

[First Reprint]

**ASSEMBLY, No. 5293**

**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

INTRODUCED MAY 13, 2019

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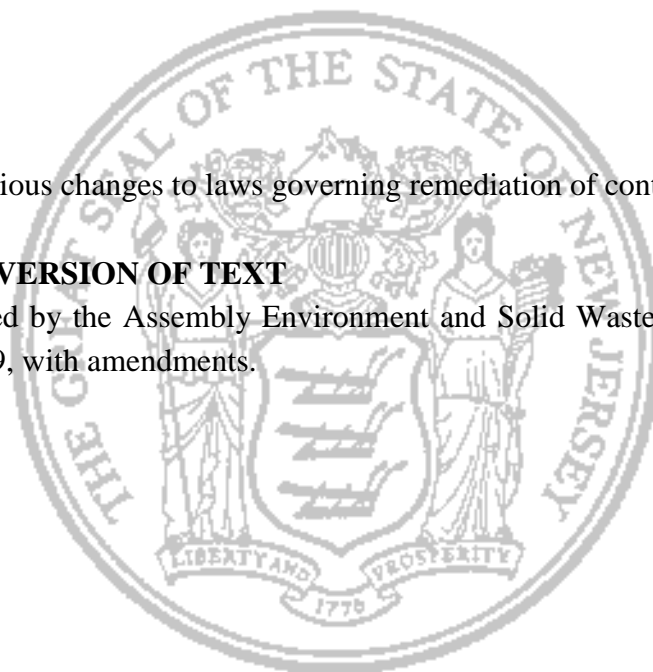
**Assemblywoman Vainieri Huttle, Senators Singleton and Oroho**

**SYNOPSIS**

Makes various changes to laws governing remediation of contaminated sites.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Environment and Solid Waste Committee on June 10, 2019, with amendments.



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

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

3

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

6

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

9 3. As used in this act:

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

17 "Closing operations" means:

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

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

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

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

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

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

44 "Transferring ownership or operations" means:

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

Matter underlined thus is new matter

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AEN committee amendments adopted June 10, 2019.

- 1 (1) any transaction or proceeding through which an industrial  
2 establishment undergoes a change in ownership;
  - 3 (2) the sale or transfer of more than 50 **【%】** percent of the assets  
4 of an industrial establishment within any five-year period, as measured  
5 on a constant, annual date-specific basis;
  - 6 (3) the execution of a lease for a period of 99 years or longer for an  
7 industrial establishment; or
  - 8 (4) the dissolution of an entity that is an owner or operator or an  
9 indirect owner of an industrial establishment, except for any  
10 dissolution of an indirect owner of an industrial establishment whose  
11 assets would have been unavailable for the remediation of the  
12 industrial establishment if the dissolution had not occurred;
- 13 "Change in ownership" means:
- 14 (1) the sale or transfer of the business of an industrial  
15 establishment or any of its real property;
  - 16 (2) the sale or transfer of stock in a corporation resulting in a  
17 merger or consolidation involving the direct owner or operator or  
18 indirect owner of the industrial establishment;
  - 19 (3) the sale or transfer of stock in a corporation, or the transfer of a  
20 partnership interest, resulting in a change in the person holding the  
21 controlling interest in the direct owner or operator or indirect owner of  
22 an industrial establishment;
  - 23 (4) the sale or transfer of title to an industrial establishment or the  
24 real property of an industrial establishment by exercising an option to  
25 purchase; or
  - 26 (5) the sale or transfer of a partnership interest in a partnership that  
27 owns or operates an industrial establishment, that would reduce, by 10  
28 **【%】** percent or more, the assets available for remediation of the  
29 industrial establishment;
- 30 "Change in ownership" shall not include:
- 31 (1) a corporate reorganization not substantially affecting the  
32 ownership of the industrial establishment;
  - 33 (2) a transaction or series of transactions involving the transfer of  
34 stock, assets or both, among corporations under common ownership, if  
35 the transaction or transactions will not result in the diminution of the  
36 net worth of the corporation that directly owns or operates the  
37 industrial establishment by more than 10 **【%】** percent, or if an equal or  
38 greater amount in assets is available for the remediation of the  
39 industrial establishment before and after the transaction or  
40 transactions;
  - 41 (3) a transaction or series of transactions involving the transfer of  
42 stock, assets or both, resulting in the merger or de facto merger or  
43 consolidation of the indirect owner with another entity, or in a change  
44 in the person holding the controlling interest of the indirect owner of  
45 an industrial establishment, when the indirect owner's assets would  
46 have been unavailable for cleanup if the transaction or transactions had  
47 not occurred;

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

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

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

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

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

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

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

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

24 "Department" means the Department of Environmental Protection;

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

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

38 "Industrial establishment" means any place of business engaged in  
39 operations which involve the generation, manufacture, refining,  
40 transportation, treatment, storage, handling, or disposal of hazardous  
41 substances or hazardous wastes on-site, above or below ground,  
42 having a Standard Industrial Classification number within 22-39  
43 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard  
44 Industrial Classifications Manual prepared by the Office of  
45 Management and Budget in the Executive Office of the President of  
46 the United States. Those facilities or parts of facilities subject to  
47 operational closure and post-closure maintenance requirements  
48 pursuant to the "Solid Waste Management Act," P.L.1970, c.39

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

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

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

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

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

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

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

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

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

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

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

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

42 "Remediation" or "remediate" means all **【necessary】** actions to  
43 investigate **【and】** , clean up , or respond to any known, suspected, or  
44 threatened discharge of hazardous substances or hazardous wastes,  
45 including **【, as necessary,】** the preliminary assessment, site  
46 investigation, remedial investigation, and remedial action , or any  
47 portion thereof <sup>1</sup> , provided, however, that "remediation" or

1 "remediate" shall not include the payment of compensation for damage  
2 to, or loss of, natural resources<sup>1</sup>;

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

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

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

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

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

1 preliminary assessment.

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

3

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

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

8 a. an accountant pursuant to P.L.1997, c.259 (C.45:2B-  
9 42 et seq.);

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

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

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

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

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

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

17 h. a chiropractor pursuant to P.L.1989, c.153 (C.45:9-  
18 41.17 et seq.);

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

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

23 k. a physical therapist pursuant to P.L.1983, c.296 (C.45:9-  
24 37.11 et seq.);

25 l. a land surveyor pursuant to P.L.1938, c.342 (C.45:8-  
26 27 et seq.);

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

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

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

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

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

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

37

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

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

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

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

47 "Barrel" means 42 United States gallons or 159.09 liters or an  
48 appropriate equivalent measure set by the director for hazardous



1 substances which are other than fluid or which are not commonly  
2 measured by the barrel;

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

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

19 "Commissioner" means the Commissioner of Environmental  
20 Protection;

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

25 "Department" means the Department of Environmental  
26 Protection;

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

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

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

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

45 "Final remediation document" means a no further action letter  
46 issued by the department pursuant to P.L.1993, c.139 (C.58:10B-  
47 1 et al.), or a response action outcome issued by a licensed site

1 remediation professional pursuant to section 14 of P.L.2009, c.60  
2 (C.58:10C-14);

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

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

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

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

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

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

46 (1) 20,000 gallons or more for hazardous substances which are  
47 other than petroleum or petroleum products, or

1 (2) 200,000 gallons or more for hazardous substances of all  
2 kinds.

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

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

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

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

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

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

40 "Petroleum" or "petroleum products" means oil or petroleum of  
41 any kind and in any form, including, but not limited to, oil,  
42 petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil  
43 mixed with other wastes, crude oils, and substances or additives to  
44 be utilized in the refining or blending of crude petroleum or  
45 petroleum stock in this State; however, any compound designated  
46 by specific chemical name on the list of hazardous substances  
47 adopted by the department pursuant to this section shall not be  
48 considered petroleum or a petroleum product for the purposes of

1 P.L.1976, c.141, unless such compound is to be utilized in the  
2 refining or blending of crude petroleum or petroleum stock in this  
3 State;

4 "Preliminary assessment" means the first phase in the process of  
5 identifying areas of concern and determining whether contaminants  
6 are or were present at a site or have migrated or are migrating from  
7 a site, and shall include the initial search for and evaluation of,  
8 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 contaminant is required. The evaluation of historic  
12 information shall be conducted from 1932 to the present, except that  
13 the department may require the search for and evaluation of  
14 additional information relating to ownership and use of the site  
15 prior to 1932 if such information is available through diligent  
16 inquiry of the public records;

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

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

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

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

1 migrated, or that any contaminants present at the site or that have  
2 migrated from the site have been remediated in accordance with  
3 applicable remediation regulations, and all applicable permits and  
4 authorizations have been obtained;

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

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

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

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

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

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

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

30

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

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

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

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

44 (3) Loss of income or impairment of earning capacity due to  
45 damage to real or personal property, including natural resources  
46 destroyed or damaged by a discharge; provided that such loss or  
47 impairment exceeds 10 **【%】** percent of the amount which claimant  
48 derives, based upon income or business records, exclusive of other

1 sources of income, from activities related to the particular real or  
2 personal property or natural resources damaged or destroyed by  
3 such discharge during the week, month or year for which the claim  
4 is filed;

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

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

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

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

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

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

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

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

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

39       (3) In addition to the persons liable pursuant to this subsection,  
40 any person who owns real property acquired on or after September  
41 14, 1993 on which there has been a discharge prior to the person's  
42 acquisition of that property and who knew or should have known  
43 that a hazardous substance had been discharged at the real property,  
44 shall be strictly liable, jointly and severally, without regard to fault,  
45 for all cleanup and removal costs no matter by whom incurred.  
46 Such person shall also be strictly liable, jointly and severally,  
47 without regard to fault, for all cleanup and removal costs incurred  
48 by the department or a local unit pursuant to subsection b. of

1 section 7 of P.L.1976, c.141 (C.58:10-23.11f). Nothing in this  
2 paragraph shall be construed to alter liability of any person who  
3 acquired real property prior to September 14, 1993.

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

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

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

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

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

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

38 To establish that a person had no reason to know that any  
39 hazardous substance had been discharged for the purposes of this  
40 paragraph (2), the person must have undertaken, at the time of  
41 acquisition, all appropriate inquiry into the previous ownership and  
42 uses of the property. For the purposes of this paragraph (2), all  
43 appropriate inquiry shall mean the performance of a preliminary  
44 assessment, and site investigation, if the preliminary assessment  
45 indicates that a site investigation is necessary, as defined in section  
46 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance  
47 with rules and regulations promulgated by the department defining  
48 these terms.



1 Nothing in this paragraph (2) shall be construed to alter liability  
2 of any person who acquired real property prior to September 14,  
3 1993; and

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

1 or engineering controls on the property or to otherwise comply with  
2 the provisions of the final remediation document.

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

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

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

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

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

47 (c) the person did not discharge the hazardous substance, is not  
48 in any way responsible for the hazardous substance, and is not a

1 corporate successor to the discharger or to any person in any way  
2 responsible for the hazardous substance or to anyone liable for  
3 cleanup and removal costs pursuant to this section;

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

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

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

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

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

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

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

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

45 (4) (a) within 30 days after acquisition of the property, the  
46 person commenced a remediation of the discharge, including any  
47 migration, pursuant to a department oversight document executed  
48 prior to acquisition, or (b) for property acquired after the date of

1 enactment of P.L.2009, c.60 (C.58:10C-1 et al.), the person  
2 provides written notice of the acquisition to the department prior to  
3 or on the date of acquisition and the person remediates the property  
4 pursuant to the provisions of section 30 of P.L.2009, c.60  
5 (C.58:10B-1.3), and (c) the department is satisfied that remediation  
6 was completed in a timely and appropriate fashion; and

7 (5) Within ten days after acquisition of the property, or within  
8 30 days after the expiration of the period or periods allowed for the  
9 right of redemption pursuant to tax foreclosure law, the person  
10 agrees in writing to provide access to the State for remediation and  
11 related activities, as determined by the State.

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

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

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

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

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

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

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

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

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

36

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

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

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

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

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

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

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

10 (1) a temporary or permanent injunction;

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

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

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

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

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

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

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

31 (b) the specific citation of the act or omission constituting the  
32 violation;

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

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

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

1 denial shall become a final order upon receipt of the notice by the  
2 violator.

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

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

9 (3) If a civil administrative penalty imposed pursuant to this  
10 section is not paid within 30 days of the date that the penalty is due  
11 and owing, and the penalty is not contested by the person against  
12 whom the penalty has been assessed, or the person fails to make a  
13 payment pursuant to a payment schedule entered into with the  
14 department, an interest charge shall accrue on the amount of the  
15 penalty from the 30th day that amount was due and owing. In the  
16 case of an appeal of a civil administrative penalty, if the amount of  
17 the penalty is upheld, in whole or in part, the rate of interest shall be  
18 calculated on that amount as of the 30th day from the date the  
19 amount was due and owing under the administrative order. The rate  
20 of interest shall be that established by the New Jersey Supreme  
21 Court for interest rates on judgments, as set forth in the Rules  
22 Governing the Courts of the State of New Jersey.

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

30 d. Any person who violates a provision of P.L.1976, c.141  
31 (C.58:10-23.11 et seq.), or a court order issued pursuant thereto, or  
32 who fails to pay a civil administrative penalty in full or to agree to a  
33 schedule of payments therefor, shall be subject to a civil penalty not  
34 to exceed \$50,000.00 per day for each violation, and each day's  
35 continuance of the violation shall constitute a separate violation.  
36 Any penalty incurred under this subsection may be recovered with  
37 costs in a summary proceeding pursuant to **["the penalty**  
38 **enforcement law" (N.J.S.2A:58-1 et seq.)]** the "Penalty  
39 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in  
40 the Superior Court or a municipal court. The Superior Court and  
41 the municipal courts shall have jurisdiction to impose a civil penalty  
42 for a violation of P.L.1976, c.141 (C.58:10-23.11 et seq.) pursuant  
43 to this subsection and in accordance with the procedures set forth in  
44 the "Penalty Enforcement Law of 1999."

45 e. All conveyances used or intended for use in the willful  
46 discharge of any hazardous substance are subject to forfeiture to the

1 State pursuant to the provisions of P.L.1981, c.387 (C.13:1K-  
2 1 et seq.).

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

4

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

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

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

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

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

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

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

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

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

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

47 "Financial assistance" means loans or loan guarantees;

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

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

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

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

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

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

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



1 additional information relating to ownership and use of the site  
2 prior to 1932 if such information is available through diligent  
3 inquiry of the public records;

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

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

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

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

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

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

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

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

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

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

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

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

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

38 "Voluntarily perform a remediation" means performing a  
39 remediation without having been ordered or directed to do so by the  
40 department or by a court and without being compelled to perform a  
41 remediation pursuant to the provisions of P.L.1983, c.330  
42 (C.13:1K-6 et al.).  
43 (cf: P.L.2009, c.60, s.40)

44

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

47 30. a. An owner or operator of an industrial establishment  
48 subject to the provisions of P.L.1983, c.330 (C.13:1K-6 et al.), the

1 discharger of a hazardous substance or a person in any way  
2 responsible for a hazardous substance pursuant to the provisions of  
3 subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), or  
4 the owner or operator of an underground storage tank regulated  
5 pursuant to the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.),  
6 that has discharged a hazardous substance, shall remediate the  
7 discharge of a hazardous substance.

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

11 (1) **hire** retain a licensed site remediation professional to  
12 perform the remediation;

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

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

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

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

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

24 (7) provide access to all applicable documents concerning the  
25 remediation to the department;

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

29 (9) obtain all necessary permits.

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

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

47 (3) No later than three years after the date of enactment of  
48 P.L.2009, c.60 (C.58:10C-1 et al.), a person responsible for

1 conducting the remediation, no matter when the remediation is  
2 initiated, shall comply with the provisions of subsection b. of this  
3 section.

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

9 (2) The provisions of this section shall not apply to any person  
10 who: (a) does not own a contaminated site, (b) conducts a  
11 preliminary assessment or site investigation of the contaminated site  
12 for the purpose of conducting all appropriate inquiry into the  
13 previous ownership and uses of the property as provided in section  
14 8 of P.L.1976, c.141 (C.58:10-23.11g), and (c) has not discharged a  
15 hazardous substance at the site or is not in any way responsible for  
16 a hazardous substance discharged at the site pursuant to section 8 of  
17 P.L.1976, c.141 (C.58:10-23.11g).

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

22

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

25 25. a. Except as otherwise provided in section 27 of P.L.2009,  
26 c.60 (C.58:10C-27), the owner or operator of an industrial  
27 establishment or any other person required to perform remediation  
28 activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), or a  
29 discharger, a person in any way responsible for a hazardous  
30 substance, or a person otherwise liable for cleanup and removal  
31 costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) who has  
32 been issued a directive or an order by a State agency, who has  
33 entered into an administrative consent order with a State agency, or  
34 who has been ordered by a court to clean up and remove a  
35 hazardous substance or hazardous waste discharge pursuant to  
36 P.L.1976, c.141 (C.58:10-23.11 et seq.), shall establish and  
37 maintain a remediation funding source in the amount necessary to  
38 pay the estimated cost of the required remediation. A person who  
39 **【**voluntarily undertakes a remediation pursuant to a memorandum  
40 of agreement with the department, or without the department's  
41 oversight, or who**】** performs a remediation in an environmental  
42 opportunity zone is not required to establish or maintain a  
43 remediation funding source. A person who uses an innovative  
44 technology or who, in a timely fashion, implements an unrestricted  
45 use remedial action or a limited restricted use remedial action for all  
46 or part of a remedial action is not required to establish a  
47 remediation funding source for the cost of the remediation  
48 involving the innovative technology or permanent remedy. A

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

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

38 b. **【**The person who established the remediation funding source  
39 may use the remediation funding source to pay for the actual cost of  
40 the remediation.**】** The department may not require any other  
41 financial assurance by the person responsible for conducting the  
42 remediation other than that required in this section. In the case of a  
43 remediation performed pursuant to P.L.1983, c.330, the remediation  
44 funding source shall be established no more than 14 days after the  
45 approval by the department or the certification by the licensed site  
46 remediation professional of a remedial action workplan, upon  
47 approval of a remediation agreement pursuant to subsection e. of  
48 section 4 of P.L.1983, c.330 (C.13:1K-9), or upon submission of a

1 remediation certification pursuant to subsection e. of P.L.1983,  
2 c.330, unless the department approves an extension. In the case of  
3 a remediation performed pursuant to P.L.1976, c.141, the  
4 remediation funding source shall be established as provided in an  
5 administrative consent order signed by the parties, as provided by a  
6 court, or as directed or ordered by the department. In the case of a  
7 remediation performed under the department's oversight pursuant to  
8 section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation  
9 funding source shall be established at the time the person becomes  
10 subject to the department's oversight. The establishment of a  
11 remediation funding source for that part of the remediation funding  
12 source to be established by a grant or financial assistance from the  
13 remediation fund may be established for the purposes of this  
14 subsection by the application for a grant or financial assistance from  
15 the remediation fund and satisfactory evidence submitted to the  
16 department that the grant or financial assistance will be awarded.  
17 However, if the financial assistance or grant is denied or the  
18 department finds that the person responsible for establishing the  
19 remediation funding source did not take reasonable action to obtain  
20 the grant or financial assistance, the department shall require that  
21 the full amount of the remediation funding source be established  
22 within 14 days of the denial or finding. Except as provided in  
23 section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation  
24 funding source shall be evidenced by the establishment and  
25 maintenance of (1) a remediation trust fund, administered by an  
26 entity that has the authority to act as a trustee and whose trust  
27 operations are regulated and examined by a federal or State agency,  
28 or governed by court rule, (2) an environmental insurance policy,  
29 issued by an entity licensed by the Department of Banking and  
30 Insurance to transact business in the State of New Jersey, to fund  
31 the remediation, (3) a line of credit from a financial institution  
32 regulated pursuant to State or federal law and satisfactory to the  
33 department authorizing the person responsible for performing the  
34 remediation to borrow money, (4) a self-guarantee, **【or】** (5) a letter  
35 of credit from a financial institution regulated pursuant to State or  
36 federal law that guarantees the performance of the remediation by  
37 the person to the satisfaction of the department, or (6) a surety bond  
38 from an entity that is listed as an acceptable surety on federal  
39 bonds in United States Treasury Department Circular 570, or by any  
40 combination thereof. Where it can be demonstrated that a person  
41 cannot establish and maintain a remediation funding source for the  
42 full cost of the remediation by a method specified in this subsection,  
43 that person may establish the remediation funding source for all or a  
44 portion of the remediation, by securing financial assistance from the  
45 Hazardous Discharge Site Remediation Fund as provided in section  
46 29 of P.L.1993, c.139 (C.58:10B-7).

47 c. A remediation trust fund shall be established pursuant to the  
48 provisions of this subsection. An originally signed duplicate of the

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

19 The trust fund agreement shall provide that the remediation trust  
20 fund may not be revoked or terminated by the person required to  
21 establish the remediation funding source or by the trustee without  
22 the written consent of the department. The person who establishes  
23 the remediation funding source in the form of a trust fund may use  
24 the remediation funding source to pay for the actual cost of the  
25 remediation. The trustee shall **[release]** disburse to the person  
26 required to establish the remediation funding source, or to the  
27 department or transferee of the property, as appropriate, only those  
28 moneys as the department or the licensed site remediation  
29 professional authorizes, in writing, to be **[released]** disbursed. The  
30 trustee shall release to the person who established the remediation  
31 funding source, or to the department or transferee of the property,  
32 as appropriate, only those moneys as the department authorizes, in  
33 writing, to be released. For any remediation subject to the oversight  
34 of the department pursuant to section 27 of P.L.2009, c.60  
35 (C.58:10C-27), the person entitled to receive money from the  
36 remediation trust fund shall submit documentation to the  
37 department detailing the costs incurred or to be incurred as part of  
38 the remediation. Upon a determination by the department that the  
39 costs are consistent with the remediation of the site, the department  
40 shall, in writing, authorize a disbursement of moneys from the  
41 remediation trust fund in the amount of the documented costs.

42 The department shall return the original remediation trust fund  
43 agreement to the trustee for termination after the **[person required**  
44 **to establish the remediation funding source substitutes]** department  
45 receives an alternative remediation funding source as specified in  
46 this section or the department notifies the person required to  
47 establish and maintain the remediation funding source that that

1 person is no longer required to maintain a remediation funding  
2 source for remediation of the contaminated site.

3 d. An environmental insurance policy shall be established  
4 pursuant to the provisions of this subsection. An originally signed  
5 duplicate of the insurance policy shall be delivered to the  
6 department (1) by certified mail, overnight delivery, or personal  
7 service within **[30]** 14 days of receipt of notice from the  
8 department that the remedial action workplan or remediation  
9 agreement, as provided in subsection e. of section 4 of P.L.1983,  
10 c.330, is approved, (2) within 14 days of submission to the  
11 department of a remedial action workplan certified by a licensed  
12 site remediation professional as provided in subsection e. of section  
13 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon submission of a  
14 remediation certification to the department as provided in  
15 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or (4) as  
16 specified in an administrative consent order, civil order, or order of  
17 the department, as applicable. [The insurance company shall  
18 release to the person required to establish the remediation funding  
19 source, or to the department or transferee of the property, as  
20 appropriate, only those moneys as the department or the licensed  
21 site remediation professional authorizes, in writing, to be released.  
22 The person entitled to receive money from the environmental  
23 insurance policy shall submit documentation to the department  
24 detailing the costs incurred or to be incurred as part of the  
25 remediation.] The environmental insurance policy shall be issued  
26 by an entity that is licensed by the New Jersey Department of  
27 Banking and Insurance to transact business in the State.

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

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



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

25 The line of credit shall not be allowed to expire, unless the  
26 institution provides the appropriate notification to the department  
27 and the borrower, as defined in a model agreement established by  
28 the department. The person who establishes the remediation  
29 funding source in the form of a line of credit may use the  
30 remediation funding source to pay for the actual cost of the  
31 remediation. The institution providing the line of credit shall  
32 disburse to the person required to establish the remediation funding  
33 source, or to the department or transferee of the property, as  
34 appropriate, only those moneys as the department or the licensed  
35 site remediation professional authorizes, in writing, to be disbursed.  
36 The [person or] institution providing the line of credit shall release  
37 to the person [required to establish] who established the  
38 remediation funding source, or to the department or transferee of  
39 the property as appropriate, only those moneys as the department  
40 [or the licensed site remediation professional] authorizes, in  
41 writing, to be released. [The person entitled to draw upon the line  
42 of credit shall submit documentation to the department detailing the  
43 costs incurred or to be incurred as part of the remediation. Upon a  
44 determination that the costs are consistent with the remediation of  
45 the site, the department shall, in writing, authorize a disbursement  
46 from the line 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** department receives an alternative  
5 remediation funding source as specified in this section, or after the  
6 department notifies the person required to establish and maintain  
7 the remediation funding source that that person is no longer  
8 required to maintain a remediation funding source for remediation  
9 of the contaminated site.

10       f. A person may self-guarantee a remediation funding source  
11 upon the submittal of documentation to the department  
12 demonstrating that the cost of the remediation **as estimated in the**  
13 **remedial action workplan, in the remediation agreement as provided**  
14 **in subsection e. of section 4 of P.L.1983, c.330, in a remediation**  
15 **certification submitted pursuant to subsection e. of P.L.1983, c.330,**  
16 **in an administrative consent order, or as provided in a departmental**  
17 **or court order,** would not exceed one-third of the tangible net  
18 worth of the person required to establish the remediation funding  
19 source, and that the person has a cash flow sufficient to assure the  
20 availability of sufficient moneys for the remediation during the time  
21 necessary for the remediation. Documentation shall be delivered to  
22 the department (1) by certified mail, overnight delivery, or personal  
23 service within 14 days of receipt of notice from the department that  
24 the remedial action workplan or remediation agreement as provided  
25 in subsection e. of section 4 of P.L.1983, c.330 is approved, (2)  
26 within 14 days of submission to the department of a remedial action  
27 workplan certified by a licensed site remediation professional as  
28 provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-  
29 9), (3) upon submission of a remediation certification pursuant to  
30 the department as provided in subsection e. of section 4 of  
31 P.L.1983, c.330 (C.13:1K-9), or (4) as specified in an  
32 administrative consent order, civil order, or order of the department,  
33 as applicable. Satisfactory documentation of a person's capacity to  
34 self-guarantee a remediation funding source shall consist of audited  
35 financial statements, in which the auditor expresses an unqualified  
36 opinion, that includes a statement of income and expenses or similar  
37 statement of that person and the balance sheet or similar statement  
38 of assets and liabilities as used by that person for the fiscal year of  
39 the person making the application that ended closest in time to the  
40 date of the self-guarantee application. In the case of a special  
41 purpose entity established specifically for the purpose of acquiring  
42 and redeveloping a contaminated site, and for which a statement of  
43 income and expenses is not available, the documentation shall  
44 include a statement of assets and liabilities certified by a certified  
45 public accountant. The self-guarantee application shall be certified  
46 as true to the best of the applicant's information, knowledge, and  
47 belief, by the chief financial, or similar officer or employee, or

1 general partner, or principal of the person making the self-guarantee  
2 application. A person shall be deemed by the department to possess  
3 the required cash flow pursuant to this section if that person's gross  
4 receipts exceed its gross payments in that fiscal year in an amount  
5 at least equal to the estimated costs of completing the remedial  
6 action workplan schedule to be performed in the 12-month period  
7 following the date on which the application for self-guarantee is  
8 made and the individual or entity possesses a net cash flow  
9 provided by operating activities in an amount at least equal to the  
10 estimated costs of completing the remediation in the 12-month  
11 period following the date the application is made. In the event that a  
12 self-guarantee is required for a period of more than one year,  
13 applications for a self-guarantee shall be renewed annually pursuant  
14 to this subsection for each successive year. The department may  
15 establish requirements and reporting obligations to ensure that the  
16 person proposing to self-guarantee a remediation funding source  
17 meets the criteria for self-guaranteeing prior to the initiation of  
18 remedial action and until completion of the remediation.

19 g. (1) If the person required to establish the remediation  
20 funding source fails to perform the remediation as required, or fails  
21 to meet the conditions established pursuant to paragraph (3) of  
22 subsection a. of section 27 of P.L.2009, c.60 (C.58:10C-27) or  
23 section 1 of P.L.2013, c.283 (C.58:10C-27.1), or the mandatory  
24 remediation timeframes or expedited site specific timeframes  
25 established pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28)  
26 for the performance of the remedial action, the department shall  
27 make a written determination of this fact. A copy of the  
28 determination by the department shall be delivered to the person  
29 required to establish the remediation funding source and, in the case  
30 of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-  
31 6 et al.), to any transferee of the property. Following this written  
32 determination, the department may perform the remediation in place  
33 of the person required to establish the remediation funding source.  
34 In order to finance the cost of the remediation the department may  
35 make disbursements from the remediation funding source, or, if  
36 sufficient moneys are not available from those funds, from the  
37 remediation guarantee fund created pursuant to section 45 of  
38 P.L.1993, c.139 (C.58:10B-20).

39 (2) The transferee of property subject to a remediation  
40 conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), may, at  
41 any time after the department's determination of nonperformance by  
42 the owner or operator required to establish the remediation funding  
43 source, petition the department, in writing, with a copy being sent to  
44 the owner and operator, for authority to perform the remediation at  
45 the industrial establishment. The department, upon a determination  
46 that the transferee is competent to do so, may grant that petition  
47 which shall authorize the transferee to perform the remediation as  
48 specified in an approved remedial action workplan, or to perform

1 the activities as required in a remediation agreement, or as provided  
2 in a remediation certification, and to avail itself of the moneys in  
3 the remediation trust fund, letter of credit, **[or]** line of credit , or  
4 surety bond, or to make claims upon the environmental insurance  
5 policy for these purposes. The petition of the transferee shall not be  
6 granted by the department if the owner or operator continues or  
7 begins to perform its obligations within 14 days of the petition  
8 being filed with the department.

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

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

43 The letter of credit shall not be allowed to expire unless the  
44 financial institution provides the appropriate notification to the  
45 department and the application, as defined by a model agreement  
46 established by the department. The financial institution that  
47 provides the letter of credit shall release to the department or to a  
48 person authorized to perform the remediation pursuant to subsection

1 g. of this section, only moneys authorized by the department, [or  
2 the authorized licensed site remediation professional, ] in writing, to  
3 be released. The department shall return the original letter of credit  
4 to the financial institution providing the letter of credit for  
5 termination after the [person required to establish the remediation  
6 funding source substitutes] department receives an alternative  
7 remediation funding source as authorized in this section, or after the  
8 department notifies the person required to establish and maintain  
9 the remediation funding source that that person is no longer  
10 required to maintain a remediation funding source for the  
11 remediation of the contaminated site.

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

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

1 of the contaminated site.

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

3

4 9. (New section) The department shall encourage the use of  
5 green and sustainable practices during the remediation of a  
6 contaminated site. The use of green and sustainable practices shall  
7 not alter the requirement that the remediation be protective of the  
8 public health and safety and of the environment.

9

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41  
42 12. Section 2 of P.L.2006, c.65 (C.58:10B-24.2) is amended to  
43 read as follows:

44 2. Upon request of a municipality, any person who is responsible  
45 for conducting a remediation of a contaminated site shall submit a  
46 copy of a remedial action workplan , any other workplan, report, or  
47 validated data required by the department <sup>1</sup>pursuant to law, rule, or

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

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

19

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

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

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

41 c. A person responsible for conducting a remediation shall  
42 respond to any <sup>1</sup>written or email<sup>1</sup> inquiries from the public <sup>1</sup>regarding  
43 the status of the remediation<sup>1</sup> that the person receives, or that the  
44 department receives and forwards to the person responsible for  
45 conducting the remediation, by providing either: (1) <sup>1</sup>**specific**<sup>1</sup>  
46 information or documents that are responsive to the public inquiry; or



1 (2) a written <sup>1</sup>summary<sup>1</sup> status report for the remediation, which shall  
2 be made in a form and manner as prescribed by the department  
3 pursuant to rules and regulations. A person responsible for conducting  
4 a remediation may designate a licensed site remediation professional  
5 to respond to public inquiries pursuant to this subsection.

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

7  
8 14. Section 1 of P.L.2005, c.360 (C.58:10B-27.2) is amended to  
9 read as follows:

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

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

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

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

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

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

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

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

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

16

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

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

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

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

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

43 (2) the developer had (i) entered into **【a memorandum of**  
44 **agreement, or other】** an oversight document, with the  
45 Commissioner of Environmental Protection, after the developer  
46 entered into the redevelopment agreement, for the remediation of  
47 contamination located on the site of the redevelopment project

1 pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29) and the  
2 developer is in compliance with the **【**memorandum of agreement  
3 oversight document, or (ii) complied with the requirements set forth  
4 in subsection b. of section 30 of P.L.2009, c.60 (C.58:10B-1.3); 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 Environmental 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.2009, c.60, s.53)

19

20 16. 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  
24 P.L.1997, c.278 (C.58:10B-28), a developer shall: (1) enter into **【**a  
25 memorandum of agreement, or other**】** an oversight document with  
26 the Commissioner of Environmental Protection; or (2) comply with  
27 the requirements set forth in subsection b. of section 30 of  
28 P.L.2009, c.60 (C.58:10B-1.3), for the remediation of the site of the  
29 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-  
36 1 et al.).

37 c. After the developer has entered into **【**a memorandum of  
38 agreement, or other**】** an oversight document with the Commissioner  
39 of 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**】** retained to perform the remediation as required  
43 pursuant to subsection b. of section 30 of P.L.2009, c.60 (C.58:10B-  
44 1.3), the commissioner shall submit a copy thereof to the developer,  
45 the clerk of the municipality in which the subject property is  
46 located, the Division of Business Assistance, Marketing and

1 International Trade in the New Jersey Economic Development  
2 Authority, and the director.

3 (cf: P.L.2009, c.60, s.54)  
4

5 17. 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】**  
32 **document** entered into with the Commissioner of Environmental  
33 Protection pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29)  
34 or as may be required by the licensed site remediation professional  
35 in order to issue a response action outcome for the site. The  
36 Department of Environmental Protection may review the  
37 remediation costs incurred by the developer to determine if they are  
38 reasonable.

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

43 (cf: P.L.2009, c.60, s.55)  
44

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

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

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

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

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

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

15 "Department" means the Department of Environmental Protection.

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

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

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

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

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

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

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

43 "Institutional controls" means a mechanism used to limit human  
44 activities at or near a contaminated site, or to ensure the effectiveness  
45 of the remedial action over time, when contaminants remain at a  
46 contaminated site in levels or concentrations above the applicable  
47 remediation standard that would allow unrestricted use of that

1 property. Institutional controls may include, without limitation,  
2 structure, land, and natural resource use restrictions, well restriction  
3 areas, and deed notices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

28

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

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

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

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

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

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

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

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

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

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

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

45 (7) has not had a professional license or <sup>1</sup>professional<sup>1</sup>  
46 certification revoked by any state licensing board or any other  
47 professional licensing agency within the previous 10 years , and has

1 not surrendered a professional license or <sup>1</sup>professional<sup>1</sup> certification in  
2 response to a disciplinary investigation within the previous 10 years.

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

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

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

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

33

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

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

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

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

46

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 (3) The licensed site remediation professional shall apply any  
48 available and appropriate technical guidelines concerning site

1 remediation as issued by the department. The department shall  
2 provide interested parties the opportunity to participate in the  
3 development and review of technical guidelines issued for the  
4 remediation of contaminated sites.

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

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

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

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

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

31

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

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

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

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

1 of professional engineering unless the licensed site remediation  
2 professional is a professional engineer licensed in the State.

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

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

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

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

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

45 i. A licensed site remediation professional shall exercise  
46 independent professional judgment, comply with the requirements  
47 and procedures set forth in the provisions of P.L.2009, c.60  
48 (C.58:10C-1 et al.), make a good faith and reasonable effort to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (1) the licensed site remediation professional orders, directs, or  
46 agrees to the provision of professional services conducted or  
47 prepared by another licensed site remediation professional under his  
48 supervision;



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

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

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

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

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

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

22 (1) make a material misrepresentation of fact;

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

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

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

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

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

46 z. A licensed site remediation professional shall not allow any  
47 ownership interest, compensation, or promise of continued  
48 employment, of the licensed site remediation professional or any

1 immediate family member, to affect the professional services  
2 provided by the licensed site remediation professional.

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

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

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

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

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

25

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

43

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

46 19. a. The department shall establish a permit program to  
47 regulate the operation, maintenance and inspection of engineering  
48 or institutional controls and related systems installed as part of a

1 remedial action of a contaminated site. The department may require  
2 periodic monitoring, inspections, and maintenance by the person  
3 responsible for the engineering or institutional controls and the  
4 submission of certifications regarding those activities. The  
5 department may issue a permit, permit by rule, or general permit  
6 pursuant to this section.

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

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

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

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

47 e. The department may charge, in accordance with a schedule  
48 adopted pursuant to the "Administrative Procedure Act," P.L.1968,

1 c.410 (C.52:14B-1 et seq.), reasonable application fees to cover the  
2 costs of processing the application, and reasonable annual fees to  
3 cover the costs of the administration and enforcement of the  
4 permits.

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

6

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

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

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

23

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

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

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

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

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

1 remedial investigation of the entire contaminated site within five years  
2 after the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (2) For any litigation pending or settled on the date of enactment  
20 of P.L.2009, c.60 (C.58:10C-1 et al.), concerning a remediation  
21 performed pursuant to the "Resource Conservation and Recovery Act,"  
22 42 U.S.C. s.6921 et seq., nothing in P.L.2009, c.60 (C.58:10C-1 et al.)  
23 shall affect an oversight procedure, remedy, or other obligation  
24 imposed by a federal administrative order or federal court order.

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

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

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

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

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

1 public comments on the proposed modification for a period of at least  
2 30 days after the date of publication. The department shall consider  
3 the public comments received during the comment period prior to  
4 making a modification pursuant to this paragraph.

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

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

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

16 (c) is a predecessor, successor, subsidiary, partner, shareholder,  
17 assign, trustee in bankruptcy, responsible corporate official, or receiver  
18 appointed pursuant to a proceeding in law or equity, to any person  
19 described in subparagraphs (a) and (b) above.<sup>1</sup>

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

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

29

30 27. This act shall take effect immediately.