this section, "full-time professional
47 experience" includes experience in which the applicant is required to
48 apply scientific or engineering principles to contaminated site

1 remediation where the resulting conclusions form the basis for reports,
2 studies or other documents connected with the remediation of a
3 contaminated site. The board may consider the applicant's work
4 activities, field of practice, duration of employment, and work
5 products prepared in determining the credit to be allowed for
6 professional experience. The board may allow applicants with
7 relevant advanced degrees up to two years of credit for professional
8 experience, of which one year of credit may be awarded for applicants
9 who have earned a master's degree in a relevant field of study and up
10 to two years of credit may be awarded for applicants who have earned
11 a doctorate degree in a relevant field of study.

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

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

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

28

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

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

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

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

41

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

44 14. a. For any site for which a licensed site remediation
45 professional is required to be **["hired"]** retained pursuant to the
46 provisions of section 30 of P.L.2009, c.60 (C.58:10B-1.3), the
47 person responsible for conducting the remediation shall certify all
48 documents submitted to the department concerning the remediation
49 of the contaminated site. The licensed site remediation professional

1 shall certify that the work was performed, the licensed site
2 remediation professional managed, supervised, or performed the
3 work that is the basis of the submission, and that the work and the
4 submitted documents are consistent with all applicable remediation
5 requirements adopted by the department.

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

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

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

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

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

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

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

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

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

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

34 **[(b)]** (c) mandatory remediation timeframes and expedited site
35 specific timeframes adopted by the department pursuant to section
36 28 of P.L.2009, c.60 (C.58:10C-28); **[and]**

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

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

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

47 (4) When there is no specific requirement provided by the
48 technical standards for site remediation adopted by the department,
49 and guidelines issued by the department are not appropriate or

1 necessary, in the professional judgment of the licensed site
2 remediation professional, to meet the remediation requirements
3 listed in paragraph (1) of this subsection, the licensed site
4 remediation professional may use the following additional
5 guidelines to make decisions regarding a remediation, and shall set
6 forth justification , including, if applicable, the scientific, technical,
7 or other justification, for such use, in the relevant submittal to the
8 department:

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

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

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

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

24

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

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

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

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

44 d. A licensed site remediation professional retained by a person
45 responsible for conducting the remediation shall notify the
46 department within 15 calendar days after being retained. In
47 addition, a licensed site remediation professional shall notify the
48 department within 15 calendar days after being released from
49 responsibility for a remediation if the release occurs prior to

1 issuance of the response action outcome for the site by the licensed
2 site remediation professional.

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

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

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

25 h. A licensed site remediation professional shall not certify any
26 document submitted to the department unless the licensed site
27 remediation professional : (1) believes that the information in the
28 submission is true, accurate, and complete; and (2) has managed,
29 supervised or performed the work that is the basis of the
30 submission, or has periodically reviewed and evaluated the work
31 performed by other persons that forms the basis for the information
32 in the submission, or has completed the work of another licensed
33 site remediation professional and has concluded such work is
34 reliable pursuant to subsection f. of this section. A licensed site
35 remediation professional shall not knowingly make any false
36 statement, representation, or certification in any document or
37 information required to be submitted to the board or the department.

38 i. A licensed site remediation professional shall exercise
39 independent professional judgment, comply with the requirements
40 and procedures set forth in the provisions of P.L.2009, c.60
41 (C.58:10C-1 et al.), make a good faith and reasonable effort to
42 identify and obtain the relevant and material facts, data, reports and
43 other information evidencing conditions at a contaminated site for
44 which he is **【responsible】** retained that is in possession of the
45 owner of the property, or that is otherwise available, and identify
46 and obtain whatever additional data and other information as the
47 licensed site remediation professional deems necessary. The
48 licensed site remediation professional shall disclose and explain in
49 any document submitted to the department any facts, data,

1 information, qualifications, or limitations known by the licensed
2 site remediation professional that are not supportive of the
3 conclusions reached in the document.

4 j. If a licensed site remediation professional **[identifies]**
5 obtains specific knowledge of a condition **[at a contaminated site]**
6 that in his independent professional judgment is an immediate
7 environmental concern, then the licensed site remediation
8 professional shall: (1) immediately verbally advise , and confirm in
9 writing to, the person responsible for conducting the remediation of
10 that person's duty to notify the department of the condition ,
11 provided the person is known to the licensed site remediation
12 professional; and (2) immediately notify the department of the
13 condition by calling the department's telephone hotline.

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

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

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

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

45 o. A licensed site remediation professional who succeeds
46 another licensed site remediation professional before the issuance of
47 a response action outcome, and who learns of material facts, data or
48 other information concerning a phase of the remediation for which a
49 report was submitted to the department and the material facts, data

1 or other information were not disclosed in the report, shall promptly
2 notify the client and the department in writing of those facts, data,
3 information, and circumstances.

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

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

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

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

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

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

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

34 (1) the licensed site remediation professional orders, directs, or
35 agrees to the provision of professional services conducted or
36 prepared by another licensed site remediation professional under his
37 supervision;

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

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

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

45 t. A licensed site remediation professional shall inform a client
46 or prospective client of any relevant and material assumptions,
47 limitations, or qualifications underlying their communication.
48 Evidence that a licensed site remediation professional has provided
49 the client or prospective client with timely written documentation of

1 these assumptions, limitations, or qualifications shall be deemed by
2 the board or the department to have satisfied the requirements of
3 this subsection.

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

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

10 (1) make a material misrepresentation of fact;

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

13 (3) make a statement that, in the opinion of the board, is likely
14 to create an unjustified expectation about results the licensed site
15 remediation professional may achieve, or state or imply that the
16 licensed site remediation professional may achieve results by means
17 that violate the provisions of applicable environmental statutes,
18 rules or regulations, including the provisions of P.L.2009, c.60
19 (C.58:10C-1 et al.).

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

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

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

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

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

48 bb. Except as provided in subsection d. of section 30 of
49 P.L.2009, c.60 (C.58:10B-1.3), a licensed site remediation

1 professional shall not manage, supervise, perform, engage, or
2 participate in remediation unless:

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

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

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

12

13 23. (New section) If a licensed site remediation professional
14 obtains specific knowledge of a condition in an unoccupied structure,
15 that, in ¹**【his】** the licensed site remediation professional's¹
16 independent professional judgment, constitutes an immediate
17 environmental concern, and the person responsible for conducting the
18 remediation provides to the department a written certification from the
19 property owner that the building (i) is not occupied, (ii) will not be
20 occupied, and (iii) will be demolished, then no further remediation
21 relative to the immediate environmental concern in the unoccupied
22 structure shall be required, provided the conditions of the certification
23 are maintained. Nothing in this section shall be construed to limit the
24 responsibility of a ¹**【license】** licensed¹ site remediation professional to
25 comply with the notification requirements of subsection j. of section
26 16 of P.L.2009, c.60 (C.58:10C-16), or the responsibility of a person
27 to report a discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et
28 seq.). The department shall prescribe the form and manner of the
29 written certification pursuant to this section.

30

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

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

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

1 periodic monitoring for compliance is conducted, to obtain a permit
2 pursuant to this section.

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

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

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

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

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

41

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

44 20. A licensed site remediation professional shall , for each
45 contaminated site, maintain and preserve all data, documents and
46 information concerning the remediation **【activities at each**
47 **contaminated site】** that the licensed site remediation professional
48 has **【worked on】** prepared or relied upon, including but not limited
49 to, technical records and contractual documents, raw sampling and

1 monitoring data, whether or not the data and information, including
2 technical records and contractual documents, were developed by the
3 licensed site remediation professional or the licensee's divisions,
4 employees, agents, accountants, contractors, or attorneys, that relate
5 in any way to the contamination at the site. **【Three】** An electronic
6 **【copies】** copy of the records shall be submitted to the department at
7 the time the response action outcome is filed with the department.
8 (cf: P.L.2009, c.60, s.20)

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

12 27. a. Except as provided in section 1 of P.L.2013, c.283 (C.
13 58:10C-27.1), and this section, the department shall undertake direct
14 oversight of a remediation of a contaminated site under the following
15 conditions:

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

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

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

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

42 (1) the person was unable to meet the applicable timeframe
43 because **【he】** the person¹ was unable to enter the contaminated site
44 because **【he】** the person¹ does not own the property, and the person
45 took all appropriate and timely action pursuant to section 40 of
46 P.L.1993, c.139 (C.58:10B-16) prior to the applicable timeframe; or

47 (2) the contaminated site is subject to federal oversight, the person
48 has made timely submissions to the department, and the person was
49 unable to meet the applicable timeframe due to the performance of

1 additional review by the department pursuant to subsection c. of
2 section 21 of P.L.2009, c.60 (C.58:10C-21).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 a settlement of litigation pending on the date of enactment of
2 P.L.2009, c.60 (C.58:10C-1 et al.).

3 (2) For any litigation pending or settled on the date of enactment
4 of P.L.2009, c.60 (C.58:10C-1 et al.), concerning a remediation
5 performed pursuant to the "Resource Conservation and Recovery Act,"
6 42 U.S.C. s.6921 et seq., nothing in P.L.2009, c.60 (C.58:10C-1 et al.)
7 shall affect an oversight procedure, remedy, or other obligation
8 imposed by a federal administrative order or federal court order.

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

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

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

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

24 (2) The department may modify the direct oversight requirements
25 of subsection c. of this section for a contaminated site if the
26 department makes a written determination that the modification is in
27 the public interest and protective of the public health and safety and
28 the environment. At least 60 days prior to making a modification
29 pursuant to this paragraph, the department shall publish its written
30 determination and the proposed modification to the requirements of
31 direct oversight, including the reasons for its determination, on the
32 department's Internet website. The department shall solicit and accept
33 public comments on the proposed modification for a period of at least
34 30 days after the date of publication. The department shall consider
35 the public comments received during the comment period prior to
36 making a modification pursuant to this paragraph.

37 (3) The department may, prior to a change in ownership of a
38 contaminated site, enter into an administrative consent order with the
39 prospective purchaser of the contaminated site providing for the
40 modification of any or all of the direct oversight requirements of
41 subsection c. of this section for the contaminated site. ¹The
42 department shall not enter into an administrative consent order
43 pursuant to this paragraph with any person who:

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

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

48 (c) is a predecessor, successor, subsidiary, partner, shareholder,
49 assign, trustee in bankruptcy, responsible corporate official, or receiver

1 appointed pursuant to a proceeding in law or equity, to any person
2 described in subparagraphs (a) and (b) above.¹

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

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

12

13 27. This act shall take effect immediately.