

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 1897**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

ADOPTED FEBRUARY 26, 2009

**Sponsored by:**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**Senator STEPHEN M. SWEENEY**

**District 3 (Salem, Cumberland and Gloucester)**

**Senator RAYMOND J. LESNIAK**

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**District 38 (Bergen)**

**Senator CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**Senator JAMES BEACH**

**District 6 (Camden)**

**SYNOPSIS**

Establishes licensing program for site remediation professionals; changes laws concerning site remediation.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Senate Environment Committee.

1 **AN ACT** concerning site remediation, and amending and  
2 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. (New section) Sections 1 through 29 of P.L. , c. (C. )  
8 (pending before the Legislature as this bill) shall be known and may  
9 be cited as the "Site Remediation Reform Act."

10

11 2. (New section) As used in sections 1 through 29 of P.L. ,  
12 c. (C. ) (pending before the Legislature as this bill):

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

17 "Board" means the Site Remediation Professional Licensing  
18 Board established pursuant to section 3 of P.L. , c. (C. )  
19 (pending before the Legislature as this bill).

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

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

29 "Department" means the Department of Environmental  
30 Protection.

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

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

42 "Environmental crime" means any criminal violation of one of  
43 the following State laws: R.S.12:5-1 et seq.; P.L.1975, c.232  
44 (C.13:1D-29 et seq.); the "Solid Waste Management Act,"

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

Matter underlined thus is new matter.

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

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

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

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

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

22 "Licensed site remediation professional" means an individual  
23 who is licensed by the board pursuant to section 7 of P.L. ,  
24 c. (C. ) (pending before the Legislature as this bill) or the  
25 department pursuant to section 12 of P.L. , c. (C. ) (pending  
26 before the Legislature as this bill).

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

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

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

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

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

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

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

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

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

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

43 "Remediation standards" means the combination of numeric  
44 standards that establish a level or concentration, and narrative  
45 standards to which contaminants must be treated, removed, or  
46 otherwise cleaned for soil, groundwater, or surface water, as  
47 provided by the department pursuant to section 35 of P.L.1993,

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

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

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

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

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

31 "Temporary license" means a license issued by the department  
32 pursuant to section 12 of P.L. , c. (C. ) (pending before the  
33 Legislature as this bill) to conduct business as a licensed site  
34 remediation professional in the State.

35 "Unregulated heating oil tank" means any one or combination of  
36 tanks, including appurtenant pipes, lines, fixtures, and other related  
37 equipment, used to contain an accumulation of heating oil for on-  
38 site consumption in a residential building, or those tanks with a  
39 capacity of 2,000 gallons or less used to store heating oil for on-site  
40 consumption in a nonresidential building, the volume of which,  
41 including the volume of the appurtenant pipes, lines, fixtures and  
42 other related equipment, is 10% or more below the ground.

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

1       3. (New section) a. There is established in, but not of, the  
2 Department of Environmental Protection, the Site Remediation  
3 Professional Licensing Board. The board shall establish licensing  
4 requirements for site remediation professionals and shall oversee  
5 the licensing and performance of site remediation professionals.

6       b. The board shall consist of 13 members to be selected and  
7 qualified as follows:

8       (1) The Commissioner of Environmental Protection, or a  
9 designee, who shall serve ex officio, and who shall be the  
10 chairperson of the board;

11       (2) The State Geologist, or a designee, who shall serve ex  
12 officio; and

13       (3) Eleven public members, residents of the State, who shall be  
14 appointed by the Governor with the advice and consent of the  
15 Senate as follows:

16       (a) six shall be site remediation professionals who hold a license  
17 from the board. Of the six members first appointed pursuant to this  
18 subparagraph, two shall be appointed to a term of one year, two  
19 shall be appointed to a term of two years, one shall be appointed to  
20 a term of three years, and one shall be appointed to a term of four  
21 years. Thereafter, all appointments shall be for a term of four years.  
22 The members first appointed to the board pursuant to this  
23 subparagraph shall hold a temporary site remediation professional  
24 license issued by the department pursuant to section 12 of P.L.     ,  
25 c. (C.     ) (pending before the Legislature as this bill);

26       (b) three shall be members at the time of appointment of  
27 Statewide organizations that promote the protection of the  
28 environment and who are knowledgeable with respect to issues  
29 involving responding to discharges of hazardous substances. Of the  
30 members appointed pursuant to this subparagraph, one shall be a  
31 licensed site remediation professional. Of the three members first  
32 appointed pursuant to this subparagraph, one shall be appointed to a  
33 term of one year, one shall be appointed to a term of two years, and  
34 one shall be appointed to a term of three years. Thereafter, all  
35 appointments shall be for a term of four years;

36       (c) one shall be a person from the business community in the  
37 State who is knowledgeable with respect to issues involving  
38 responding to discharges of hazardous substances and whose initial  
39 appointment shall be for a term of three years. Thereafter, the  
40 appointment shall be for a term of four years; and

41       (d) one shall be a member of the academic community who is  
42 knowledgeable with respect to issues involving responding to  
43 discharges of hazardous substances and who shall be appointed for  
44 a term of four years.

45       c. Each member shall serve for the term of the appointment and  
46 until a successor shall have been appointed and qualified. Any  
47 vacancy shall be filled in the same manner as the original  
48 appointment for the unexpired term only.

1       d. (1) The Governor may remove a member of the board for  
2       cause, after a public hearing.

3       (2) The 11 public members shall serve without compensation,  
4       but may be reimbursed for necessary expenses incurred in the  
5       performance of their duties within the limits of funding made  
6       available to the board.

7       e. The department shall provide such staff and other persons as  
8       are required to assist the board in the performance of its functions  
9       and duties pursuant to P.L.     , c. (C.     ) (pending before the  
10      Legislature as this bill), including administrative law judges who  
11      may conduct adjudicatory proceedings. The board shall make all  
12      final decisions in such adjudicatory proceedings.

13

14      4. (New section) The powers of the board shall be vested in  
15      the members thereof in office. A majority of the total authorized  
16      membership of the board shall constitute a quorum and no action  
17      may be taken by the board except upon the affirmative vote of a  
18      majority of the total authorized membership of the board.

19

20      5. (New section) The board shall have the following powers  
21      and duties:

22      a. To review and approve or deny applications for licensing  
23      site remediation professionals;

24      b. To administer and evaluate licensing examinations for site  
25      remediation professionals;

26      c. To issues licenses and license renewals to all qualifying site  
27      remediation professionals;

28      d. To establish standards and requirements for continuing  
29      education of licensed site remediation professionals;

30      e. To approve or offer continuing education courses;

31      f. To track fulfillment of continuing education requirements by  
32      licensed site remediation professionals;

33      g. To establish and collect fees for examinations, licenses,  
34      renewals, or any other services required for the licensing of site  
35      remediation professionals;

36      h. To adopt and administer standards for professional conduct  
37      for licensed site remediation professionals, as provided in sections  
38      14 and 16 of P.L.     , c. (C.     ) (pending before the Legislature as  
39      this bill);

40      i. To investigate complaints, impose discipline, and suspend  
41      and revoke licenses of site remediation professionals who violate  
42      the provisions of P.L.     , c. (C.     ) (pending before the  
43      Legislature as this bill);

44      j. To publish and maintain the names and contact information  
45      of all site remediation professionals licensed pursuant to P.L.     ,  
46      c. (C.     ) (pending before the Legislature as this bill), and make  
47      the list available on the board's internet website;



1 k. To publish and maintain a list of all site remediation  
2 professionals whose license has been suspended or revoked by the  
3 board and make the list available on the board's internet website;

4 l. To provide public information on the licensed site  
5 remediation professional program; and

6 m. To maintain a record of complaints filed against licensed site  
7 remediation professionals and provide the public with information  
8 upon request.

9  
10 6. (New section) a. No later than 18 months after the date of  
11 enactment of P.L. , c. (C. ) (pending before the Legislature  
12 as this bill), the board shall, pursuant to the "Administrative  
13 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules  
14 and regulations necessary for the implementation, administration,  
15 and enforcement of P.L. , c. (C. ) (pending before the  
16 Legislature as this bill). The rules and regulations shall: (1)  
17 establish requirements for the education, continuing education,  
18 training, experience, examination and testing, and references for the  
19 licensing of site remediation professionals; (2) establish standards  
20 for professional conduct of, and the payment of fees by, licensed  
21 site remediation professionals; (3) establish procedures for the  
22 investigation of complaints concerning licensed site remediation  
23 professionals initiated by any person; (4) establish other forms of  
24 nonmonetary penalties that the board may impose on a licensed site  
25 remediation professional pursuant to section 17 of P.L. ,  
26 c. (C. ) (pending before the Legislature as this bill); and (5)  
27 provide for enforcement of the provisions of P.L. , c. (C. )  
28 (pending before the Legislature as this bill). The rules and  
29 regulations shall establish an expiration date for temporary site  
30 remediation professional licenses issued by the department pursuant  
31 to section 12 of P.L. , c. (C. ) (pending before the Legislature  
32 as this bill).

33 b. The rules and regulations adopted pursuant to this section  
34 shall be sufficient to assure that any response action outcome issued  
35 by a site remediation professional licensed pursuant to P.L. ,  
36 c. (C. ) (pending before the Legislature as this bill) shall be  
37 consistent with all applicable laws, rules and regulations concerning  
38 the remediation of contaminated sites and shall protect public health  
39 and safety and the environment.

40  
41 7. (New section) a. The board shall establish a licensing  
42 program and licensing requirements for site remediation  
43 professionals, and shall oversee their licensing and performance.

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

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

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

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

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

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

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

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

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

46 (6) has not been convicted of, or plead guilty to, an  
47 environmental crime, any similar or related criminal offense under  
48 federal or state law, or any crime involving fraud, theft by

1 deception, forgery or any similar or related offense under federal or  
2 state law; and

3 (7) has not had a professional license revoked by any state  
4 licensing board or any other professional licensing agency within  
5 the previous 10 years.

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

20 f. The board shall authorize an applicant who has been issued a  
21 temporary license pursuant to subsection d. of section 13 of P.L. ,  
22 c. (C. ) (pending before the Legislature as this bill), who meets  
23 all other requirements established pursuant to this section but does  
24 not hold a bachelor's degree from an accredited institution of higher  
25 education to take the licensing examination to qualify for a license  
26 pursuant to this section. An applicant who does not satisfactorily  
27 complete the examination authorized pursuant to this subsection  
28 shall not be authorized to reapply for a license.

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

35  
36 8. (New section) a. The board may suspend or revoke a  
37 license pursuant to the provisions of section 17 of P.L. ,  
38 c. (C. ) (pending before the Legislature as this bill). The board  
39 shall establish standards and requirements for the reinstatement of a  
40 site remediation professional license that has been suspended or  
41 revoked.

42 b. The board may prohibit any person whose application for an  
43 initial license or for a license renewal is denied, or whose license is  
44 revoked, from applying for a license for a period of not more than  
45 three years. The term during which reapplication is prohibited shall  
46 be established as part of the determination of the board in the  
47 proceedings concerning the denial or revocation.

1        9. (New section) A licensed site remediation professional shall  
2 submit an application for license renewal at least 90 days and no  
3 more than 120 days prior to expiration of the license. The board  
4 shall establish standards and requirements for the renewal of the site  
5 remediation professional license and may require training or  
6 continuing education, experience or other requirements as a  
7 condition for renewal of a license. An application for a license  
8 renewal shall be accompanied by an application fee.

9  
10       10. (New section) Each license issued pursuant to section 7 of  
11 P.L. , c. (C. ) (pending before the Legislature as this bill)  
12 shall be issued to an individual, shall be valid only for the  
13 individual to whom it is issued and shall not be transferable. Each  
14 license issued pursuant to section 7 of P.L. , c. (C. ) (pending  
15 before the Legislature as this bill) shall be valid for a period not to  
16 exceed three years, unless a shorter period is specified therein, or  
17 unless suspended or revoked.

18  
19       11. (New section) No person shall be, act as, advertise as, or  
20 hold himself out to be, or represent himself as being, a licensed site  
21 remediation professional unless that person has been issued a valid  
22 license pursuant to P.L. , c. (C. ) (pending before the  
23 Legislature as this bill).

24  
25       12. (New section) a. No more than 90 days after the date of  
26 enactment of P.L. , c. (C. ) (pending before the Legislature  
27 as this bill), the department shall establish a temporary site  
28 remediation professional license program. The department shall  
29 issue a temporary site remediation professional license to any  
30 individual who qualifies for the license pursuant to the provisions of  
31 section 13 of P.L. , c. (C. ) (pending before the Legislature  
32 as this bill).

33       b. An application for a temporary license or license renewal  
34 shall be accompanied by an application fee established by the  
35 department that shall cover all costs of processing the application  
36 and developing and conducting license exams. The department may  
37 also establish an annual fee that shall be charged to a person who  
38 qualifies for a temporary license that shall cover all costs of  
39 administering and enforcing the temporary license program.

40       c. Each temporary license issued by the department shall be  
41 issued to an individual, shall be valid only for the individual to  
42 whom it is issued and shall not be transferable. Except as provided  
43 in this subsection, each temporary license issued by the department  
44 pursuant to this section and section 13 of P.L. , c. (C. )  
45 (pending before the Legislature as this bill) shall be valid for a  
46 period not to exceed three years, unless a shorter period is specified  
47 therein, or unless suspended or revoked. All temporary site  
48 remediation professional licenses shall expire as provided in rules

1 and regulations adopted by the board pursuant to subsection a. of  
2 section 6 of P.L. , c. (C. ) (pending before the Legislature as  
3 this bill).

4 d. The department may deny an application for a temporary  
5 license or an application for a license renewal. The department may  
6 prohibit any person whose application for a temporary license or for  
7 a license renewal is denied from applying for a license for a period  
8 of not more than three years. The term during which reapplication is  
9 prohibited shall be established as part of the determination of the  
10 department in the proceedings concerning the denial.

11  
12 13. (New section) a. No more than 90 days after the date of  
13 enactment of P.L. , c. (C. ) (pending before the Legislature as  
14 this bill), the department shall issue guidelines which shall be  
15 published in the New Jersey Register that set forth the procedures  
16 for the issuance of temporary site remediation professional licenses.  
17 Application for a temporary license shall be made in a manner and  
18 on such forms as may be prescribed by the department.

19 b. An applicant for a temporary site remediation professional  
20 license shall demonstrate to the department that the applicant:

21 (1) holds a bachelor's degree or higher in natural, chemical or  
22 physical science, or an engineering degree in a discipline related to  
23 site remediation, from an accredited institution of higher education,  
24 except as provided in subsection d. of this section;

25 (2) has 10 years of full-time professional experience, as  
26 described in subsection c. of this section, in the field of site  
27 remediation, of which five years shall have occurred in New Jersey  
28 and at least three years shall have occurred in New Jersey  
29 immediately prior to submission of the application;

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

34 (4) has attended and completed a course approved by the  
35 department on the State's rules and regulations concerning the  
36 technical requirements for site remediation no more than three years  
37 prior to the date of enactment of P.L. , c. (C. ) (pending before the  
38 Legislature as this bill);

39 (5) has not been convicted of, or plead guilty to, an  
40 environmental crime, or any similar or related criminal offense  
41 under federal or state law, or any crime involving fraud, theft by  
42 deception, forgery, or any similar or related criminal offense under  
43 federal or state law; and

44 (6) has not had a professional license revoked by any state  
45 licensing board or any other professional licensing agency within  
46 the previous 10 years.

47 c. For the purposes of this section, "full-time professional  
48 experience" includes experience in which the applicant is required

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

14 d. For the purposes of this section, the department may issue a  
15 temporary license to an applicant for the remediation of discharges  
16 from underground storage tanks only. For those temporary licenses  
17 issued pursuant to this subsection, the department may provide for  
18 the substitution of full-time professional experience in the field of  
19 contaminated site remediation for the holding of a bachelor's  
20 degree. An applicant who does not hold a bachelor's degree from  
21 an accredited institution of higher education shall have at least 14  
22 years of full-time professional experience, of which at least five  
23 years shall have occurred in New Jersey immediately prior to  
24 submission of the application. The applicant shall meet all other  
25 requirements as provided in subsection b. of this section.

26 e. The department may issue temporary site remediation  
27 professional licenses by publishing a list of the names and  
28 identifying information of the licensees on its Internet website.

29

30 14. (New section) a. For any site for which a licensed site  
31 remediation professional is required to be hired pursuant to the  
32 provisions of section 30 of P.L. , c. (C. ) (pending before the  
33 Legislature as this bill), the person responsible for conducting the  
34 remediation shall certify all documents submitted to the department  
35 concerning the remediation of the contaminated site. The licensed  
36 site remediation professional shall certify that the work was  
37 performed, the licensed site remediation professional managed,  
38 supervised, or performed the work that is the basis of the  
39 submission, and that the work and the submitted documents are  
40 consistent with all applicable remediation requirements adopted by  
41 the department.

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

- 1       c. The licensed site remediation professional shall employ the  
2 following remediation requirements in providing professional  
3 services for the remediation of contaminated sites:
- 4       (1) The licensed site remediation professional shall make each  
5 decision concerning a contaminated site in order to meet the  
6 following standards:
- 7       (a) health risk and environmental standards established pursuant  
8 to section 35 of P.L.1993, c.139 (C.58:10B-12);
- 9       (b) remediation standards adopted by the department pursuant to  
10 section 35 of P.L.1993, c.139 (C.58:10B-12);
- 11       (c) maximum contaminant levels for building interiors adopted  
12 by the Department of Health and Senior Services pursuant to  
13 section 1 of P.L.2007, c.1 (C.52:27D-130.4) as applicable; and
- 14       (d) any other applicable standards adopted pursuant to law.
- 15       (2) The licensed site remediation professional shall apply the  
16 following regulations:
- 17       (a) technical standards for site remediation adopted by the  
18 department pursuant to P.L.1993, c.139 (C.58:10B-1 et seq.);
- 19       (b) mandatory remediation timeframes and expedited site  
20 specific timeframes adopted by the department pursuant to section  
21 28 of P.L. , c. (C ) (pending before the Legislature as this  
22 bill); and
- 23       (c) presumptive remedies adopted by the department pursuant to  
24 section 35 of P.L.1993, c.139 (C.58:10B-12).
- 25       (3) The licensed site remediation professional shall apply any  
26 available and appropriate technical guidelines concerning site  
27 remediation as issued by the department. The department shall  
28 provide interested parties the opportunity to participate in the  
29 development and review of technical guidelines issued for the  
30 remediation of contaminated sites.
- 31       (4) When there is no specific requirement provided by the  
32 technical standards for site remediation adopted by the department,  
33 and guidelines issued by the department are not appropriate or  
34 necessary, in the professional judgment of the licensed site  
35 remediation professional, to meet the remediation requirements  
36 listed in paragraph (1) of this subsection, the licensed site  
37 remediation professional may use the following additional  
38 guidelines to make decisions regarding a remediation, and shall set  
39 forth justification for such use, in the relevant submittal:
- 40       (a) relevant guidance from the federal Environmental Protection  
41 Agency or other states; and
- 42       (b) other relevant, applicable, and appropriate methods and  
43 practices that ensure the protection of the public health and safety,  
44 and of the environment.
- 45       d. Upon completion of the remediation, the licensed site  
46 remediation professional shall issue a response action outcome to  
47 the person responsible for conducting the remediation when, in the  
48 opinion of the licensed site remediation professional, the site has

1 been remediated so that it is in compliance with all applicable  
2 statutes, rules and regulations protective of public health and safety  
3 and the environment. The licensed site remediation professional  
4 shall file the response action outcome with the department when it  
5 is issued to the person responsible for conducting the remediation.

6  
7 15. (New section) a. No person shall use a certified subsurface  
8 evaluator for the remediation of a discharge from an underground  
9 storage tank regulated pursuant to P.L.1986, c.102 (C.58:10A-21 et  
10 seq.).

11 b. Any person who remediates a discharge from an unregulated  
12 heating oil tank may hire a certified subsurface evaluator or a  
13 licensed site remediation professional to perform the remediation.

14  
15 16. (New section) a. A licensed site remediation professional's  
16 highest priority in the performance of professional services shall be  
17 the protection of public health and safety and the environment.

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

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

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

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

45 f. A licensed site remediation professional may complete any  
46 phase of remediation based on remediation work performed under  
47 the supervision of another licensed site remediation professional,  
48 provided that the licensed site remediation professional: (1)



1 reviews all available documentation on which he relies; (2)  
2 conducts a site visit to observe current conditions and to verify the  
3 status of as much of the work as is reasonably observable; and (3)  
4 concludes, in the exercise of independent professional judgment,  
5 that there is sufficient information upon which to complete any  
6 additional phase of remediation and prepare workplans and reports  
7 related thereto.

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

14 h. A licensed site remediation professional shall not certify any  
15 document submitted to the department unless the licensed site  
16 remediation professional has managed, supervised or performed the  
17 work that is the basis of the submission, or has periodically  
18 reviewed and evaluated the work performed by other persons that  
19 forms the basis for the information in the submission, or has  
20 completed the work of another licensed site remediation  
21 professional and has concluded such work is reliable pursuant to  
22 subsection f. of this section.

23 i. A licensed site remediation professional shall exercise  
24 independent professional judgment, comply with the requirements  
25 and procedures set forth in the provisions of P.L. , c. (C. )  
26 (pending before the Legislature as this bill), make a good faith and  
27 reasonable effort to identify and obtain the relevant and material  
28 facts, data, reports and other information evidencing conditions at a  
29 contaminated site for which he is responsible that is in possession  
30 of the owner of the property, or that is otherwise available, and  
31 identify and obtain whatever additional data and other information  
32 as the licensed site remediation professional deems necessary. The  
33 licensed site remediation professional shall disclose and explain in  
34 any document submitted to the department any facts, data,  
35 information, qualifications, or limitations known by the licensed  
36 site remediation professional that are not supportive of the  
37 conclusions reached in the document.

38 j. If a licensed site remediation professional identifies a  
39 condition at a contaminated site that in his independent professional  
40 judgment is an immediate environmental concern, then the licensed  
41 site remediation professional shall: (1) immediately verbally advise  
42 the person responsible for conducting the remediation of that  
43 person's duty to notify the department of the condition; and (2)  
44 immediately notify the department of the condition by calling the  
45 department's telephone hotline.

46 k. If a licensed site remediation professional obtains specific  
47 knowledge that a discharge has occurred on a contaminated site for  
48 which he is responsible, the licensed site remediation professional

1 shall: (1) notify the person responsible for conducting the  
2 remediation of the existence of the discharge; and (2) notify the  
3 department of the discharge by calling the department's telephone  
4 hotline. The person responsible for conducting the remediation  
5 shall also be responsible for notifying the department of the  
6 existence of the discharge. The provisions of this subsection shall  
7 not apply to a discharge that may be a result of the existence of  
8 historic fill material.

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

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

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

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

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

43 q. A licensed site remediation professional shall cooperate in  
44 an investigation by the board or the department by promptly  
45 furnishing, in response to formal requests, orders or subpoenas, any  
46 information the board or the department, or persons duly authorized  
47 by the board or the department, deems necessary to perform its  
48 duties. In an investigation by the board of a license application or a

1 license suspension or revocation, a licensed site remediation  
2 professional shall not:

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

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

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

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

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

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

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

- 43 (1) make a material misrepresentation of fact;  
44 (2) omit a fact when the omission results in a materially  
45 misleading description; or  
46 (3) make a statement that, in the opinion of the board, is likely  
47 to create an unjustified expectation about results the licensed site  
48 remediation professional may achieve, or state or imply that the

1 licensed site remediation professional may achieve results by means  
2 that violate the provisions of applicable environmental statutes,  
3 rules or regulations, including the provisions of P.L. , c. (C. )  
4 (pending before the Legislature as this bill).

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

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

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

19 z. A licensed site remediation professional shall not allow any  
20 ownership interest, compensation, or promise of continued  
21 employment, of the licensed site remediation professional or any  
22 immediate family member, to affect the professional services  
23 provided by the licensed site remediation professional.  
24

25 17. (New section) a. (1) Whenever, on the basis of available  
26 information, the board finds that a person is in violation of P.L. ,  
27 c. (C. ) (pending before the Legislature as this bill), or any  
28 rule, regulation, or order adopted or issued pursuant thereto, or who  
29 knowingly has made any false statement, representation, or  
30 certification in any documents or information required to be  
31 submitted to the board or the department, the board may:

32 (a) Suspend or revoke the license of a licensed site remediation  
33 professional or impose another penalty on the licensed site  
34 remediation professional as determined by the board in accordance  
35 with subsection b. of this section;

36 (b) Bring a civil action in accordance with subsection c. of this  
37 section;

38 (c) Issue an administrative order in accordance with subsection  
39 d. of this section;

40 (d) Bring an action for a civil penalty in accordance with  
41 subsection e. of this section;

42 (e) Assess a civil administrative penalty in accordance with  
43 subsection f. of this section; or

44 (f) Petition the Attorney General to bring a criminal action in  
45 accordance with paragraph (2) of this subsection.

46 The exercise of any of the remedies provided in this section shall  
47 not preclude recourse to any other remedy so provided.

1       (2) A licensed site remediation professional who purposely,  
2 knowingly, or recklessly violates a provision of P.L. , c. (C. )  
3 (pending before the Legislature as this bill), including making a  
4 false statement, representation, or certification in any application,  
5 record, or other document filed or required to be maintained  
6 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
7 this bill), or by falsifying, tampering with, or rendering inaccurate  
8 any monitoring device or method, institutional or engineering  
9 control, shall be guilty, upon conviction, of a crime of the third  
10 degree and shall, notwithstanding the provisions of subsection b. of  
11 N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor more  
12 than \$75,000 per day of violation, or by imprisonment, or both.

13       b. (1) The board may suspend or revoke a license issued to a  
14 licensed site remediation professional pursuant to section 7 of  
15 P.L. , c. (C. ) (pending before the Legislature as this bill), or  
16 impose another penalty as determined by the board. The board may  
17 not suspend or revoke a license or impose another penalty until a  
18 violator has been notified by certified mail or personal service. The  
19 notice shall: (a) identify the statutory or regulatory basis of the  
20 violation; (b) identify the specific act or omission constituting the  
21 violation; (c) identify the license to be suspended or revoked, or the  
22 penalty to be imposed; and (d) affirm the right of the violator to a  
23 hearing on any matter contained in the notice and the procedures for  
24 requesting a hearing.

25       (2) A violator shall have 35 days from receipt of the notice  
26 within which to request a hearing on any matter contained in the  
27 notice, and shall comply with all procedures for requesting a  
28 hearing. Failure to submit a timely request or to comply with all  
29 procedures set forth by the board shall constitute grounds for denial  
30 of a hearing request. After a hearing and upon a finding that a  
31 violation has occurred, the board shall issue a final order  
32 suspending or revoking the license, or imposing the penalty  
33 specified in the notice. If a violator does not request a hearing or  
34 fails to satisfy the statutory and administrative requirements for  
35 requesting a hearing, the notice of intent to suspend or revoke the  
36 license or to impose the penalty shall become final after the  
37 expiration of the 35-day period. If the board denies a hearing  
38 request, the notice of denial shall become a final order, suspending  
39 or revoking the license, or imposing the penalty, upon receipt of the  
40 notice by the violator. Upon a determination of the board that the  
41 conduct of the licensed site remediation professional is so egregious  
42 as to pose an imminent threat to public health, safety, or the  
43 environment if the licensed site remediation professional is allowed  
44 to conduct remediation of sites or areas of concern pending a  
45 hearing on a revocation of the license, the board may suspend the  
46 license prior to the outcome of the hearing. Any order issued by the  
47 board suspending or revoking a license shall provide for the  
48 licensee's obligations regarding the maintenance and preservation of

1 records regarding the licensee's remediation activities at  
2 contaminated sites.

3 c. If a person violates any provision of P.L. , c. (C. )  
4 (pending before the Legislature as this bill), or any rule, regulation,  
5 or order adopted or issued pursuant thereto, the board may institute  
6 a civil action in Superior Court for appropriate relief for any  
7 violation of P.L. , c. (C. ) (pending before the Legislature as  
8 this bill), or any rule, regulation, or order adopted or issued  
9 pursuant thereto. Such relief may include, singly or in combination:

10 (1) A temporary or permanent injunction; or

11 (2) Assessment of the violator for the reasonable costs of any  
12 investigation which led to the establishment of the violation, and for  
13 the reasonable costs of preparing and litigating the case under this  
14 subsection.

15 d. (1) Whenever the board finds that any person is in violation  
16 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
17 or any rule, regulation, or order adopted or issued pursuant thereto,  
18 the board may issue an order: (a) specifying the provision or  
19 provisions of P.L. , c. (C. ) (pending before the Legislature as  
20 this bill), or the rule, regulation, or order adopted or issued pursuant  
21 thereto of which the person is in violation; (b) citing the action  
22 which caused the violation; (c) requiring compliance with the  
23 provision or provisions; and (d) giving notice to the person of the  
24 person's right to a hearing on the matters contained in the order.

25 (2) A violator shall have 35 days from receipt of the notice  
26 within which to request a hearing on any matter contained in the  
27 notice, and shall comply with all procedures for requesting a  
28 hearing. Failure to submit a timely request or to comply with all  
29 procedures set forth by the board shall constitute grounds for denial  
30 of a hearing request. After a hearing and upon a finding that a  
31 violation has occurred, the board shall issue a final order. If a  
32 violator does not request a hearing or fails to satisfy the statutory  
33 and administrative requirements for requesting a hearing, the  
34 administrative order shall become final after the expiration of the  
35 35-day period. If the board denies a hearing request, the notice of  
36 denial shall become a final order, upon receipt of the notice by the  
37 violator.

38 e. Any person who violates P.L. , c. (C. ) (pending  
39 before the Legislature as this bill), or any rule, regulation, code of  
40 conduct, or order adopted or issued pursuant thereto, or who fails to  
41 pay a civil penalty or civil administrative penalty in full or to agree  
42 to a schedule of payments therefor, shall be subject, upon order of a  
43 court, to a civil penalty not to exceed \$10,000 for a first violation  
44 and not more than \$20,000 for every subsequent violation. Any civil  
45 penalty imposed pursuant to this subsection may be collected with  
46 costs in a summary proceeding pursuant to the "Penalty  
47 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

1 f. (1) The board may assess a civil administrative penalty of  
2 not more than \$10,000 for a first violation and not more than  
3 \$20,000 for every subsequent violation of the provisions of P.L. ,  
4 c. , (C. ) (pending before the Legislature as this bill) or any  
5 rule, regulation, code of conduct, or order adopted or issued  
6 pursuant thereto.

7 Prior to assessment of a penalty under this subsection, the board  
8 shall notify the person committing the violation by certified mail or  
9 personal service that the penalty is being assessed. In the notice the  
10 board shall: (a) identify the statutory or regulatory basis of the  
11 violation; (b) identify the specific citation of the act or omission  
12 constituting the violation; (c) state the basis for the amount of the  
13 civil penalties to be assessed; and (d) affirm the right of the violator  
14 to a hearing on any matter contained in the notice and the  
15 procedures for requesting a hearing.

16 (2) (a) A violator shall have 35 days from the receipt of the  
17 notice within which to request a hearing on any matter contained in  
18 the notice, and shall comply with all procedures for requesting a  
19 hearing. Failure to submit a timely request or to comply with all  
20 procedures set forth by the board shall constitute grounds for denial  
21 of a hearing request. After a hearing and upon a finding that a  
22 violation has occurred, the board shall issue a final order assessing  
23 the amount of the civil administrative penalty specified in the  
24 notice. If a violator does not request a hearing or fails to satisfy the  
25 statutory and administrative requirements for requesting a hearing,  
26 the notice of assessment of a civil administrative penalty shall  
27 become a final order after the expiration of the 35-day period. If the  
28 board denies a hearing request, the notice of denial shall become a  
29 final order upon receipt of the notice by the violator.

30 (b) Payment of the assessed penalty is due when a final  
31 administrative enforcement order is issued or the notice becomes a  
32 final order. The authority to levy a civil administrative order is in  
33 addition to all other enforcement provisions, and the payment of  
34 any assessment shall not be deemed to affect the availability of any  
35 other enforcement provisions in connection with the violation for  
36 which the assessment is levied. The board may compromise any  
37 civil administrative penalty assessed under this section in an  
38 amount and with conditions the board determines appropriate. A  
39 civil administrative penalty assessed, including a portion thereof  
40 required to be paid pursuant to a payment schedule approved by the  
41 board, which is not paid within 30 days of the date that payment of  
42 the penalty is due, shall be subject to an interest charge on the  
43 amount of the penalty, or portion thereof, which shall accrue as of  
44 the date payment is due. If the penalty is contested, no additional  
45 interest charge shall accrue on the amount of the penalty until after  
46 the date on which a final order is issued. Interest charges assessed  
47 and collectible pursuant to this subsection shall be based on the rate  
48 of interest on judgments provided in the New Jersey Rules of Court.

1 (3) The board may assess and recover, by civil administrative  
2 order, the costs of any investigation incurred by the board, and any  
3 other State agency, and the reasonable costs of preparing and  
4 successfully enforcing a civil administrative penalty pursuant to this  
5 subsection. The assessment may be recovered at the same time as a  
6 civil administrative penalty, and shall be in addition to the penalty  
7 assessment.

8 g. A licensed site remediation professional may not apply for a  
9 new license for three years following the date of revocation of the  
10 license by the board or for the term established by the board  
11 pursuant to subsection b. of section 8 of P.L. , c. (C. )  
12 (pending before the Legislature as this bill). At the conclusion of  
13 the license revocation, the licensed site remediation professional  
14 shall follow the application procedures for licensure in accordance  
15 with section 7 of P.L. , c. (C. ) (pending before the  
16 Legislature as this bill).

17 h. Upon the second revocation of a license, a licensed site  
18 remediation professional shall be permanently prohibited from  
19 applying for a site remediation professional license in this State.  
20

21 18. (New section) a. The board and the department shall have  
22 the authority to enter, at reasonable times and in a reasonable  
23 manner, any known or suspected site, vessel, or other location,  
24 whether public or private, for the purpose of investigating,  
25 sampling, inspecting, or copying any records, condition, equipment,  
26 practice, or property relating to activities subject to P.L. ,  
27 c. (C. ) (pending before the Legislature as this bill). The board  
28 or the department shall seek a warrant authorizing such entry upon  
29 denial of permission to enter. If the board or the department does  
30 not wish to provide prior notice to the inspection or entry, a court  
31 authorized to issue search warrants may issue a warrant authorizing  
32 entry by the board or the department upon a showing that the entry  
33 is necessary to allow the board or the department to verify  
34 compliance with the provisions of P.L. , c. (C. ) (pending  
35 before the Legislature as this bill), or any rule, regulation, or order  
36 adopted or issued pursuant thereto.

37 b. Where necessary to ascertain facts relevant to, or not  
38 available at, such site, vessel, or other location, any person shall,  
39 upon request of any officer, employee, or duly authorized  
40 representative of the board or the department, furnish information  
41 relating to activities subject to the provisions of P.L. , c. (C. )  
42 (pending before the Legislature as this bill), and shall permit the  
43 officers, employees, or authorized representatives to have access to,  
44 and to copy, all records relating to the activities.

45 c. If the board or the department has reason to believe that any  
46 person has made fraudulent representations to the board or the  
47 department or has destroyed or concealed evidence relating to any  
48 activity subject to the provisions of P.L. , c. (C. ) (pending



1 before the Legislature as this bill), or any rule, regulation, license,  
2 or order issued pursuant thereto, the board or the department may  
3 seize any records, equipment, property, or other evidence it deems  
4 necessary.

5 d. Whenever, on basis of available information, the board finds  
6 that there is a violation of any provision of P.L. , c. , (C. )  
7 (pending before the Legislature as this bill), or of any rule,  
8 regulation, license, or order issued or adopted pursuant thereto, the  
9 board may issue to a person causing or contributing, or likely to  
10 cause or contribute, to the violation an order pursuant to the  
11 provisions of section 17 of P.L. , c. (C. ) (pending in the  
12 Legislature as this bill), requiring the production or analysis of  
13 samples, requiring the production of records, or imposing such  
14 restraints on or requiring such action by the person. Issuance of an  
15 order pursuant to this section shall not preclude, and shall not be  
16 deemed an election to forego, any action to suspend or revoke a  
17 license, recover damages, or seek injunctive relief, civil or criminal  
18 penalties, or any other remedy.

19 The board shall cause notice of each order, and of the results of  
20 all adjudicatory proceedings related thereto, to be given to the  
21 department in order to enable the department to implement and  
22 enforce the provisions of P.L. , c. (C. ) (pending before the  
23 Legislature as this bill) and all other applicable laws, rules and  
24 regulations.

25

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

35 b. The department may require any person who is responsible  
36 for the monitoring, operation, and maintenance of an engineering or  
37 institutional control implemented before the date of enactment of  
38 P.L. , c. (C. ) (pending before the Legislature as this bill),  
39 and any person required to submit a certification on a biennial basis  
40 pursuant to section 6 of P.L.1997, c.278 (C.58:10B-13.1), that  
41 engineering or institutional controls and related systems are  
42 properly maintained and that periodic monitoring for compliance is  
43 conducted, to obtain a permit pursuant to this section.

44 c. (1) Except as provided in paragraph (2) of this subsection,  
45 the department may require that a person issued a permit pursuant  
46 to this section maintain insurance, financial assurance or another  
47 financial instrument to guarantee that funding is available to  
48 operate, maintain, and inspect the engineering controls installed as

1 part of a remedial action of a contaminated site for the period that  
2 such controls are required. The person required to maintain the  
3 funding source pursuant to this section may petition the department  
4 on an annual basis to decrease the amount of funding required to be  
5 maintained.

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

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

30

31 20. (New section) A licensed site remediation professional shall  
32 maintain and preserve all data, documents and information  
33 concerning remediation activities at each contaminated site the  
34 licensed site remediation professional has worked on, including but  
35 not limited to, technical records and contractual documents, raw  
36 sampling and monitoring data, whether or not the data and  
37 information, including technical records and contractual documents,  
38 were developed by the licensed site remediation professional or the  
39 licensee's divisions, employees, agents, accountants, contractors, or  
40 attorneys, that relate in any way to the contamination at the site.  
41 Three electronic copies of the records shall be submitted to the  
42 department at the time the response action outcome is filed with the  
43 department.

44

45 21. (New section) a. The department shall inspect all documents  
46 and information submitted by a licensed site remediation  
47 professional concerning a remediation upon receipt. The  
48 department may provide additional review of any document

- 1 submitted for the remediation of a contaminated site upon a  
2 determination that: (1) the licensed site remediation professional  
3 did not comply with the provisions of section 16 of P.L. ,  
4 c. (C. ) (pending before the Legislature as this bill); (2) any  
5 deficiencies, errors or omissions will result in an inability to  
6 determine if the remediation is protective of the public health,  
7 safety, or the environment; or (3) the remediation will not be  
8 protective, of the public health, safety, or the environment.
- 9 b. The department shall perform additional review of any  
10 document, or shall review the performance of a remediation, if:
- 11 (1) the contamination at the site poses a significant detrimental  
12 impact on public health, safety, or the environment as determined  
13 by a receptor evaluation or the site is ranked by the department in  
14 the category requiring the highest priority pursuant to the ranking  
15 system developed pursuant to section 2 of P.L.1982, c.202  
16 (C.58:10-23.16);
- 17 (2) the contamination at the site may affect a licensed child care  
18 center, school or other sensitive population;
- 19 (3) the contaminated site is located in a low-income community  
20 of color that has a higher density of contaminated sites and  
21 permitted discharges with the potential for increased health and  
22 environmental impacts, as compared to other communities; or
- 23 (4) State grants or loans are being used to remediate the site or  
24 area of concern.
- 25 c. The department may perform additional review of any  
26 document, or may review the performance of a remediation, if:
- 27 (1) the site or a portion thereof is in a brownfield development  
28 area or other economic development priority area;
- 29 (2) the remediation is subject to federal oversight;
- 30 (3) the person responsible for conducting the remediation or the  
31 licensed site remediation professional conducting the remediation  
32 has been out of compliance with P.L. , c. (C. ) (pending  
33 before the Legislature as this bill), P.L.1993, c.139 (C.58:10B-1 et  
34 seq.), P.L.1986, c.102 (C.58:10A-21 et seq.), P.L.1983, c.330  
35 (C.13:1K-6 et seq.), or P.L.1976, c.141 (C.58:10-23.11 et seq.), or  
36 any rules and regulations adopted pursuant to those laws;
- 37 (4) the contaminated site has had an impact on a natural  
38 resource;
- 39 (5) an oversight document, administrative order or remediation  
40 agreement is in effect for the contaminated site that requires  
41 department review and approval of submissions;
- 42 (6) there is substantial public interest in the contaminated site;
- 43 (7) the person responsible for conducting the remediation has  
44 proposed the use of alternative or site specific remediation  
45 standards for the contaminated site;
- 46 (8) the remediation requires the issuance of a permit by the  
47 department;

1       (9) the use of the contaminated site is changing from any use to  
2 residential or mixed use;

3       (10) the submission may not be in compliance with any rules  
4 and regulations applicable to contaminated site remediation; or

5       (11) the remediation may not be protective of the public health,  
6 safety, or the environment.

7       d. The licensed site remediation professional and the person  
8 responsible for conducting the remediation shall provide any data,  
9 documents or other information as requested by the department to  
10 conduct a review of the remediation pursuant to this section.

11       e. Unless directed otherwise by the department, the person  
12 responsible for conducting the remediation and the licensed site  
13 remediation professional may continue to conduct the remediation  
14 while the department conducts any inspection or additional review  
15 of documents pursuant to this section.

16       f. The department shall, at a minimum, provide additional  
17 review pursuant to this section of at least 10 percent of all  
18 documents submitted annually by licensed site remediation  
19 professionals.  
20

21       22. (New section) The department shall invalidate a response  
22 action outcome issued by a licensed site remediation professional if  
23 the department determines that the remedial action is not protective  
24 of public health, safety, or the environment or if a presumptive  
25 remedy was not implemented as required pursuant to the provisions  
26 of subsection g. of section 35 of P.L.1993, c.139 (C.58:10B-12).  
27 However, if a presumptive remedy is not implemented as required  
28 pursuant to the provisions of subsection g. of section 35 of  
29 P.L.1993, c.139 (C.58:10B-12), but the department determines the  
30 remedial action is as protective of the public health, safety, and the  
31 environment as the presumptive remedy, the department shall not  
32 invalidate the response action outcome.  
33

34       23. (New section) The department may recommend to the board  
35 that an investigation of a licensed site remediation professional be  
36 conducted to consider the suspension or revocation of the license  
37 of, or the taking of other appropriate action as necessary against, a  
38 licensed site remediation professional based upon the result of an  
39 audit performed pursuant to the provisions of section 24 or 25 of  
40 P.L. , c. (C. ) (pending before the Legislature as this bill) or  
41 based upon a document review performed pursuant to section 21 of  
42 P.L. , c. (C. ) (pending before the Legislature as this bill).  
43

44       24. (New section) The board shall audit annually the  
45 submissions and conduct of at least 10 percent of the total number  
46 of licensed site remediation professionals. A licensed site  
47 remediation professional and the person responsible for conducting  
48 the remediation shall cooperate with the board in the conduct of the

1 audit and shall provide any information requested by the board as  
2 part of the audit.

3

4 25. (New section) The department shall not audit a response  
5 action outcome more than three years after the date the licensed site  
6 remediation professional filed the response action outcome with the  
7 department, unless:

8 a. undiscovered contamination is found on a site for which a  
9 response action outcome has been filed;

10 b. the board conducts an investigation of the licensed site  
11 remediation professional; or

12 c. the licensed site remediation professional who issued the  
13 response action outcome has had his license suspended or revoked  
14 by the board.

15

16 26. (New section) No person shall take retaliatory action if a  
17 licensed site remediation professional:

18 a. discloses, or undertakes to disclose, to the board or to the  
19 department an activity, policy or practice that the licensed site  
20 remediation professional reasonably believes: (1) is a violation of  
21 law, or a rule or regulation adopted pursuant to law, including any  
22 violation involving deception of, or misrepresentation to, any client,  
23 customer, the department, or any other governmental entity; or (2)  
24 is fraudulent or criminal, including any activity, policy or practice  
25 of deception or misrepresentation that the licensed site remediation  
26 professional reasonably believes may defraud any client, customer,  
27 the department, or any other governmental entity;

28 b. provides information to, or testifies before, any public body  
29 conducting an investigation, hearing, or inquiry into any violation  
30 of law, or a rule or regulation adopted pursuant to law, by a client  
31 or customer with whom there is a business relationship, including  
32 any violation involving deception of, or misrepresentation to, any  
33 client, customer, the department or any other governmental entity,  
34 or, in the case of a licensed site remediation professional, provides  
35 information to, or testifies before, any public body conducting an  
36 investigation, hearing, or inquiry into the quality of remediation of  
37 a contaminated site; or

38 c. objects to, or refuses to participate in, any activity, policy or  
39 practice which the licensed site remediation professional reasonably  
40 believes:

41 (1) is in violation of law, or a rule or regulation adopted pursuant  
42 to law, including any violation involving deception of, or  
43 misrepresentation to, any, client, customer, the department or any  
44 governmental entity;

45 (2) is fraudulent or criminal, including any activity, policy or  
46 practice of deception or misrepresentation which the licensed site  
47 remediation professional reasonably believes may defraud any

1 client, customer, the department, or any other governmental entity;  
2 or

3 (3) is incompatible with a clear mandate of public policy  
4 concerning the protection of the public health, safety, or the  
5 environment.

6

7 27. (New section) a. The department shall undertake direct  
8 oversight of a remediation of a contaminated site under the  
9 following conditions:

10 (1) the person responsible for conducting the remediation has a  
11 history of noncompliance with the laws concerning remediation, or  
12 any rule or regulation adopted pursuant thereto, that includes the  
13 issuance of at least two enforcement actions after the date of  
14 enactment of P.L. , c. (C. ) (pending in the Legislature as this  
15 bill) during any five year period concerning a remediation;

16 (2) the person responsible for conducting the remediation at a  
17 contaminated site has failed to meet a mandatory remediation  
18 timeframe or an expedited site specific timeframe adopted by the  
19 department pursuant to section 28 of P.L. , c. (C. ) (pending  
20 before the Legislature as this bill), including any extension thereof  
21 granted by the department, or a schedule established pursuant to an  
22 administrative order or court order; or

23 (3) unless a longer period has been ordered by a court, the  
24 person responsible for conducting the remediation has, prior to the  
25 date of enactment of P.L. , c. (C. ) (pending before the  
26 Legislature as this bill), failed to complete the remedial  
27 investigation of the entire contaminated site 10 years after the  
28 discovery of a discharge at the site and has failed to complete the  
29 remedial investigation of the entire contaminated site within five  
30 years after the date of enactment of P.L. , c. (C. ) (pending  
31 before the Legislature as this bill).

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

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

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

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

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

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

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

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

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

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

9 (4) the person responsible for conducting the remediation shall  
10 establish a remediation trust fund pursuant to section 25 of  
11 P.L.1993, c.139 (C.58:10B-3) in the amount of the estimated cost of  
12 the remediation;

13 (5) all disbursements of funds from the remediation trust fund  
14 shall require prior approval by the department;

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

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

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

26 e. (1) Any oversight procedure, remedy, or other obligation in  
27 P.L. , c. (C. ) (pending in the Legislature as this bill) shall not  
28 affect a remediation conducted pursuant to and in compliance with a  
29 settlement of litigation to which the department is a party if the  
30 settlement (a) occurred prior to the date of enactment of P.L. ,  
31 c. (C. ) (pending before the Legislature as this bill), or (b) is a  
32 settlement of litigation pending on the date of enactment of P.L. ,  
33 c. (C. ) (pending before the Legislature as this bill).

34 (2) For any litigation pending or settled on the date of enactment  
35 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
36 concerning a remediation performed pursuant to the "Resource  
37 Conservation and Recovery Act," 42 U.S.C. s.6921 et seq., nothing  
38 in P.L. , c. (C. ) (pending before the Legislature as this bill)  
39 shall affect an oversight procedure, remedy, or other obligation  
40 imposed by a federal administrative order or federal court order.

41

42 28. (New section) a. The department shall establish mandatory  
43 remediation timeframes, and expedited site specific timeframes  
44 when necessary, to protect the public health and safety and the  
45 environment, for each of the following:

46 (1) a receptor evaluation;

47 (2) control of ongoing sources of contamination;

48 (3) establishment of interim remedial measures;

- 1 (4) addressing immediate environmental concern conditions;
- 2 (5) the performance of each phase of the remediation including
- 3 preliminary assessment, site investigation, remedial investigation
- 4 and remedial action;
- 5 (6) completion of remediation; and
- 6 (7) any other activities deemed necessary by the department to
- 7 effectuate timely remediation.

8 b. In establishing remediation timeframes pursuant to  
9 subsection a. of this section, the department shall take the following  
10 into account:

- 11 (1) the potential risk to the public health, safety, and the
- 12 environment;
- 13 (2) the results of the receptor evaluation;
- 14 (3) the ongoing industrial or commercial operations at the site;
- 15 (4) whether, for operating industrial or commercial facilities,
- 16 there are no releases of contamination to the groundwater or surface
- 17 water from the site; and
- 18 (5) the complexity of the contaminated site.

19 c. The department shall grant an extension to a mandatory  
20 remediation timeframe as a result of:

- 21 (1) a delay by the department in reviewing or granting a permit,
- 22 provided that there was a timely filing of a technically and
- 23 administratively complete permit application;
- 24 (2) a delay in the provision of State funding for remediation,
- 25 provided that there was a timely filing of a technically and
- 26 administratively complete application for funding; or
- 27 (3) a delay by the department for an approval or permit required
- 28 for long-term operation, maintenance and monitoring of an
- 29 engineering control at the site provided the request for approval or
- 30 permit application is technically and administratively complete.

31 d. The department may grant an extension to a mandatory  
32 remediation timeframe on a case-by case basis as a result of:

- 33 (1) a delay in obtaining access to property, provided the person
- 34 responsible for conducting the remediation demonstrates that good
- 35 faith efforts have been undertaken to gain access, access has not
- 36 been granted by the property owner, and, after good faith efforts
- 37 have been exhausted, a complaint was filed with the Superior Court
- 38 to gain access, in accordance with applicable rules and regulations;
- 39 (2) other circumstances beyond the control of the person
- 40 responsible for conducting the remediation, such as fire, flood, riot,
- 41 or strike; or
- 42 (3) other site-specific circumstances that may warrant an
- 43 extension as determined by the department.
- 44

45 29. (New section) Notwithstanding the provisions of the  
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
47 seq.) to the contrary, the department shall adopt, after notice,  
48 interim rules and regulations establishing a program that provides



1 for the responsibilities of persons responsible for conducting a  
2 remediation and licensed site remediation professionals in the  
3 remediation of contaminated sites pursuant to the provisions of  
4 P.L. , c. (C. ) (pending before the Legislature as this bill), no  
5 later than 180 days after the date of enactment of P.L. ,  
6 c. (C. ) (pending before the Legislature as this bill). The  
7 interim rules and regulations may include amendments to rules and  
8 regulations adopted pursuant to other laws, in order to make them  
9 consistent with the provisions of P.L. , c. (C. ) (pending  
10 before the Legislature as this bill). The interim rules and  
11 regulations shall be effective immediately upon filing with the  
12 Office of Administrative Law and shall be effective for a period not  
13 to exceed 18 months, and may, thereafter, be amended, adopted or  
14 readopted by the department in accordance with the provisions of  
15 the "Administrative Procedure Act."

16

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

26 b. A person who initiates a remediation of a contaminated site  
27 at least 180 days after the date of enactment of P.L. , c. (C. )  
28 (pending before the Legislature as this bill) shall:

29 (1) hire a licensed site remediation professional to perform the  
30 remediation;

31 (2) notify the department of the name and license information of  
32 the licensed site remediation professional who has been hired to  
33 perform the remediation;

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

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

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

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

42 (7) provide access to all applicable documents concerning the  
43 remediation to the department;

44 (8) meet the mandatory remediation timeframes and expedited  
45 site specific timeframes established by the department pursuant to  
46 section 28 of P.L. , c. (C. ) (pending before the Legislature as  
47 this bill); and

48 (9) obtain all necessary permits.

1       c. (1) Any person who initiates a remediation prior to the date  
2 of enactment of P.L.       , c.       (C.       ) (pending before the  
3 Legislature as this bill), or prior to the issuance of temporary  
4 licenses to site remediation professionals pursuant to section 12 of  
5 P.L.       , c.       (C.       ) (pending before the Legislature as this bill),  
6 shall comply with the provisions of paragraphs (4) through (9) of  
7 subsection b. of this section.

8       (2) The department may require a person required to perform a  
9 remediation pursuant to subsection a. of this section, or a person  
10 who has initiated a remediation prior to the date of enactment of  
11 P.L.       , c.       (C.       ) (pending before the Legislature as this bill), to  
12 comply with the provisions of subsection b. of this section if, after  
13 the date of enactment of P.L.       , c.       (C.       ) (pending before the  
14 Legislature as this bill), the department (a) issues a final order or a  
15 penalty becomes due and payable, concerning the performance of  
16 the remediation, or (b) issues a demand for stipulated penalties  
17 pursuant to the provisions of an oversight document in which the  
18 person waived a right to a hearing on the penalties.

19       (3) No later than three years after the date of enactment  
20 of P.L.       , c.       (C.       ) (pending before the Legislature as this bill),  
21 a person responsible for conducting the remediation, no matter  
22 when the remediation is initiated, shall comply with the provisions  
23 of subsection b. of this section.

24       d. (1) The provisions of this section shall not apply to any  
25 person who remediates a discharge from an unregulated heating oil  
26 tank. For any person who remediates a discharge from an  
27 unregulated heating oil tank, the provisions of section 15 of P.L.       ,  
28 c.       (C.       ) (pending before the Legislature as this bill) shall apply.

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

38       e. Any person who fails to comply with the provisions of this  
39 section shall be liable to the enforcement provisions established  
40 pursuant to section 22 of P.L.1976, c.141 (C.58:10-23.11u).

41

42       31. (New section) a. After a licensed site remediation  
43 professional issues a response action outcome to the person  
44 responsible for conducting the remediation, the person shall be  
45 deemed, by operation of law, to have received a covenant not to sue  
46 with respect to the real property upon which the remediation has  
47 been conducted. The covenant not to sue shall be subject to any  
48 conditions and limitations contained in the response action

1 outcome. The covenant not to sue shall be for any area of concern  
2 remediated and may apply to the entire real property if the  
3 remediation included a preliminary assessment and, if necessary, a  
4 site investigation of the entire real property, and any other  
5 necessary remedial actions. The covenant remains effective only  
6 for as long as the real property for which the covenant was deemed  
7 to have been issued continues to meet the conditions of the response  
8 action outcome. Upon a finding by the department that real  
9 property or a portion thereof to which a covenant not to sue  
10 pertains, no longer meets with the conditions of the response action  
11 outcome, the department shall provide notice of that fact to the  
12 person responsible for maintaining compliance with the response  
13 action outcome. The department may allow the person a reasonable  
14 time to come into compliance with the terms of the original  
15 response action outcome. If the property does not meet the  
16 conditions of the response action outcome and if the department  
17 does not allow for a period of time to come into compliance or if  
18 the person fails to come into compliance within the time period, the  
19 covenant not to sue shall be deemed to be revoked by operation of  
20 law.

21 Except as provided in subsection e. of this section, a covenant  
22 not to sue shall by operation of law provide for the following, as  
23 applicable:

24 (1) a provision releasing the person who undertook the  
25 remediation from all civil liability to the State to perform any  
26 additional remediation, to pay compensation for damage to, or loss  
27 of, natural resources, for the restoration of natural resources in  
28 connection with the discharge on the property or for any cleanup  
29 and removal costs;

30 (2) for a remediation that involves the use of engineering or  
31 institutional controls:

32 (a) a provision requiring the person, or any subsequent owner,  
33 lessee, or operator during the person's period of ownership, tenancy,  
34 or operation, to maintain those controls, conduct periodic  
35 monitoring for compliance, and submit to the department, on a  
36 biennial basis, a certification that the engineering and institutional  
37 controls are being properly maintained and continue to be protective  
38 of public health and safety and of the environment. The  
39 certification shall state the underlying facts and shall include the  
40 results of any tests or procedures performed that support the  
41 certification; and

42 (b) a provision that the covenant is revoked by operation of law  
43 if the engineering or institutional controls are not being maintained  
44 or are no longer in place; and

45 (3) for a remediation that involves the use of engineering  
46 controls but not for any remediation that involves the use of  
47 institutional controls only, a provision barring the person or persons  
48 whom the covenant not to sue benefits, from making a claim against

1 the New Jersey Spill Compensation Fund and the Sanitary Landfill  
2 Facility Contingency Fund for any costs or damages relating to the  
3 real property and remediation covered by the covenant not to sue.  
4 The covenant not to sue shall not bar a claim by any person against  
5 the New Jersey Spill Compensation Fund and the Sanitary Landfill  
6 Contingency Fund for any remediation that involves only the use of  
7 institutional controls if, after a valid response action outcome has  
8 been issued, the department orders additional remediation, except  
9 that the covenant shall bar such a claim if the department ordered  
10 additional remediation in order to remove the institutional control.

11 b. The covenant not to sue shall apply to all successors in  
12 ownership of the property and to all persons who lease the property  
13 or who engage in operations on the property.

14 c. If a covenant not to sue is revoked, liability for any  
15 additional remediation shall not be applied retroactively to any  
16 person for whom the covenant remained in effect during that  
17 person's ownership, tenancy, or operation of the property.

18 d. A covenant not to sue and the protections it affords shall not  
19 apply to any discharge that occurs subsequent to the issuance of the  
20 response action outcome which was the basis of the issuance of the  
21 covenant, nor shall a covenant not to sue and the protections it  
22 affords relieve any person of the obligations to comply in the future  
23 with laws, rules and regulations.

24 e. The covenant not to sue shall be deemed to apply to any  
25 person who obtains a response action outcome as provided in  
26 subsection a. of this section. The covenant not to sue shall not  
27 provide relief from any liability, either under statutory or common  
28 law, to any person who is liable for cleanup and removal costs  
29 pursuant to subsection c. of section 8 of P.L.1976, c.141 (C.58:10-  
30 23.11g), and who does not have a defense to liability pursuant to  
31 subsection d. of that section.

32

33 32. (New section) a. The New Jersey Economic Development  
34 Authority shall require that payment of a grant or financial  
35 assistance from the Hazardous Discharge Site Remediation Fund  
36 shall be conditioned upon the subrogation to the department of all  
37 rights of the recipient to recover remediation costs from an  
38 insurance carrier, discharger, or person in any way responsible for a  
39 hazardous substance pursuant to subsection c. of section 8 of  
40 P.L.1976, c.141 (C.58:10-23.11g) and who does not have a defense  
41 to liability pursuant to subsection d. of that section, upon the failure  
42 of the recipient to repay the financial assistance to the State.  
43 Nothing in this subsection shall be construed to limit or otherwise  
44 affect the authority or rights of the department concerning the  
45 discharge of a hazardous substance pursuant to P.L.1976, c.141, any  
46 other law, or pursuant to common law, against a discharger or a  
47 person in any way responsible for a hazardous substance.

1       b. The New Jersey Economic Development Authority shall not  
2 award a grant or financial assistance from the Hazardous Discharge  
3 Site Remediation Fund if the applicant relinquishes, impairs, or  
4 waives, or has relinquished, impaired, or waived, any right to  
5 recover the costs of the remediation against an insurance carrier,  
6 discharger, or person in any way responsible for a hazardous  
7 substance pursuant to subsection c. of section 8 of P.L.1976, c.141  
8 (C.58:10-23.11g).

9       c. In any action by the department to enforce a right of  
10 subrogation, the department shall be entitled to invoke any right or  
11 defense available to the recipient of a grant or financial assistance  
12 from the Hazardous Discharge Site Remediation Fund.

13       d. All moneys collected in a cost recovery subrogation action  
14 shall be deposited into the Hazardous Discharge Site Remediation  
15 Fund.

16  
17       33. Section 3 of P.L.1983, c.330 (C.13:1K-8) is amended to read  
18 as follows:

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

26       "Closing operations" means:

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

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

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

45       (4) the initiation of bankruptcy proceedings pursuant to Chapter  
46 7 of the federal Bankruptcy Code, 11 U.S.C. s.701 et seq. or the  
47 filing of a plan of reorganization that provides for a liquidation

1 pursuant to Chapter 11 of the federal Bankruptcy Code, 11 U.S.C.  
2 s.1101 et seq.;

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

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

9 "Transferring ownership or operations" means:

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

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

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

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

22 "Change in ownership" means:

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

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

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

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

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

39 "Change in ownership" shall not include:

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

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

1 the industrial establishment before and after the transaction or  
2 transactions;

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

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

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

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

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

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

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

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

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

33 "Department" means the Department of Environmental  
34 Protection;

35 "Hazardous substances" means those elements and compounds,  
36 including petroleum products, which are defined as such by the  
37 department, after public hearing, and which shall be consistent to  
38 the maximum extent possible with, and which shall include, the list  
39 of hazardous substances adopted by the Environmental Protection  
40 Agency pursuant to Section 311 of the "Federal Water Pollution  
41 Control Act Amendments of 1972" (33 U.S.C. s.1321) and the list  
42 of toxic pollutants designated by Congress or the Environmental  
43 Protection Agency pursuant to Section 307 of that act (33 U.S.C.  
44 s.1317); except that sewage and sewage sludge shall not be  
45 considered as hazardous substances for the purposes of this act;

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

1 "Industrial establishment" means any place of business engaged  
2 in operations which involve the generation, manufacture, refining,  
3 transportation, treatment, storage, handling, or disposal of  
4 hazardous substances or hazardous wastes on-site, above or below  
5 ground, having a Standard Industrial Classification number within  
6 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in the  
7 Standard Industrial Classifications Manual prepared by the Office  
8 of Management and Budget in the Executive Office of the President  
9 of the United States. Those facilities or parts of facilities subject to  
10 operational closure and post-closure maintenance requirements  
11 pursuant to the "Solid Waste Management Act," P.L.1970, c.39  
12 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting  
13 Act," P.L.1981, c.279 (C.13:1E-49 et seq.) or the "Solid Waste  
14 Disposal Act" (42 U.S.C. s.6901 et seq.), or any establishment  
15 engaged in the production or distribution of agricultural  
16 commodities, shall not be considered industrial establishments for  
17 the purposes of this act. The department may, pursuant to the  
18 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
19 seq.), exempt certain sub-groups or classes of operations within  
20 those sub-groups within the Standard Industrial Classification major  
21 group numbers listed in this subsection upon a finding that the  
22 operation of the industrial establishment does not pose a risk to  
23 public health and safety;

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

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

38 "No further action letter" means a written determination by the  
39 department that, based upon an evaluation of the historical use of  
40 the industrial establishment and the property, or of an area of  
41 concern or areas of concern, as applicable, and any other  
42 investigation or action the department deems necessary, there are no  
43 discharged hazardous substances or hazardous wastes present at the  
44 site of the industrial establishment, at the area of concern or areas of  
45 concern, or at any other site to which discharged hazardous  
46 substances or hazardous wastes originating at the industrial  
47 establishment have migrated, and that any discharged hazardous  
48 substances or hazardous wastes present at the industrial



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

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

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

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

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

29 "Licensed site remediation professional" means an individual  
30 who is licensed by the Site Remediation Professional Licensing  
31 Board pursuant to section 7 of P.L. , c. (C. ) (pending before  
32 the Legislature as this bill) or the department pursuant to section 12  
33 of P.L. , c. (C. ) (pending before the Legislature as this bill);

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

42 "Operator" means any person, including users, tenants, or  
43 occupants, having and exercising direct actual control of the  
44 operations of an industrial establishment. A holder of a mortgage  
45 or other security interest in the industrial establishment shall not be  
46 deemed to be an operator of the industrial establishment unless or  
47 until it loses its exemption under P.L.1993, c.112 (C.58:10-23.11g4

1 et al.) or obtains title to the industrial establishment by deed of  
2 foreclosure, by other deed, or by court order or other process;

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

17 "Remediation" or "remediate" means all necessary actions to  
18 investigate and clean up or respond to any known, suspected, or  
19 threatened discharge of hazardous substances or hazardous wastes,  
20 including, as necessary, the preliminary assessment, site  
21 investigation, remedial investigation, and remedial action;

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

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

40 "Remedial investigation" means a process to determine the  
41 nature and extent of a discharge of hazardous substances or  
42 hazardous wastes at an industrial establishment or a discharge of  
43 hazardous substances or hazardous wastes that have migrated or are  
44 migrating from the site and the problems presented by a discharge,  
45 and may include data collection, site characterization, sampling,  
46 monitoring, and the gathering of any other sufficient and relevant  
47 information necessary to determine the necessity for remedial

1 action and to support the evaluation of remedial actions if  
2 necessary;

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

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

22 (cf: P.L. 1997, c.278, s.7)

23

24 34. Section 4 of P.L.1983, c.330 (C.13:1K-9) is amended to read  
25 as follows:

26 4. a. The owner or operator of an industrial establishment  
27 planning to close operations or transfer ownership or operations  
28 shall notify the department in writing, no more than five days  
29 subsequent to closing operations or of its public release of its  
30 decision to close operations, whichever occurs first, or within five  
31 days after the execution of an agreement to transfer ownership or  
32 operations, as applicable. The notice to the department shall:  
33 identify the subject industrial establishment; describe the  
34 transaction requiring compliance with P.L.1983, c.330 (C.13:1K-6  
35 et al.); state the date of the closing of operations or the date of the  
36 public release of the decision to close operations as evidenced by a  
37 copy of the appropriate public announcement, if applicable; state  
38 the date of execution of the agreement to transfer ownership or  
39 operations and the names, addresses and telephone numbers of the  
40 parties to the transfer, if applicable; state the proposed date for  
41 closing operations or transferring ownership or operations; list the  
42 name, address, and telephone number of an authorized agent for the  
43 owner or operator; and certify that the information submitted is  
44 accurate. The notice shall be transmitted to the department in the  
45 manner and form required by the department. The department may,  
46 by regulation, require the submission of any additional information  
47 in order to improve the efficient implementation of P.L.1983, c.330.  
48 The owner or operator of the industrial establishment shall also

1 provide all information required to be submitted to the department  
2 pursuant to this subsection, to the clerk of the municipality in which  
3 the industrial establishment is located, at the same time the  
4 information is submitted to the department.

5 b. (1) Subsequent to the submittal of the notice required  
6 pursuant to subsection a. of this section, the owner or operator of an  
7 industrial establishment shall, except as otherwise provided by  
8 P.L.1983, c.330 or P.L.1993, c.139 (C.13:1K-9.6 et al.), remediate  
9 the industrial establishment. The remediation shall be conducted in  
10 accordance with criteria, procedures, and time schedules established  
11 by the department.

12 (2) The owner or operator shall attach a copy of any approved  
13 negative declaration, approved remedial action workplan, no further  
14 action letter, **【or】** remediation agreement approval , response action  
15 outcome, or remediation certification to the contract or agreement  
16 of sale or agreement to transfer or any option to purchase which  
17 may be entered into with respect to the transfer of ownership or  
18 operations. In the event that any sale or transfer agreements or  
19 options have been executed prior to the approval of a negative  
20 declaration, remedial action workplan, no further action letter, or  
21 remediation agreement, or prior to the submission of a remediation  
22 certification or the filing of a response action outcome with the  
23 department, these documents, as relevant, shall be transmitted by  
24 the owner or operator, by certified mail, overnight delivery, or  
25 personal service, prior to the transfer of ownership or operations, to  
26 all parties to any transaction concerning the transfer of ownership or  
27 operations, including purchasers, bankruptcy trustees, mortgagees,  
28 sureties, and financiers.

29 (3) The preliminary assessment, site investigation, remedial  
30 investigation, and remedial action for the industrial establishment  
31 shall be performed and implemented by the owner or operator of the  
32 industrial establishment, except that any other party may assume  
33 that responsibility pursuant to the provisions of P.L.1983, c.330.

34 c. The owner or operator of an industrial establishment shall,  
35 subsequent to closing operations, or of its public release of its  
36 decision to close operations, or prior to transferring ownership or  
37 operations except as otherwise provided in subsection e. of this  
38 section, as applicable, submit to the department for approval a  
39 proposed negative declaration **【or】** , proposed remedial action  
40 workplan , or a remedial action workplan certified by a licensed site  
41 remediation professional. The owner or operator shall also provide  
42 written notification to the clerk of the municipality in which the  
43 industrial site is located, that upon written request, the municipality  
44 may receive a copy of the proposed negative declaration **【or】** ,  
45 proposed remedial action workplan, or a remedial action workplan  
46 certified by a licensed site remediation professional. The owner or  
47 operator of the industrial establishment shall provide the requested  
48 documents to the clerk of the municipality within five days after

1 receipt of the written request. Except as otherwise provided in  
2 section 6 of P.L.1983, c.330 (C.13:1K-11), and sections 13, 16, 17  
3 and 18 of P.L.1993, c.139 (C.13:1K-11.2, C.13:1K-11.5, C.13:1K-  
4 11.6 and C.13:1K-11.7), the owner or operator of an industrial  
5 establishment shall not transfer ownership or operations until a  
6 negative declaration or a remedial action workplan has been  
7 approved by the department, a remedial action workplan has been  
8 prepared and certified by a licensed site remediation professional  
9 and submitted to the department, or the conditions of subsection e.  
10 of this section for remediation agreements or remediation  
11 certifications have been met and until, in cases where a remedial  
12 action workplan is required to be approved or a remediation  
13 agreement has been approved, a remediation funding source, as  
14 required pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3),  
15 has been established.

16 d. (1) Upon the submission of the results of either the  
17 preliminary assessment, site investigation, remedial investigation,  
18 or remedial action, where applicable, which demonstrate that there  
19 are no discharged hazardous substances or hazardous wastes at the  
20 industrial establishment, or that have migrated from or are  
21 migrating from the industrial establishment, in violation of the  
22 applicable remediation regulations, the owner or operator may  
23 submit to the department **【for approval】** a proposed negative  
24 declaration as provided in subsection c. of this section.

25 (2) After the submission and review of the information  
26 submitted pursuant to a preliminary assessment, site investigation,  
27 remedial investigation, or remedial action, as necessary, the  
28 department shall, within 45 days of submission of a complete and  
29 accurate negative declaration, approve the negative declaration, or  
30 inform the owner or operator of the industrial establishment that a  
31 remedial action workplan or additional remediation shall be  
32 required. The department shall approve a negative declaration by  
33 the issuance of a no further action letter. Upon the remediation of  
34 the industrial establishment pursuant to the requirements of section  
35 30 of P.L. , c. (C. ) (pending in the Legislature as this bill), a  
36 licensed site remediation professional may file a response action  
37 outcome with the department.

38 e. The owner or operator of an industrial establishment, who  
39 has submitted a notice to the department pursuant to subsection a.  
40 of this section, may transfer ownership or operations of the  
41 industrial establishment prior to the approval of a negative  
42 declaration or remedial action workplan upon application to and  
43 approval by the department of a remediation agreement or upon  
44 submission to the department of a remediation certification. The  
45 owner or operator requesting a remediation agreement shall submit  
46 the following documents: (1) an estimate of the cost of the  
47 remediation that is approved by the department; (2) a certification  
48 of the statutory liability of the owner or operator pursuant to

1 P.L.1983, c.330 to perform and to complete a remediation of the  
2 industrial establishment in the manner and time limits provided by  
3 the department in regulation and consistent with all applicable laws  
4 and regulations; however, nothing in this paragraph shall be  
5 construed to be an admission of liability, or to impose liability on  
6 the owner or operator, pursuant to P.L.1976, c.141 (C.58:10-23.11  
7 et seq.) or pursuant to any other statute or common law; (3)  
8 evidence of the establishment of a remediation funding source in an  
9 amount of the estimated cost of the remediation and in accordance  
10 with the provisions of section 25 of P.L.1993, c.139 (C.58:10B-3);  
11 (4) a certification that the owner or operator is subject to the  
12 provisions of P.L.1983, c.330, including the liability for penalties  
13 for violating the act, defenses to liability and limitations thereon,  
14 the requirement to perform a remediation as required by the  
15 department, allowing the department access to the industrial  
16 establishment as provided in section 5 of P.L.1983, c.330 (C.13:1K-  
17 10), and the requirement to prepare and submit any document  
18 required by the department relevant to the remediation of the  
19 industrial establishment; and (5) evidence of the payment of all  
20 applicable fees required by the department.

21 The owner or operator submitting a remediation certification  
22 shall provide the following documents to the department: (1) an  
23 estimate of the cost of the remediation prepared and certified by a  
24 licensed site remediation professional; (2) a certification of the  
25 statutory liability of the owner or operator pursuant to P.L.1983,  
26 c.330 to perform and to complete a remediation of the industrial  
27 establishment in the manner and time limits provided by the  
28 department in regulation and consistent with all applicable laws and  
29 regulations; however, nothing in this paragraph shall be construed  
30 to be an admission of liability, or to impose liability on the owner  
31 or operator, pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) or  
32 pursuant to any other statute or common law; (3) evidence of the  
33 establishment of a remediation funding source in an amount of the  
34 estimated cost of the remediation and in accordance with the  
35 provisions of section 25 of P.L.1993, c.139 (C.58:10B-3); (4) a  
36 certification that the owner or operator is subject to the provisions  
37 of P.L.1983, c.330, including the liability for penalties for violating  
38 the act, defenses to liability and limitations thereon, the requirement  
39 to perform a remediation as required by the department, allowing  
40 the department access to the industrial establishment as provided in  
41 section 5 of P.L.1983, c.330 (C.13:1K-10), the requirement to  
42 comply with the provisions of P.L. , c. (C. ) (pending before the  
43 Legislature as this bill), and the requirement to prepare and submit  
44 any document required by the department relevant to the  
45 remediation of the industrial establishment; and (5) evidence of the  
46 payment of all applicable fees required by the department.

47 The department may require in the remediation agreement that  
48 all plans for and results of the preliminary assessment, site

1 investigation, remedial investigation, and the implementation of the  
2 remedial action workplan, prepared or initiated subsequent to the  
3 transfer of ownership or operations, be submitted to the department,  
4 for review purposes only, at the completion of each phase of the  
5 remediation.

6 The department shall adopt regulations establishing the manner  
7 in which the documents required pursuant to [paragraphs (1)  
8 through (5), inclusive, of] this subsection shall be submitted. The  
9 department shall approve the application for the remediation  
10 agreement upon the complete and accurate submission of the  
11 documents required to be submitted pursuant to this subsection.  
12 The regulations shall include a sample form of the certifications.  
13 Approval of a remediation agreement shall not affect an owner's or  
14 operator's right to avail itself of the provisions of section 6 of  
15 P.L.1983, c.330 (C.13:1K-11), of section 13, 14, 15, 16, 17, or 18  
16 of P.L.1993, c.139 (C.13:1K-11.2, C.13:1K-11.3, C.13:1K-11.4,  
17 C.13:1K-11.5, C.13:1K-11.6 or C.13:1K-11.7), or of the other  
18 provisions of this section.

19 The owner or operator of the industrial establishment shall also  
20 provide written notification to the clerk of the municipality in which  
21 the industrial establishment is located, at the same time the  
22 information is submitted to the department, that upon written  
23 request, the owner or operator shall provide the information  
24 required to be submitted to the department pursuant to this  
25 subsection, to the municipality. The owner or operator shall  
26 provide the information to the municipality within five days after  
27 receipt of the written request.

28 f. An owner or operator of an industrial establishment may  
29 perform a preliminary assessment, site investigation, or remedial  
30 investigation for a soil, surface water, or groundwater remediation  
31 without the prior submission to or approval of the department,  
32 except as otherwise provided in a remediation agreement required  
33 pursuant to subsection e. of this section. However, the plans for and  
34 results of the preliminary assessment, site investigation, and  
35 remedial investigation may, at the discretion of the owner or  
36 operator, be submitted to the department for its review and approval  
37 at the completion of each phase of the remediation.

38 g. 【The】 Except as provided in section 27 of P.L. \_\_\_\_\_,  
39 c. (C. ) (pending before the Legislature as this bill), the soil,  
40 groundwater, and surface water remediation standard and the  
41 remedial action to be implemented on an industrial establishment  
42 shall be selected by the owner or operator, and reviewed and  
43 approved by the department, or prepared, certified and submitted to  
44 the department by a licensed site remediation professional, based  
45 upon the policies , requirements, and criteria enumerated in section  
46 35 of P.L.1993, c.139 (C.58:10B-12).

47 h. An owner or operator of an industrial establishment may  
48 implement a soil remedial action at an industrial establishment

1 without prior department approval of the remedial action workplan  
2 for the remediation of soil when the remedial action can reasonably  
3 be expected to be completed pursuant to standards, criteria, and  
4 time schedules established by the department, which schedules shall  
5 not exceed five years from the commencement of the  
6 implementation of the remedial action and if the owner or operator  
7 is implementing a soil remediation which meets the established  
8 minimum residential or nonresidential use soil remediation  
9 standards adopted by the department.

10 Nothing in this subsection shall be construed to authorize the  
11 closing of operations or the transfer of ownership or operations of  
12 an industrial establishment without the department's approval of a  
13 negative declaration, a remedial action workplan or a remediation  
14 agreement , or without the submission of a remediation  
15 certification.

16 i. An owner or operator of an industrial establishment shall  
17 base the decision to select a remedial action based upon the  
18 standards , requirements, and criteria set forth in section 35 of  
19 P.L.1993, c.139 (C.58:10B-12). When a remedial action selected  
20 by an owner or operator includes the use of an engineering or  
21 institutional controls that necessitates the recording of a notice  
22 pursuant to section 36 of P.L.1993, c.139 (C.58:10B-13), the owner  
23 or operator shall obtain the approval of the transferee of the  
24 industrial establishment.

25 At any time after the effective date of P.L.1993, c.139, an owner  
26 or operator may request the department to provide a determination  
27 as to whether a proposed remedial action is consistent with the  
28 standards and criteria set forth in section 35 of P.L.1993, c.139  
29 (C.58:10B-12). The department shall make that determination  
30 based upon the standards and criteria set forth in that section. The  
31 department shall provide any such determination within 30 calendar  
32 days of the department's receipt of the request.

33 j. **【An】** Except as provided in P.L. , c. (C. ) (pending  
34 before the Legislature as this bill), an owner or operator proposing  
35 to implement a soil remedial action other than one which is set forth  
36 in subsection h. of this section must receive department approval  
37 prior to implementation of the remedial action.

38 k. **【An】** Except as provided in P.L. , c. (C. ) (pending  
39 before the Legislature as this bill), an owner or operator of an  
40 industrial establishment shall not implement a remedial action  
41 involving the remediation of groundwater or surface water without  
42 the prior review and approval by the department of a remedial  
43 action workplan.

44 l. Submissions of a preliminary assessment, site investigation,  
45 remedial investigation, remedial action workplan, and the results of  
46 a remedial action shall be in a manner and form, and shall contain  
47 any relevant information relating to the remediation, as may be  
48 required by the department.



1       Upon receipt of a complete and accurate submission, the  
2       department shall review and approve or disapprove the submission  
3       in accordance with the review schedules established pursuant to  
4       section 2 of P.L.1991, c.423 (C.13:1D-106). The owner or operator  
5       shall not be required to wait for a response by the department before  
6       continuing remediation activities, except as otherwise provided in  
7       this section. Upon completion of the remediation, the plans for and  
8       results of the preliminary assessment, site investigation, remedial  
9       investigation, remedial action workplan, and remedial action and  
10      any other information required to be submitted as provided in  
11      section 35 of P.L.1993, c.139 (C.58:10B-12), that has not  
12      previously been submitted to the department, shall be submitted to  
13      the department for its review and approval.

14      The department shall review all information submitted to it by  
15      the owner or operator at the completion of the remediation to  
16      determine whether the actions taken were in compliance with rules  
17      and regulations of the department regarding remediation.

18      The department may review and approve or disapprove every  
19      remedial action workplan, no matter when submitted, to determine,  
20      in accordance with the criteria listed in subsection g. of section 35  
21      of P.L.1993, c.139 (C.58:10B-12) if the remedial action that has  
22      occurred or that will occur is appropriate to meet the applicable  
23      health risk or environmental standards.

24      The department may order additional remediation activities at the  
25      industrial establishment, or offsite where necessary, or may require  
26      the submission of additional information, where (a) the department  
27      determines that the remediation activities undertaken were not in  
28      compliance with the applicable rules or regulations of the  
29      department; (b) all documents required to be submitted to the  
30      department were not submitted or, if submitted, were inaccurate, or  
31      deficient; or (c) discharged hazardous substances or hazardous  
32      wastes remain at the industrial establishment, or have migrated or  
33      are migrating offsite, at levels or concentrations or in a manner that  
34      is in violation of the applicable health risk or environmental  
35      standards. Upon a finding by the department that the remediation  
36      conducted at the industrial establishment was in compliance with all  
37      applicable regulations, that no hazardous substances or hazardous  
38      wastes remain at the industrial establishment in a manner that is in  
39      violation of the applicable health risk or environmental standards,  
40      and that all hazardous substances or hazardous wastes that migrated  
41      from the industrial establishment have been remediated in  
42      conformance with the applicable health risk or environmental  
43      standards, the department shall approve the remediation for that  
44      industrial establishment by the issuance of a no further action letter.  
45      The owner or operator of the industrial establishment may also  
46      perform the remediation pursuant to the provisions of P.L. \_\_\_\_\_,  
47      c. (C. \_\_\_\_\_) (pending before the Legislature as this bill).  
48      (cf: P.L. 2007, c.1, s.4)

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

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

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

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

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

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

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

30       "Commissioner" means the Commissioner of Environmental  
31 Protection;

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

36       "Department" means the Department of Environmental  
37 Protection;

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

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

46       "Emergency response action" means those activities conducted  
47 by a local unit to clean up, remove, prevent, contain, or mitigate a

1 discharge that poses an immediate threat to the environment or to  
2 the public health, safety, or welfare;

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

9 "Final remediation document" means a no further action letter  
10 issued by the department pursuant to P.L.1993, c.139 (C.58:10B-1  
11 et seq.), or a response action outcome issued by a licensed site  
12 remediation professional pursuant to section 14 of P.L. ,  
13 c. (C. ) (pending before the Legislature as this bill);

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

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

34 "Licensed site remediation professional" means an individual  
35 who is licensed by the Site Remediation Professional Licensing  
36 Board pursuant to section 7 of P.L. , c. (C. ) (pending before the  
37 Legislature as this bill) or the department pursuant to section 12 of  
38 P.L. , c. (C. ) (pending before the Legislature as this bill);

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

42 "Major facility" includes, but is not limited to, any refinery,  
43 storage or transfer terminal, pipeline, deep-water port, drilling  
44 platform or any appurtenance related to any of the preceding that is  
45 used or is capable of being used to refine, produce, store, handle,  
46 transfer, process or transport hazardous substances. "Major  
47 facility" shall include a vessel only when that vessel is engaged in a  
48 transfer of hazardous substances between it and another vessel, and

1 in any event shall not include a vessel used solely for activities  
2 directly related to recovering, containing, cleaning up or removing  
3 discharges of petroleum in the surface waters of the State, including  
4 training, research, and other activities directly related to spill  
5 response.

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

9 (1) 20,000 gallons or more for hazardous substances which are  
10 other than petroleum or petroleum products, or

11 (2) 200,000 gallons or more for hazardous substances of all  
12 kinds. In determining whether a facility is a major facility for the  
13 purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.), any  
14 underground storage tank at the facility used solely to store heating  
15 oil for on-site consumption shall not be considered when  
16 determining the combined storage capacity of the facility.

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

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

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

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

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

1 discharged at a contaminated site, or (5) any other person who is  
2 remediating a site;

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

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

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

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

45 "Remediation" or "remediate" means all necessary actions to  
46 investigate and clean up or respond to any known, suspected, or  
47 threatened discharge, including, as necessary, the preliminary  
48 assessment, site investigation, remedial investigation, and remedial

1 action, provided, however, that "remediation" or "remediate" shall  
2 not include the payment of compensation for damage to, or loss of,  
3 natural resources;

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

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

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

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

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

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

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

40 (cf: P.L.2004, c.50, s.1)

41  
42 36. Section 2 of P.L.2005, c.348 (C.58:10-23.11e2) is amended  
43 to read as follows:

44 2. At least 30 days prior to its agreement to any administrative  
45 or judicially approved settlement entered into pursuant to P.L.1976,  
46 c.141 (C.58:10-23.11 et seq.), **【**or at least 30 days prior to the  
47 issuance of any no further action letter issued pursuant to P.L.1993,  
48 c.139 (C.58:10B-1 et seq.), on or after the effective date of

1 P.L.2005, c.348 (C.58:10-23.11e2 et al.),**】** the Department of  
2 Environmental Protection shall publish in the New Jersey Register  
3 and on the New Jersey Department of Environmental Protection's  
4 website the name of the case, the names of the parties to the  
5 settlement **【**or the no further action letter, as the case may be**】**, the  
6 location of the property on which the discharge occurred, and a  
7 summary of the terms of the settlement **【**or the no further action  
8 letter**】**, including the amount of any monetary payments made or to  
9 be made. The Department of Environmental Protection shall  
10 provide written notice of the settlement **【**or of the no further action  
11 letter**】**, which shall include the information listed above, to all other  
12 parties in the case and to any other potentially responsible parties of  
13 whom the department has notice at the time of the publication.  
14 (cf: P.L.2005, c.348, s.2)  
15

16 37. Section 7 of P.L.1976, c.141 (C.58:10-23.11f) is amended to  
17 read as follows:

18 7. a. (1) Whenever any hazardous substance is discharged, the  
19 department may, in its discretion, act to clean up and remove or  
20 arrange for the cleanup and removal of the discharge or may direct  
21 the discharger to clean up and remove, or arrange for the cleanup  
22 and removal of, the discharge. If the discharge occurs at any  
23 hazardous waste facility or solid waste facility, the department may  
24 order the hazardous waste facility or solid waste facility closed for  
25 the duration of the cleanup and removal operations. The department  
26 may monitor the discharger's compliance with any such directive.  
27 Any discharger who fails to comply with such a directive shall be  
28 liable to the department in an amount equal to three times the cost  
29 of such cleanup and removal, and shall be subject to the revocation  
30 or suspension of any license issued or permit held authorizing that  
31 person to operate a hazardous waste facility or solid waste facility.

32 (2) (a) Whenever one or more dischargers or persons cleans up  
33 and removes a discharge of a hazardous substance, those  
34 dischargers and persons shall have a right of contribution against all  
35 other dischargers and persons in any way responsible for a  
36 discharged hazardous substance or other persons who are liable for  
37 the cost of the cleanup and removal of that discharge of a hazardous  
38 substance. In an action for contribution, the contribution plaintiffs  
39 need prove only that a discharge occurred for which the  
40 contribution defendant or defendants are liable pursuant to the  
41 provisions of subsection c. of section 8 of P.L.1976, c.141  
42 (C.58:10-23.11g), and the contribution defendant shall have only  
43 the defenses to liability available to parties pursuant to subsection d.  
44 of section 8 of P.L.1976, c.141 (C.58:10-23.11g). In resolving  
45 contribution claims, a court may allocate the costs of cleanup and  
46 removal among liable parties using such equitable factors as the  
47 court determines are appropriate. Nothing in this subsection shall

1 affect the right of any party to seek contribution pursuant to any  
2 other statute or under common law.

3 (b) A person who has discharged a hazardous substance or is in  
4 any way responsible for the discharge of a hazardous substance who  
5 has resolved his liability to the State for cleanup and removal costs,  
6 including the payment of compensation for damage to, or the loss  
7 of, natural resources, or for the restoration of natural resources, and  
8 (i) has received a **[no further action letter from the State]** final  
9 remediation document, or (ii) has entered into an administrative or  
10 judicially approved settlement with the State, shall not be liable for  
11 claims for contribution regarding matters addressed in the  
12 settlement or the **[no further action letter]** final remediation  
13 document, as the case may be. The settlement shall not release any  
14 other person from liability for cleanup and removal costs who is not  
15 a party to the settlement, but shall reduce the potential liability of  
16 any other discharger or person in any way responsible for a  
17 discharged hazardous substance at the site that is the subject of the  
18 **[no further action letter]** final remediation document or the  
19 settlement by the amount of the **[no further action letter]** final  
20 remediation document or the settlement.

21 (3) In an action for contribution taken pursuant to this  
22 subsection, a contribution plaintiff may file a claim with the court  
23 for treble damages. A contribution plaintiff may be granted an  
24 award of treble damages by the court from one or more contribution  
25 defendants only upon a finding by the court that: (a) the  
26 contribution defendant is a person who was named on or subject to  
27 a directive issued by the department, who failed or refused to  
28 comply with such a directive, and who is subject to contribution  
29 pursuant to this subsection; (b) the contribution plaintiff gave 30  
30 days' notice to the contribution defendant of the plaintiff's intention  
31 to seek treble damages pursuant to this subsection and gave the  
32 contribution defendant an opportunity to participate in the cleanup;  
33 (c) the contribution defendant failed or refused to enter into a  
34 settlement agreement with the contribution plaintiff; and (d) the  
35 contribution plaintiff (i) on or after the date of enactment of P.L. \_\_, c. (C. \_\_) (pending before the Legislature as this bill), commenced  
36 remediation of the site and provided written notice to the  
37 department that the contribution plaintiff is remediating or has  
38 remediated the property pursuant to the provisions of section 30 of  
39 P.L. \_\_, c. (C. \_\_) (pending before the Legislature as this bill), or  
40 (ii) entered into an agreement with the department to remediate the  
41 site. Notwithstanding the foregoing requirements, any authorization  
42 to seek treble damages made by the department prior to the  
43 effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.) shall remain  
44 in effect, provided that the department or the contribution plaintiff  
45 gave notice to the contribution defendant of the plaintiff's request to  
46 the department for authorization to seek treble damages.  
47



1       A contribution defendant from whom treble damages is sought in  
2 a contribution action shall not be assessed treble damages by any  
3 court where the contribution defendant, for good cause shown,  
4 failed or refused to enter the settlement agreement with the  
5 contribution plaintiff or where principles of fundamental fairness  
6 will be violated. One third of an award of treble damages in a  
7 contribution action pursuant to this paragraph shall be paid to the  
8 department, which sum shall be deposited in the New Jersey Spill  
9 Compensation Fund. The other two thirds of the treble damages  
10 award shall be shared by the contribution plaintiffs in the proportion  
11 of the responsibility for the cost of the cleanup and removal that the  
12 contribution plaintiffs have agreed to with the department or in an  
13 amount as has been agreed to by those parties.

14       Cleanup and removal of hazardous substances and actions to  
15 minimize damage from discharges shall, to the greatest extent  
16 possible, be in accordance with the National Contingency Plan for  
17 cleanup and removal of oil and hazardous substances established  
18 pursuant to section 311(c)(2) of the federal Water Pollution Control  
19 Act Amendments of 1972 (Pub.L.92-500, 33U.S.C. s.1251 et seq.).

20       Whenever the department acts to clean up and remove a  
21 discharge or contracts to secure prospective cleanup and removal  
22 services, it is authorized to draw upon the money available in the  
23 fund. Such money shall be used to pay promptly for all cleanup and  
24 removal costs incurred by the department in cleaning up, in  
25 removing or in minimizing damage caused by such discharge.  
26 Nothing in this section is intended to preclude removal and cleanup  
27 operations by any person threatened by such discharges, provided  
28 such persons coordinate and obtain approval for such actions with  
29 ongoing State or federal operations. No action taken by any person  
30 to contain or clean up and remove a discharge shall be construed as  
31 an admission of liability for said discharge. No person who renders  
32 assistance in containing or cleaning up and removing a discharge  
33 shall be liable for any civil damages to third parties resulting solely  
34 from acts or omissions of such person in rendering such assistance,  
35 except for acts or omissions of gross negligence or willful  
36 misconduct. In the course of cleanup or removal operations, no  
37 person shall discharge any detergent into the waters of this State  
38 without prior authorization of the commissioner.

39       b. Notwithstanding any other provisions of P.L.1976, c.141  
40 (C.58:10-23.11 et seq.), the department, subject to the approval of  
41 the administrator with regard to the availability of funds therefor, or  
42 a local unit as a part of an emergency response action and with the  
43 approval of the department, may clean up and remove or arrange for  
44 the cleanup and removal of any hazardous substance which:

45       (1) Has not been discharged from a grounded or disabled vessel,  
46 if the department determines that such cleanup and removal is  
47 necessary to prevent an imminent discharge of such hazardous  
48 substance; or

1       (2) Has not been discharged, if the department determines that  
2 such substance is not satisfactorily stored or contained and said  
3 substance possesses any one or more of the following  
4 characteristics:

- 5       (a) Explosiveness;
- 6       (b) High flammability;
- 7       (c) Radioactivity;
- 8       (d) Chemical properties which in combination with any  
9 discharged hazardous substance at the same storage facility would  
10 create a substantial risk of imminent damage to public health or  
11 safety or an imminent and severe damage to the environment;
- 12       (e) Is stored in a container from which its discharge is imminent  
13 as a result of contact with a hazardous substance which has already  
14 been discharged and such additional discharge would create a  
15 substantial risk of imminent damage to public health or safety or  
16 imminent and severe damage to the environment; or
- 17       (f) High toxicity and is stored or being transported in a  
18 container or motor vehicle, truck, rail car or other mechanized  
19 conveyance from which its discharge is imminent as a result of the  
20 significant deterioration or the precarious location of the container,  
21 motor vehicle, truck, rail car or other mechanized conveyance, and  
22 such discharge would create a substantial risk of imminent damage  
23 to public health or safety or imminent and severe damage to the  
24 environment; or

25       (3) Has been discharged prior to the effective date of P.L.1976,  
26 c.141.

27       c. If and to the extent that he determines that funds are  
28 available, the administrator shall approve and make payments for  
29 any cleanup and removal costs incurred by the department for the  
30 cleanup and removal of a hazardous substance other than petroleum  
31 as authorized by subsection b. of this section; provided that in  
32 determining the availability of funds, the administrator shall not  
33 include as available funds revenues realized or to be realized from  
34 the tax on the transfer of petroleum, to the extent that such revenues  
35 result from a tax levied at a rate in excess of \$0.01 per barrel,  
36 pursuant to subsection b. of section 9 of P.L.1976, c.141 (C.58:10-  
37 23.11h), unless the administrator determines that the sum of claims  
38 paid by the fund on behalf of petroleum discharges or cleanup and  
39 removals plus pending reasonable claims against the fund on behalf  
40 of petroleum discharges or cleanup and removals is greater than  
41 30% of the sum of all claims paid by the fund plus all pending  
42 reasonable claims against the fund.

43       d. The administrator may only approve and make payments for  
44 any cleanup and removal costs incurred by the department for the  
45 cleanup and removal of a hazardous substance discharged prior to  
46 the effective date of P.L.1976, c.141, pursuant to subsection b. of  
47 this section, if, and to the extent that, he determines that adequate  
48 funds from another source are not or will not be available; and

1 provided further, with regard to the cleanup and removal costs  
2 incurred for discharges which occurred prior to the effective date of  
3 P.L.1976, c.141, the administrator may not during any one-year  
4 period pay more than \$18,000,000 in total or more than \$3,000,000  
5 for any discharge or related set or series of discharges.

6 e. Notwithstanding any other provisions of P.L.1976, c.141, the  
7 administrator, after considering, among any other relevant factors,  
8 the department's priorities for spending funds pursuant to P.L.1976,  
9 c.141, and within the limits of available funds, shall make payments  
10 for the restoration or replacement of, or connection to an alternative  
11 water supply for, any private residential well destroyed,  
12 contaminated, or impaired as a result of a discharge prior to the  
13 effective date of P.L.1976, c.141; provided, however, total  
14 payments for said purpose shall not exceed \$500,000 for the period  
15 between the effective date of this subsection e. and January 1, 1983,  
16 and in any calendar year thereafter.

17 f. Any expenditures of cleanup and removal costs and related  
18 costs made by the **【administrator】 State** pursuant to this act shall  
19 constitute, in each instance, a debt of the discharger to the fund.  
20 The debt shall constitute a lien on all property owned by the  
21 discharger when a notice of lien, incorporating a description of the  
22 property of the discharger subject to the cleanup and removal and  
23 an identification of the amount of cleanup, removal and related  
24 costs expended **【from the fund】 by the State**, is duly filed with the  
25 clerk of the Superior Court. The clerk shall promptly enter upon  
26 the civil judgment or order docket the name and address of the  
27 discharger and the amount of the lien as set forth in the notice of  
28 lien. Upon entry by the clerk, the lien, to the amount committed by  
29 the **【administrator】 State** for cleanup and removal, shall attach to  
30 the revenues and all real and personal property of the discharger,  
31 whether or not the discharger is insolvent.

32 The notice of lien filed pursuant to this subsection which affects  
33 the property of a discharger subject to the cleanup and removal of a  
34 discharge shall create a lien with priority over all other claims or  
35 liens which are or have been filed against the property, except if the  
36 property comprises six dwelling units or less and is used  
37 exclusively for residential purposes, this notice of lien shall not  
38 affect any valid lien, right or interest in the property filed in  
39 accordance with established procedure prior to the filing of this  
40 notice of lien. The notice of lien filed pursuant to this subsection  
41 which affects any property of a discharger, other than the property  
42 subject to the cleanup and removal, shall have priority from the day  
43 of the filing of the notice of the lien over all other claims and liens  
44 filed against the property, but shall not affect any valid lien, right,  
45 or interest in the property filed in accordance with established  
46 procedure prior to the filing of a notice of lien pursuant to this  
47 subsection.

1       g. In the event a vessel discharges a hazardous substance into  
2 the waters of the State, the cleanup and removal and related costs  
3 resulting from that discharge that constitute a maritime lien on the  
4 discharging vessel pursuant to 33 U.S.C. s.1321 or any other law,  
5 may be recovered by the Department of Environmental Protection  
6 in an action in rem brought in the district court of the United States.  
7 An impoundment of a vessel resulting from this action shall  
8 continue until:

9       (1) the claim against the owner or operator of the vessel for the  
10 cleanup and removal and related costs of the discharge is satisfied;

11       (2) the owner or operator of the vessel, or a representative of the  
12 owner or operator, provides evidence of financial responsibility as  
13 provided in section 2 of P.L.1991, c.58 (C.58:10-23.11g2) and  
14 satisfactorily guarantees that these costs will be paid; or

15       (3) the impoundment is otherwise vacated by a court order. The  
16 remedy provided in this subsection is in addition to any other  
17 remedy or enforcement power that the department may have under  
18 any other law.

19       Any action brought by the State pursuant to this subsection and  
20 any impoundment of a vessel resulting therefrom shall not subject  
21 the State to be in any way liable for a subsequent or continued  
22 discharge of a hazardous substance from that vessel.

23 (cf: P.L.2005, c.348, s.1)

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

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

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

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

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

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

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

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

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

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

44       Where a person is liable for cleanup and removal costs as  
45 provided in this paragraph, any expenditures made by the  
46 administrator for that cleanup and removal shall constitute a debt of  
47 that person to the fund. The debt shall constitute a lien on all  
48 property owned by that person when a notice of lien identifying the

1 nature of the discharge and the amount of the cleanup, removal and  
2 related costs expended from the fund is duly filed with the clerk of  
3 the Superior Court. The clerk shall promptly enter upon the civil  
4 judgment or order docket the name and address of the liable person  
5 and the amount of the lien as set forth in the notice of lien. Upon  
6 entry by the clerk, the lien, to the amount committed by the  
7 administrator for cleanup and removal, shall attach to the revenues  
8 and all real and personal property of the liable person, whether or  
9 not that person is insolvent.

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

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

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

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

47 d. (1) In addition to those defenses provided in this subsection,  
48 an act or omission caused solely by war, sabotage, or God, or a

1 combination thereof, shall be the only defenses which may be raised  
2 by any owner or operator of a major facility or vessel responsible  
3 for a discharge in any action arising under the provisions of this act.

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

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

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

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

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

32 To establish that a person had no reason to know that any  
33 hazardous substance had been discharged for the purposes of this  
34 paragraph (2), the person must have undertaken, at the time of  
35 acquisition, all appropriate inquiry into the previous ownership and  
36 uses of the property. For the purposes of this paragraph (2), all  
37 appropriate inquiry shall mean the performance of a preliminary  
38 assessment, and site investigation, if the preliminary assessment  
39 indicates that a site investigation is necessary, as defined in section  
40 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance  
41 with rules and regulations promulgated by the department defining  
42 these terms.

43 Nothing in this paragraph (2) shall be construed to alter liability  
44 of any person who acquired real property prior to September 14,  
45 1993; and

46 (e) For the purposes of this subparagraph the person must have  
47 (i) acquired the property subsequent to a hazardous substance being  
48 discharged on the site and which discharge was discovered at the

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

45 (3) Notwithstanding the provisions of paragraph (2) of this  
46 subsection to the contrary, if a person who owns real property  
47 obtains actual knowledge of a discharge of a hazardous substance at



1 the real property during the period of that person's ownership and  
2 subsequently transfers ownership of the property to another person  
3 without disclosing that knowledge, the transferor shall be strictly  
4 liable for the cleanup and removal costs of the discharge and no  
5 defense under this subsection shall be available to that person.

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

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

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

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

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

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

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

7 Nothing in this paragraph (5) shall be construed to alter liability  
8 of any person who acquired real property on or after September 14,  
9 1993.

10 e. Neither the fund nor the Sanitary Landfill Contingency Fund  
11 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall  
12 be liable for any damages incurred by any person who is relieved  
13 from liability pursuant to subsection d. or f. of this section for a  
14 remediation that involves the use of engineering controls but the  
15 fund and the Sanitary Landfill Contingency Fund shall be liable for  
16 any remediation that involves only the use of institutional controls  
17 if after a valid **[no further action letter]** final remediation document  
18 has been issued the department orders additional remediation except  
19 that the fund and the Sanitary Landfill Contingency Fund shall not  
20 be liable for any additional remediation that is required to remove  
21 an institutional control.

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

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

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

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

40 (4) (a) within 30 days after acquisition of the property, the  
41 person commenced a remediation of the discharge, including any  
42 migration, pursuant to a department oversight document executed  
43 prior to acquisition, or (b) for property acquired after the date of  
44 enactment of P.L. , c. (C. ) (pending before the Legislature as  
45 this bill), the person provides written notice of the acquisition to the  
46 department prior to or on the date of acquisition and the person  
47 remediates the property pursuant to the provisions of section 30 of  
48 P.L. , c. (C. ) (pending before the Legislature as this bill), and

1 (c) the department is satisfied that remediation was completed in a  
2 timely and appropriate fashion; and

3 (5) Within ten days after acquisition of the property, or within  
4 30 days after the expiration of the period or periods allowed for the  
5 right of redemption pursuant to tax foreclosure law, the person  
6 agrees in writing to provide access to the State for remediation and  
7 related activities, as determined by the State.

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

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

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

14 (3) if that person fails to maintain the institutional or  
15 engineering controls on the property or to otherwise comply with  
16 the provisions of a **no further action letter** final remediation  
17 document or a remedial action workplan and a person is harmed  
18 thereby;

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

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

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

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

32 (cf: P.L.2005, c.238, s.1)

33

34 39. Section 2 of P.L.1982, c.202 (C.58:10-23.16) is amended to  
35 read as follows:

36 2. The department shall prepare and **adopt a master list for the**  
37 **cleanup of** maintain a database that lists all known hazardous  
38 discharge sites , cases, and areas of concern. The **master list**  
39 database shall comprise an inventory of all the known hazardous  
40 discharge sites , cases, and areas of concern in the State **which**  
41 **have been cleaned up prior to the effective date of this act, which**  
42 **have been identified as in need of cleanup, or which will be cleaned**  
43 **up subsequent to the effective date of this act, and a ranking, based**  
44 **on criteria established by the department pursuant to P.L. 198(3),**  
45 **c.(222) (C.(58:10-23.20)), of the sites in the order in which the**  
46 **department intends to clean up the sites** . No later than one year  
47 after the date of enactment of P.L. , c. (C. ) (pending before

1 the Legislature as this bill) the department shall establish a ranking  
2 system that establishes categories in which to rank sites based upon  
3 the level of risk to the public health, safety, or the environment, the  
4 length of time the site has been undergoing remediation, the  
5 economic impact of the contaminated site on the municipality and  
6 on surrounding property, and any other factors deemed relevant by  
7 the department. The database shall include information concerning  
8 each site that identifies the location of the known or suspected  
9 contaminated site, the status of the remediation, the contaminants of  
10 concern, and whether institutional or engineering controls are in use  
11 at the site . The department shall [review the master list at least  
12 once every six months and modify it as necessary] provide public  
13 access to reports from the database on its internet website.  
14 (cf: P.L.1982, c.202, s.2)

15  
16 40. Section 23 of P.L.1993, c.139 (C.58:10B-1) is amended to  
17 read as follows:

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

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

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

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

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

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

40 "Department" means the Department of Environmental  
41 Protection;

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

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

1 covers, dikes, trenches, leachate collection systems, signs, fences  
2 and physical access controls;

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

5 "Final remediation document" means a no further action letter  
6 issued by the department pursuant to P.L.1993, c.139 (C.58:10B-1  
7 et seq.), or a response action outcome issued by a licensed site  
8 remediation professional pursuant to section 14 of P.L. \_\_\_\_\_,  
9 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill);

10 "Financial assistance" means loans or loan guarantees;

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

19 "Licensed site remediation professional" means an individual  
20 who is licensed by the Site Remediation Professional Licensing  
21 Board pursuant to section 7 of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) (pending before  
22 the Legislature as this bill) or the department pursuant to section 12  
23 of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) (pending before the Legislature as this bill);

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

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

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

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

1 discharged at a contaminated site, or (5) any other person who is  
2 remediating a site;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (cf: P.L.2005, c.223, s.1)

7  
8 41. Section 24 of P.L.1993, c.139 (C.58:10B-2) is amended to  
9 read as follows:

10 24. a. The department shall, pursuant to the "Administrative  
11 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules  
12 and regulations establishing criteria and **【minimum】** standards  
13 necessary for the submission, evaluation and approval of plans or  
14 results of preliminary assessments, site investigations, remedial  
15 investigations, and remedial action workplans and for the  
16 implementation thereof. The documents for the preliminary  
17 assessment, site investigation, remedial investigation, and remedial  
18 action workplan required to be submitted for a remediation, shall  
19 not be identical to the criteria and standards used for similar  
20 documents submitted pursuant to federal law, except as may be  
21 required by federal law. In establishing criteria and **【minimum】**  
22 standards for these terms the department shall strive to be result  
23 oriented, provide for flexibility, and to avoid duplicate or  
24 unnecessarily costly or time consuming conditions or standards.

25 b. The regulations adopted by the department pursuant to  
26 subsection a. of this section shall provide that a person performing a  
27 remediation may deviate from the strict adherence to the  
28 regulations, in a variance procedure or by another method  
29 prescribed by the department, if that person can demonstrate that  
30 the deviation and the resulting remediation would be as protective  
31 of human health, safety, and the environment, as appropriate, as the  
32 department's regulations and that the health risk standards  
33 established in subsection d. of section 35 of P.L.1993, c.139  
34 (C.58:10B-12) and any applicable environmental standards would  
35 be met. Factors to be considered in determining if the deviation  
36 should be allowed are whether the alternative method:

37 (1) has been either used successfully or approved by the  
38 department in writing or similar situations;

39 (2) reflects current technology as documented in peer-reviewed  
40 professional journals;

41 (3) can be expected to achieve the same or substantially the  
42 same results or objectives as the method which it is to replace; and

43 (4) furthers the attainment of the goals of the specific remedial  
44 phase for which it is used.

45 **【The department shall make available to the public, and shall**  
46 **periodically update, a list of alternative remediation methods used**  
47 **successfully or approved by the department as provided in**  
48 **paragraph (1) of this subsection.】**



1 c. To the extent practicable and in conformance with the  
2 standards for remediations as provided in section 35 of P.L.1993,  
3 c.139 (C.58:10-12), the department shall adopt rules and regulations  
4 that allow for certain remedial actions to be undertaken in a manner  
5 prescribed by the department without having to obtain prior  
6 approval from or submit detailed documentation to the department.  
7 A person who performs a remedial action in the manner prescribed  
8 in the rules and regulations of the department, and who certifies this  
9 fact to the department, shall obtain a [no further action letter from  
10 the department] final remediation document for that particular  
11 remedial action.

12 d. The department shall develop regulatory procedures that  
13 encourage the use of innovative technologies in the performance of  
14 remedial actions and other remediation activities.

15 e. Notwithstanding any other provisions of this section, all  
16 remediation standards and remedial actions that involve real  
17 property located in the pinelands area shall be consistent with the  
18 provisions of the "Pinelands Protection Act," P.L.1979, c.111  
19 (C.13:18A-1 et seq.), any rules and regulations adopted pursuant  
20 thereto, and with section 502 of the "National Parks and Recreation  
21 Act of 1978," 16 U.S.C. s.471i.

22 f. Notwithstanding any other provisions of this section, all  
23 remediation standards and remedial actions that involve real  
24 property located in the Highlands preservation area shall be  
25 consistent with the provisions of the "Highlands Water Protection  
26 and Planning Act," P.L.2004, c.120 (C.13:20-1 et al.), and any rules  
27 and regulations and the Highlands regional master plan adopted  
28 pursuant thereto.

29 (cf: P.L.2004, c.120, s.80)

30

31 42. Section 1 of P.L.2002, c.37 (C.58:10B-2.1) is amended to  
32 read as follows:

33 1. a. In the case of an owner or operator of an industrial  
34 establishment or any other person required to perform remediation  
35 activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), or a  
36 discharger, a person in any way responsible for a hazardous  
37 substance, or a person otherwise liable for cleanup and removal  
38 costs pursuant to subsection c. of section 8 of P.L.1976, c.141  
39 (C.58:10-23.11g) and who does not have a defense to liability  
40 pursuant to subsection d. of that section, the fees for department  
41 oversight of the cleanup and removal of a discharge of a hazardous  
42 substance performed after the effective date of P.L.2002, c.37 may  
43 include the indirect costs of the department and the costs related to  
44 the department's oversight charged to the department by other State  
45 departments or agencies.

46 b. In the case of the remediation of a contaminated site  
47 performed by any person not subject to the provisions of subsection  
48 a. of this section, the fees for department oversight of the

1 remediation performed after the effective date of P.L.2002, c.37  
2 shall not include any indirect costs, but may include **【only】** those  
3 program costs directly related to the oversight of the remediation  
4 and the costs related to the department's oversight charged to the  
5 department by other State departments or agencies.

6 c. In the case of the cleanup and removal of a discharged  
7 hazardous substance at a person's primary residence, the fees for  
8 department oversight of the remediation performed after the  
9 effective date of P.L.2002, c.37 shall not include any indirect costs,  
10 but may include only those program costs directly related to the  
11 oversight of the remediation.

12 d. The department shall not establish or impose a fee for the  
13 oversight of any cleanup and removal of a discharged hazardous  
14 substance or for the remediation of a contaminated site that includes  
15 direct program costs and indirect costs which together exceed seven  
16 and one-half percent of the cost of the remediation of a  
17 contaminated site or the cleanup and removal of a discharged  
18 hazardous substance.

19 (cf: P.L.2002, c.37, s.1)

20  
21 43. Section 25 of P.L.1993, c.139 (C.58:10B-3) is amended to  
22 read as follows:

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

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

10 The remediation funding source shall be established in an  
11 amount equal to or greater than the cost estimate of the  
12 implementation of the remediation (1) as approved by the  
13 department or as determined by the licensed site remediation  
14 professional, as applicable, in accordance with rules and regulations  
15 adopted by the department pursuant to section 29 of P.L. ,  
16 c. (C. ) (pending before the Legislature as this bill), (2) as  
17 provided in an administrative consent order or remediation  
18 agreement or remediation certification certification as required  
19 pursuant to subsection e. of section 4 of P.L.1983, c.330, (3) as  
20 stated in a departmental order or directive, or (4) as agreed to by a  
21 court, and shall be in effect for a term not less than the actual time  
22 necessary to perform the remediation at the site. Whenever the  
23 remediation cost estimate increases, the person required to establish  
24 the remediation funding source shall cause the amount of the  
25 remediation funding source to be increased to an amount at least  
26 equal to the new estimate. Whenever the remediation or cost  
27 estimate decreases, the person required to obtain the remediation  
28 funding source may file a written request to the department to  
29 decrease the amount in the remediation funding source or may  
30 submit written documentation to the department certified by the  
31 licensed site remediation professional of the details of the decrease  
32 in the cost estimate, as applicable . The remediation funding source  
33 may be decreased to the amount of the new estimate upon written  
34 approval by the department delivered to the person who established  
35 the remediation funding source [and to the trustee or the person or  
36 institution providing the remediation trust, the environmental  
37 insurance policy, or the line of credit, as applicable. The  
38 department shall approve the request upon a finding that the  
39 remediation cost estimate decreased by the requested amount. The  
40 department shall review and respond to the request to decrease the  
41 remediation funding source within 45 days of receipt of the  
42 request] or upon submission of the certification by the licensed site  
43 remediation professional, as applicable.

44 b. The person [responsible for performing the remediation  
45 and] who established the remediation funding source may use the  
46 remediation funding source to pay for the actual cost of the  
47 remediation. The department may not require any other financial

1 assurance by the person responsible for **performing** conducting  
2 the remediation other than that required in this section. In the case  
3 of a remediation performed pursuant to P.L.1983, c.330, the  
4 remediation funding source shall be established no more than 14  
5 days after the approval by the department or the certification by the  
6 licensed site remediation professional of a remedial action workplan  
7 **or** , upon approval of a remediation agreement pursuant to  
8 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9) , or upon  
9 submission of a remediation certification pursuant to subsection e.  
10 of P.L.1983, c.330 , unless the department approves an extension.  
11 In the case of a remediation performed pursuant to P.L.1976, c.141,  
12 the remediation funding source shall be established as provided in  
13 an administrative consent order signed by the parties, as provided  
14 by a court, or as directed or ordered by the department. In the case  
15 of a remediation performed under the department's oversight  
16 pursuant to section 27 of P.L. , c. (C. ) (pending before the  
17 Legislature as this bill), the remediation funding source shall be  
18 established at the time the person becomes subject to the  
19 department's oversight. The establishment of a remediation funding  
20 source for that part of the remediation funding source to be  
21 established by a grant or financial assistance from the remediation  
22 fund may be established for the purposes of this subsection by the  
23 application for a grant or financial assistance from the remediation  
24 fund and satisfactory evidence submitted to the department that the  
25 grant or financial assistance will be awarded. However, if the  
26 financial assistance or grant is denied or the department finds that  
27 the person responsible for establishing the remediation funding  
28 source did not take reasonable action to obtain the grant or financial  
29 assistance, the department shall require that the full amount of the  
30 remediation funding source be established within 14 days of the  
31 denial or finding. **The** Except as provided in section 27 of  
32 P.L. , c. (C. ) (pending before the Legislature as this bill), the  
33 remediation funding source shall be evidenced by the establishment  
34 and maintenance of (1) a remediation trust fund, (2) an  
35 environmental insurance policy, issued by an entity licensed by the  
36 Department of Banking and Insurance to transact business in the  
37 State of New Jersey, to fund the remediation, (3) a line of credit  
38 from a **person or** financial institution regulated pursuant to State  
39 or federal law and satisfactory to the department authorizing the  
40 person responsible for performing the remediation to borrow  
41 money, **or** (4) a self-guarantee, or (5) a letter of credit from a  
42 financial institution regulated pursuant to State or federal law that  
43 guarantees the performance of the remediation by the person to the  
44 satisfaction of the department, or by any combination thereof.  
45 Where it can be demonstrated that a person cannot establish and  
46 maintain a remediation funding source for the full cost of the  
47 remediation by a method specified in this subsection, that person

1 may establish the remediation funding source for all or a portion of  
2 the remediation, by securing financial assistance from the  
3 Hazardous Discharge Site Remediation Fund as provided in section  
4 29 of P.L.1993, c.139 (C.58:10B-7).

5 c. A remediation trust fund shall be established pursuant to the  
6 provisions of this subsection. An originally signed duplicate of the  
7 trust agreement shall be delivered to the department by certified  
8 mail within 14 days of receipt of notice from the department that  
9 the remedial action workplan or remediation agreement as provided  
10 in subsection e. of section 4 of P.L.1983, c.330 is approved, upon  
11 submission of a remediation certification to the department as  
12 provided in subsection e. of section 4 of P.L.1983, c.330, or as  
13 specified in an administrative consent order, civil order, or order of  
14 the department, as applicable. The remediation trust fund  
15 agreement shall conform to a model trust fund agreement as  
16 established by the department and shall be accompanied by a  
17 certification of acknowledgment that conforms to a model  
18 established by the department. The trustee shall be an entity which  
19 has the authority to act as a trustee and whose trust operations are  
20 regulated and examined by a federal or New Jersey agency.

21 The trust fund agreement shall provide that the remediation trust  
22 fund may not be revoked or terminated by the person required to  
23 establish the remediation funding source or by the trustee without  
24 the written consent of the department. The trustee shall release to  
25 the person required to establish the remediation funding source, or  
26 to the department or transferee of the property, as appropriate, only  
27 those moneys as the department or the licensed site remediation  
28 professional authorizes, in writing, to be released. **【The】** For any  
29 remediation subject to the oversight of the department pursuant to  
30 section 27 of P.L. , c. (C. ) (pending before the Legislature as  
31 this bill), the person entitled to receive money from the remediation  
32 trust fund shall submit documentation to the department detailing  
33 the costs incurred or to be incurred as part of the remediation.  
34 Upon a determination by the department that the costs are  
35 consistent with the remediation of the site, the department shall, in  
36 writing, authorize a disbursement of moneys from the remediation  
37 trust fund in the amount of the documented costs.

38 The department shall return the original remediation trust fund  
39 agreement to the trustee for termination after the person required to  
40 establish the remediation funding source substitutes an alternative  
41 remediation funding source as specified in this section or the  
42 department notifies the person that that person is no longer required  
43 to maintain a remediation funding source for remediation of the  
44 contaminated site.

45 d. An environmental insurance policy shall be established  
46 pursuant to the provisions of this subsection. An originally signed  
47 duplicate of the insurance policy shall be delivered to the  
48 department by certified mail, overnight delivery, or personal service

1 within 30 days of receipt of notice from the department that the  
2 remedial action workplan or remediation agreement, as provided in  
3 subsection e. of section 4 of P.L.1983, c.330, is approved, upon  
4 submission of a remediation certification to the department as  
5 provided in subsection e. of section 4 of P.L.1983, c.330, or as  
6 specified in an administrative consent order, civil order, or order of  
7 the department, as applicable. **【**The environmental insurance policy  
8 may not be revoked or terminated without the written consent of the  
9 department.**】** The insurance company shall release to the person  
10 required to establish the remediation funding source, or to the  
11 department or transferee of the property, as appropriate, only those  
12 moneys as the department or the licensed site remediation  
13 professional authorizes, in writing, to be released. The person  
14 entitled to receive money from the environmental insurance policy  
15 shall submit documentation to the department detailing the costs  
16 incurred or to be incurred as part of the remediation.

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 by  
23 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, upon submission of  
27 a remediation certification pursuant to subsection e. of P.L.1983,  
28 c.330 or as specified in an administrative consent order, civil order,  
29 or order of the department, as applicable. The line of credit  
30 agreement shall conform to a model agreement as established by the  
31 department and shall be accompanied by a certification of  
32 acknowledgment that conforms to a model established by the  
33 department.

34 **【**A line of credit agreement shall provide that the line of credit  
35 may not be revoked or terminated by the person required to obtain  
36 the remediation funding source or the person or institution  
37 providing the line of credit without the written consent of the  
38 department.**】** The person or institution providing the line of credit  
39 shall release to the person required to establish the remediation  
40 funding source, or to the department or transferee of the property as  
41 appropriate, only those moneys as the department or the licensed  
42 site remediation professional authorizes, in writing, to be released.  
43 The person entitled to draw upon the line of credit shall submit  
44 documentation to the department detailing the costs incurred or to  
45 be incurred as part of the remediation. Upon a determination that  
46 the costs are consistent with the remediation of the site, the  
47 department shall, in writing, authorize a disbursement from the line  
48 of credit in the amount of the documented costs.

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

9       f. A person may self-guarantee a remediation funding source  
10 upon the submittal of documentation to the department  
11 demonstrating that the cost of the remediation as estimated in the  
12 remedial action workplan, in the remediation agreement as provided  
13 in subsection e. of section 4 of P.L.1983, c.330, in a remediation  
14 certification submitted pursuant to subsection e. of P.L.1983, c.330,  
15 in an administrative consent order, or as provided in a departmental  
16 or court order, would not exceed one-third of the tangible net worth  
17 of the person required to establish the remediation funding source,  
18 and that the person has a cash flow sufficient to assure the  
19 availability of sufficient moneys for the remediation during the time  
20 necessary for the remediation. Satisfactory documentation of a  
21 person's capacity to self-guarantee a remediation funding source  
22 shall consist of audited financial statements, in which the auditor  
23 expresses an unqualified opinion, that includes a statement of  
24 income and expenses or similar statement of that person and the  
25 balance sheet or similar statement of assets and liabilities as used by  
26 that person for the fiscal year of the person making the application  
27 that ended closest in time to the date of the self-guarantee  
28 application **[, or in]** . In the case of a special purpose entity  
29 established specifically for the purpose of acquiring and  
30 redeveloping a contaminated site, and for which a statement of  
31 income and expenses is not available, the documentation shall  
32 include a statement of assets and liabilities certified by a certified  
33 public accountant. The self-guarantee application shall be certified  
34 as true to the best of the applicant's information, knowledge, and  
35 belief, by the chief financial, or similar officer or employee, or  
36 general partner, or principal of the person making the self-guarantee  
37 application. A person shall be deemed by the department to possess  
38 the required cash flow pursuant to this section if that person's gross  
39 receipts exceed its gross payments in that fiscal year in an amount  
40 at least equal to the estimated costs of completing the remedial  
41 action workplan schedule to be performed in the 12-month period  
42 following the date on which the application for self-guarantee is  
43 made. In the event that a self-guarantee is required for a period of  
44 more than one year, applications for a self-guarantee shall be  
45 renewed annually pursuant to this subsection for each successive  
46 year. The department may establish requirements and reporting  
47 obligations to ensure that the person proposing to self-guarantee a  
48 remediation funding source meets the criteria for self-guaranteeing

1 prior to the initiation of remedial action and until completion of the  
2 remediation.

3 g. (1) If the person required to establish the remediation  
4 funding source fails to perform the remediation as required, or fails  
5 to meet the mandatory remediation timeframes or expedited site  
6 specific timeframes established pursuant to section 28 of P.L. ,  
7 c. (C. ) (pending before the Legislature as this bill) for the  
8 performance of the remedial action, the department shall make a  
9 written determination of this fact. A copy of the determination by  
10 the department shall be delivered to the person required to establish  
11 the remediation funding source and, in the case of a remediation  
12 conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), to any  
13 transferee of the property. Following this written determination, the  
14 department may perform the remediation in place of the person  
15 required to establish the remediation funding source. In order to  
16 finance the cost of the remediation the department may make  
17 disbursements from the [remediation trust fund or the line of credit  
18 or claims upon the environmental insurance policy, as appropriate]  
19 remediation funding source , or, if sufficient moneys are not  
20 available from those funds, from the remediation guarantee fund  
21 created pursuant to section 45 of P.L.1993, c.139 (C.58:10B-20).

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

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



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

18     The financial institution that provides the letter of credit shall  
19 release to the department or to a person authorized to perform the  
20 remediation pursuant to subsection g. of this section, only moneys  
21 authorized by the department, or the authorized licensed site  
22 remediation professional, in writing, to be released. The  
23 department shall return the original letter of credit to the financial  
24 institution providing the letter of credit for termination after the  
25 person required to establish the remediation funding source  
26 substitutes an alternative remediation funding source as authorized  
27 in this section, or after the department notifies the person that that  
28 person is no longer required to maintain a remediation funding  
29 source for the remediation of the contaminated site.

30 (cf: P.L.2003, c.224, s.2)

31  
32     44. Section 26 of P.L.1993, c.139 (C.58:10B-4) is amended to  
33 read as follows:

34     26. a. There is established in the New Jersey Economic  
35 Development Authority a special, revolving fund to be known as  
36 the Hazardous Discharge Site Remediation Fund. Except as  
37 provided in section 4 of P.L.2007, c.135 (C.52:27D-130.7), moneys  
38 in the remediation fund shall be dedicated for the provision of  
39 financial assistance or grants to municipalities, counties,  
40 redevelopment entities authorized to exercise redevelopment  
41 powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), and  
42 persons, for the purpose of financing remediation activities at sites  
43 at which there is, or is suspected of being, a discharge of hazardous  
44 substances or hazardous wastes.

45     b. The remediation fund shall be credited with:

46         (1) moneys as are appropriated by the Legislature;

47         (2) moneys deposited into the fund as repayment of principal  
48 and interest on outstanding loans made from the fund;

- 1 (3) any return on investment of moneys deposited in the fund;
- 2 (4) **【remediation funding source surcharges imposed pursuant to**  
3 **section 33 of P.L.1993, c.139 (C.58:10B-11)】** (Deleted by  
4 amendment, P.L. , c. )(pending before the Legislature as this bill);
- 5 (5) moneys deposited in the fund as repayment of recoverable  
6 grants made by the New Jersey Redevelopment Authority for  
7 brownfield redevelopment;
- 8 (6) moneys deposited into the fund from cost recovery  
9 subrogation actions; and
- 10 (7) moneys made available to the authority for the purposes of  
11 the fund.  
12 (cf: P.L.2007, c.135, s.1)
- 13
- 14 45. Section 30 of P.L.1993, c.139 (C.58:10B-8) is amended to  
15 read as follows:
- 16 30. a. The authority shall, by rule or regulation:
- 17 (1) require a financial assistance or grant recipient to provide to  
18 the authority, as necessary or upon request, evidence that financial  
19 assistance or grant moneys are being spent for the purposes for  
20 which the financial assistance or grant was made, and that the  
21 applicant is adhering to all of the terms and conditions of the  
22 financial assistance or grant agreement;
- 23 (2) require the financial assistance or grant recipient to provide  
24 access at reasonable times to the subject property to determine  
25 compliance with the terms and conditions of the financial assistance  
26 or grant;
- 27 (3) establish a priority system for rendering financial assistance  
28 or grants for remediations identified by the department as involving  
29 an imminent and significant threat to a public water source, human  
30 health, or to a sensitive or significant ecological area pursuant to  
31 subsection a. of section 28 of P.L.1993, c.139 (C.58:10B-6);
- 32 (4) **【provide that payment of a grant shall be conditioned upon**  
33 **the subrogation to the department of all rights of the recipient to**  
34 **recover remediation costs from the discharger or other liable**  
35 **parties. All moneys collected in a cost recovery subrogation action**  
36 **shall be deposited into the remediation fund】** (Deleted by  
37 amendment, P.L. , c. )(pending before the Legislature as this  
38 bill);
- 39 (5) provide that an applicant for financial assistance or a grant  
40 pay a reasonable fee for the application which shall be used by the  
41 authority for the administration of the loan and grant program;
- 42 (6) provide that where financial assistance to a person other than  
43 a municipality, a county, or a redevelopment entity authorized to  
44 exercise redevelopment powers pursuant to section 4 of P.L.1992,  
45 c.79 (C.40A:12A-4), is for a portion of the remediation cost, that  
46 the proceeds thereof not be disbursed to the applicant until the costs  
47 of the remediation for which a remediation funding source has been  
48 established has been expended;

1 (7) provide that the amount of a grant for the costs of a remedial  
2 action shall not include the cost to remediate a site to meet  
3 residential soil remediation standards if the local zoning ordinances  
4 adopted pursuant to the "Municipal Land Use Law," P.L.1975,  
5 c.291 (C.40:55D-1 et seq.) does not allow for residential use;

6 (8) adopt such other requirements as the authority shall deem  
7 necessary or appropriate in carrying out the purposes for which the  
8 Hazardous Discharge Site Remediation Fund was created.

9 b. An applicant for financial assistance or a grant shall be  
10 required to:

11 (1) provide proof, as determined sufficient by the authority, that  
12 the applicant, where applicable, cannot establish a remediation  
13 funding source for all or part of the remediation costs, as required  
14 by section 25 of P.L.1993, c.139 (C.58:10B-3). The provisions of  
15 this paragraph do not apply to grants to innocent persons, grants for  
16 the use of innovative technologies, or grants for the implementation  
17 of unrestricted use remedial actions or limited restricted use  
18 remedial actions or to financial assistance or grants to  
19 municipalities, counties, or redevelopment entities authorized to  
20 exercise redevelopment powers pursuant to section 4 of P.L.1992,  
21 c.79 (C.40A:12A-4); and

22 (2) demonstrate the ability to repay the amount of the financial  
23 assistance and interest, and, if necessary, to provide adequate  
24 collateral to secure the financial assistance amount.

25 c. Information submitted as part of a loan or grant application  
26 or agreement shall be deemed a public record subject to the  
27 provisions of P.L.1963, c.73 (C.47:1A-1 et seq.).

28 d. In establishing requirements for financial assistance or grant  
29 applications and financial assistance or grant agreements, the  
30 authority:

31 (1) shall minimize the complexity and costs to applicants or  
32 recipients of complying with such requirements;

33 (2) may not require financial assistance or grant conditions that  
34 interfere with the everyday normal operations of the recipient's  
35 business activities, except to the extent necessary to ensure the  
36 recipient's ability to repay the financial assistance and to preserve  
37 the value of the loan collateral; and

38 (3) shall expeditiously process all financial assistance or grant  
39 applications in accordance with a schedule established by the  
40 authority for the review and the taking of final action on the  
41 application, which schedule shall reflect the degree of complexity  
42 of a financial assistance or grant application.

43 (cf: P.L.2005, c.223, s.6)

44  
45 46. Section 33 of P.L.1993, c.139 (C.58:10B-11) is amended to  
46 read as follows:

47 33. a. There is imposed upon every person who is required to  
48 establish a remediation funding source pursuant to section 25 of

1 P.L.1993, c.139 (C.58:10B-3) a remediation funding source  
2 surcharge. The remediation funding source surcharge shall be in an  
3 amount equal to 1% of the required amount of the remediation  
4 funding source required by the department to be maintained. No  
5 surcharge, however, may be imposed upon (1) that amount of the  
6 remediation funding source that is met by a self-guarantee as  
7 provided in subsection f. of section 25 of P.L.1993, c.139  
8 (C.58:10B-3), (2) that amount of the remediation funding source  
9 that is met by financial assistance or a grant from the remediation  
10 fund, (3) any person who voluntarily performs a remediation  
11 pursuant to an administrative consent order, (4) any person who  
12 entered voluntarily into a memorandum of understanding with the  
13 department to remediate real property, as long as that person  
14 **【continues the remediation in a reasonable manner, or as required**  
15 **by law, even if subsequent to initiation of the memorandum of**  
16 **understanding, the person received an order by the department or**  
17 **entered into an administrative consent order to perform the**  
18 **remediation】** meets the mandatory remediation timeframes and  
19 expedited site specific timeframes established by the department  
20 pursuant to section 28 of P.L. , c. (C. ) (pending before the  
21 Legislature as this bill, (5) any person performing a remediation in  
22 an environmental opportunity zone, or (6) that portion of the cost of  
23 the remediation that is specifically for the use of an innovative  
24 technology or to implement a limited restricted use remedial action  
25 or an unrestricted use remedial action. The surcharge shall be based  
26 on the cost of remediation work remaining to be completed and  
27 shall be paid on an annual basis as long as the remediation  
28 continues and until the Department of Environmental Protection  
29 issues a no further action letter or the licensed site remediation  
30 professional issues a response action outcome for the property  
31 subject to the remediation. The remediation funding source  
32 surcharge shall be due and payable within 14 days of the time of the  
33 department's approval of a remedial action workplan or signing an  
34 administrative consent order or as otherwise provided by law. The  
35 department shall collect the surcharge and shall remit all moneys  
36 collected to the **【Economic Development Authority for deposit into**  
37 **the Hazardous Discharge Site Remediation Fund】** Remediation  
38 Guarantee Fund established pursuant to section 45 of P.L.1993,  
39 c.139 (C.58:10B-20).

40 b. By February 1 of each year, the department shall issue a  
41 report to the Senate Environment Committee and to the Assembly  
42 **【Agriculture and Waste Management】** Environment and Solid  
43 Waste Committee, or their successors, listing, for the prior calendar  
44 year, each person who owed the remediation funding source  
45 surcharge, the amount of the surcharge paid, and the total amount  
46 collected.

47 (cf: P.L.1997, c.278, s.16)

1       47. Section 35 of P.L.1993, c.139 (C.58:10B-12) is amended to  
2 read as follows:

3       35. a. The Department of Environmental Protection shall adopt  
4 minimum remediation standards for soil, groundwater, and surface  
5 water quality necessary for the remediation of contamination of real  
6 property. The remediation standards shall be developed to ensure  
7 that the potential for harm to public health and safety and to the  
8 environment is minimized to acceptable levels, taking into  
9 consideration the location, the surroundings, the intended use of the  
10 property, the potential exposure to the discharge, and the  
11 surrounding ambient conditions, whether naturally occurring or  
12 man-made.

13       Until the minimum remediation standards for the protection of  
14 public health and safety as described herein are adopted, the  
15 department shall apply public health and safety remediation  
16 standards for contamination at a site on a case-by-case basis based  
17 upon the considerations and criteria enumerated in this section.

18       The department shall not propose or adopt remediation standards  
19 protective of the environment pursuant to this section, except  
20 standards for groundwater or surface water, until recommendations  
21 are made by the Environment Advisory Task Force created pursuant  
22 to section 37 of P.L.1993, c.139. Until the Environment Advisory  
23 Task Force issues its recommendations and the department adopts  
24 remediation standards protective of the environment as required by  
25 this section, the department shall continue to determine the need for  
26 and the application of remediation standards protective of the  
27 environment on a case-by-case basis in accordance with the  
28 guidance and regulations of the United States Environmental  
29 Protection Agency pursuant to the "Comprehensive Environmental  
30 Response, Compensation and Liability Act of 1980," 42 U.S.C.  
31 s.9601 et seq. and other statutory authorities as applicable.

32       The department may not require any person to perform an  
33 ecological evaluation of any area of concern that consists of an  
34 underground storage tank storing heating oil for on-site  
35 consumption in a one to four family residential building.

36       b. In developing minimum remediation standards the  
37 department shall:

38       (1) base the standards on generally accepted and peer reviewed  
39 scientific evidence or methodologies;

40       (2) base the standards upon reasonable assumptions of exposure  
41 scenarios as to amounts of contaminants to which humans or other  
42 receptors will be exposed, when and where those exposures will  
43 occur, and the amount of that exposure;

44       (3) avoid the use of redundant conservative assumptions. The  
45 department shall avoid the use of redundant conservative  
46 assumptions by the use of parameters that provide an adequate  
47 margin of safety and which avoid the use of unrealistic conservative  
48 exposure parameters and which guidelines make use of the guidance

1 and regulations for exposure assessment developed by the United  
2 States Environmental Protection Agency pursuant to the  
3 "Comprehensive Environmental Response, Compensation, and  
4 Liability Act of 1980," 42 U.S.C. s.9601 et seq. and other statutory  
5 authorities as applicable;

6 (4) where feasible, establish the remediation standards as  
7 numeric or narrative standards setting forth acceptable levels or  
8 concentrations for particular contaminants; and

9 (5) consider and utilize, in the absence of other standards used  
10 or developed by the Department of Environmental Protection and  
11 the United States Environmental Protection Agency, the toxicity  
12 factors, slope factors for carcinogens and reference doses for non-  
13 carcinogens from the United States Environmental Protection  
14 Agency's Integrated Risk Information System (IRIS).

15 c. (1) The department shall develop residential and  
16 nonresidential soil remediation standards that are protective of  
17 public health and safety. For contaminants that are mobile and  
18 transportable to groundwater or surface water, the residential and  
19 nonresidential soil remediation standards shall be protective of  
20 groundwater and surface water. Residential soil remediation  
21 standards shall be set at levels or concentrations of contamination  
22 for real property based upon the use of that property for residential  
23 or similar uses and which will allow the unrestricted use of that  
24 property without the need of engineering devices or any  
25 institutional controls and without exceeding a health risk standard  
26 greater than that provided in subsection d. of this section.  
27 Nonresidential soil remediation standards shall be set at levels or  
28 concentrations of contaminants that recognize the lower likelihood  
29 of exposure to contamination on property that will not be used for  
30 residential or similar uses, which will allow for the unrestricted use  
31 of that property for nonresidential purposes, and that can be met  
32 without the need of engineering controls. Whenever real property is  
33 remediated to a nonresidential soil remediation standard, except as  
34 otherwise provided in paragraph (3) of subsection g. of this section,  
35 the department shall require, pursuant to section 36 of P.L.1993,  
36 c.139 (C.58:10B-13), that the use of the property be restricted to  
37 nonresidential or other uses compatible with the extent of the  
38 contamination of the soil and that access to that site be restricted in  
39 a manner compatible with the allowable use of that property.

40 (2) The department may develop differential remediation  
41 standards for surface water or groundwater that take into account  
42 the current, planned, or potential use of that water in accordance  
43 with the "Clean Water Act" (33 U.S.C. s.1251 et seq.) and the  
44 "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.).

45 d. The department shall develop minimum remediation  
46 standards for soil, groundwater, and surface water intended to be  
47 protective of public health and safety taking into account the  
48 provisions of this section. In developing these minimum health risk

1 remediation standards the department shall identify the hazards  
2 posed by a contaminant to determine whether exposure to that  
3 contaminant can cause an increase in the incidence of an adverse  
4 health effect and whether the adverse health effect may occur in  
5 humans. The department shall set minimum soil remediation health  
6 risk standards for both residential and nonresidential uses that:

7 (1) for human carcinogens, as categorized by the United States  
8 Environmental Protection Agency, will result in an additional  
9 cancer risk of one in one million;

10 (2) for noncarcinogens, will limit the Hazard Index for any  
11 given effect to a value not exceeding one.

12 The health risk standards established in this subsection are for  
13 any particular contaminant and not for the cumulative effects of  
14 more than one contaminant at a site.

15 e. Remediation standards and other remediation requirements  
16 established pursuant to this section and regulations adopted  
17 pursuant thereto shall apply to remediation activities required  
18 pursuant to the "Spill Compensation and Control Act," P.L.1976,  
19 c.141 (C.58:10-23.11 et seq.), the "Water Pollution Control Act,"  
20 P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21  
21 et seq.), the "Industrial Site Recovery Act," P.L.1983, c.330  
22 (C.13:1K-6 et al.), the "Solid Waste Management Act," P.L.1970,  
23 c.39 (C.13:1E-1 et seq.), the "Comprehensive Regulated Medical  
24 Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the  
25 "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279  
26 (C.13:1E-49 et seq.), the "Sanitary Landfill Facility Closure and  
27 Contingency Fund Act," P.L.1981, c.306 (C.13:1E-100 et seq.), the  
28 "Regional Low-Level Radioactive Waste Disposal Facility Siting  
29 Act," P.L.1987, c.333 (C.13:1E-177 et seq.), or any other law or  
30 regulation by which the State may compel a person to perform  
31 remediation activities on contaminated property. However, nothing  
32 in this subsection shall be construed to limit the authority of the  
33 department to establish discharge limits for pollutants or to  
34 prescribe penalties for violations of those limits pursuant to  
35 P.L.1977, c.74 (C.58:10A-1 et seq.), or to require the complete  
36 removal of nonhazardous solid waste pursuant to law.

37 f. (1) A person performing a remediation of contaminated real  
38 property, in lieu of using the established minimum soil remediation  
39 standard for either residential use or nonresidential use adopted by  
40 the department pursuant to subsection c. of this section, may submit  
41 to the department a request to use an alternative residential use or  
42 nonresidential use soil remediation standard. The use of an  
43 alternative soil remediation standard shall be based upon site  
44 specific factors which may include (1) physical site characteristics  
45 which may vary from those used by the department in the  
46 development of the soil remediation standards adopted pursuant to  
47 this section; or (2) a site specific risk assessment. If a person  
48 performing a remediation requests to use an alternative soil

1 remediation standard based upon a site specific risk assessment, that  
2 person shall demonstrate to the department that the requested  
3 deviation from the risk assessment protocol used by the department  
4 in the development of soil remediation standards pursuant to this  
5 section is consistent with the guidance and regulations for exposure  
6 assessment developed by the United States Environmental  
7 Protection Agency pursuant to the "Comprehensive Environmental  
8 Response, Compensation, and Liability Act of 1980," 42  
9 U.S.C.s.9601 et seq. and other statutory authorities as applicable. A  
10 site specific risk assessment may consider exposure scenarios and  
11 assumptions that take into account the form of the contaminant  
12 present, natural biodegradation, fate and transport of the  
13 contaminant, available toxicological data that are based upon  
14 generally accepted and peer reviewed scientific evidence or  
15 methodologies , and physical characteristics of the site, including,  
16 but not limited to, climatic conditions and topographic conditions.  
17 Nothing in this subsection shall be construed to authorize the use of  
18 an alternative soil remediation standard in those instances where an  
19 engineering control is the appropriate remedial action, as  
20 determined by the department, to prevent exposure to  
21 contamination.

22 Upon a determination by the department that the requested  
23 alternative remediation standard satisfies the department's  
24 regulations, is protective of public health and safety, as established  
25 in subsection d. of this section, and is protective of the environment  
26 pursuant to subsection a. of this section, the alternative residential  
27 use or nonresidential use soil remediation standard shall be  
28 approved by the department. The burden to demonstrate that the  
29 requested alternative remediation standard is protective rests with  
30 the person requesting the alternative standard and the department  
31 may require the submission of any documentation as the department  
32 determines to be necessary in order for the person to meet that  
33 burden.

34 (2) The department may, upon its own initiative, require an  
35 alternative remediation standard for a particular contaminant for a  
36 specific real property site, in lieu of using the established minimum  
37 residential use or nonresidential use soil remediation standard  
38 adopted by the department for a particular contaminant pursuant to  
39 this section. The department may require an alternative remediation  
40 standard pursuant to this paragraph upon a determination by the  
41 department, based on the weight of the scientific evidence, that due  
42 to specific physical site characteristics of the subject real property,  
43 including, but not limited to, its proximity to surface water, the use  
44 of the adopted residential use or nonresidential use soil remediation  
45 standards would not be protective , or would be unnecessarily  
46 overprotective, of public health or safety or of the environment, as  
47 appropriate.



1 g. The development, selection, and implementation of any  
2 remediation standard or remedial action shall ensure that it is  
3 protective of public health, safety, and the environment, as  
4 applicable, as provided in this section. In determining the  
5 appropriate remediation standard or remedial action that shall occur  
6 at a site, the department and any person performing the remediation,  
7 shall base the decision on the following factors:

8 (1) Unrestricted use remedial actions, limited restricted use  
9 remedial actions and restricted use remedial actions shall be  
10 allowed except that unrestricted use remedial actions and limited  
11 restricted use remedial actions shall be preferred over restricted use  
12 remedial actions. **【The】** For any remediation initiated one year after  
13 the date of enactment of P.L. , c. (C. ) (pending before the  
14 Legislature as this bill), the department shall require the use of an  
15 unrestricted use remedial action, or a presumptive remedy or an  
16 alternative remedy as provided in paragraph (10) of this subsection,  
17 at a site or area of concern where new construction is proposed for  
18 residential purposes, for use as a child care center licensed pursuant  
19 to P.L.1983, c.492 (C.30:5B-1 et seq.), or as a public school or  
20 private school as defined in N.J.S.18A:1-1, as a charter school  
21 established pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.), or  
22 where there will be a change in the use of the site to residential,  
23 child care, or public school, private school, or charter school  
24 purposes or another purpose that involves use by a sensitive  
25 population. For any remediation initiated on or after the date of  
26 enactment of P.L. , c. (C. ) (pending before the Legislature as  
27 this bill), the department may require the use of an unrestricted use  
28 remedial action or a presumptive remedy as provided in guidelines  
29 adopted pursuant to paragraph (10) of this subsection for a site or  
30 area of concern that is to be used for residential, child care, or  
31 public school, private school, or charter school purposes or another  
32 purpose that involves use by a sensitive population. Except as  
33 provided in this subsection, and section 27 of P.L. , c. (C. )  
34 (pending before the Legislature as this bill), the department,  
35 however, may not disapprove the use of a restricted use remedial  
36 action or a limited restricted use remedial action so long as the  
37 selected remedial action meets the health risk standard established  
38 in subsection d. of this section, and where, as applicable, is  
39 protective of the environment. 【The】 Except as provided in this  
40 subsection and section 27 of P.L. , c. (C. ) (pending before  
41 the Legislature as this bill), the choice of the remedial action to be  
42 implemented shall be made by the person 【performing】 responsible  
43 for conducting the remediation in accordance with regulations  
44 adopted by the department and that choice of the remedial action  
45 shall be approved by the department if all the criteria for remedial  
46 action selection enumerated in this section , as applicable, are met.  
47 **【The】** Except as provided in section 27 of P.L. , c. (C. )  
48 (pending before the Legislature as this bill), the department may not

1 require a person to compare or investigate any alternative remedial  
2 action as part of its review of the selected remedial action . The  
3 department may disapprove the selection of a remedial action for a  
4 site on which the proposed remedial action will render the property  
5 unusable for future redevelopment or for recreational use ;

6 (2) Contamination may, upon the department's approval, be left  
7 onsite at levels or concentrations that exceed the minimum soil  
8 remediation standards for residential use if the implementation of  
9 institutional or engineering controls at that site will result in the  
10 protection of public health, safety and the environment at the health  
11 risk standard established in subsection d. of this section **[and]** , if  
12 the requirements established in subsections a., b., c. and d. of  
13 section 36 of P.L.1993, c.139 (C.58:10B-13) , and paragraphs (1)  
14 and (10) of this subsection, are met . The department may also  
15 require the treatment or removal of contaminated material that  
16 would pose an acute health or safety hazard in the event of failure  
17 of an engineering control ;

18 (3) Real property on which there is soil that has not been  
19 remediated to the residential soil remediation standards, or real  
20 property on which the soil, groundwater, or surface water has been  
21 remediated to meet the required health risk standard by the use of  
22 engineering or institutional controls, may be developed or used for  
23 residential purposes, or for any other similar purpose, if (a) all areas  
24 of that real property at which a person may come into contact with  
25 soil are remediated to meet the residential soil remediation  
26 standards **[and]** , (b) it is clearly demonstrated that for all areas of  
27 the real property, other than those described in subparagraph (a)  
28 above, engineering and institutional controls can be implemented  
29 and maintained on the real property sufficient to meet the health  
30 risk standard as established in subsection d. of this section , and (c)  
31 a presumptive remedy established and approved by the department  
32 pursuant to paragraph (10) of this subsection, or an alternative  
33 remedy approved by the department pursuant to paragraph (10) of  
34 this subsection, has been approved, as provided in paragraphs (1)  
35 and (10) of this subsection ;

36 (4) Remediation shall not be required beyond the regional  
37 natural background levels for any particular contaminant. The  
38 department shall develop regulations that set forth a process to  
39 identify background levels of contaminants for a particular region.  
40 For the purpose of this paragraph "regional natural background  
41 levels" means the concentration of a contaminant consistently  
42 present in the environment of the region of the site and which has  
43 not been influenced by localized human activities;

44 (5) Remediation shall not be required of the owner or operator  
45 of real property for contamination coming onto the site from  
46 another property owned and operated by another person, unless the  
47 owner or operator is the person who is liable for cleanup and  
48 removal costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.);

1 (6) Groundwater that is contaminated shall not be required to be  
2 remediated to a level or concentration for any particular  
3 contaminant lower than the level or concentration that is migrating  
4 onto the property from another property owned and operated by  
5 another person;

6 (7) The technical performance, effectiveness and reliability of  
7 the proposed remedial action in attaining and maintaining  
8 compliance with applicable remediation standards and required  
9 health risk standards shall be considered. In reviewing a proposed  
10 remedial action, the department or the licensed site remediation  
11 professional shall also consider the ability of the owner or operator  
12 to implement the proposed remedial action within a reasonable time  
13 frame without jeopardizing public health, safety or the environment;

14 (8) The use of a remedial action for soil contamination that is  
15 determined by the department to be effective in its guidance  
16 document created pursuant to section 38 of P.L.1993, c.139  
17 (C.58:10B-14), is presumed to be an appropriate remedial action if  
18 it is to be implemented on a site in the manner described by the  
19 department in the guidance document and applicable regulations  
20 and if all of the conditions for remedy selection provided for in this  
21 section are met. The burden to prove compliance with the criteria  
22 in the guidance document is with the person **【performing】**  
23 responsible for conducting the remediation;

24 (9) (Deleted by amendment, P.L.1997, c.278) ;

25 (10) The department shall, by rule or regulation, establish  
26 presumptive remedies, use of which shall be required on any site or  
27 area of concern to be used for residential purposes, as a child care  
28 center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.), as a  
29 public school or private school as defined in N.J.S.18A:1-1, or as a  
30 charter school established pursuant to P.L.1995, c.426 (C.18A:36A-  
31 1 et seq.). The department may also issue guidelines that provide  
32 for presumptive remedies that may be required as provided in  
33 paragraph (1) of this subsection, on a site to be used for residential  
34 purposes, as a child care center, or as a public school, private school  
35 or charter school. The presumptive remedies shall be based on the  
36 historic use of the property, the nature and extent of the  
37 contamination at the site, the future use of the site and any other  
38 factors deemed relevant by the department. The department may  
39 include the use of engineering and institutional controls in the  
40 presumptive remedies authorized pursuant to this subsection. If the  
41 person responsible for conducting the remediation demonstrates to  
42 the department that the use of an unrestricted use remedial action or  
43 a presumptive remedy is impractical due to conditions at the site, or  
44 that an alternative remedy would be equally protective over time as  
45 a presumptive remedy, then an alternative remedy for the site that is  
46 protective of the public health and safety may be proposed for  
47 review and approval by the department;

1     (11) The department may authorize a person conducting a  
2     remediation to divide a contaminated site into one or more areas of  
3     concern. For each area of concern, a different remedial action may  
4     be selected provided the requirements of this subsection are met and  
5     the remedial action selected is consistent with the future use of the  
6     property; and

7     (12) The construction of single family residences, public schools,  
8     private schools, or charter schools, or child care centers shall be  
9     prohibited on a landfill that undergoes a remediation if engineering  
10    controls are required for the management of landfill gas or leachate.

11    The burden to demonstrate that a remedial action is protective of  
12    public health, safety and the environment, as applicable, and has  
13    been selected in conformance with the provisions of this subsection  
14    is with the person **【proposing the remedial action】** responsible for  
15    conducting the remediation.

16    The department may require the person **【performing】**  
17    responsible for conducting the remediation to supply the  
18    information required pursuant to this subsection as is necessary for  
19    the department to make a determination.

20    h. (1) The department shall adopt regulations which establish a  
21    procedure for a person to demonstrate that a particular parcel of  
22    land contains large quantities of historical fill material. Upon a  
23    determination by the department that large quantities of historic fill  
24    material exist on that parcel of land, there is a rebuttable  
25    presumption that the department shall not require any person to  
26    remove or treat the fill material in order to comply with applicable  
27    health risk or environmental standards. In these areas the  
28    department shall establish by regulation the requirement for  
29    engineering or institutional controls that are designed to prevent  
30    exposure of these contaminants to humans, that allow for the  
31    continued use of the property, that are less costly than removal or  
32    treatment, which maintain the health risk standards as established in  
33    subsection d. of this section, and, as applicable, are protective of the  
34    environment. The department may rebut the presumption only upon  
35    a finding by the preponderance of the evidence that the use of  
36    engineering or institutional controls would not be effective in  
37    protecting public health, safety, and the environment. The  
38    department may not adopt any rule or regulation that has the effect  
39    of shifting the burden of rebutting the presumption. For the  
40    purposes of this paragraph "historic fill material" means generally  
41    large volumes of non-indigenous material, no matter what date they  
42    were emplaced on the site, used to raise the topographic elevation  
43    of a site, which were contaminated prior to emplacement and are in  
44    no way connected with the operations at the location of  
45    emplacement and which include, but are not limited to, construction  
46    debris, dredge spoils, incinerator residue, demolition debris, fly ash,  
47    and non-hazardous solid waste. Historic fill material shall not  
48    include any material which is substantially chromate chemical

1 production waste or any other chemical production waste or waste  
2 from processing of metal or mineral ores, residues, slags or tailings.

3 (2) The department shall develop recommendations for remedial  
4 actions in large areas of historic industrial contamination. These  
5 recommendations shall be designed to meet the health risk  
6 standards established in subsection d. of this section, and to be  
7 protective of the environment and shall take into account the  
8 industrial history of these sites, the extent of the contamination that  
9 may exist, the costs of remedial actions, the economic impacts of  
10 these policies, and the anticipated uses of these properties. The  
11 department shall issue a report to the Senate Environment  
12 Committee and to the Assembly [Agriculture and Waste  
13 Management] Environment and Solid Waste Committee, or their  
14 successors, explaining these recommendations and making any  
15 recommendations for legislative or regulatory action.

16 (3) The department may not, as a condition of allowing the use  
17 of a nonresidential use soil remediation standard, or the use of  
18 institutional or engineering controls, require the owner of that real  
19 property, except as provided in section 36 of P.L.1993, c.139  
20 (C.58:10B-13), to restrict the use of that property through the filing  
21 of a deed easement, covenant, or condition.

22 i. The department may not require a remedial action workplan  
23 to be prepared or implemented or engineering or institutional  
24 controls to be imposed upon any real property unless sampling  
25 performed at that real property demonstrates the existence of  
26 contamination above the applicable remediation standards.

27 j. Upon the approval by the department or by a licensed site  
28 remediation professional of a remedial action workplan, or similar  
29 plan that describes the extent of contamination at a site and the  
30 remedial action to be implemented to address that contamination,  
31 the department may not subsequently require a change to that  
32 workplan or similar plan in order to compel a different remediation  
33 standard due to the fact that the established remediation standards  
34 have changed; however, the department may compel a different  
35 remediation standard if the difference between the new remediation  
36 standard and the remediation standard approved in the workplan or  
37 other plan differs by an order of magnitude. The limitation to the  
38 department's authority to change a workplan or similar plan  
39 pursuant to this subsection shall only apply if the workplan or  
40 similar plan is being implemented in a reasonable timeframe, as  
41 may be indicated in the approved remedial action workplan or  
42 similar plan.

43 k. Notwithstanding any other provisions of this section, all  
44 remediation standards and remedial actions that involve real  
45 property located in the Pinelands area shall be consistent with the  
46 provisions of the "Pinelands Protection Act," P.L.1979, c.111  
47 (C.13:18A-1 et seq.), any rules and regulations promulgated  
48 pursuant thereto, and with section 502 of the "National Parks and

1 Recreation Act of 1978," 16 U.S.C. s.471i; and all remediation  
2 standards and remedial actions that involve real property located in  
3 the Highlands preservation area shall be consistent with the  
4 provisions of the "Highlands Water Protection and Planning Act,"  
5 P.L.2004, c.120 (C.13:20-1 et al.), and any rules and regulations  
6 and the Highland regional master plan adopted pursuant thereto.

7 1. Upon the adoption of a remediation standard for a particular  
8 contaminant in soil, groundwater, or surface water pursuant to this  
9 section, the department may amend that remediation standard only  
10 upon a finding that a new standard is necessary to maintain the  
11 health risk standards established in subsection d. of section 35 of  
12 P.L.1993, c.139 (C.58:10B-12) or to protect the environment, as  
13 applicable. The department may not amend a public health based  
14 soil remediation standard to a level that would result in a health risk  
15 standard more protective than that provided for in subsection d. of  
16 section 35 of P.L.1993, c.139 (C.58:10B-12).

17 m. Nothing in P.L.1993, c.139 shall be construed to restrict or  
18 in any way diminish the public participation which is otherwise  
19 provided under the provisions of the "Spill Compensation and  
20 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.).

21 n. Notwithstanding any provision of subsection a. of section 36  
22 of P.L.1993, c.139 (C.58:10B-13) to the contrary, the department  
23 may not require a person intending to implement a remedial action  
24 at an underground storage tank facility storing heating oil for on-  
25 site consumption at a one to four family residential dwelling to  
26 provide advance notice to a municipality prior to implementing that  
27 remedial action.

28 o. A person who has remediated a site pursuant to the  
29 provisions of this section, who was liable for the cleanup and  
30 removal costs of that discharge pursuant to the provisions of  
31 paragraph (1) of subsection c. of section 8 of P.L.1976, c.141  
32 (C.58:10-23.11g), and who remains liable for the discharge on that  
33 site due to a possibility that a remediation standard may change,  
34 undiscovered contamination may be found, or because an  
35 engineering control was used to remediate the discharge, shall  
36 maintain with the department a current address at which that person  
37 may be contacted in the event additional remediation needs to be  
38 performed at the site. The requirement to maintain the current  
39 address shall be made part of the conditions of the **no further**  
40 **action letter issued by the department** permit issued pursuant to  
41 section 19 of P.L. , c. (C. ) (pending before the Legislature as  
42 this bill) and the final remediation document.

43 (cf: P.L.2004, c.120, s.81)

44  
45 48. Section 36 of P.L.1993, c.39 (C.58:10B-13) is amended to  
46 read as follows:

47 36. a. When real property is remediated to a nonresidential soil  
48 remediation standard or engineering or institutional controls are

1 used in lieu of remediating a site to meet an established remediation  
2 standard for soil, groundwater, or surface water, the **【department】**  
3 person responsible for conducting the remediation shall, as a  
4 condition of the use of that standard or control measure:

5 (1) **【require the establishment of】** implement any engineering or  
6 institutional controls the department **【determines are reasonably**  
7 **necessary】** requires to prevent exposure to the contaminants,  
8 **【require】** provide maintenance, as necessary, of those controls, and  
9 **【require】** provide for the restriction of the use of the property by  
10 the owner in a manner that prevents exposure;

11 (2) **【require,】** with the consent of the owner of the real property,  
12 provide for the recording with the office of the county recording  
13 officer, in the county in which the property is located, a notice to  
14 inform prospective holders of an interest in the property that  
15 contamination exists on the property at a level that may statutorily  
16 restrict certain uses of or access to all or part of that property, a  
17 delineation of those restrictions, a description of all specific  
18 engineering or institutional controls at the property that exist and  
19 that shall be maintained in order to prevent exposure to  
20 contaminants remaining on the property, and the written consent to  
21 the notice by the owner of the property. The notice shall be  
22 recorded in the same manner as are deeds and other interests in real  
23 property. The department shall develop a uniform deed notice that  
24 ensures the proper filing of the deed notice. The provisions of this  
25 paragraph do not apply to restrictions on the use of surface water or  
26 groundwater;

27 (3) **【require a】** provide written notice to the governing body of  
28 each municipality in which the property is located that contaminants  
29 will exist at the property above residential use soil remediation  
30 standards or any other remediation standards and specifying the  
31 restrictions on the use of or access to all or part of that property and  
32 of the specific engineering or institutional controls at the property  
33 that exist and that shall be maintained;

34 (4) **【require, when determined necessary by the department,**  
35 **that】** post signs 【be posted】 , as required by the department, at any  
36 location at the site where access is restricted or in those areas that  
37 must be maintained in a prescribed manner, to inform persons on  
38 the property that there are restrictions on the use of that property or  
39 restrictions on access to any part of the site;

40 (5) **【require that】** maintain a list of the restrictions **【be kept】** on  
41 site for inspection by governmental enforcement officials; and

42 (6) **【require a person,】** prior to commencing a remedial action,  
43 **【to】** notify , in writing, the governing body of each municipality  
44 wherein the property being remediated is located. The notice shall  
45 include, but not be limited to, the commencement date for the  
46 remedial action; the name, mailing address and business telephone  
47 number of the person implementing the remedial action, or his

1 designated representative; and a brief description of the remedial  
2 action.

3 b. If the owner of the real property does not consent to the  
4 recording of a notice pursuant to paragraph (2) of subsection a. of  
5 this section, the **【department】** person responsible for conducting the  
6 remediation shall **【require the use of a】** implement a remedial  
7 action that meets the residential soil remediation standard in the  
8 remediation of that real property.

9 c. Whenever engineering or institutional controls on property  
10 as provided in subsection a. of this section are no longer required,  
11 or whenever the engineering or institutional controls are changed  
12 because of the performance of subsequent remedial activities, a  
13 change in conditions at the site, or the adoption of revised  
14 remediation standards, the department shall require that the owner  
15 or operator of that property record with the office of the county  
16 recording officer a notice that the use of the property is no longer  
17 restricted or delineating the new restrictions. The **【department shall**  
18 **also require that the owner or operator】** person responsible for  
19 conducting the remediation shall notify, in writing, the municipality  
20 in which the property is located of the removal or change of the  
21 restrictive use conditions.

22 d. The owner or lessee of any real property, or any person  
23 operating a business on real property, which has been remediated to  
24 a nonresidential use soil remediation standard or on which **【the**  
25 **department has allowed】** a remedial action that includes  
26 engineering or institutional controls for soil, groundwater, or  
27 surface water has been implemented to protect the public health,  
28 safety, or the environment, as applicable, shall maintain the  
29 engineering or institutional controls as required by the department.  
30 An owner, lessee, or operator who takes any action that results in  
31 the improper alteration or removal of engineering or institutional  
32 controls or who fails to maintain the engineering or institutional  
33 controls as required by the department, shall be subject to the  
34 penalties and actions set forth in section 22 of P.L.1976, c.141  
35 (C.58:10-23.11u) and, where applicable, shall be liable for any  
36 additional remediation and damages pursuant to the provisions of  
37 section 8 of P.L.1976, c.141 (C.58:10-23.11g). The provisions of  
38 this subsection shall not apply if a notification received pursuant to  
39 subsection b. of this section authorizes all restrictions or controls to  
40 be removed from the subject property.

41 e. Notwithstanding the provisions of any other law, or any rule,  
42 regulation, or order adopted pursuant thereto to the contrary,  
43 whenever contamination at a property is remediated in compliance  
44 with **【any】** all applicable soil, **【or any】** groundwater or surface  
45 water remediation standards that were in effect or approved by the  
46 department at the completion of the remediation, no person, except  
47 as otherwise provided in this section, shall be liable for the cost of



1 any additional remediation that may be required by a subsequent  
2 adoption by the department of a more stringent remediation  
3 standard for a particular contaminant. Upon the adoption of a  
4 regulation that amends a remediation standard, or where the  
5 adoption of a regulation would change a remediation standard  
6 which was otherwise approved by the department, only a person  
7 who is liable to clean up and remove that contamination pursuant to  
8 section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not  
9 have a defense to liability pursuant to subsection d. of that section,  
10 shall be liable for any additional remediation costs necessary to  
11 bring the site into compliance with the new remediation standards  
12 except that no person shall be so liable unless the difference  
13 between the new remediation standard and the level or  
14 concentration of a contaminant at the property differs by an order of  
15 magnitude. The department may compel a person who is liable for  
16 the additional remediation costs to perform additional remediation  
17 activities to meet the new remediation standard except that a person  
18 may not be compelled to perform any additional remediation  
19 activities on the site if that person can demonstrate that the existing  
20 engineering or institutional controls on the site prevent exposure to  
21 the contamination and that the site remains protective of public  
22 health , safety and the environment pursuant to section 35 of  
23 P.L.1993, c.139 (C.58:10B-12). The burden to prove that a site  
24 remains protective is on the person liable for the additional  
25 remediation costs. A person liable for the additional remediation  
26 costs who is relying on engineering or institutional controls to make  
27 a site protective, shall comply with the provisions of subsections a.,  
28 b., c. and d. of this section.

29 Nothing in the provisions of this subsection shall be construed to  
30 affect the authority of the department, pursuant to subsection f. of  
31 this section, to require additional remediation on real property  
32 where engineering controls were implemented.

33 Nothing in the provisions of this subsection shall limit the rights  
34 of a person, other than the State, or any department or agency  
35 thereof, to bring a civil action for damages, contribution, or  
36 indemnification as provided by statutory or common law.

37 f. Whenever the department approves or has approved , or a  
38 licensed site remediation professional implements a remedial action  
39 that includes, the use of engineering controls for the remediation of  
40 soil, groundwater, or surface water, to protect public health, safety  
41 or the environment, the department may require additional  
42 remediation of that site only if the engineering controls no longer  
43 are protective of public health, safety, or the environment.

44 g. Whenever the department approves or has approved , or a  
45 licensed site remediation professional implements a remedial action  
46 that includes, the use of engineering or institutional controls for the  
47 remediation of soil, groundwater, or surface water, to protect public  
48 health, safety or the environment, the department shall inspect that

1 site at least once every five years in order to ensure that the  
2 engineering and institutional controls are being properly maintained  
3 and that the controls remain protective of public health and safety  
4 and of the environment.

5 h. A property owner of a site on which a deed notice has been  
6 recorded shall notify any person who intends to excavate on the site  
7 of the nature and location of any contamination existing on the site  
8 and of any conditions or measures necessary to prevent exposure to  
9 contaminants.

10 (cf: P.L.1997, c.278, s.18)

11  
12 49. Section 6 of P.L.1997, c.278 (C.58:10B-13.1) is amended to  
13 read as follows:

14 6. a. Whenever after the effective date of P.L.1997, c.278  
15 (C.58:10B-1.1 et al.) the Department of Environmental Protection  
16 issues a no further action letter pursuant to a remediation, it shall  
17 also issue to the person performing the remediation a covenant not  
18 to sue with respect to the real property upon which the remediation  
19 has been conducted. A covenant not to sue shall be executed by the  
20 person performing the remediation and by the department in order  
21 to become effective. The covenant not to sue shall be consistent  
22 with any conditions and limitations contained in the no further  
23 action letter. The covenant not to sue shall be for any area of  
24 concern remediated and may apply to the entire real property if the  
25 remediation included a preliminary assessment and, if necessary, a  
26 site investigation of the entire real property, and any other  
27 necessary remedial actions. The covenant remains effective only  
28 for as long as the real property for which the covenant was issued  
29 continues to meet the conditions of the no further action letter.  
30 Upon a finding by the department that real property or a portion  
31 thereof to which a covenant not to sue pertains, no longer meets  
32 with the conditions of the no further action letter, the department  
33 shall provide notice of that fact to the person responsible for  
34 maintaining compliance with the no further action letter. The  
35 department may allow the person a reasonable time to come into  
36 compliance with the terms of the original no further action letter. If  
37 the property does not meet the conditions of the no further action  
38 letter and if the department does not allow for a period of time to  
39 come into compliance or if the person fails to come into compliance  
40 within the time period, the department may invoke the provisions of  
41 the covenant not to sue permitting revocation of the covenant not to  
42 sue.

43 Except as provided in subsection e. of this section, a covenant  
44 not to sue shall contain the following, as applicable:

45 (1) a provision releasing the person who undertook the  
46 remediation from all civil liability to the State to perform any  
47 additional remediation, to pay compensation for damage to, or loss  
48 of, natural resources, for the restoration of natural resources in

1 connection with the discharge on the property or for any cleanup  
2 and removal costs;

3 (2) for a remediation that involves the use of engineering or  
4 institutional controls:

5 (a) a provision requiring the person, or any subsequent owner,  
6 lessee, or operator during the person's period of ownership, tenancy,  
7 or operation, to maintain those controls, conduct periodic  
8 monitoring for compliance, and submit to the department, on a  
9 biennial basis, a certification that the engineering and institutional  
10 controls are being properly maintained and continue to be protective  
11 of public health and safety and of the environment. The  
12 certification shall state the underlying facts and shall include the  
13 results of any tests or procedures performed that support the  
14 certification; and

15 (b) a provision revoking the covenant if the engineering or  
16 institutional controls are not being maintained or are no longer in  
17 place; and

18 (3) for a remediation that involves the use of engineering  
19 controls but not for any remediation that involves the use of  
20 institutional controls only, a provision barring the person or persons  
21 whom the covenant not to sue benefits, from making a claim against  
22 the New Jersey Spill Compensation Fund and the Sanitary Landfill  
23 Facility Contingency Fund for any costs or damages relating to the  
24 real property and remediation covered by the covenant not to sue.  
25 The covenant not to sue shall not bar a claim by any person against  
26 the New Jersey Spill Compensation Fund and the Sanitary Landfill  
27 Contingency Fund for any remediation that involves only the use of  
28 institutional controls if, after a valid no further action letter has  
29 been issued, the department orders additional remediation, except  
30 that the covenant shall bar such a claim if the department ordered  
31 additional remediation in order to remove the institutional control.

32 b. Unless a covenant not to sue issued under this section is  
33 revoked by the department, the covenant shall remain effective.  
34 The covenant not to sue shall apply to all successors in ownership  
35 of the property and to all persons who lease the property or who  
36 engage in operations on the property.

37 c. If a covenant not to sue is revoked, liability for any  
38 additional remediation shall not be applied retroactively to any  
39 person for whom the covenant remained in effect during that  
40 person's ownership, tenancy, or operation of the property.

41 d. A covenant not to sue and the protections it affords shall not  
42 apply to any discharge that occurs subsequent to the issuance of the  
43 no further action letter which was the basis of the issuance of the  
44 covenant, nor shall a covenant not to sue and the protections it  
45 affords relieve any person of the obligations to comply in the future  
46 with laws and regulations.

47 e. The covenant not to sue may be issued to any person who  
48 obtains a no further action letter as provided in subsection a. of this

1 section. The covenant not to sue shall not provide relief from any  
2 liability, either under statutory or common law, to any person who  
3 is liable for cleanup and removal costs pursuant to subsection c. of  
4 section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not  
5 have a defense to liability pursuant to subsection d. of that section.

6 f. (1) Except as provided in paragraph (2) of this subsection,  
7 the department shall not issue covenants not to sue after the  
8 issuance of licenses to site remediation professionals pursuant to the  
9 provisions of section 12 of P.L. , c. (C. ) (pending before the  
10 Legislature as this bill).

11 (2) The department may issue a covenant not to sue pursuant to  
12 this section when it issues a no further action letter for a  
13 remediation of a discharge from an unregulated heating oil tank.

14 (cf: P.L.2005, c.4, s.3)

15  
16 50. Section 5 of P.L.2001, c.154 (C. 58:10B-17.1) is amended to  
17 read as follows:

18 5. a. (1) Except where a limitations provision expressly and  
19 specifically applies to actions commenced by the State or where a  
20 longer limitations period would otherwise apply, and subject to any  
21 statutory provisions or common law rules extending limitations  
22 periods, any civil action concerning the remediation of a  
23 contaminated site or the closure of a sanitary landfill facility  
24 commenced by the State pursuant to the State's environmental laws  
25 shall be commenced within three years next after the cause of action  
26 shall have accrued.

27 (2) For purposes of determining whether a civil action subject to  
28 the limitations periods specified in paragraph (1) of this subsection  
29 has been commenced within time, no cause of action shall be  
30 deemed to have accrued prior to January 1, 2002 or until the  
31 contaminated site is remediated or the sanitary landfill has been  
32 properly closed, whichever is later.

33 b. (1) Except where a limitations provision expressly and  
34 specifically applies to actions commenced by the State or where a  
35 longer limitations period would otherwise apply, and subject to any  
36 statutory provisions or common law rules extending limitations  
37 periods, any civil action concerning the payment of compensation  
38 for damage to, or loss of, natural resources due to the discharge of a  
39 hazardous substance, commenced by the State pursuant to the  
40 State's environmental laws, shall be commenced within five years  
41 and six months next after the cause of action shall have accrued.

42 (2) For purposes of determining whether a civil action subject to  
43 the limitations periods specified in paragraph (1) of this subsection  
44 has been commenced within time, no cause of action shall be  
45 deemed to have accrued prior to January 1, 2002 or until the  
46 completion of the remedial **【investigation of】** action for the entire  
47 contaminated site or the entire sanitary landfill facility, whichever  
48 is later.

1 c. As used in this section:

2 "State's environmental laws" means the "Spill Compensation and  
3 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water  
4 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),  
5 P.L.1986, c.102 (C.58:10A-21 et seq.), the "Brownfield and  
6 Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-  
7 1.1 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330  
8 (C.13:1K-6 et al.), the "Solid Waste Management Act," P.L.1970,  
9 c.39 (C.13:1E-1 et seq.), the "Comprehensive Regulated Medical  
10 Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the  
11 "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279  
12 (C.13:1E-49 et seq.), the "Sanitary Landfill Facility Closure and  
13 Contingency Fund Act," P.L.1981, c.306 (C.13:1E-100 et seq.), the  
14 "Regional Low-Level Radioactive Waste Disposal Facility Siting  
15 Act," P.L.1987, c.333 (C.13:1E-177 et seq.), or any other law or  
16 regulation by which the State may compel a person to perform  
17 remediation activities on contaminated property; and

18 "State" means the State, its political subdivisions, any office,  
19 department, division, bureau, board, commission or agency of the  
20 State or one of its political subdivisions, and any public authority or  
21 public agency, including, but not limited to, the New Jersey Transit  
22 Corporation and the University of Medicine and Dentistry of New  
23 Jersey.

24 d. Nothing in the amendatory provisions to this section adopted  
25 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
26 this bill) shall extend a limitations period that has expired prior to  
27 the date of enactment of P.L. , c. (C. ) (pending before the  
28 Legislature as this bill).

29 (cf: P.L.2005, c.245, s.1)

30

31 51. Section 45 of P.L.1993, c.139 (C.58:10B-20) is amended to  
32 read as follows:

33 45. a. There is created in the Department of Environmental  
34 Protection **and Energy** a special, revolving fund to be known as  
35 the Remediation Guarantee Fund. The fund shall be credited with  
36 all remediation funding source surcharges imposed pursuant to  
37 section 33 of P.L.1993, c.139 (C.58:10B-11), all moneys  
38 appropriated to it by law, all moneys collected in subrogation  
39 actions to recover moneys expended from the fund, and all moneys  
40 earned from the investment of the moneys in the fund.

41 b. **【The Commissioner of Environmental Protection and**  
42 **Energy shall appoint and supervise an administrator of the fund.**  
43 **The administrator shall be the chief executive of the fund, shall**  
44 **approve all disbursements of moneys from the fund, and shall**  
45 **ensure the proper deposit of all moneys authorized to be deposited**  
46 **into the fund.】** (Deleted by amendment, P.L. , c. )(pending  
47 before the Legislature as this bill)

1 c. (1) Moneys in the fund shall be used by the Department of  
2 Environmental Protection **and Energy** to remediate, or contract  
3 for the remediation of, any real property for which a person was  
4 required to establish a remediation funding source pursuant to  
5 section 25 of P.L.1993, c.139 (C.58:10B-3) and where that person  
6 fails to conduct or properly conduct that remediation.

7 (2) Moneys in the fund may be disbursed by the department as  
8 technical assistance grants to nonprofit organizations to evaluate  
9 remediation methods and monitor site conditions at specific sites of  
10 public concern in the local community in accordance with rules and  
11 regulations adopted by the department.

12 d. Any moneys expended by the department from the fund  
13 pursuant to this section shall constitute a debt of (1) the person  
14 required to establish the remediation funding source who fails to  
15 conduct or properly conduct a remediation and funds are expended  
16 pursuant to subsection c. of this section, and (2) against the  
17 discharger. The debt shall constitute a lien on all property owned by  
18 the person required to establish the remediation funding source and  
19 against the discharger to the same extent and in the same manner as  
20 provided for liens in subsection f. of section 7 of P.L.1976, c.141  
21 (C.58:10-23.11f).

22 e. Whenever the department expends moneys from the fund for  
23 a remediation, it shall have a cause of action to recover from the  
24 person required to establish the remediation funding source or from  
25 any other person liable for the discharge pursuant to section 8 of  
26 P.L.1976, c.141 (C.58:10-23.11g) triple the amount of moneys  
27 expended for the remediation.

28 f. Moneys in the fund may be appropriated to pay for the costs  
29 to administer the fund except that those appropriations may not  
30 exceed the amount of moneys deposited into the fund earned from  
31 the investment of moneys in the fund.

32 (cf: P. L.1993, c.139, s.45)

33  
34 52. Section 34 of P.L.1997, c.278 (C.58:10B-26) is amended to  
35 read as follows:

36 34. As used in sections 34 through 39 of P.L.1997, c.278  
37 (C.58:10B-26 through 58:10B-31):

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

43 "Developer" means any person that enters or proposes to enter  
44 into a redevelopment agreement with the State pursuant to the  
45 provisions of section 35 of P.L.1997, c.278 (C.58:10B-27).

46 "Director" means the Director of the Division of Taxation in the  
47 Department of the Treasury.

1     "Licensed site remediation professional" means an individual  
2     who is licensed by the Site Remediation Professional Licensing  
3     Board pursuant to section 7 of P.L.     , c.     (C.     ) (pending before  
4     the Legislature as this bill) or the Department of Environmental  
5     Protection pursuant to section 12 of P.L.     , c.     (C.     ) (pending  
6     before the Legislature as this bill).

7     "No further action letter" means a written determination by the  
8     Department of Environmental Protection that based upon an  
9     evaluation of the historical use of a particular site, or of an area of  
10    concern or areas of concern at that site, as applicable, and any other  
11    investigation or action the department deems necessary, there are no  
12    discharged contaminants present at the site, at the area of concern or  
13    areas of concern, at any other site to which a discharge originating  
14    at the site has migrated, or that any discharged contaminants present  
15    at the site or that have migrated from the site have been remediated  
16    in accordance with applicable remediation regulations.

17    "Project" or "redevelopment project" means a specific work or  
18    improvement, including lands, buildings, improvements, real and  
19    personal property or any interest therein, including lands under  
20    water, riparian rights, space rights and air rights, acquired, owned,  
21    developed or redeveloped, constructed, reconstructed, rehabilitated  
22    or improved, undertaken by a developer within an area of land  
23    whereon a contaminated site is located, under a redevelopment  
24    agreement with the State pursuant to section 35 of P.L.1997, c.278  
25    (C.58:10B-27).

26    "Redevelopment agreement" means an agreement between the  
27    State and a developer under which the developer agrees to perform  
28    any work or undertaking necessary for the remediation of the  
29    contaminated site located at the site of the redevelopment project,  
30    and for the clearance, development or redevelopment, construction  
31    or rehabilitation of any structure or improvement of commercial,  
32    industrial or public structures or improvements within an area of  
33    land whereon a contaminated site is located pursuant to section 35  
34    of P.L.1997, c.278 (C.58:10B-27), and the State agrees that the  
35    developer shall be eligible for the reimbursement of up to 75%of  
36    the costs of remediation of the contaminated site from the fund  
37    established pursuant to section 38 of P.L.1997, c.278 (C.58:10B-30)  
38    as authorized pursuant to section 36 of P.L.1997, c.278 (C.58:10B-  
39    28).

40    "Remediation" or "remediate" means all necessary actions to  
41    investigate and clean up or respond to any known, suspected, or  
42    threatened discharge of contaminants, including, as necessary, the  
43    preliminary assessment, site investigation, remedial investigation,  
44    and remedial action, as those terms are defined in section 23 of  
45    P.L.1993, c.139 (C.58:10B-1).

46    "Remediation costs" means all reasonable costs associated with  
47    the remediation of a contaminated site except that "remediation

costs" shall not include any costs incurred in financing the remediation.

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

(cf: P.L.2003, c.224, s.5)

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

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

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

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

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

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



1 compliance with the memorandum of agreement, or (ii) complied  
2 with the requirements set forth in subsection b. of section 30 of  
3 P.L. , c. (C. ) (pending before the Legislature as this bill) ;  
4 and

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

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

18 (cf: P.L.2003, c.224, s.7)

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

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

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

37 c. After the developer has entered into a memorandum of  
38 agreement, or other oversight document with the Commissioner of  
39 Environmental Protection, or after the developer has notified the  
40 Department of Environmental Protection of the name and license  
41 information of the licensed site remediation professional who has  
42 been hired to perform the remediation as required pursuant to  
43 subsection b. of section 30 of P.L. , c. (C. ) (pending before  
44 the Legislature as this bill), the commissioner shall submit a copy  
45 thereof to the developer, the clerk of the municipality in which the  
46 subject property is located, the Chief Executive Officer and

1 Secretary of the Commerce and Economic Growth Commission,  
2 and the director.

3 (cf: P.L.2003, c.224, s.8)  
4

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

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

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

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

42 (cf: P.L.2005, c.360, s.2)  
43

44 56. Sections 1 through 32 and section 50 of this act shall take  
45 effect immediately, and the remainder of this act shall take effect  
46 180 days after the date of enactment.