

**58:10B-12.1, 58:10C-16.1 et al.  
LEGISLATIVE HISTORY CHECKLIST**  
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**LAWS OF:** 2019                    **CHAPTER:** 263

**NJSA:** 58:10B-12.1, 58:10C-16.1 et al. (Makes various changes to laws governing remediation of contaminated sites.)

**BILL NO:** A5293                    (Substituted for S3682)

**SPONSOR(S)** Nancy J. Pinkin and others

**DATE INTRODUCED:** 5/13/2019

**COMMITTEE:**                    **ASSEMBLY:** Environment & Solid Waste  
   **SENATE:** Environment & Energy

**AMENDED DURING PASSAGE:**                    Yes

**DATE OF PASSAGE:**                    **ASSEMBLY:** 6/27/2019  
   **SENATE:** 6/20/2019

**DATE OF APPROVAL:**                    8/23/2019

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (Second Reprint enacted)                    Yes

**A5293**

**SPONSOR’S STATEMENT:** (Begins on page 63 of introduced bill)                    Yes

**COMMITTEE STATEMENT:**    **ASSEMBLY:**                    Yes

**SENATE:**    No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:**    Yes

**LEGISLATIVE FISCAL ESTIMATE:**    No

**S3682**

**SPONSOR’S STATEMENT:** (Begins on page of 62 introduced bill)                    Yes

**COMMITTEE STATEMENT:**    **ASSEMBLY:**                    No

**SENATE:**    Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

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(CORRECTED COPY)

P.L. 2019, CHAPTER 263, *approved August 23, 2019*  
Assembly, No. 5293 (*Second Reprint*)

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

**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.

<sup>2</sup>Senate floor amendments adopted June 20, 2019.

- 1 Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. s.1101 et seq.;
- 2 (5) any change in operations of an industrial establishment that
- 3 changes the industrial establishment's Standard Industrial
- 4 Classification number to one that is not subject to this act; or
- 5 (6) the termination of a lease unless there is no disruption in
- 6 operations of the industrial establishment, or the assignment of a lease;
- 7 "Transferring ownership or operations" means:
- 8 (1) any transaction or proceeding through which an industrial
- 9 establishment undergoes a change in ownership;
- 10 (2) the sale or transfer of more than 50 **【%】** percent of the assets
- 11 of an industrial establishment within any five-year period, as measured
- 12 on a constant, annual date-specific basis;
- 13 (3) the execution of a lease for a period of 99 years or longer for an
- 14 industrial establishment; or
- 15 (4) the dissolution of an entity that is an owner or operator or an
- 16 indirect owner of an industrial establishment, except for any
- 17 dissolution of an indirect owner of an industrial establishment whose
- 18 assets would have been unavailable for the remediation of the
- 19 industrial establishment if the dissolution had not occurred;
- 20 "Change in ownership" means:
- 21 (1) the sale or transfer of the business of an industrial
- 22 establishment or any of its real property;
- 23 (2) the sale or transfer of stock in a corporation resulting in a
- 24 merger or consolidation involving the direct owner or operator or
- 25 indirect owner of the industrial establishment;
- 26 (3) the sale or transfer of stock in a corporation, or the transfer of a
- 27 partnership interest, resulting in a change in the person holding the
- 28 controlling interest in the direct owner or operator or indirect owner of
- 29 an industrial establishment;
- 30 (4) the sale or transfer of title to an industrial establishment or the
- 31 real property of an industrial establishment by exercising an option to
- 32 purchase; or
- 33 (5) the sale or transfer of a partnership interest in a partnership that
- 34 owns or operates an industrial establishment, that would reduce, by 10
- 35 **【%】** percent or more, the assets available for remediation of the
- 36 industrial establishment;
- 37 "Change in ownership" shall not include:
- 38 (1) a corporate reorganization not substantially affecting the
- 39 ownership of the industrial establishment;
- 40 (2) a transaction or series of transactions involving the transfer of
- 41 stock, assets or both, among corporations under common ownership, if
- 42 the transaction or transactions will not result in the diminution of the
- 43 net worth of the corporation that directly owns or operates the
- 44 industrial establishment by more than 10 **【%】** percent, or if an equal or
- 45 greater amount in assets is available for the remediation of the
- 46 industrial establishment before and after the transaction or
- 47 transactions;

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

1 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard  
2 Industrial Classifications Manual prepared by the Office of  
3 Management and Budget in the Executive Office of the President of  
4 the United States. Those facilities or parts of facilities subject to  
5 operational closure and post-closure maintenance requirements  
6 pursuant to the "Solid Waste Management Act," P.L.1970, c.39  
7 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting  
8 Act," sections 1 through 43 of P.L.1981, c.279 (C.13:1E-49 et seq.) or  
9 the "Solid Waste Disposal Act" (42 U.S.C. s.6901 et seq.), or any  
10 establishment engaged in the production or distribution of agricultural  
11 commodities, shall not be considered industrial establishments for the  
12 purposes of this act. The department may, pursuant to the  
13 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),  
14 exempt certain sub-groups or classes of operations within those sub-  
15 groups within the Standard Industrial Classification major group  
16 numbers listed in this subsection upon a finding that the operation of  
17 the industrial establishment does not pose a risk to public health and  
18 safety;

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

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

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

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

1 "Direct owner or operator" means any person that directly owns or  
2 operates an industrial establishment. A holder of a mortgage or other  
3 security interest in the industrial establishment shall not be deemed to  
4 be a direct owner or operator of the industrial establishment unless or  
5 until it loses its exemption under P.L.1993, c.112 (C.58:10-  
6 23.11g4 et al.) or obtains title to the industrial establishment by deed  
7 of foreclosure, by other deed, or by court order or other process;

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

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

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

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

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

47 "Remediation" or "remediate" means all **[necessary]** actions to  
48 investigate **[and]** , clean up , or respond to any known, suspected, or  
49 threatened discharge of hazardous substances or hazardous wastes,

1 including **[, as necessary,]** the preliminary assessment, site  
2 investigation, remedial investigation, and remedial action , or any  
3 portion thereof <sup>1</sup>, provided, however, that "remediation" or  
4 "remediate" shall not include the payment of compensation for damage  
5 to, or loss of, natural resources<sup>1</sup>;

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

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

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

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

45 "Site investigation" means the collection and evaluation of data  
46 adequate to determine whether or not discharged hazardous substances  
47 or hazardous wastes exist at the industrial establishment or have  
48 migrated or are migrating from the site at levels in excess of the



1 applicable remediation standards. A site investigation shall be  
2 developed based upon the information collected pursuant to the  
3 preliminary assessment.

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

5

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

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

10 a. an accountant pursuant to P.L.1997, c.259 (C.45:2B-  
11 42 et seq.);

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

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

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

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

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

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

19 h. a chiropractor pursuant to P.L.1989, c.153 (C.45:9-  
20 41.17 et seq.);

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

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

25 k. a physical therapist pursuant to P.L.1983, c.296 (C.45:9-  
26 37.11 et seq.);

27 l. a land surveyor pursuant to P.L.1938, c.342 (C.45:8-  
28 27 et seq.);

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

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

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

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

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

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

39

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

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

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

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

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

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

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

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

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

27 "Department" means the Department of Environmental  
28 Protection;

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

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

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

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

47 "Final remediation document" means a no further action letter  
48 issued by the department pursuant to P.L.1993, c.139 (C.58:10B-  
49 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

48 (2) 200,000 gallons or more for hazardous substances of all  
49 kinds.

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

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

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

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

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

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

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

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

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

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

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

1 applicable remediation regulations, and all applicable permits and  
2 authorizations have been obtained;

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

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

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

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

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

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

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

28

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

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

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

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

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

1 such discharge during the week, month or year for which the claim  
2 is filed;

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

44 Nothing in this paragraph (2) shall be construed to alter liability  
45 of any person who acquired real property prior to September 14,  
46 1993; and

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

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

44 (3) Notwithstanding the provisions of paragraph (2) of this  
45 subsection to the contrary, if a person who owns real property  
46 obtains actual knowledge of a discharge of a hazardous substance at  
47 the real property during the period of that person's ownership and  
48 subsequently transfers ownership of the property to another person  
49 without disclosing that knowledge, the transferor shall be strictly

1 liable for the cleanup and removal costs of the discharge and no  
2 defense under this subsection shall be available to that person.

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

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

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

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

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

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

46 To establish that a person had no reason to know that any  
47 hazardous substance had been discharged for the purposes of this  
48 paragraph (5), the person must have undertaken, at the time of  
49 acquisition, all appropriate inquiry on the previous ownership and

1 uses of the property based upon generally accepted good and  
2 customary standards.

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

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

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

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

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

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

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

46 (5) Within ten days after acquisition of the property, or within  
47 30 days after the expiration of the period or periods allowed for the  
48 right of redemption pursuant to tax foreclosure law, the person

1 agrees in writing to provide access to the State for remediation and  
2 related activities, as determined by the State.

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

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

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

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

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

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

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

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

27  
28 5. Section 22 of P.L.1976, c.141 (C.58:10-23.11u) is amended  
29 to read as follows:

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

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

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

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

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

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

48 (1) a temporary or permanent injunction;

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

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

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

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

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

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

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

21 (b) the specific citation of the act or omission constituting the  
22 violation;

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

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

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

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

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

47 (3) If a civil administrative penalty imposed pursuant to this  
48 section is not paid within 30 days of the date that the penalty is due  
49 and owing, and the penalty is not contested by the person against

1 whom the penalty has been assessed, or the person fails to make a  
2 payment pursuant to a payment schedule entered into with the  
3 department, an interest charge shall accrue on the amount of the  
4 penalty from the 30th day that amount was due and owing. In the  
5 case of an appeal of a civil administrative penalty, if the amount of  
6 the penalty is upheld, in whole or in part, the rate of interest shall be  
7 calculated on that amount as of the 30th day from the date the  
8 amount was due and owing under the administrative order. The rate  
9 of interest shall be that established by the New Jersey Supreme  
10 Court for interest rates on judgments, as set forth in the Rules  
11 Governing the Courts of the State of New Jersey.

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

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

34 e. All conveyances used or intended for use in the willful  
35 discharge of any hazardous substance are subject to forfeiture to the  
36 State pursuant to the provisions of P.L.1981, c.387 (C.13:1K-  
37 1 et seq.).  
38 (cf: P.L.1990, c.75, s.1)  
39

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

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

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

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

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

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

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

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

18 "Discharge" means an intentional or unintentional action or  
19 omission resulting in the releasing, spilling, leaking, pumping,  
20 pouring, emitting, emptying, or dumping of a contaminant onto the  
21 land or into the waters 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  
26 and physical access controls;

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

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

34 "Financial assistance" means loans or loan guarantees;

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

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

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



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

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

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

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

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

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

47 "Remedial action" means those actions taken at a site or offsite if  
48 a contaminant has migrated or is migrating therefrom, as may be  
49 required by the department, including the removal, treatment,

1 containment, transportation, securing, or other engineering or  
2 treatment measures, whether to an unrestricted use or otherwise,  
3 designed to ensure that any discharged contaminant at the site or  
4 that has migrated or is migrating from the site, is remediated in  
5 compliance with the applicable health risk or environmental  
6 standards;

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

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

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

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

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

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

43 "Response action outcome" means a written determination by a  
44 licensed site remediation professional that the contaminated site  
45 was remediated in accordance with all applicable statutes and  
46 regulations, and based upon an evaluation of the historical use of  
47 the site, or of any area of concern at that site, as applicable, and any  
48 other investigation or action the department deems necessary, there

1 are no contaminants present at the site, or at any area of concern, at  
2 any other site to which a discharge originating at the site has  
3 migrated, or that any contaminants present at the site or that have  
4 migrated from the site have been remediated in accordance with  
5 applicable remediation regulations, and all applicable permits and  
6 authorizations have been obtained;

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

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

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

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

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

27

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

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

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

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

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

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

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

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

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

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

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

12 (9) obtain all necessary permits.

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

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

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

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

40 (2) The provisions of this section shall not apply to any person  
41 who: (a) does not own a contaminated site, (b) conducts a  
42 preliminary assessment or site investigation of the contaminated site  
43 for the purpose of conducting all appropriate inquiry into the  
44 previous ownership and uses of the property as provided in section  
45 8 of P.L.1976, c.141 (C.58:10-23.11g), and (c) has not discharged a  
46 hazardous substance at the site or is not in any way responsible for  
47 a hazardous substance discharged at the site pursuant to section 8 of  
48 P.L.1976, c.141 (C.58:10-23.11g).

1       <sup>2</sup>(3) A person shall not be required to retain a licensed site  
2 remediation professional pursuant to this section to conduct  
3 sampling or investigation to confirm or evaluate a remediation  
4 performed or supervised by a retained licensed site remediation  
5 professional, provided that such sampling or investigation: (1) is  
6 not required pursuant to this section or any other law, rule,  
7 regulation, or order; (2) is not conducted in order to obtain a  
8 response action outcome; and (3) is not conducted in order to  
9 investigate, clean up, or respond to any known, suspected, or  
10 threatened discharge of a contaminant.<sup>2</sup>

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

15  
16       8. Section 25 of P.L.1993, c.139 (C.58:10B-3) is amended to  
17 read as follows:

18       25. a. Except as otherwise provided in section 27 of P.L.2009,  
19 c.60 (C.58:10C-27), the owner or operator of an industrial  
20 establishment or any other person required to perform remediation  
21 activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), or a  
22 discharger, a person in any way responsible for a hazardous  
23 substance, or a person otherwise liable for cleanup and removal  
24 costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) who has  
25 been issued a directive or an order by a State agency, who has  
26 entered into an administrative consent order with a State agency, or  
27 who has been ordered by a court to clean up and remove a  
28 hazardous substance or hazardous waste discharge pursuant to  
29 P.L.1976, c.141 (C.58:10-23.11 et seq.), shall establish and  
30 maintain a remediation funding source in the amount necessary to  
31 pay the estimated cost of the required remediation. A person who  
32 **【**voluntarily undertakes a remediation pursuant to a memorandum  
33 of agreement with the department, or without the department's  
34 oversight, or who**】** performs a remediation in an environmental  
35 opportunity zone is not required to establish or maintain a  
36 remediation funding source. A person who uses an innovative  
37 technology or who, in a timely fashion, implements an unrestricted  
38 use remedial action or a limited restricted use remedial action for all  
39 or part of a remedial action is not required to establish a  
40 remediation funding source for the cost of the remediation  
41 involving the innovative technology or permanent remedy. A  
42 government entity, a person who undertakes a remediation at their  
43 primary or secondary residence, the owner or operator of a child  
44 care center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.)  
45 who performs a remediation at the licensed child care center, or the  
46 person responsible for conducting a remediation at a public school  
47 or private school as defined in N.J.S.18A:1-1, or a charter school  
48 established pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.), shall

1 not be required to establish or maintain a remediation funding  
2 source. A person required to establish a remediation funding source  
3 pursuant to this section shall provide to the department satisfactory  
4 documentation that the requirement has been met.

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

31 b. **【**The person who established the remediation funding source  
32 may use the remediation funding source to pay for the actual cost of  
33 the remediation.**】** The department may not require any other  
34 financial assurance by the person responsible for conducting the  
35 remediation other than that required in this section. In the case of a  
36 remediation performed pursuant to P.L.1983, c.330, the remediation  
37 funding source shall be established no more than 14 days after the  
38 approval by the department or the certification by the licensed site  
39 remediation professional of a remedial action workplan, upon  
40 approval of a remediation agreement pursuant to subsection e. of  
41 section 4 of P.L.1983, c.330 (C.13:1K-9), or upon submission of a  
42 remediation certification pursuant to subsection e. of P.L.1983,  
43 c.330, unless the department approves an extension. In the case of  
44 a remediation performed pursuant to P.L.1976, c.141, the  
45 remediation funding source shall be established as provided in an  
46 administrative consent order signed by the parties, as provided by a  
47 court, or as directed or ordered by the department. In the case of a  
48 remediation performed under the department's oversight pursuant to  
49 section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation

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

39 c. A remediation trust fund shall be established pursuant to the  
40 provisions of this subsection. An originally signed duplicate of the  
41 trust agreement shall be delivered to the department (1) by certified  
42 mail, overnight delivery, or personal service within 14 days of  
43 receipt of notice from the department that the remedial action  
44 workplan or remediation agreement as provided in subsection e. of  
45 section 4 of P.L.1983, c.330 (C.13:1K-9) is approved, (2) within 14  
46 days of submission to the department of a remedial action workplan  
47 certified by a licensed site remediation professional as provided in  
48 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon  
49 submission of a remediation certification to the department as

1 provided in subsection e. of section 4 of P.L.1983, c.330, or (4) as  
2 specified in an administrative consent order, civil order, or order of  
3 the department, as applicable. The remediation trust fund agreement  
4 shall conform to a model trust fund agreement as established by the  
5 department and shall be accompanied by a certification of  
6 acknowledgment that conforms to a model established by the  
7 department. The trustee shall be an entity which has the authority  
8 to act as a trustee and whose trust operations are regulated and  
9 examined by a federal or New Jersey agency.

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

33 The department shall return the original remediation trust fund  
34 agreement to the trustee for termination after the **[person required**  
35 **to establish the remediation funding source substitutes]** department  
36 receives an alternative remediation funding source as specified in  
37 this section or the department notifies the person required to  
38 establish and maintain the remediation funding source that that  
39 person is no longer required to maintain a remediation funding  
40 source for remediation of the contaminated site.

41 d. An environmental insurance policy shall be established  
42 pursuant to the provisions of this subsection. An originally signed  
43 duplicate of the insurance policy shall be delivered to the  
44 department (1) by certified mail, overnight delivery, or personal  
45 service within **[30]** 14 days of receipt of notice from the  
46 department that the remedial action workplan or remediation  
47 agreement, as provided in subsection e. of section 4 of P.L.1983,  
48 c.330, is approved, (2) within 14 days of submission to the



1 department of a remedial action workplan certified by a licensed  
2 site remediation professional as provided in subsection e. of section  
3 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon submission of a  
4 remediation certification to the department as provided in  
5 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or (4) as  
6 specified in an administrative consent order, civil order, or order of  
7 the department, as applicable. [The insurance company shall  
8 release to the person required to establish the remediation funding  
9 source, or to the department or transferee of the property, as  
10 appropriate, only those moneys as the department or the licensed  
11 site remediation professional authorizes, in writing, to be released.  
12 The person entitled to receive money from the environmental  
13 insurance policy shall submit documentation to the department  
14 detailing the costs incurred or to be incurred as part of the  
15 remediation.] The environmental insurance policy shall be issued  
16 by an entity that is licensed by the New Jersey Department of  
17 Banking and Insurance to transact business in the State.

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

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

39 e. A line of credit shall be established pursuant to the  
40 provisions of this subsection. A line of credit shall allow the person  
41 establishing it to borrow money up to a limit established in a written  
42 agreement in order to pay for the cost of the remediation for which  
43 the line of credit was established. An originally signed duplicate of  
44 the line of credit agreement shall be delivered to the department (1)  
45 by certified mail, overnight delivery, or personal service within 14  
46 days of receipt of notice from the department that the remedial  
47 action workplan or remediation agreement as provided in subsection  
48 e. of section 4 of P.L.1983, c.330 is approved, (2) within 14 days of  
49 submission to the department of a remedial action workplan

1 certified by a licensed site remediation professional as provided in  
2 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon  
3 submission of a remediation certification [pursuant to] to the  
4 department as provided in subsection e. of section 4 of P.L.1983,  
5 c.330 (C.13:1K-9), or (4) as specified in an administrative consent  
6 order, civil order, or order of the department, as applicable. The  
7 line of credit agreement shall conform to a model agreement as  
8 established by the department and shall be accompanied by a  
9 certification of acknowledgment that conforms to a model  
10 established by the department. The line of credit shall be issued by  
11 an institution that is licensed by the New Jersey Department of  
12 Banking and Insurance to transact business in the State, or by a  
13 federally regulated bank.

14 The line of credit shall not be allowed to expire, unless the  
15 institution provides the appropriate notification to the department  
16 and the borrower, as defined in a model agreement established by  
17 the department. The person who establishes the remediation  
18 funding source in the form of a line of credit may use the  
19 remediation funding source to pay for the actual cost of the  
20 remediation. The institution providing the line of credit shall  
21 disburse to the person required to establish the remediation funding  
22 source, or to the department or transferee of the property, as  
23 appropriate, only those moneys as the department or the licensed  
24 site remediation professional authorizes, in writing, to be disbursed.

25 The [person or] institution providing the line of credit shall release  
26 to the person [required to establish] who established the  
27 remediation funding source, or to the department or transferee of  
28 the property as appropriate, only those moneys as the department  
29 [or the licensed site remediation professional] authorizes, in  
30 writing, to be released. [The person entitled to draw upon the line  
31 of credit shall submit documentation to the department detailing the  
32 costs incurred or to be incurred as part of the remediation. Upon a  
33 determination that the costs are consistent with the remediation of  
34 the site, the department shall, in writing, authorize a disbursement  
35 from the line of credit in the amount of the documented costs.]

36 The department shall return the original line of credit agreement  
37 to the [person or] institution providing the line of credit for  
38 termination after the [person required to establish the remediation  
39 funding source substitutes] department receives an alternative  
40 remediation funding source as specified in this section, or after the  
41 department notifies the person required to establish and maintain  
42 the remediation funding source that that person is no longer  
43 required to maintain a remediation funding source for remediation  
44 of the contaminated site.

45 f. A person may self-guarantee a remediation funding source  
46 upon the submittal of documentation to the department  
47 demonstrating that the cost of the remediation [as estimated in the  
48 remedial action workplan, in the remediation agreement as provided

1 in subsection e. of section 4 of P.L.1983, c.330, in a remediation  
2 certification submitted pursuant to subsection e. of P.L.1983, c.330,  
3 in an administrative consent order, or as provided in a departmental  
4 or court order,] would not exceed one-third of the tangible net  
5 worth of the person required to establish the remediation funding  
6 source, and that the person has a cash flow sufficient to assure the  
7 availability of sufficient moneys for the remediation during the time  
8 necessary for the remediation. Documentation shall be delivered to  
9 the department (1) by certified mail, overnight delivery, or personal  
10 service within 14 days of receipt of notice from the department that  
11 the remedial action workplan or remediation agreement as provided  
12 in subsection e. of section 4 of P.L.1983, c.330 is approved, (2)  
13 within 14 days of submission to the department of a remedial action  
14 workplan certified by a licensed site remediation professional as  
15 provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-  
16 9), (3) upon submission of a remediation certification pursuant to  
17 the department as provided in subsection e. of section 4 of  
18 P.L.1983, c.330 (C.13:1K-9), or (4) as specified in an  
19 administrative consent order, civil order, or order of the department,  
20 as applicable. Satisfactory documentation of a person's capacity to  
21 self-guarantee a remediation funding source shall consist of audited  
22 financial statements, in which the auditor expresses an unqualified  
23 opinion, that includes a statement of income and expenses or similar  
24 statement of that person and the balance sheet or similar statement  
25 of assets and liabilities as used by that person for the fiscal year of  
26 the person making the application that ended closest in time to the  
27 date of the self-guarantee application. In the case of a special  
28 purpose entity established specifically for the purpose of acquiring  
29 and redeveloping a contaminated site, and for which a statement of  
30 income and expenses is not available, the documentation shall  
31 include a statement of assets and liabilities certified by a certified  
32 public accountant. The self-guarantee application shall be certified  
33 as true to the best of the applicant's information, knowledge, and  
34 belief, by the chief financial, or similar officer or employee, or  
35 general partner, or principal of the person making the self-guarantee  
36 application. A person shall be deemed by the department to possess  
37 the required cash flow pursuant to this section if that person's gross  
38 receipts exceed its gross payments in that fiscal year in an amount  
39 at least equal to the estimated costs of completing the remedial  
40 action workplan schedule to be performed in the 12-month period  
41 following the date on which the application for self-guarantee is  
42 made and the individual or entity possesses a net cash flow  
43 provided by operating activities in an amount at least equal to the  
44 estimated costs of completing the remediation in the 12-month  
45 period following the date the application is made. In the event that a  
46 self-guarantee is required for a period of more than one year,  
47 applications for a self-guarantee shall be renewed annually pursuant  
48 to this subsection for each successive year. The department may  
49 establish requirements and reporting obligations to ensure that the

1 person proposing to self-guarantee a remediation funding source  
2 meets the criteria for self-guaranteeing prior to the initiation of  
3 remedial action and until completion of the remediation.

4 g. (1) If the person required to establish the remediation  
5 funding source fails to perform the remediation as required, or fails  
6 to meet the conditions established pursuant to paragraph (3) of  
7 subsection a. of section 27 of P.L.2009, c.60 (C.58:10C-27) or  
8 section 1 of P.L.2013, c.283 (C.58:10C-27.1), or the mandatory  
9 remediation timeframes or expedited site specific timeframes  
10 established pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28)  
11 for the performance of the remedial action, the department shall  
12 make a written determination of this fact. A copy of the  
13 determination by the department shall be delivered to the person  
14 required to establish the remediation funding source and, in the case  
15 of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-  
16 6 et al.), to any transferee of the property. Following this written  
17 determination, the department may perform the remediation in place  
18 of the person required to establish the remediation funding source.  
19 In order to finance the cost of the remediation the department may  
20 make disbursements from the remediation funding source, or, if  
21 sufficient moneys are not available from those funds, from the  
22 remediation guarantee fund created pursuant to section 45 of  
23 P.L.1993, c.139 (C.58:10B-20).

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

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

1 except upon a determination by the department that the transferee is  
2 not adequately performing the remediation.

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

28 The letter of credit shall not be allowed to expire unless the  
29 financial institution provides the appropriate notification to the  
30 department and the application, as defined by a model agreement  
31 established by the department. The financial institution that  
32 provides the letter of credit shall release to the department or to a  
33 person authorized to perform the remediation pursuant to subsection  
34 g. of this section, only moneys authorized by the department, [or  
35 the authorized licensed site remediation professional,] in writing, to  
36 be released. The department shall return the original letter of credit  
37 to the financial institution providing the letter of credit for  
38 termination after the [person required to establish the remediation  
39 funding source substitutes] department receives an alternative  
40 remediation funding source as authorized in this section, or after the  
41 department notifies the person required to establish and maintain  
42 the remediation funding source that that person is no longer  
43 required to maintain a remediation funding source for the  
44 remediation of the contaminated site.

45 i. A surety bond shall be established pursuant to the provisions  
46 of this subsection. A surety bond shall allow a person to guarantee  
47 the availability of funds up to a limit established in a written  
48 agreement in order to guarantee the payment of the cost of the

1 remediation for which the surety bond was established. An  
2 originally signed duplicate of the surety bond agreement shall be  
3 delivered to the department (1) by certified mail, overnight  
4 delivery, or personal service within 14 days of receipt of notice  
5 from the department that the remedial action workplan or  
6 remediation agreement as provided in subsection e. of section 4 of  
7 P.L.1983, c.330 (C.13:1K-9) is approved, (2) within 14 days of  
8 submission to the department of a licensed site remediation  
9 professional certified remedial action workplan as provided in  
10 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon  
11 submission of a remediation certification to the department as  
12 provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-  
13 9), or (4) as specified in an administrative consent order, civil order,  
14 or order of the department, as applicable. The surety bond  
15 agreement shall conform to a model agreement established by the  
16 department and shall be accompanied by a certification of  
17 acknowledgment that conforms to a model established by the  
18 department. The surety company issuing the bond must be a  
19 company that is listed as an acceptable surety on federal bonds in  
20 United States Treasury Department Circular 570.

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

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

35

36 9. (New section) The department shall encourage the use of  
37 green and sustainable practices during the remediation of a  
38 contaminated site. The use of green and sustainable practices shall  
39 not alter the requirement that the remediation be protective of the  
40 public health and safety and of the environment.

41

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

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

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

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

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

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

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

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

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

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

39  
40 11. Section 1 of P.L.2006, c.65 (C.58:10B-24.1) is amended to  
41 read as follows:

42 1. a. Prior to the initiation of the remedial [action]  
43 investigation phase of the remediation of a contaminated site, any  
44 person who is responsible for conducting a remediation of the  
45 contaminated site, including the Department of Environmental  
46 Protection when it conducts a remediation of a contaminated site  
47 using public monies, shall provide written notification describing  
48 the activities that are to take place at the contaminated site to the

1 clerk of the municipality and to the county health department and  
2 the local health agency wherein the site is located. The written  
3 notice shall include notice of the location of the contaminated site,  
4 including address and the lot and block number of the contaminated  
5 site. The written notice shall also inform the municipality, county  
6 health department, and local health agency that they may receive a  
7 copy of the remedial action workplan **【and any updates or status**  
8 **reports】** , any other workplan, report, or validated data required by  
9 the department, and any updates thereto, and a copy of the site  
10 health and safety plan, from the responsible party, upon request.  
11 For any remediation of a contaminated site that will take longer  
12 than two years to complete, the person responsible for conducting  
13 the remediation shall provide the notification **【shall be provided】**  
14 required by this section every two years until remediation is  
15 complete.

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

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

22

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

25 2. Upon request of a municipality, any person who is responsible  
26 for conducting a remediation of a contaminated site shall submit a  
27 copy of a remedial action workplan , any other workplan, report, or  
28 validated data required by the department <sup>1</sup>pursuant to law, rule, or  
29 regulation<sup>1</sup>, and any updates or status reports pursuant to the  
30 "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), the  
31 "Brownfield and Contaminated Site Remediation Act," P.L.1997,  
32 c.278 (C.58:10B-1.1 et al.), or the "Spill Compensation and Control  
33 Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), and a copy of the site  
34 health and safety plan, to the clerk of the municipality wherein the  
35 contaminated site is located at the same time as **【the workplan is】**  
36 those documents are submitted to the **【Department of Environmental**  
37 **Protection】** department. Upon request of a county health department  
38 or a local health agency, the person who is responsible for conducting  
39 a remediation of a contaminated site shall also submit a copy of the  
40 remedial action workplan **【and】** , any other workplan, report, or  
41 validated data required by the department <sup>1</sup>pursuant to law, rule, or  
42 regulation<sup>1</sup>, any updates or status reports, and a copy of the site health  
43 and safety plan, to the county health department or local health  
44 agency, respectively <sup>1</sup>, wherein the contaminated site is located at the  
45 same time as those documents are submitted to the department<sup>1</sup>.

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



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

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

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

22       c. A person responsible for conducting a remediation shall  
23 respond to any <sup>1</sup>written or email<sup>1</sup> inquiries from the public <sup>1</sup>regarding  
24 the status of the remediation<sup>1</sup> that the person receives, or that the  
25 department receives and forwards to the person responsible for  
26 conducting the remediation, by providing either: (1) <sup>1</sup>**【specific】<sup>1</sup>**  
27 information or documents that are responsive to the public inquiry; or  
28 (2) a written <sup>1</sup>summary<sup>1</sup> status report for the remediation, which shall  
29 be made in a form and manner as prescribed by the department  
30 pursuant to rules and regulations. A person responsible for conducting  
31 a remediation may designate a licensed site remediation professional  
32 to respond to public inquiries pursuant to this subsection.

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

34

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

37       1. a. The provisions of any other law, or rule or regulation  
38 adopted pursuant thereto, to the contrary notwithstanding, the State  
39 may enter into a redevelopment agreement pursuant to sections 35  
40 and 36 of P.L.1997, c. 278 (C.58:10B-27 and 58:10B-28) for a  
41 redevelopment project that was commenced prior to the effective  
42 date of sections 34 through 39 of P.L.1997, c.278 (C.58:10B-26  
43 through 58:10B-31) in which the State may agree to reimburse a  
44 developer for 75 **【%】** percent of remediation costs incurred  
45 subsequent to entering into the redevelopment agreement, provided  
46 that the **【Chief Executive Officer and Secretary of the Commerce**  
47 **and Economic Growth Commission】** Executive Director of the New

1 Jersey Economic Development Authority, in consultation with the  
2 State Treasurer, finds that:

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

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

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

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

30 (2) a developer has entered into **【**a memorandum of agreement  
31 or other**】** an oversight document with the Commissioner of  
32 Environmental Protection for the remediation of a contaminated site  
33 located on the site of the redevelopment project and the developer is  
34 in compliance with the **【**memorandum of agreement or**】** oversight  
35 document.

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

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

43

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

46 36. a. The provisions of any other law, or rule or regulation  
47 adopted pursuant thereto, to the contrary notwithstanding, any  
48 developer that enters into a redevelopment agreement pursuant to

1 section 35 of P.L.1997, c.278 (C.58:10B-27), may be eligible for  
2 reimbursement of up to 75 **【%】** percent of the costs of the  
3 remediation of the subject real property pursuant to the provisions  
4 of this section upon the commencement of a business operation, or  
5 the completion of the construction of one or more new residences,  
6 within a redevelopment project.

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

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

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

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

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

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

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

45

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

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

9       b. Under the **[memorandum of agreement, or other]** oversight  
10 document, the developer shall agree to perform and complete any  
11 remediation activity as may be required by the Department of  
12 Environmental Protection to ensure the remediation is conducted  
13 pursuant to the regulations adopted by the Department of  
14 Environmental Protection pursuant to P.L.1993, c.139 (C.58:10B-  
15 1 et al.).

16       c. After the developer has entered into **[a memorandum of**  
17 agreement, or other] an oversight document with the Commissioner  
18 of Environmental Protection, or after the developer has notified the  
19 Department of Environmental Protection of the name and license  
20 information of the licensed site remediation professional who has  
21 been **[hired]** retained to perform the remediation as required  
22 pursuant to subsection b. of section 30 of P.L.2009, c.60 (C.58:10B-  
23 1.3), the commissioner shall submit a copy thereof to the developer,  
24 the clerk of the municipality in which the subject property is  
25 located, the Division of Business Assistance, Marketing and  
26 International Trade in the New Jersey Economic Development  
27 Authority, and the director.

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

29  
30       17. Section 39 of P.L.1997, c.278 (C.58:10B-31) is amended to  
31 read as follows:

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

47       b. A developer shall submit to the director updated remediation  
48 costs actually incurred by the developer for the remediation of the

1 contaminated property located at the site of the redevelopment  
2 project as provided in the redevelopment agreement. The  
3 reimbursement authorized pursuant to this section shall continue  
4 until such time as the aggregate dollar amount of the agreed upon  
5 reimbursement. To remain entitled to the reimbursement authorized  
6 pursuant to this section, the developer shall perform and complete  
7 all remediation activities as may be required pursuant to the  
8 **【memorandum of agreement or other】** oversight **【agreement】**  
9 document entered into with the Commissioner of Environmental  
10 Protection pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29)  
11 or as may be required by the licensed site remediation professional  
12 in order to issue a response action outcome for the site. The  
13 Department of Environmental Protection may review the  
14 remediation costs incurred by the developer to determine if they are  
15 reasonable.

16 Reimbursable remediation costs shall include costs that are  
17 incurred in preparing the area of land whereon the contaminated site  
18 is located for remediation and may include costs of dynamic  
19 compaction of soil necessary for the remediation.  
20 (cf: P.L.2009, c.60, s.55)

21

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

24 2. As used in sections 1 through 29 of P.L.2009, c.60 (C.58:10C-  
25 1 et seq.):

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

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

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

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

40 "Department" means the Department of Environmental Protection.

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

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

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

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

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

34 "Hazardous substance" means the "environmental hazardous  
35 substances" on the environmental hazardous substance list adopted by  
36 the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4);  
37 such elements and compounds, including petroleum products, which  
38 are defined as such by the department, after public hearing, and which  
39 shall be consistent to the maximum extent possible with, and which  
40 shall include, the list of hazardous substances adopted by the federal  
41 Environmental Protection Agency pursuant to section 311 of the  
42 Federal Water Pollution Control Act Amendments of 1972, Pub. L.92-  
43 500, as amended by the Clean Water Act of 1977, Pub. L.95-217  
44 (33 U.S.C. s.1251 et seq.); the list of toxic pollutants designated by  
45 Congress or the federal Environmental Protection Agency pursuant to  
46 section 307 of that act; and the list of hazardous substances adopted by  
47 the federal Environmental Protection Agency pursuant to section 101  
48 of the "Comprehensive Environmental Response, Compensation and  
49 Liability Act of 1980," Pub. L.96-510 (42 U.S.C. s.9601 et seq.);

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

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

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

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

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

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

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

47 "Preliminary assessment" means the first phase in the process of  
48 identifying areas of concern and determining whether contaminants are

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

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

14 "Remedial action" means those actions taken at a site or offsite if a  
15 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 that  
20 has migrated or is migrating from the site, is remediated in compliance  
21 with the applicable health risk or environmental standards.

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

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

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

43 "Remediation standards" means the combination of numeric  
44 standards that establish a level or concentration, and narrative  
45 standards to which contaminants must be treated, removed, or  
46 otherwise cleaned for soil, groundwater, or surface water, as provided  
47 by the department pursuant to section 35 of P.L.1993, c.139



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47       (4) has attended and completed the minimum environmental health  
48 and safety education and training provided pursuant to 29 C.F.R.

1 Section 1910.120 no more than one year prior to submission of an  
2 application for a license pursuant to this section;

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

7 (6) has not been convicted of, or <sup>1</sup>~~plead~~ pled<sup>1</sup> guilty to, an  
8 environmental crime, any similar or related <sup>1</sup>~~criminal offense~~ crime<sup>1</sup>  
9 under federal or state law, or any crime involving fraud, breach of  
10 trust, theft by deception, forgery, or any <sup>1</sup>~~crime or~~ offense that would  
11 qualify the person for registration pursuant to section 2 of P.L.1994,  
12 c.133 (C.2C:7-2), or any other crime <sup>1</sup>~~or offense~~ involving moral  
13 turpitude, or any similar or related offense under federal or state law .  
14 For the purposes of this section, a conviction or plea of guilty shall  
15 include a non vult, nolo contendere, no contest, or finding of guilt by a  
16 judge or jury; and

17 (7) has not had a professional license or <sup>1</sup>~~professional~~  
18 certification revoked by any state licensing board or any other  
19 professional licensing agency within the previous 10 years, and has  
20 not surrendered a professional license or <sup>1</sup>~~professional~~ certification in  
21 response to a disciplinary investigation within the previous 10 years.

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

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

45 g. No person may obtain a license unless that person meets the  
46 standards established for education, training and experience required  
47 in subsection b. of this section, satisfactorily passes the examination,  
48 and satisfies any other requirements established by the board to ensure

1 that licensed site remediation professionals meet the requirements  
2 established pursuant to this section.

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

4

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

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

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

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

17

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

20 14. a. For any site for which a licensed site remediation  
21 professional is required to be **【hired】** retained pursuant to the  
22 provisions of section 30 of P.L.2009, c.60 (C.58:10B-1.3), the  
23 person responsible for conducting the remediation shall certify all  
24 documents submitted to the department concerning the remediation  
25 of the contaminated site. The licensed site remediation professional  
26 shall certify that the work was performed, the licensed site  
27 remediation professional managed, supervised, or performed the  
28 work that is the basis of the submission, and that the work and the  
29 submitted documents are consistent with all applicable remediation  
30 requirements adopted by the department.

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

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

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

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

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

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

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

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

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

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

12 **[(b)]** (c) mandatory remediation timeframes and expedited site  
13 specific timeframes adopted by the department pursuant to section  
14 28 of P.L.2009, c.60 (C.58:10C-28); **[and]**

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

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

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

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

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

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

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

1 shall file the response action outcome with the department when it  
2 is issued to the person responsible for conducting the remediation.

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

4

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

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

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

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

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

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

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

47 g. A licensed site remediation professional who has taken over  
48 the responsibility for the remediation of a contaminated site from  
49 another licensed site remediation professional shall correct all

1 deficiencies in a document submitted by the previous licensed site  
2 remediation professional identified by the department in accordance  
3 with timeframes established by the department.

4 h. A licensed site remediation professional shall not certify any  
5 document submitted to the department unless the licensed site  
6 remediation professional : (1) believes that the information in the  
7 submission is true, accurate, and complete; and (2) has managed,  
8 supervised or performed the work that is the basis of the  
9 submission, or has periodically reviewed and evaluated the work  
10 performed by other persons that forms the basis for the information  
11 in the submission, or has completed the work of another licensed  
12 site remediation professional and has concluded such work is  
13 reliable pursuant to subsection f. of this section. A licensed site  
14 remediation professional shall not knowingly make any false  
15 statement, representation, or certification in any document or  
16 information required to be submitted to the board or the department.

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

32 j. If a licensed site remediation professional **【identifies】**  
33 obtains specific knowledge of a condition 【at a contaminated site】  
34 that in his independent professional judgment is an immediate  
35 environmental concern, then the licensed site remediation  
36 professional shall: (1) immediately verbally advise , and confirm in  
37 writing to, the person responsible for conducting the remediation of  
38 that person's duty to notify the department of the condition ,  
39 provided the person is known to the licensed site remediation  
40 professional; and (2) immediately notify the department of the  
41 condition by calling the department's telephone hotline.

42 k. If a licensed site remediation professional retained to  
43 perform remediation at a site or any portion of a site obtains  
44 specific knowledge that a discharge has occurred **【on a**  
45 **contaminated site for which he is responsible】** at any location on  
46 the site, the licensed site remediation professional shall: (1) notify  
47 the person responsible for conducting the remediation of the  
48 existence of the discharge; and (2) notify the department of the

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

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

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

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

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

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

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

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



- 1 (2) fail to disclose a fact necessary to correct a material  
2 misunderstanding known by the licensed site remediation  
3 professional to have arisen in the matter;
- 4 (3) knowingly and materially falsify, tamper with, alter, conceal,  
5 or destroy any document, data record, remedial system, or  
6 monitoring device that is relevant to the investigation, without  
7 obtaining the prior approval of the department; or
- 8 (4) knowingly allow or tolerate any employee, agent, or  
9 contractor of the licensed site remediation professional to engage in  
10 any of the foregoing activities.
- 11 r. A licensed site remediation professional shall be jointly  
12 responsible for a violation of any provision of this section  
13 committed by another licensed site remediation professional whose  
14 work he supervises or reviews if:
- 15 (1) the licensed site remediation professional orders, directs, or  
16 agrees to the provision of professional services conducted or  
17 prepared by another licensed site remediation professional under his  
18 supervision;
- 19 (2) the licensed site remediation professional knows that the  
20 professional services constitute a violation of this section; and
- 21 (3) the licensed site remediation professional fails to take  
22 reasonable steps to avoid or mitigate the violation.
- 23 s. A licensed site remediation professional shall comply with  
24 all conditions imposed by the board as a result of a license  
25 suspension or other disciplinary proceeding conducted by the board.
- 26 t. A licensed site remediation professional shall inform a client  
27 or prospective client of any relevant and material assumptions,  
28 limitations, or qualifications underlying their communication.  
29 Evidence that a licensed site remediation professional has provided  
30 the client or prospective client with timely written documentation of  
31 these assumptions, limitations, or qualifications shall be deemed by  
32 the board or the department to have satisfied the requirements of  
33 this subsection.
- 34 u. A licensed site remediation professional shall not state or  
35 imply, as an inducement or a threat to a client or prospective client,  
36 an ability to improperly influence a government agency or official.
- 37 v. In any description of qualifications, experience, or ability to  
38 provide services, a licensed site remediation professional shall not  
39 knowingly:
- 40 (1) make a material misrepresentation of fact;
- 41 (2) omit a fact when the omission results in a materially  
42 misleading description; or
- 43 (3) make a statement that, in the opinion of the board, is likely  
44 to create an unjustified expectation about results the licensed site  
45 remediation professional may achieve, or state or imply that the  
46 licensed site remediation professional may achieve results by means  
47 that violate the provisions of applicable environmental statutes,  
48 rules or regulations, including the provisions of P.L.2009, c.60  
49 (C.58:10C-1 et al.).

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

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

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

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

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

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

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

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

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

42  
43 23. (New section) If a licensed site remediation professional  
44 obtains specific knowledge of a condition in an unoccupied structure,  
45 that, in <sup>1</sup>his the licensed site remediation professional's<sup>1</sup>  
46 independent professional judgment, constitutes an immediate  
47 environmental concern, and the person responsible for conducting the  
48 remediation provides to the department a written certification from the  
49 property owner that the building (i) is not occupied, (ii) will not be

1 occupied, and (iii) will be demolished, then no further remediation  
2 relative to the immediate environmental concern in the unoccupied  
3 structure shall be required, provided the conditions of the certification  
4 are maintained. Nothing in this section shall be construed to limit the  
5 responsibility of a ~~'[license]~~ licensed<sup>1</sup> site remediation professional to  
6 comply with the notification requirements of subsection j. of section  
7 16 of P.L.2009, c.60 (C.58:10C-16), or the responsibility of a person  
8 to report a discharge pursuant to P.L.1976, c.141 (C.58:10-  
9 23.11 et seq.). The department shall prescribe the form and manner of  
10 the written certification pursuant to this section.

11

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

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

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

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

42 (2) A government entity, a person who is not otherwise liable  
43 for cleanup and removal costs pursuant to P.L.1976, c.141  
44 (C.58:10-23.11 et seq.) who purchases contaminated property  
45 before the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.)  
46 and undertakes a remediation of the property, a person who  
47 undertakes a remediation at their primary or secondary residence,  
48 the owner or operator of a child care center licensed pursuant to  
49 P.L.1983, c.492 (C.30:5B-1 et seq.) who performs a remediation at

1 the licensed child care center, the person responsible for conducting  
2 a remediation at a public school or private school as defined in  
3 N.J.S.18A:1-1, or a charter school established pursuant to P.L.1995,  
4 c.426 (C.18A:36A-1 et seq.), or the owner or operator of a small  
5 business responsible for performing a remediation at their business  
6 property, shall not be required to establish or maintain a funding  
7 source pursuant to this section, for the operation, maintenance, and  
8 inspection of the engineering controls installed as part of a remedial  
9 action of a contaminated site.

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

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

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

21

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

24 20. A licensed site remediation professional shall , for each  
25 contaminated site, maintain and preserve all data, documents and  
26 information concerning the remediation **【activities at each**  
27 **contaminated site】** that the licensed site remediation professional  
28 has **【worked on】** prepared or relied upon, including but not limited  
29 to, technical records and contractual documents, raw sampling and  
30 monitoring data, whether or not the data and information, including  
31 technical records and contractual documents, were developed by the  
32 licensed site remediation professional or the licensee's divisions,  
33 employees, agents, accountants, contractors, or attorneys, that relate  
34 in any way to the contamination at the site. **【Three】** An electronic  
35 **【copies】** copy of the records shall be submitted to the department at  
36 the time the response action outcome is filed with the department.

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

38

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

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

45 (1) the person responsible for conducting the remediation has a  
46 history of noncompliance with the laws concerning remediation, or  
47 any rule or regulation adopted pursuant thereto, that includes the  
48 issuance of at least two enforcement actions after the date of

1 enactment of P.L.2009, c.60 (C.58:10C-1 et al.) during any five-year  
2 period concerning a remediation;

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

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

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

23 (1) the person was unable to meet the applicable timeframe  
24 because <sup>1</sup>[he] the person<sup>1</sup> was unable to enter the contaminated site  
25 because <sup>1</sup>[he] the person<sup>1</sup> does not own the property, and the person  
26 took all appropriate and timely action pursuant to section 40 of  
27 P.L.1993, c.139 (C.58:10B-16) prior to the applicable timeframe; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (2) For any litigation pending or settled on the date of enactment  
34 of P.L.2009, c.60 (C.58:10C-1 et al.), concerning a remediation  
35 performed pursuant to the "Resource Conservation and Recovery Act,"  
36 42 U.S.C. s.6921 et seq., nothing in P.L.2009, c.60 (C.58:10C-1 et al.)  
37 shall affect an oversight procedure, remedy, or other obligation  
38 imposed by a federal administrative order or federal court order.

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

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

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

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

6        (2) The department may modify the direct oversight requirements  
7 of subsection c. of this section for a contaminated site if the  
8 department makes a written determination that the modification is in  
9 the public interest and protective of the public health and safety and  
10 the environment. At least 60 days prior to making a modification  
11 pursuant to this paragraph, the department shall publish its written  
12 determination and the proposed modification to the requirements of  
13 direct oversight, including the reasons for its determination, on the  
14 department's Internet website. The department shall solicit and accept  
15 public comments on the proposed modification for a period of at least  
16 30 days after the date of publication. The department shall consider  
17 the public comments received during the comment period prior to  
18 making a modification pursuant to this paragraph.

19        (3) The department may, prior to a change in ownership of a  
20 contaminated site, enter into an administrative consent order with the  
21 prospective purchaser of the contaminated site providing for the  
22 modification of any or all of the direct oversight requirements of  
23 subsection c. of this section for the contaminated site. <sup>1</sup>The  
24 department shall not enter into an administrative consent order  
25 pursuant to this paragraph with any person who:

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

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

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

34        (4) The department may reinstate any or all of the direct oversight  
35 requirements that it modifies pursuant to paragraphs (1), (2), <sup>1</sup>[and]  
36 or<sup>1</sup> (3) of this subsection if, after the modification, the department  
37 finds that the person responsible for conducting the remediation has  
38 failed to comply with any applicable timeframe, administrative  
39 consent order modifying the requirements of direct oversight, or any  
40 law, rule, or regulation concerning the remediation of contaminated  
41 sites.

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

43  
44        27. This act shall take effect immediately.

45  
46  
47        Makes various changes to laws governing remediation of  
48 contaminated sites.

# ASSEMBLY, No. 5293

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 13, 2019

**Sponsored by:**

**Assemblywoman NANCY J. PINKIN**

**District 18 (Middlesex)**

**Assemblyman ANDREW ZWICKER**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**SYNOPSIS**

Makes various changes to laws governing remediation of contaminated sites.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 6/11/2019)



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

3

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

6

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

9 3. As used in this act:

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

17 "Closing operations" means:

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

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

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

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

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

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

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

Matter underlined thus is new matter.

1 "Transferring ownership or operations" means:

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

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

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

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

14 "Change in ownership" means:

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

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

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

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

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

31 "Change in ownership" shall not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 pursuant to the "Solid Waste Management Act," P.L.1970, c.39  
2 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting  
3 Act," sections 1 through 43 of P.L.1981, c.279 (C.13:1E-49 et seq.)  
4 or the "Solid Waste Disposal Act" (42 U.S.C. s.6901 et seq.), or any  
5 establishment engaged in the production or distribution of  
6 agricultural commodities, shall not be considered industrial  
7 establishments for the purposes of this act. The department may,  
8 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
9 (C.52:14B-1 et seq.), exempt certain sub-groups or classes of  
10 operations within those sub-groups within the Standard Industrial  
11 Classification major group numbers listed in this subsection upon a  
12 finding that the operation of the industrial establishment does not  
13 pose a risk to public health and safety;

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

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

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

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

46 "Direct owner or operator" means any person that directly owns  
47 or operates an industrial establishment. A holder of a mortgage or  
48 other security interest in the industrial establishment shall not be

1 deemed to be a direct owner or operator of the industrial  
2 establishment unless or until it loses its exemption under P.L.1993,  
3 c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial  
4 establishment by deed of foreclosure, by other deed, or by court  
5 order or other process;

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

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

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

24 "Operator" means any person, including users, tenants, or  
25 occupants, having and exercising direct actual control of the  
26 operations of an industrial establishment. A holder of a mortgage  
27 or other security interest in the industrial establishment shall not be  
28 deemed to be an operator of the industrial establishment unless or  
29 until it loses its exemption under P.L.1993, c.112 (C.58:10-  
30 23.11g4 et al.) or obtains title to the industrial establishment by  
31 deed of foreclosure, by other deed, or by court order or other  
32 process;

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

47 "Remediation" or "remediate" means all **【necessary】** actions to  
48 investigate **【and】** , clean up , or respond to any known, suspected,

1 or threatened discharge of hazardous substances or hazardous  
2 wastes, including [ , as necessary,] the preliminary assessment, site  
3 investigation, remedial investigation, and remedial action , or any  
4 portion thereof;

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

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

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

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

45 "Site investigation" means the collection and evaluation of data  
46 adequate to determine whether or not discharged hazardous  
47 substances or hazardous wastes exist at the industrial establishment  
48 or have migrated or are migrating from the site at levels in excess of

1 the applicable remediation standards. A site investigation shall be  
2 developed based upon the information collected pursuant to the  
3 preliminary assessment.

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

5

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

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

10 a. an accountant pursuant to P.L.1997, c.259 (C.45:2B-  
11 42 et seq.);

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

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

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

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

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

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

19 h. a chiropractor pursuant to P.L.1989, c.153 (C.45:9-  
20 41.17 et seq.);

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

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

25 k. a physical therapist pursuant to P.L.1983, c.296 (C.45:9-  
26 37.11 et seq.);

27 l. a land surveyor pursuant to P.L.1938, c.342 (C.45:8-  
28 27 et seq.);

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

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

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

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

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

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

39

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

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

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

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

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

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

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

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

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

27 "Department" means the Department of Environmental  
28 Protection;

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

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

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

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



1 "Final remediation document" means a no further action letter  
2 issued by the department pursuant to P.L.1993, c.139 (C.58:10B-  
3 1 et al.), or a response action outcome issued by a licensed site  
4 remediation professional pursuant to section 14 of P.L.2009, c.60  
5 (C.58:10C-14);

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

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

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

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

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

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

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

3 (2) 200,000 gallons or more for hazardous substances of all  
4 kinds.

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

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

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

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

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

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

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

1 adopted by the department pursuant to this section shall not be  
2 considered petroleum or a petroleum product for the purposes of  
3 P.L.1976, c.141, unless such compound is to be utilized in the  
4 refining or blending of crude petroleum or petroleum stock in this  
5 State;

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

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

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

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

43 "Response action outcome" means a written determination by a  
44 licensed site remediation professional that the contaminated site  
45 was remediated in accordance with all applicable statutes and  
46 regulations, and based upon an evaluation of the historical use of  
47 the site, or of any area of concern at that site, as applicable, and any  
48 other investigation or action the department deems necessary, there

1 are no contaminants present at the site, or at any area of concern, at  
2 any other site to which a discharge originating at the site has  
3 migrated, or that any contaminants present at the site or that have  
4 migrated from the site have been remediated in accordance with  
5 applicable remediation regulations, and all applicable permits and  
6 authorizations have been obtained;

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

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

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

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

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

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

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

32

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

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

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

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

46 (3) Loss of income or impairment of earning capacity due to  
47 damage to real or personal property, including natural resources  
48 destroyed or damaged by a discharge; provided that such loss or

1 impairment exceeds 10 **【%】** percent of the amount which claimant  
2 derives, based upon income or business records, exclusive of other  
3 sources of income, from activities related to the particular real or  
4 personal property or natural resources damaged or destroyed by  
5 such discharge during the week, month or year for which the claim  
6 is filed;

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

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

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

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

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

1 responsibility required pursuant to section 2 of P.L.1991, c.58  
2 (C.58:10-23.11g2).

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

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

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

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

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

1 without regard to fault, for all cleanup and removal costs incurred  
2 by the department or a local unit pursuant to subsection b. of  
3 section 7 of P.L.1976, c.141 (C.58:10-23.11f). Nothing in this  
4 paragraph shall be construed to alter liability of any person who  
5 acquired real property prior to September 14, 1993.

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

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

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

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

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

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

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

1 with rules and regulations promulgated by the department defining  
2 these terms.

3 Nothing in this paragraph (2) shall be construed to alter liability  
4 of any person who acquired real property prior to September 14,  
5 1993; and

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



1 and regulations, or if that person fails to maintain the institutional  
2 or engineering controls on the property or to otherwise comply with  
3 the provisions of the final remediation document.

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

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

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

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

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

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

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

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

14 Nothing in this paragraph (5) shall be construed to alter liability  
15 of any person who acquired real property on or after September 14,  
16 1993.

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

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

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

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

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

47 (4) (a) within 30 days after acquisition of the property, the  
48 person commenced a remediation of the discharge, including any

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (1) a temporary or permanent injunction;

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

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

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

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

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

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

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

33 (b) the specific citation of the act or omission constituting the  
34 violation;

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

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

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

1 order on the 21st calendar day following receipt of the notice by the  
2 violator. If the department denies a hearing request, the notice of  
3 denial shall become a final order upon receipt of the notice by the  
4 violator.

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

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

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

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

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

1 e. All conveyances used or intended for use in the willful  
2 discharge of any hazardous substance are subject to forfeiture to the  
3 State pursuant to the provisions of P.L.1981, c.387 (C.13:1K-  
4 1 et seq.).  
5 (cf: P.L.1990, c.75, s.1)

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

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

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

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

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

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

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

31 "Department" means the Department of Environmental  
32 Protection;

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

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

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

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

1 "Financial assistance" means loans or loan guarantees;

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

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

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

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

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

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

1 the department may require the search for and evaluation of  
2 additional information relating to ownership and use of the site  
3 prior to 1932 if such information is available through diligent  
4 inquiry of the public records;

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

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

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

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

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

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

46 "Remediation fund" means the Hazardous Discharge Site  
47 Remediation Fund established pursuant to section 26 of P.L.1993,  
48 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 of  
13 this subsection. A surety bond shall allow a person to guarantee the  
14 availability of funds up to a limit established in a written agreement  
15 in order to guarantee the payment of the cost of the remediation for  
16 which the surety bond was established. An originally signed  
17 duplicate of the surety bond agreement shall be delivered to the  
18 department (1) by certified mail, overnight delivery, or personal  
19 service within 14 days of receipt of notice from the department that  
20 the remedial action workplan or remediation agreement as provided  
21 in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9) is  
22 approved, (2) within 14 days of submission to the department of a  
23 licensed site remediation professional certified remedial action  
24 workplan as provided in subsection e. of section 4 of P.L.1983,  
25 c.330 (C.13:1K-9), (3) upon submission of a remediation  
26 certification to the department as provided in subsection e. of  
27 section 4 of P.L.1983, c.330 (C.13:1K-9), or (4) as specified in an  
28 administrative consent order, civil order, or order of the department,  
29 as applicable. The surety bond agreement shall conform to a model  
30 agreement established by the department and shall be accompanied  
31 by a certification of acknowledgment that conforms to a model  
32 established by the department. The surety company issuing the  
33 bond must be a company that is listed as an acceptable surety on  
34 federal bonds in United States Treasury Department Circular 570.

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

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

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

6  
7       10. Section 39 of P.L.1993, c.139 (C.58:10B-15) is amended to  
8 read as follows:

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

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

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

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

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

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

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

44       d. Any documents or information provided to the department  
45 pursuant to this section may not be used in a criminal investigation  
46 or criminal prosecution against the person providing the  
47 information or documents for those violations that occurred before

1 the effective date of **【this act】** P.L.1993, c.139 as long as the person  
2 remediates the discharge in conformance with the administrative  
3 consent order **【or memorandum of agreement】** entered into  
4 pursuant to subsection a. of this section.

5 (cf: P.L.1993, c.139, s.39)  
6

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

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

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

36 (cf: P.L.2007, c.276, s.1)  
37

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

40 2. Upon request of a municipality, any person who is  
41 responsible for conducting a remediation of a contaminated site  
42 shall submit a copy of a remedial action workplan , any other  
43 workplan, report, or validated data required by the department, and  
44 any updates or status reports pursuant to the "Industrial Site  
45 Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), the "Brownfield  
46 and Contaminated Site Remediation Act," P.L.1997, c.278  
47 (C.58:10B-1.1 et al.), or the "Spill Compensation and Control Act,"

1 P.L.1976, c.141 (C.58:10-23.11 et seq.), and a copy of the site  
2 health and safety plan, to the clerk of the municipality wherein the  
3 contaminated site is located at the same time as **the workplan is**  
4 those documents are submitted to the **Department of**  
5 **Environmental Protection** department. Upon request of a county  
6 health department or a local health agency, the person who is  
7 responsible for conducting a remediation of a contaminated site  
8 shall also submit a copy of the remedial action workplan **and** ,  
9 any other workplan, report, or validated data required by the  
10 department, any updates or status reports, and a copy of the site  
11 health and safety plan, to the county health department or local  
12 health agency, respectively.

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

14

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

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

22 b. Within six months after the date of enactment of this act, the  
23 Department of Environmental Protection shall adopt, pursuant to  
24 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
25 1 et seq.), rules and regulations setting forth the notice requirements  
26 pursuant to subsection a. of this section. The rules and regulations  
27 to be adopted by the department pursuant to this section shall  
28 require any person who is responsible for conducting a remediation  
29 of a contaminated site to provide written notification to any local  
30 property owners and tenants who reside within 200 feet of the  
31 contaminated site. The notification shall summarize site conditions  
32 and provide information about actions being taken to remediate the  
33 site and may require written notification **or** and the posting of a  
34 sign visible to the public which shall be located on the boundaries  
35 of the contaminated site.

36 c. A person responsible for conducting a remediation shall  
37 respond to any inquiries from the public that the person receives, or  
38 that the department receives and forwards to the person responsible  
39 for conducting the remediation, by providing either: (1) specific  
40 information or documents that are responsive to the public inquiry;  
41 or (2) a written status report for the remediation, which shall be  
42 made in a form and manner as prescribed by the department  
43 pursuant to rules and regulations. A person responsible for  
44 conducting a remediation may designate a licensed site remediation  
45 professional to respond to public inquiries pursuant to this  
46 subsection.

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

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

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

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

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

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

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

43       (2) a developer has entered into **【a memorandum of agreement**  
44 **or other】** an oversight document with the Commissioner of  
45 Environmental Protection for the remediation of a contaminated site  
46 located on the site of the redevelopment project and the developer is



1 in compliance with the **【**memorandum of agreement or**】** oversight  
2 document.

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

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

10

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

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

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

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

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

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

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

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

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

15  
16 16. Section 37 of P.L.1997, c.278 (C.58:10B-29) is amended to  
17 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 P.L.1977, c.224 (C.58:12A-1 et al.); the "Flood Hazard Area  
2 Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.).

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

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

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

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

1 applicable remediation standard that would allow unrestricted use  
2 of that property. Institutional controls may include, without  
3 limitation, structure, land, and natural resource use restrictions, well  
4 restriction areas, and deed notices.

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

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

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

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

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

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

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

1 compliance with the applicable health risk or environmental  
2 standards.

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

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

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

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

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

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

1       “Retained” means hired, individually or through a firm or other  
2 person, by or on behalf of a person responsible for conducting  
3 remediation, to perform, manage, or supervise remediation or to  
4 periodically review and evaluate a remediation performed by other  
5 persons.

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

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

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

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

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

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

35

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

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

41       b. The board shall establish standards for education, training  
42 and experience that shall be required of any person who applies for  
43 a license or a license renewal. The board shall conduct  
44 examinations to certify that an applicant possesses sufficient  
45 knowledge of the State laws, rules and regulations, standards and  
46 requirements applicable to site remediation and that the applicant is  
47 qualified to obtain a license or a license renewal. The board shall  
48 also adopt standards for the professional conduct of licensed site



1 remediation professionals pursuant to the provisions of section 16  
2 of P.L.2009, c.60 (C.58:10C-16). The board shall require an  
3 applicant to submit references to ensure that the applicant meets the  
4 standards and requirements established for training, experience and  
5 professional conduct by licensed site remediation professionals. No  
6 person may take the licensing examination until the board  
7 determines that the applicant meets the standards for education,  
8 training and experience.

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

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

17 (1) holds a bachelor's degree or higher in natural, chemical or  
18 physical science, or an engineering degree in a discipline related to  
19 site remediation, from an accredited institution of higher education,  
20 or has been issued a temporary license to remediate discharges from  
21 underground storage tanks only pursuant to subsection d. of section  
22 13 of P.L.2009, c.60 (C.58:10C-13) and meets the other  
23 requirements established in this subsection and in subsection f. of  
24 this section;

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

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

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

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

44 (6) has not been convicted of, or plead guilty to, an  
45 environmental crime, any similar or related criminal offense under  
46 federal or state law, or any crime involving fraud, breach of trust,  
47 theft by deception, forgery , or any offense that would qualify the  
48 person for registration pursuant to section 2 of P.L.1994, c.133

1 (C.2C:7-2), or any other crime or offense involving moral turpitude,  
2 or any similar or related offense under federal or state law . For the  
3 purposes of this section, a conviction or plea of guilty shall include  
4 a non vult, nolo contendere, no contest, or finding of guilt by a  
5 judge or jury; and

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

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

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

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

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

41

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

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

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

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

7  
8        21. Section 14 of P.L.2009, c.60 (C.58:10C-14) is amended to  
9 read as follows:

10        14. a. For any site for which a licensed site remediation  
11 professional is required to be **[hired]** retained pursuant to the  
12 provisions of section 30 of P.L.2009, c.60 (C.58:10B-1.3), the  
13 person responsible for conducting the remediation shall certify all  
14 documents submitted to the department concerning the remediation  
15 of the contaminated site. The licensed site remediation professional  
16 shall certify that the work was performed, the licensed site  
17 remediation professional managed, supervised, or performed the  
18 work that is the basis of the submission, and that the work and the  
19 submitted documents are consistent with all applicable remediation  
20 requirements adopted by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40  
41       22. Section 16 of P.L.2009, c.60 (C.58:10C-16) is amended to  
42 read as follows:

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

46       b. A licensed site remediation professional shall exercise  
47 reasonable care and diligence, and shall apply the knowledge and  
48 skill ordinarily exercised by licensed site remediation professionals

1 in good standing practicing in the State at the time the services are  
2 performed.

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

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

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

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

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

41 h. A licensed site remediation professional shall not certify any  
42 document submitted to the department unless the licensed site  
43 remediation professional : (1) believes that the information in the  
44 submission is true, accurate, and complete; and (2) has managed,  
45 supervised or performed the work that is the basis of the  
46 submission, or has periodically reviewed and evaluated the work  
47 performed by other persons that forms the basis for the information  
48 in the submission, or has completed the work of another licensed

1 site remediation professional and has concluded such work is  
2 reliable pursuant to subsection f. of this section. A licensed site  
3 remediation professional shall not knowingly make any false  
4 statement, representation, or certification in any document or  
5 information required to be submitted to the board or the department.

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

21 j. If a licensed site remediation professional **【identifies】**  
22 obtains specific knowledge of a condition **【at a contaminated site】**  
23 that in his independent professional judgment is an immediate  
24 environmental concern, then the licensed site remediation  
25 professional shall: (1) immediately verbally advise , and confirm in  
26 writing to, the person responsible for conducting the remediation of  
27 that person's duty to notify the department of the condition ,  
28 provided the person is known to the licensed site remediation  
29 professional; and (2) immediately notify the department of the  
30 condition by calling the department's telephone hotline.

31 k. If a licensed site remediation professional retained to  
32 perform remediation at a site or any portion of a site obtains  
33 specific knowledge that a discharge has occurred **【on a**  
34 **contaminated site for which he is responsible】** at any location on  
35 the site, the licensed site remediation professional shall: (1) notify  
36 the person responsible for conducting the remediation of the  
37 existence of the discharge; and (2) notify the department of the  
38 discharge by calling the department's telephone hotline. The person  
39 responsible for conducting the remediation shall also be responsible  
40 for notifying the department of the existence of the discharge. The  
41 provisions of this subsection shall not apply to a discharge that may  
42 be a result of the existence of historic fill material.

43 l. If a licensed site remediation professional learns of an action  
44 or decision by a client that results in a deviation from the remedial  
45 action workplan or other report concerning the remediation  
46 developed by the licensed site remediation professional, the

1 licensed site remediation professional shall promptly notify the  
2 client and the department, in writing, of the deviation.

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

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

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

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

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

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

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

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

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

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

8 (1) the licensed site remediation professional orders, directs, or  
9 agrees to the provision of professional services conducted or  
10 prepared by another licensed site remediation professional under his  
11 supervision;

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

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

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

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

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

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

33 (1) make a material misrepresentation of fact;

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

36 (3) make a statement that, in the opinion of the board, is likely  
37 to create an unjustified expectation about results the licensed site  
38 remediation professional may achieve, or state or imply that the  
39 licensed site remediation professional may achieve results by means  
40 that violate the provisions of applicable environmental statutes,  
41 rules or regulations, including the provisions of P.L.2009, c.60  
42 (C.58:10C-1 et al.).

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

47 x. A licensed site remediation professional shall not accept  
48 compensation, financial or otherwise, for professional services



1 pertaining to a contaminated site from two or more persons whose  
2 interests are adverse or conflicting unless the circumstances are  
3 fully disclosed and agreed to by all clients engaging the licensed  
4 site remediation professional.

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

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

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

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

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

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

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

36

37 23. (New section) If a licensed site remediation professional  
38 obtains specific knowledge of a condition in an unoccupied  
39 structure, that, in his independent professional judgment, constitutes  
40 an immediate environmental concern, and the person responsible  
41 for conducting the remediation provides to the department a written  
42 certification from the property owner that the building (i) is not  
43 occupied, (ii) will not be occupied, and (iii) will be demolished,  
44 then no further remediation relative to the immediate environmental  
45 concern in the unoccupied structure shall be required, provided the  
46 conditions of the certification are maintained. Nothing in this  
47 section shall be construed to limit the responsibility of a license site  
48 remediation professional to comply with the notification

1 requirements of subsection j. of section 16 of P.L.2009, c.60  
2 (C.58:10C-16), or the responsibility of a person to report a  
3 discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.). The  
4 department shall prescribe the form and manner of the written  
5 certification pursuant to this section.

6

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

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

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

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

37 (2) A government entity, a person who is not otherwise liable  
38 for cleanup and removal costs pursuant to P.L.1976, c.141  
39 (C.58:10-23.11 et seq.) who purchases contaminated property  
40 before the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.)  
41 and undertakes a remediation of the property, a person who  
42 undertakes a remediation at their primary or secondary residence,  
43 the owner or operator of a child care center licensed pursuant to  
44 P.L.1983, c.492 (C.30:5B-1 et seq.) who performs a remediation at  
45 the licensed child care center, the person responsible for conducting  
46 a remediation at a public school or private school as defined in  
47 N.J.S.18A:1-1, or a charter school established pursuant to P.L.1995,  
48 c.426 (C.18A:36A-1 et seq.), or the owner or operator of a small

1 business responsible for performing a remediation at their business  
2 property, shall not be required to establish or maintain a funding  
3 source pursuant to this section, for the operation, maintenance, and  
4 inspection of the engineering controls installed as part of a remedial  
5 action of a contaminated site.

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

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

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

17

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

20 20. A licensed site remediation professional shall , for each  
21 contaminated site, maintain and preserve all data, documents and  
22 information concerning the remediation **【activities at each**  
23 **contaminated site】** that the licensed site remediation professional  
24 has **【worked on】** prepared or relied upon, including but not limited  
25 to, technical records and contractual documents, raw sampling and  
26 monitoring data, whether or not the data and information, including  
27 technical records and contractual documents, were developed by the  
28 licensed site remediation professional or the licensee's divisions,  
29 employees, agents, accountants, contractors, or attorneys, that relate  
30 in any way to the contamination at the site. **【Three】** An electronic  
31 **【copies】** copy of the records shall be submitted to the department at  
32 the time the response action outcome is filed with the department.

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

34

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

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

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

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

8 (3) unless a longer period has been ordered by a court, the  
9 person responsible for conducting the remediation has, prior to the  
10 date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), failed to  
11 complete the remedial investigation of the entire contaminated site  
12 10 years after the discovery of a discharge at the site and has failed  
13 to complete the remedial investigation of the entire contaminated  
14 site within five years after the date of enactment of P.L.2009, c.60  
15 (C.58:10C-1 et al.).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10     (2) The department may modify the direct oversight  
11 requirements of subsection c. of this section for a contaminated site  
12 if the department makes a written determination that the  
13 modification is in the public interest and protective of the public  
14 health and safety and the environment. At least 60 days prior to  
15 making a modification pursuant to this paragraph, the department  
16 shall publish its written determination and the proposed  
17 modification to the requirements of direct oversight, including the  
18 reasons for its determination, on the department's Internet website.  
19 The department shall solicit and accept public comments on the  
20 proposed modification for a period of at least 30 days after the date  
21 of publication. The department shall consider the public comments  
22 received during the comment period prior to making a modification  
23 pursuant to this paragraph.

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

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

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

38  
39 27. This act shall take effect immediately.

40  
41  
42   STATEMENT

43  
44         This bill would make various changes to the laws governing the  
45 remediation of contaminated sites and licensed site remediation  
46 professionals (LSRPs).

47         The bill would require a plaintiff, in any action for damages for  
48 personal injuries, wrongful death, or property damage resulting

1 from an alleged act of malpractice or negligence by an LSRP, to  
2 provide each defendant with an affidavit of merit. An affidavit of  
3 merit is a sworn statement from an appropriate licensed person  
4 stating that there exists a reasonable probability that the care, skill,  
5 or knowledge exercised or exhibited in the practice or work that is  
6 the subject of the complaint fell outside acceptable professional or  
7 occupational standards. If a plaintiff fails to file an affidavit of  
8 merit, his case would be dismissed for failure to state a cause of  
9 action. The State currently requires an affidavit of merit for suits  
10 against various other licensed professionals including doctors,  
11 accountants, attorneys, and engineers.

12 The bill would authorize the Superior Court and the municipal  
13 courts to impose a civil penalty for a violation of the “Spill  
14 Compensation and Control Act,” P.L.1976, c. 141 (C. 58:10-  
15 23.11 et seq.), to be assessed in accordance with the “Penalty  
16 Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.).

17 The bill makes several changes to laws governing the  
18 establishment of remediation funding sources, and when and how  
19 those remediation funding sources may be used, dispersed, and  
20 released. The bill provides that a person may establish, as a  
21 remediation funding source, a surety bond from an entity that is  
22 listed as an acceptable surety on federal bonds in United States  
23 Treasury Department Circular 570. The bill also establishes  
24 requirements for utilizing a surety bond as a remediation funding  
25 source.

26 The bill would require the Department of Environmental  
27 Protection (DEP) to encourage the use of green and sustainable  
28 practices during the remediation of a contaminated site. However,  
29 the use of green and sustainable practices would not alter the  
30 requirement that the remediation be protective of the public health  
31 and safety and of the environment.

32 Current law requires a person responsible for conducting a  
33 remediation to provide written notice of the remediation to the  
34 municipality and county in which the contaminated site is located  
35 prior to initiating the remedial action. The bill would require that  
36 such written notice be provided earlier in the site remediation  
37 process – prior to the initiation of the remedial investigation. The  
38 bill would also expand the types of documents a person responsible  
39 for conducting a remediation is required to provide to a  
40 municipality or county, upon request.

41 The bill would require a person responsible for conducting a  
42 remediation to respond to any inquiries from the public that the  
43 person receives or that the DEP receives and forwards to that  
44 person. Under the bill, the person’s response must include either:  
45 (1) specific information or documents that are responsive to the  
46 public inquiry; or (2) a written status report for the remediation in a  
47 form and manner as determined by the DEP. A person responsible

1 for conducting a remediation would be permitted to designate an  
2 LSRP to respond to public inquiries under the bill.

3 Current law provides that an “immediate environmental concern”  
4 includes “confirmed contamination that has migrated into an  
5 occupied structure...” The bill would expand the definition to  
6 include “confirmed contamination that has migrated into a structure  
7 currently used or able to be used for human occupancy...” Under  
8 existing law, the DEP has established expedited timeframes to  
9 address immediate environmental concerns. However, under the  
10 bill, no further remediation relative to an immediate environmental  
11 concern that affects an unoccupied structure would be required if a  
12 person responsible for conducting the remediation provides to the  
13 DEP a written certification from the property owner that the  
14 building: (1) is not occupied; (2) will not be occupied; and (3) will  
15 be demolished.

16 Under existing law, if an LSRP identifies a condition that, in his  
17 independent professional judgment, is an immediate environmental  
18 concern, then the LSRP must, among other things, immediately  
19 verbally advise the person responsible for conducting the  
20 remediation of that person’s duty to notify the DEP. The bill would  
21 require an LSRP to notify the person responsible for conducting the  
22 remediation, in writing, of the person’s duty to notify the DEP of  
23 the condition.

24 The bill provides that, if an LSRP who is retained to perform  
25 remediation at a site or any portion of a site obtains specific  
26 knowledge that a discharge has occurred at any location on the site,  
27 the LSRP must notify the person responsible for conducting the  
28 remediation and the DEP.

29 The bill makes certain changes to the licensing requirements for  
30 LSRPs. Under current law, an applicant for an LSRP license must  
31 demonstrate, among other things, that the applicant has the requisite  
32 number of years of full-time professional experience in the field of  
33 site remediation, of which five years must have occurred in New  
34 Jersey, and at least three years must have occurred in the State  
35 immediately prior to submission of the application. The bill would  
36 change this requirement to provide that an applicant must have  
37 worked at least three years in the State within the five years  
38 immediately prior to submission of the application, to account for  
39 applicants who may have been absent from work for personal  
40 reasons.

41 Current law specifies the crimes and other offenses that  
42 disqualify a person from becoming an LSRP. This bill would  
43 expand that list to include any criminal offense involving breach of  
44 trust, and any offense that would qualify the person for registration  
45 on the State’s sex offender registry, or any other crime or offense  
46 involving moral turpitude. Under the bill, an applicant for an LSRP  
47 license would need to demonstrate that he has not had a  
48 professional certification revoked, and has not surrendered a



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

3 The bill provides that a person who is not an LSRP may not  
4 perform remediation unless the remediation is managed, supervised,  
5 or periodically reviewed and evaluated by an LSRP. The bill  
6 specifies that an LSRP, when providing professional services for  
7 the remediation of a contaminated site, must apply the rules and  
8 regulations adopted by the Site Remediation Professional Licensing  
9 Board (board), and any other applicable rules and regulations  
10 concerning the remediation.

11 The bill specifies that an LSRP may not certify any document  
12 submitted to the DEP unless the LSRP believes that the information  
13 in the submission is true, accurate, and complete. The bill would  
14 also explicitly prohibit an LSRP from knowingly making any false  
15 statement, representation, or certification in any document or  
16 information required to be submitted to the DEP or the board.

17 The bill provides that an LSRP is prohibited from facilitating,  
18 aiding, assisting, or cooperating with any person in retaining or  
19 arranging for the retention of any person who is not an LSRP to  
20 perform remediation, unless the remediation is managed,  
21 supervised, or periodically reviewed and evaluated by an LSRP  
22 retained for that purpose, and the DEP has been notified of the  
23 retention. Additionally, under the bill, an LSRP would be  
24 prohibited from managing, supervising, performing, engaging, or  
25 participating in a remediation unless: (1) the LSRP has been  
26 retained by a person responsible for conducting the remediation,  
27 and the DEP has been notified of the retention; or (2) the  
28 remediation is being managed, supervised, or performed by another  
29 LSRP retained by the person responsible for conducting the  
30 remediation, and the DEP has been notified of the retention of the  
31 other LSRP.

32 The bill requires a person who is issued a remedial action permit  
33 for the operation, maintenance, and inspection of engineering or  
34 institutional controls and related systems installed as part of a  
35 remedial action to retain an LSRP to manage, supervise, or perform  
36 the requirements of the permit for the duration of the permit.

37 Under the bill, if a person responsible for conducting a  
38 remediation fails to meet certain conditions, the DEP would not  
39 undertake direct oversight of the contaminated site if the person  
40 demonstrates, and the DEP finds, that: (1) the person was unable to  
41 meet the applicable timeframe because he was unable to enter the  
42 contaminated site because he does not own the property, and the  
43 person took all appropriate and timely action to gain access to the  
44 site; or (2) the contaminated site is subject to federal oversight, the  
45 person has made timely submissions to the DEP, and the person was  
46 unable to meet the applicable timeframe due to the performance of  
47 additional review by the DEP.

1 The bill provides that, when a contaminated site is subject to  
2 direct oversight, the requirements of direct oversight run with the  
3 site, regardless of who owns the property, and regardless of whether  
4 there is a transfer of ownership of the property.

5 The bill authorizes the DEP to modify the requirements of direct  
6 oversight if: (1) the person responsible for conducting the  
7 remediation demonstrates financial hardship that prevents the  
8 performance of the remediation due to the imposition of direct  
9 oversight; or (2) there is a public emergency resulting from a  
10 natural disaster, as declared by the State or federal government, that  
11 resulted in a delay in meeting the mandatory or expedited site-  
12 specific timeframe or other condition that triggered direct oversight.  
13 The DEP would also be authorized to modify the requirements of  
14 direct oversight for a contaminated site if the DEP makes a written  
15 determination that the modification is in the public interest and  
16 protective of the public health and safety and the environment. The  
17 DEP would be required to publish its written determination,  
18 including the reasons for its determination, on the DEP's Internet  
19 website, and solicit and consider public comments on the proposed  
20 modification.

21 The bill also authorizes the DEP, prior to a change in ownership  
22 of a contaminated site, to enter into an administrative consent order  
23 with the prospective purchaser of the contaminated site providing  
24 for the modification of the requirements of direct oversight. The  
25 DEP would be authorized to reinstate the direct oversight  
26 requirements that it modifies under the bill if, after the  
27 modification, the DEP finds that the person responsible for  
28 conducting the remediation failed to comply with any applicable  
29 timeframe, administrative consent order, or any law, rule, or  
30 regulation concerning site remediation.

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

36 The bill deletes various references in the site remediation laws to  
37 the term "memorandum of agreement."

ASSEMBLY ENVIRONMENT AND SOLID WASTE  
COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 5293**

with committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 10, 2019

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Assembly Bill No. 5293.

This bill, as amended by the committee, would make various changes to the laws governing the remediation of contaminated sites and licensed site remediation professionals (LSRPs).

The bill would require a plaintiff, in any action for damages for personal injuries, wrongful death, or property damage resulting from an alleged act of malpractice or negligence by an LSRP, to provide each defendant with an affidavit of merit. (An affidavit of merit is a sworn statement from an appropriate licensed person stating that there exists a reasonable probability that the care, skill, or knowledge exercised or exhibited in the practice or work that is the subject of the complaint fell outside acceptable professional or occupational standards.) If a plaintiff fails to file an affidavit of merit, the case would be dismissed for failure to state a cause of action.

The bill would authorize the Superior Court and the municipal courts to impose a civil penalty for a violation of the “Spill Compensation and Control Act,” to be assessed in accordance with the “Penalty Enforcement Law of 1999.”

The bill makes several changes to laws governing the establishment of remediation funding sources, and when and how those remediation funding sources may be used, dispersed, and released. The bill provides that a person may establish, as a remediation funding source, a surety bond from an entity that is listed as an acceptable surety on federal bonds in United States Treasury Department Circular 570. The bill also establishes requirements for utilizing a surety bond as a remediation funding source.

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

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

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

Current law provides that an "immediate environmental concern" includes "confirmed contamination that has migrated into an occupied structure..." The bill would remove the word "occupied," so that the definition reads, in relevant part, "confirmed contamination that has migrated into a structure..." Under existing law, the DEP has established expedited timeframes to address immediate environmental concerns. However, under the bill, no further remediation relative to an immediate environmental concern that affects an unoccupied structure would be required if a person responsible for conducting the remediation provides to the DEP a written certification from the property owner that the building: (1) is not occupied; (2) will not be occupied; and (3) will be demolished.

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

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

The bill makes certain changes to the licensing requirements for LSRPs. Under current law, an applicant for an LSRP license must demonstrate, among other things, that the applicant has the requisite number of years of full-time professional experience in the field of site

remediation, of which five years must have occurred in the State, and at least three years must have occurred in the State immediately prior to submission of the application. The bill would change this requirement to provide that an applicant must have worked at least three years in the State within the five years immediately prior to submission of the application, to account for applicants who may have been absent from work for personal reasons.

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

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

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

The bill provides that an LSRP is prohibited from facilitating, aiding, assisting, or cooperating with any person in retaining or arranging for the retention of any person who is not an LSRP to perform remediation, unless the remediation is managed, supervised, or periodically reviewed and evaluated by an LSRP retained for that purpose, and the DEP has been notified of the retention. Additionally, under the bill, an LSRP would be prohibited from managing, supervising, performing, engaging, or participating in a remediation unless: (1) the LSRP has been retained by a person responsible for conducting the remediation, and the DEP has been notified of the retention; or (2) the remediation is being managed, supervised, or performed by another LSRP retained by the person responsible for conducting the remediation, and the DEP has been notified of the retention of the other LSRP.

The bill requires a person who is issued a remedial action permit for the operation, maintenance, and inspection of engineering or

institutional controls and related systems installed as part of a remedial action to retain an LSRP to manage, supervise, or perform the requirements of the permit for the duration of the permit.

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

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

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

The bill also authorizes the DEP, prior to a change in ownership of a contaminated site, to enter into an administrative consent order with the prospective purchaser of the contaminated site providing for the modification of the requirements of direct oversight, with certain exceptions. The DEP would be authorized to reinstate the direct oversight requirements that it modifies under the bill if, after the modification, the DEP finds that the person responsible for conducting the remediation failed to comply with any applicable timeframe, administrative consent order, or any law, rule, or regulation concerning site remediation.

The bill makes certain changes to the definition of the term "remediation," used in various existing site remediation laws. The bill also adds a definition for the term "retained" in the "Site Remediation Reform Act," and makes consistent the use of that term throughout that law.

Lastly, the bill deletes various references in the site remediation laws to the term “memorandum of agreement.”

#### COMMITTEE AMENDMENTS

The committee amendments to the bill:

(1) revise the definition of the term “remediation” in section 3 of P.L.1983, c.330 (C.13:1K-8) to make it consistent with other laws, by specifying that “remediation” does not include the payment of compensation for damage to, or loss of, natural resources;

(2) specify that a person responsible for conducting a remediation is required to provide to a municipality, upon request, any other workplan, report, or validated data required by the DEP pursuant to law, rule, or regulation;

(3) clarify that a person responsible for conducting a remediation is required to respond to any written or email inquiries from the public regarding the status of the remediation that the person receives, or that the DEP receives and forwards to the person;

(4) specify that the status report that a person responsible for conducting remediation may provide in response to a public inquiry is a written summary status report;

(5) amend the definition of the term “immediate environmental concern” in section 2 of P.L.2009, c.60 (C.58:10C-2) to provide that it includes “confirmed contamination that has migrated into a structure or a confined space...”;

(6) remove language providing that a person can be disqualified from becoming an LSRP for “offenses” involving moral turpitude, and instead provide that a person can be disqualified only for “crimes” involving moral turpitude;

(7) specify that a person may be disqualified from becoming an LSRP if a professional certification is revoked within the previous 10 years, as opposed to any certification;

(8) provide that, when the DEP, pursuant to the bill, modifies the requirement of direct oversight due to a public emergency, that public emergency does not need to be the result of a natural disaster;

(9) provide that the DEP may not enter into a pre-purchaser administrative consent order to modify the requirements of direct oversight with any person who: (a) has discharged a hazardous substance at the contaminated site, is in any way responsible for a hazardous substance at the site, or is otherwise liable for cleanup and removal costs at the site, (b) has owned or operated the contaminated site, or (c) is a predecessor, successor, subsidiary, partner, shareholder, assign, trustee in bankruptcy, responsible corporate official, or receiver appointed pursuant to a proceeding in law or equity, to any person described in subparagraphs (a) and (b) above; and

(10) make technical corrections to the bill.

STATEMENT TO  
[First Reprint]  
**ASSEMBLY, No. 5293**

with Senate Floor Amendments  
(Proposed by Senator SMITH)

ADOPTED: JUNE 20, 2019

This floor amendment would provide that a person is not required to retain a licensed site remediation professional (LSRP) to conduct sampling or investigation to confirm or evaluate a remediation performed or supervised by a retained LSRP, provided that the sampling or investigation: (1) is not required pursuant to any law, rule, regulation, or order; (2) is not conducted in order to obtain a response action outcome; and (3) is not conducted in order to investigate, clean up, or respond to any known, suspected, or threatened discharge of a contaminant.

This floor amendment would make this bill identical to Senate Bill No. 3682 (1R).



**SENATE, No. 3682**

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

INTRODUCED MAY 13, 2019

**Sponsored by:**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**Senator CHRISTOPHER "KIP" BATEMAN**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**Senator LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

**Senator Singleton**

**SYNOPSIS**

Makes various changes to laws governing remediation of contaminated sites.

**CURRENT VERSION OF TEXT**

As introduced.



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

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

3

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

6

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

9 3. As used in this act:

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

17 "Closing operations" means:

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

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

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

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

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

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

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

Matter underlined thus is new matter.

1 "Transferring ownership or operations" means:

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

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

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

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

14 "Change in ownership" means:

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

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

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

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

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

31 "Change in ownership" shall not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22       l. a land surveyor pursuant to P.L.1938, c.342 (C.45:8-27 et  
23 seq.);

24       m. a registered pharmacist pursuant to P.L.2003, c.280  
25 (C.45:14-40 et seq.);

26       n. a veterinarian pursuant to R.S.45:16-1 et seq.;

27       o. an insurance producer pursuant to P.L.2001, c.210  
28 (C.17:22A-26 et seq.); **[and]**

29       p. a certified midwife, certified professional midwife, or  
30 certified nurse midwife pursuant to R.S.45:10-1 et seq.; and

31       q. a licensed site remediation professional pursuant to section 7  
32 of P.L.2009, c.60 (C.58:10C-7).

33 (cf: P.L.2010, c.88, s.1)

34

35       3. Section 3 of P.L.1976, c.141 (C.58:10-23.11b) is amended to  
36 read as follows:

37       3. Unless the context clearly indicates otherwise, the following  
38 terms shall have the following meanings:

39       "Act of God" means an act exclusively occasioned by an  
40 unanticipated, grave natural disaster without the interference of any  
41 human agency;

42       "Administrator" means the chief executive of the New Jersey  
43 Spill Compensation Fund;

44       "Barrel" means 42 United States gallons or 159.09 liters or an  
45 appropriate equivalent measure set by the director for hazardous  
46 substances which are other than fluid or which are not commonly  
47 measured by the barrel;

48       "Board" means a board of arbitration convened by the  
49 administrator to settle disputed disbursements from the fund;



1 "Cleanup and removal costs" means all direct costs associated  
2 with a discharge, and those indirect costs that may be imposed by  
3 the department pursuant to section 1 of P.L.2002, c.37 associated  
4 with a discharge, incurred by the State or its political subdivisions  
5 or their agents or any person with written approval from the  
6 department in the: (1) removal or attempted removal of hazardous  
7 substances, or (2) taking of reasonable measures to prevent or  
8 mitigate damage to the public health, safety, or welfare, including,  
9 but not limited to, public and private property, shorelines, beaches,  
10 surface waters, water columns and bottom sediments, soils and  
11 other affected property, including wildlife and other natural  
12 resources, and shall include costs incurred by the State for the  
13 indemnification and legal defense of contractors pursuant to  
14 sections 1 through 11 of P.L.1991, c.373 (C.58:10-23.11f8 et seq.);

15 "Commissioner" means the Commissioner of Environmental  
16 Protection;

17 "Contamination" or "contaminant" means any discharged  
18 hazardous substance, hazardous waste as defined pursuant to  
19 section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined  
20 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

21 "Department" means the Department of Environmental  
22 Protection;

23 "Director" means the Director of the Division of Taxation in the  
24 Department of the Treasury;

25 "Discharge" means any intentional or unintentional action or  
26 omission resulting in the releasing, spilling, leaking, pumping,  
27 pouring, emitting, emptying or dumping of hazardous substances  
28 into the waters or onto the lands of the State, or into waters outside  
29 the jurisdiction of the State when damage may result to the lands,  
30 waters or natural resources within the jurisdiction of the State;

31 "Emergency response action" means those activities conducted  
32 by a local unit to clean up, remove, prevent, contain, or mitigate a  
33 discharge that poses an immediate threat to the environment or to  
34 the public health, safety, or welfare;

35 "Fair market value" means the invoice price of the hazardous  
36 substances transferred, including transportation charges; but where  
37 no price is so fixed, "fair market value" shall mean the market price  
38 as of the close of the nearest day to the transfer, paid for similar  
39 hazardous substances, as shall be determined by the taxpayer  
40 pursuant to rules of the director;

41 "Final remediation document" means a no further action letter  
42 issued by the department pursuant to P.L.1993, c.139 (C.58:10B-1  
43 et al.), or a response action outcome issued by a licensed site  
44 remediation professional pursuant to section 14 of P.L.2009, c.60  
45 (C.58:10C-14);

46 "Fund" means the New Jersey Spill Compensation Fund;

47 "Hazardous substances" means the "environmental hazardous  
48 substances" on the environmental hazardous substance list adopted  
49 by the department pursuant to section 4 of P.L.1983, c.315

1 (C.34:5A-4); such elements and compounds, including petroleum  
2 products, which are defined as such by the department, after public  
3 hearing, and which shall be consistent to the maximum extent  
4 possible with, and which shall include, the list of hazardous  
5 substances adopted by the federal Environmental Protection Agency  
6 pursuant to section 311 of the Federal Water Pollution Control Act  
7 Amendments of 1972, Pub.L.92-500, as amended by the Clean  
8 Water Act of 1977, Pub.L.95-217 (33 U.S.C.s.1251 et seq.); the list  
9 of toxic pollutants designated by Congress or the **[EPA]** United  
10 States Environmental Protection Agency pursuant to section 307 of  
11 that act; and the list of hazardous substances adopted by the federal  
12 Environmental Protection Agency pursuant to section 101 of the  
13 "Comprehensive Environmental Response, Compensation and  
14 Liability Act of 1980," Pub.L.96-510 (42 U.S.C.s.9601 et seq.);  
15 provided, however, that sewage and sewage sludge shall not be  
16 considered as hazardous substances for the purposes of P.L.1976,  
17 c.141 (C.58:10-23.11 et seq.);

18 "Licensed site remediation professional" means an individual  
19 who is licensed by the Site Remediation Professional Licensing  
20 Board pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) or the  
21 department pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12);

22 "Local unit" means any county or municipality, or any agency or  
23 other instrumentality thereof, or a duly incorporated volunteer fire,  
24 ambulance, first aid, emergency, or rescue company or squad;

25 "Major facility" includes, but is not limited to, any refinery,  
26 storage or transfer terminal, pipeline, deep-water port, drilling  
27 platform or any appurtenance related to any of the preceding that is  
28 used or is capable of being used to refine, produce, store, handle,  
29 transfer, process or transport hazardous substances. "Major  
30 facility" shall include a vessel only when that vessel is engaged in a  
31 transfer of hazardous substances between it and another vessel, and  
32 in any event shall not include a vessel used solely for activities  
33 directly related to recovering, containing, cleaning up or removing  
34 discharges of petroleum in the surface waters of the State, including  
35 training, research, and other activities directly related to spill  
36 response.

37 A facility shall not be considered a major facility for the purpose  
38 of P.L.1976, c.141 unless it has total combined aboveground or  
39 buried storage capacity of:

40 (1) 20,000 gallons or more for hazardous substances which are  
41 other than petroleum or petroleum products, or

42 (2) 200,000 gallons or more for hazardous substances of all  
43 kinds.

44 In determining whether a facility is a major facility for the  
45 purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.), any  
46 underground storage tank at the facility used solely to store heating  
47 oil for on-site consumption shall not be considered when  
48 determining the combined storage capacity of the facility.

1 For the purposes of this definition, "storage capacity" shall mean  
2 only that total combined capacity which is dedicated to, used for or  
3 intended to be used for storage of hazardous substances of all kinds.  
4 Where appropriate to the nature of the facility, storage capacity may  
5 be determined by the intended or actual use of open land or  
6 unenclosed space as well as by the capacities of tanks or other  
7 enclosed storage spaces;

8 "Natural resources" means all land, fish, shellfish, wildlife, biota,  
9 air, waters and other such resources owned, managed, held in trust  
10 or otherwise controlled by the State;

11 "Owner" or "operator" means, with respect to a vessel, any  
12 person owning, operating or chartering by demise such vessel; with  
13 respect to any major facility, any person owning such facility, or  
14 operating it by lease, contract or other form of agreement; with  
15 respect to abandoned or derelict major facilities, the person who  
16 owned or operated such facility immediately prior to such  
17 abandonment, or the owner at the time of discharge;

18 "Person" means public or private corporations, companies,  
19 associations, societies, firms, partnerships, joint stock companies,  
20 individuals, the United States, the State of New Jersey and any of  
21 its political subdivisions or agents;

22 "Person responsible for conducting the remediation" means (1)  
23 any person who executes or is otherwise subject to an oversight  
24 document to remediate a contaminated site, (2) the owner or  
25 operator of an industrial establishment subject to P.L.1983, c.330  
26 (C.13:1K-6 et al.), for the remediation of a discharge, (3) the owner  
27 or operator of an underground storage tank subject to P.L.1986,  
28 c.102 (C.58:10A-21 et seq.), for the remediation of a discharge, (4)  
29 any other person who discharges a hazardous substance or is in any  
30 way responsible for a hazardous substance, pursuant to section 8 of  
31 P.L.1976, c.141 (C.58:10-23.11g), that was discharged at a  
32 contaminated site, or (5) any other person who is remediating a site;

33 "Petroleum" or "petroleum products" means oil or petroleum of  
34 any kind and in any form, including, but not limited to, oil,  
35 petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil  
36 mixed with other wastes, crude oils, and substances or additives to  
37 be utilized in the refining or blending of crude petroleum or  
38 petroleum stock in this State; however, any compound designated  
39 by specific chemical name on the list of hazardous substances  
40 adopted by the department pursuant to this section shall not be  
41 considered petroleum or a petroleum product for the purposes of  
42 P.L.1976, c.141, unless such compound is to be utilized in the  
43 refining or blending of crude petroleum or petroleum stock in this  
44 State;

45 "Preliminary assessment" means the first phase in the process of  
46 identifying areas of concern and determining whether contaminants  
47 are or were present at a site or have migrated or are migrating from  
48 a site, and shall include the initial search for and evaluation of,  
49 existing site specific operational and environmental information,

1 both current and historic, to determine if further investigation  
2 concerning the documented, alleged, suspected or latent discharge  
3 of any contaminant is required. The evaluation of historic  
4 information shall be conducted from 1932 to the present, except that  
5 the department may require the search for and evaluation of  
6 additional information relating to ownership and use of the site  
7 prior to 1932 if such information is available through diligent  
8 inquiry of the public records;

9 "Remedial action" means those actions taken at a site or offsite if  
10 a contaminant has migrated or is migrating therefrom, as may be  
11 required by the department, including the removal, treatment,  
12 containment, transportation, securing, or other engineering or  
13 treatment measures, whether to an unrestricted use or otherwise,  
14 designed to ensure that any discharged contaminant at the site or  
15 that has migrated or is migrating from the site, is remediated in  
16 compliance with the applicable health risk or environmental  
17 standards;

18 "Remedial investigation" means a process to determine the  
19 nature and extent of a discharge of a contaminant at a site or a  
20 discharge of a contaminant that has migrated or is migrating from  
21 the site and the problems presented by a discharge, and may include  
22 data collected, site characterization, sampling, monitoring, and the  
23 gathering of any other sufficient and relevant information necessary  
24 to determine the necessity for remedial action and to support the  
25 evaluation of remedial actions if necessary;

26 "Remediation" or "remediate" means all **【necessary】** actions to  
27 investigate **【and】** , clean up , or respond to any known, suspected,  
28 or threatened discharge, including **【, as necessary,】** the preliminary  
29 assessment, site investigation, remedial investigation, and remedial  
30 action, or any portion thereof, provided, however, that  
31 "remediation" or "remediate" shall not include the payment of  
32 compensation for damage to, or loss of, natural resources;

33 "Response action outcome" means a written determination by a  
34 licensed site remediation professional that the contaminated site  
35 was remediated in accordance with all applicable statutes and  
36 regulations, and based upon an evaluation of the historical use of  
37 the site, or of any area of concern at that site, as applicable, and any  
38 other investigation or action the department deems necessary, there  
39 are no contaminants present at the site, or at any area of concern, at  
40 any other site to which a discharge originating at the site has  
41 migrated, or that any contaminants present at the site or that have  
42 migrated from the site have been remediated in accordance with  
43 applicable remediation regulations, and all applicable permits and  
44 authorizations have been obtained;

45 "Site investigation" means the collection and evaluation of data  
46 adequate to determine whether or not discharged contaminants exist  
47 at a site or have migrated or are migrating from the site at levels in  
48 excess of the applicable remediation standards. A site investigation

1 shall be developed based upon the information collected pursuant to  
2 the preliminary assessment;

3 "Taxpayer" means the owner or operator of a major facility  
4 subject to the tax provisions of P.L.1976, c.141;

5 "Tax period" means every calendar month on the basis of which  
6 the taxpayer is required to report under P.L.1976, c.141;

7 "Transfer" means onloading or offloading between major  
8 facilities and vessels, or vessels and major facilities, and from  
9 vessel to vessel or major facility to major facility, except for fueling  
10 or refueling operations and except that with regard to the movement  
11 of hazardous substances other than petroleum, it shall also include  
12 any onloading of or offloading from a major facility;

13 "Vessel" means every description of watercraft or other  
14 contrivance that is practically capable of being used as a means of  
15 commercial transportation of hazardous substances upon the water,  
16 whether or not self-propelled;

17 "Waters" means the ocean and its estuaries to the seaward limit  
18 of the State's jurisdiction, all springs, streams and bodies of surface  
19 or groundwater, whether natural or artificial, within the boundaries  
20 of this State.

21 (cf: P.L.2009, c.60, s.35)

22

23 4. Section 8 of P.L.1976, c.141 (C.58:10-23.11g) is amended to  
24 read as follows:

25 8. a. The fund shall be strictly liable, without regard to fault,  
26 for all cleanup and removal costs and for all direct and indirect  
27 damages no matter by whom sustained, including but not limited to:

28 (1) The cost of restoring, repairing, or replacing any real or  
29 personal property damaged or destroyed by a discharge, any income  
30 lost from the time such property is damaged to the time such  
31 property is restored, repaired or replaced, and any reduction in  
32 value of such property caused by such discharge by comparison  
33 with its value prior thereto;

34 (2) The cost of restoration and replacement, where possible, of  
35 any natural resource damaged or destroyed by a discharge;

36 (3) Loss of income or impairment of earning capacity due to  
37 damage to real or personal property, including natural resources  
38 destroyed or damaged by a discharge; provided that such loss or  
39 impairment exceeds 10 **【%】** percent of the amount which claimant  
40 derives, based upon income or business records, exclusive of other  
41 sources of income, from activities related to the particular real or  
42 personal property or natural resources damaged or destroyed by  
43 such discharge during the week, month or year for which the claim  
44 is filed;

45 (4) Loss of tax revenue by the State or local governments for a  
46 period of one year due to damage to real or personal property  
47 proximately resulting from a discharge;

48 (5) Interest on loans obtained or other obligations incurred by a  
49 claimant for the purpose of ameliorating the adverse effects of a

1 discharge pending the payment of a claim in full as provided by this  
2 act.

3 b. The damages which may be recovered by the fund, without  
4 regard to fault, subject to the defenses enumerated in subsection d.  
5 of this section against the owner or operator of a major facility or  
6 vessel, shall not exceed \$50,000,000.00 for each major facility or  
7 \$1,200 per gross ton for each vessel, except that such maximum  
8 limitation shall not apply and the owner or operator shall be liable,  
9 jointly and severally, for the full amount of such damages if it can  
10 be shown that such discharge was the result of (1) gross negligence  
11 or willful misconduct, within the knowledge and privity of the  
12 owner, operator or person in charge, or (2) a gross or willful  
13 violation of applicable safety, construction or operating standards or  
14 regulations. Damages which may be recovered from, or by, any  
15 other person shall be limited to those authorized by common or  
16 statutory law.

17 c. (1) Except as provided in section 2 of P.L.2005, c.43  
18 (C.58:10-23.11g12), any person who has discharged a hazardous  
19 substance, or is in any way responsible for any hazardous  
20 substance, shall be strictly liable, jointly and severally, without  
21 regard to fault, for all cleanup and removal costs no matter by  
22 whom incurred. Such person shall also be strictly liable, jointly and  
23 severally, without regard to fault, for all cleanup and removal costs  
24 incurred by the department or a local unit pursuant to subsection b.  
25 of section 7 of P.L.1976, c.141 (C.58:10-23.11f).

26 (2) In addition to the persons liable pursuant to this subsection,  
27 in the case of a discharge of a hazardous substance from a vessel  
28 into the waters of the State, the owner or operator of a refinery,  
29 storage, transfer, or pipeline facility to which the vessel was en  
30 route to deliver the hazardous substance who, by contract,  
31 agreement, or otherwise, was scheduled to assume ownership of the  
32 discharged hazardous substance, and any other person who was so  
33 scheduled to assume ownership of the discharged hazardous  
34 substance, shall be strictly liable, jointly and severally, without  
35 regard to fault, for all cleanup and removal costs if the owner or  
36 operator of the vessel did not have the evidence of financial  
37 responsibility required pursuant to section 2 of P.L.1991, c.58  
38 (C.58:10-23.11g2).

39 Where a person is liable for cleanup and removal costs as  
40 provided in this paragraph, any expenditures made by the  
41 administrator for that cleanup and removal shall constitute a debt of  
42 that person to the fund. The debt shall constitute a lien on all  
43 property owned by that person when a notice of lien identifying the  
44 nature of the discharge and the amount of the cleanup, removal and  
45 related costs expended from the fund is duly filed with the clerk of  
46 the Superior Court. The clerk shall promptly enter upon the civil  
47 judgment or order docket the name and address of the liable person  
48 and the amount of the lien as set forth in the notice of lien. Upon  
49 entry by the clerk, the lien, to the amount committed by the

1 administrator for cleanup and removal, shall attach to the revenues  
2 and all real and personal property of the liable person, whether or  
3 not that person is insolvent.

4 For the purpose of determining priority of this lien over all other  
5 claims or liens which are or have been filed against the property of  
6 an owner or operator of a refinery, storage, transfer, or pipeline  
7 facility, the lien on the facility to which the discharged hazardous  
8 substance was en route shall have priority over all other claims or  
9 liens which are or have been filed against the property. The notice  
10 of lien filed pursuant to this paragraph which affects any property  
11 of a person liable pursuant to this paragraph other than the property  
12 of an owner or operator of a refinery, storage, transfer, or pipeline  
13 facility to which the discharged hazardous substance was en route,  
14 shall have priority from the day of the filing of the notice of the lien  
15 over all claims and liens filed against the property, but shall not  
16 affect any valid lien, right, or interest in the property filed in  
17 accordance with established procedure prior to the filing of a notice  
18 of lien pursuant to this paragraph.

19 To the extent that a person liable pursuant to this paragraph is  
20 not otherwise liable pursuant to paragraph (1) of this subsection, or  
21 under any other provision of law or under common law, that person  
22 may bring an action for indemnification for costs paid pursuant to  
23 this paragraph against any other person who is strictly liable  
24 pursuant to paragraph (1) of this subsection.

25 Nothing in this paragraph shall be construed to extend or negate  
26 the right of any person to bring an action for contribution that may  
27 exist under P.L.1976, c.141, or any other act or under common law.

28 (3) In addition to the persons liable pursuant to this subsection,  
29 any person who owns real property acquired on or after September  
30 14, 1993 on which there has been a discharge prior to the person's  
31 acquisition of that property and who knew or should have known  
32 that a hazardous substance had been discharged at the real property,  
33 shall be strictly liable, jointly and severally, without regard to fault,  
34 for all cleanup and removal costs no matter by whom incurred.  
35 Such person shall also be strictly liable, jointly and severally,  
36 without regard to fault, for all cleanup and removal costs incurred  
37 by the department or a local unit pursuant to subsection b. of  
38 section 7 of P.L.1976, c.141 (C.58:10-23.11f). Nothing in this  
39 paragraph shall be construed to alter liability of any person who  
40 acquired real property prior to September 14, 1993.

41 d. (1) In addition to those defenses provided in this subsection,  
42 an act or omission caused solely by war, sabotage, or God, or a  
43 combination thereof, shall be the only defenses which may be raised  
44 by any owner or operator of a major facility or vessel responsible  
45 for a discharge in any action arising under the provisions of this act.

46 (2) A person, including an owner or operator of a major facility,  
47 who owns real property acquired on or after September 14, 1993 on  
48 which there has been a discharge, shall not be liable for cleanup and  
49 removal costs or for any other damages to the State or to any other

1 person for the discharged hazardous substance pursuant to  
2 subsection c. of this section or pursuant to civil common law, if that  
3 person can establish by a preponderance of the evidence that  
4 subparagraphs (a) through (d) apply, or if applicable, subparagraphs  
5 (a) through (e) apply:

6 (a) the person acquired the real property after the discharge of  
7 that hazardous substance at the real property;

8 (b) (i) at the time the person acquired the real property, the  
9 person did not know and had no reason to know that any hazardous  
10 substance had been discharged at the real property, or (ii) the person  
11 acquired the real property by devise or succession, except that any  
12 other funds or property received by that person from the deceased  
13 real property owner who discharged a hazardous substance or was  
14 in any way responsible for a hazardous substance, shall be made  
15 available to satisfy the requirements of P.L.1976, c.141, or (iii) the  
16 person complies with the provisions of subparagraph (e) of  
17 paragraph (2) of this subsection;

18 (c) the person did not discharge the hazardous substance, is not  
19 in any way responsible for the hazardous substance, and is not a  
20 corporate successor to the discharger or to any person in any way  
21 responsible for the hazardous substance or to anyone liable for  
22 cleanup and removal costs pursuant to this section;

23 (d) the person gave notice of the discharge to the department  
24 upon actual discovery of that discharge.

25 To establish that a person had no reason to know that any  
26 hazardous substance had been discharged for the purposes of this  
27 paragraph (2), the person must have undertaken, at the time of  
28 acquisition, all appropriate inquiry into the previous ownership and  
29 uses of the property. For the purposes of this paragraph (2), all  
30 appropriate inquiry shall mean the performance of a preliminary  
31 assessment, and site investigation, if the preliminary assessment  
32 indicates that a site investigation is necessary, as defined in section  
33 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance  
34 with rules and regulations promulgated by the department defining  
35 these terms.

36 Nothing in this paragraph (2) shall be construed to alter liability  
37 of any person who acquired real property prior to September 14,  
38 1993; and

39 (e) For the purposes of this subparagraph the person must have  
40 (i) acquired the property subsequent to a hazardous substance being  
41 discharged on the site and which discharge was discovered at the  
42 time of acquisition as a result of the appropriate inquiry, as defined  
43 in this paragraph (2), (ii) performed, following the effective date of  
44 P.L.1997, c.278, a remediation of the site or discharge consistent  
45 with the provisions of section 35 of P.L.1993, c.139 (C.58:10B-12),  
46 or, relied upon a valid final remediation document for a remediation  
47 performed prior to acquisition, or, obtained a remedial action  
48 workplan certified by a licensed site remediation professional  
49 retained for the site after the date of enactment of P.L.2009, c.60



1 (C.58:10C-1 et al.) and continued to comply with the conditions of  
2 that workplan. or obtained approval of a remedial action workplan  
3 by the department after the effective date of P.L.1997, c.278 and  
4 continued to comply with the conditions of that workplan, and (iii)  
5 established and maintained all engineering and institutional controls  
6 as may be required pursuant to sections 35 and 36 of P.L.1993,  
7 c.139. A person who complies with the provisions of this  
8 subparagraph by actually performing a remediation of the site or  
9 discharge as set forth in (ii) above shall be issued, upon application,  
10 a no further action letter by the department or a response action  
11 outcome by a licensed site remediation professional, as applicable.  
12 A person who complies with the provisions of this subparagraph  
13 either by receipt of a final remediation document following the  
14 effective date of P.L.1997, c.278, or by relying on a previously  
15 issued final remediation document shall not be liable for any further  
16 remediation including any changes in a remediation standard or for  
17 the subsequent discovery of a hazardous substance, at the site, or  
18 emanating from the site, if the remediation was for the entire site,  
19 and the hazardous substance was discharged prior to the person  
20 acquiring the property. Notwithstanding any other provisions of  
21 this subparagraph, a person who complies with the provisions of  
22 this subparagraph only by virtue of the existence of a previously  
23 issued final remediation document shall receive no liability  
24 protections for any discharge which occurred during the time period  
25 between the issuance of the final remediation document and the  
26 property acquisition. Compliance with the provisions of this  
27 subparagraph (e) shall not relieve any person of any liability for a  
28 discharge that is off the site of the property covered by the final  
29 remediation document, for a discharge that occurs at that property  
30 after the person acquires the property, for any actions that person  
31 negligently takes that aggravates or contributes to a discharge of a  
32 hazardous substance, for failure to comply in the future with laws  
33 and regulations, or if that person fails to maintain the institutional  
34 or engineering controls on the property or to otherwise comply with  
35 the provisions of the final remediation document.

36 (3) Notwithstanding the provisions of paragraph (2) of this  
37 subsection to the contrary, if a person who owns real property  
38 obtains actual knowledge of a discharge of a hazardous substance at  
39 the real property during the period of that person's ownership and  
40 subsequently transfers ownership of the property to another person  
41 without disclosing that knowledge, the transferor shall be strictly  
42 liable for the cleanup and removal costs of the discharge and no  
43 defense under this subsection shall be available to that person.

44 (4) Any federal, State, or local governmental entity which  
45 acquires ownership of real property through bankruptcy, tax  
46 delinquency, abandonment, escheat, eminent domain, condemnation  
47 or any circumstance in which the governmental entity involuntarily  
48 acquires title by virtue of its function as sovereign, or where the  
49 governmental entity acquires the property by any means for the

1 purpose of promoting the redevelopment of that property, shall not  
2 be liable, pursuant to subsection c. of this section or pursuant to  
3 common law, to the State or to any other person for any discharge  
4 which occurred or began prior to that ownership. This paragraph  
5 shall not provide any liability protection to any federal, State or  
6 local governmental entity which has caused or contributed to the  
7 discharge of a hazardous substance. This paragraph shall not  
8 provide any liability protection to any federal, State, or local  
9 government entity that acquires ownership of real property by  
10 condemnation or eminent domain where the real property is being  
11 remediated in a timely manner at the time of the condemnation or  
12 eminent domain action.

13 (5) A person, including an owner or operator of a major facility,  
14 who owns real property acquired prior to September 14, 1993 on  
15 which there has been a discharge, shall not be liable for cleanup and  
16 removal costs or for any other damages to the State or to any other  
17 person for the discharged hazardous substance pursuant to  
18 subsection c. of this section or pursuant to civil common law, if that  
19 person can establish by a preponderance of the evidence that  
20 subparagraphs (a) through (d) apply:

21 (a) the person acquired the real property after the discharge of  
22 that hazardous substance at the real property;

23 (b) (i) at the time the person acquired the real property, the  
24 person did not know and had no reason to know that any hazardous  
25 substance had been discharged at the real property, or (ii) the person  
26 acquired the real property by devise or succession, except that any  
27 other funds or property received by that person from the deceased  
28 real property owner who discharged a hazardous substance or was  
29 in any way responsible for a hazardous substance, shall be made  
30 available to satisfy the requirements of P.L.1976, c.141;

31 (c) the person did not discharge the hazardous substance, is not  
32 in any way responsible for the hazardous substance, and is not a  
33 corporate successor to the discharger or to any person in any way  
34 responsible for the hazardous substance or to anyone liable for  
35 cleanup and removal costs pursuant to this section;

36 (d) the person gave notice of the discharge to the department  
37 upon actual discovery of that discharge.

38 To establish that a person had no reason to know that any  
39 hazardous substance had been discharged for the purposes of this  
40 paragraph (5), the person must have undertaken, at the time of  
41 acquisition, all appropriate inquiry on the previous ownership and  
42 uses of the property based upon generally accepted good and  
43 customary standards.

44 Nothing in this paragraph (5) shall be construed to alter liability  
45 of any person who acquired real property on or after September 14,  
46 1993.

47 e. Neither the fund nor the Sanitary Landfill Contingency Fund  
48 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall  
49 be liable for any damages incurred by any person who is relieved

1 from liability pursuant to subsection d. or f. of this section for a  
2 remediation that involves the use of engineering controls but the  
3 fund and the Sanitary Landfill Contingency Fund shall be liable for  
4 any remediation that involves only the use of institutional controls  
5 if after a valid final remediation document has been issued the  
6 department orders additional remediation except that the fund and  
7 the Sanitary Landfill Contingency Fund shall not be liable for any  
8 additional remediation that is required to remove an institutional  
9 control.

10 f. Notwithstanding any other provision of this section, a  
11 person, who owns real property acquired on or after the effective  
12 date of P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for  
13 any cleanup and removal costs or damages, under this section or  
14 pursuant to any other statutory or civil common law, to any person,  
15 other than the State and the federal government, harmed by any  
16 hazardous substance discharged on that property prior to  
17 acquisition, and any migration off that property related to that  
18 discharge, provided all the conditions of this subsection are met:

19 (1) the person acquired the real property after the discharge of  
20 that hazardous substance at the real property;

21 (2) the person did not discharge the hazardous substance, is not  
22 in any way responsible for the hazardous substance, and is not a  
23 corporate successor to the discharger or to any person in any way  
24 responsible for the hazardous substance or to anyone liable for a  
25 discharge pursuant to this section;

26 (3) the person gave notice of the discharge to the department  
27 upon actual discovery of that discharge;

28 (4) (a) within 30 days after acquisition of the property, the  
29 person commenced a remediation of the discharge, including any  
30 migration, pursuant to a department oversight document executed  
31 prior to acquisition, or (b) for property acquired after the date of  
32 enactment of P.L.2009, c.60 (C.58:10C-1 et al.), the person  
33 provides written notice of the acquisition to the department prior to  
34 or on the date of acquisition and the person remediates the property  
35 pursuant to the provisions of section 30 of P.L.2009, c.60  
36 (C.58:10B-1.3), and (c) the department is satisfied that remediation  
37 was completed in a timely and appropriate fashion; and

38 (5) Within ten days after acquisition of the property, or within  
39 30 days after the expiration of the period or periods allowed for the  
40 right of redemption pursuant to tax foreclosure law, the person  
41 agrees in writing to provide access to the State for remediation and  
42 related activities, as determined by the State.

43 The provisions of this subsection shall not relieve any person of  
44 any liability:

45 (1) for a discharge that occurs at that property after the person  
46 acquired the property;

47 (2) for any actions that person negligently takes that aggravates  
48 or contributes to the harm inflicted upon any person;

1 (3) if that person fails to maintain the institutional or  
2 engineering controls on the property or to otherwise comply with  
3 the provisions of a final remediation document or a remedial action  
4 workplan and a person is harmed thereby;

5 (4) for any liability to clean up and remove, pursuant to the  
6 department's regulations and directions, any hazardous substances  
7 that may have been discharged on the property or that may have  
8 migrated therefrom; and

9 (5) for that person's failure to comply in the future with laws  
10 and regulations.

11 g. Nothing in the amendatory provisions to this section adopted  
12 pursuant to P.L.1997, c.278 shall be construed to remove any  
13 defense to liability that a person may have had pursuant to  
14 subsection e. of this section that existed prior to the effective date  
15 of P.L.1997, c.278.

16 h. Nothing in this section shall limit the requirements of any  
17 person to comply with P.L.1983, c.330 (C.13:1K-6 et al.).

18 (cf: P.L.2009, c.60, s.38)

19  
20 5. Section 22 of P.L.1976, c.141 (C.58:10-23.11u) is amended  
21 to read as follows:

22 22. a. (1) Whenever, on the basis of available information, the  
23 department determines that a person is in violation of a provision of  
24 P.L.1976, c.141 (C.58:10-23.11 et seq.), including any rule,  
25 regulation, plan, information request, access request, order or  
26 directive promulgated or issued pursuant thereto, or that a person  
27 knowingly has given false testimony, documents or information to  
28 the department, the department may:

29 (a) bring a civil action in accordance with subsection b. of this  
30 section;

31 (b) levy a civil administrative penalty in accordance with  
32 subsection c. of this section; or

33 (c) bring an action for a civil penalty in accordance with  
34 subsection d. of this section.

35 Use of any remedy specified in this section shall not preclude use  
36 of any other remedy. The department may simultaneously pursue  
37 administrative and judicial remedies provided in this section.

38 b. The department may commence a civil action in Superior  
39 Court for, singly or in combination:

40 (1) a temporary or permanent injunction;

41 (2) the costs of any investigation, cleanup or removal, and for  
42 the reasonable costs of preparing and successfully litigating an  
43 action under this subsection;

44 (3) the cost of restoring, repairing, or replacing real or personal  
45 property damaged or destroyed by a discharge, any income lost  
46 from the time the property is damaged to the time it is restored,  
47 repaired or replaced, and any reduction in value of the property  
48 caused by the discharge by comparison with its value prior thereto;

1 (4) the cost of restoration and replacement, where practicable, of  
2 any natural resource damaged or destroyed by a discharge; and

3 (5) any other costs incurred by the department pursuant to  
4 P.L.1976, c.141.

5 Compensatory damages for damages awarded to a person other  
6 than the State shall be paid to the person injured by the discharge.

7 c. (1) The department may assess a civil administrative  
8 penalty of not more than \$50,000 for each violation, and each day  
9 of violation shall constitute an additional, separate and distinct  
10 violation. A civil administrative penalty shall not be levied until a  
11 violator has been notified by certified mail or personal service of:

12 (a) the statutory or regulatory basis of the violation;

13 (b) the specific citation of the act or omission constituting the  
14 violation;

15 (c) the amount of the civil administrative penalty to be imposed;

16 (d) the right of the violator to a hearing on any matter contained  
17 in the notice and the procedures for requesting a hearing.

18 (2) (a) A violator shall have 20 calendar days following receipt  
19 of notice within which to request a hearing on any matter contained  
20 in the notice, and shall comply with all procedures for requesting a  
21 hearing. Failure to submit a timely request or to comply with all  
22 departmental procedures shall constitute grounds for denial of a  
23 hearing request. After a hearing and upon a finding that a violation  
24 has occurred, the department shall issue a final order assessing the  
25 amount of the civil administrative penalty specified in the notice. If  
26 a violator does not request a hearing or fails to satisfy the statutory  
27 and administrative requirements for requesting a hearing, the notice  
28 of assessment of a civil administrative penalty shall become a final  
29 order on the 21st calendar day following receipt of the notice by the  
30 violator. If the department denies a hearing request, the notice of  
31 denial shall become a final order upon receipt of the notice by the  
32 violator.

33 (b) A civil administrative penalty may be settled by the  
34 department on such terms and conditions as the department may  
35 determine.

36 (c) Payment of a civil administrative penalty shall not be  
37 deemed to affect the availability of any other enforcement remedy  
38 in connection with the violation for which the penalty was levied.

39 (3) If a civil administrative penalty imposed pursuant to this  
40 section is not paid within 30 days of the date that the penalty is due  
41 and owing, and the penalty is not contested by the person against  
42 whom the penalty has been assessed, or the person fails to make a  
43 payment pursuant to a payment schedule entered into with the  
44 department, an interest charge shall accrue on the amount of the  
45 penalty from the 30th day that amount was due and owing. In the  
46 case of an appeal of a civil administrative penalty, if the amount of  
47 the penalty is upheld, in whole or in part, the rate of interest shall be  
48 calculated on that amount as of the 30th day from the date the  
49 amount was due and owing under the administrative order. The rate

1 of interest shall be that established by the New Jersey Supreme  
2 Court for interest rates on judgments, as set forth in the Rules  
3 Governing the Courts of the State of New Jersey.

4 (4) The department may assess and recover, by civil  
5 administrative order, the costs of any investigation, cleanup or  
6 removal, and the reasonable costs of preparing and successfully  
7 enforcing a civil administrative penalty pursuant to this subsection.  
8 The assessment may be recovered at the same time as a civil  
9 administrative penalty, and shall be in addition to the penalty  
10 assessment.

11 d. Any person who violates a provision of P.L.1976, c.141  
12 (C.58:10-23.11 et seq.), or a court order issued pursuant thereto, or  
13 who fails to pay a civil administrative penalty in full or to agree to a  
14 schedule of payments therefor, shall be subject to a civil penalty not  
15 to exceed \$50,000.00 per day for each violation, and each day's  
16 continuance of the violation shall constitute a separate violation.  
17 Any penalty incurred under this subsection may be recovered with  
18 costs in a summary proceeding pursuant to ["the penalty  
19 enforcement law" (N.J.S.2A:58-1 et seq.)] the "Penalty  
20 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in  
21 the Superior Court or a municipal court. The Superior Court and  
22 the municipal courts shall have jurisdiction to impose a civil penalty  
23 for a violation of P.L.1976, c.141 (C.58:10-23.11 et seq.) pursuant  
24 to this subsection and in accordance with the procedures set forth in  
25 the "Penalty Enforcement Law of 1999."

26 e. All conveyances used or intended for use in the willful  
27 discharge of any hazardous substance are subject to forfeiture to the  
28 State pursuant to the provisions of P.L.1981, c.387 (C.13:1K-1 et  
29 seq.).

30 (cf: P.L.1990, c.75, s.1)

31

32 6. Section 23 of P.L.1993, c.139 (C.58:10B-1) is amended to  
33 read as follows:

34 23. As used in sections 23 through 43 and section 45 of  
35 P.L.1993, c.139 (C.58:10B-1 et seq.), as may be amended and  
36 supplemented:

37 "Area of concern" means any location where contaminants are or  
38 were known or suspected to have been discharged, generated,  
39 manufactured, refined, transported, stored, handled, treated, or  
40 disposed, or where contaminants have or may have migrated;

41 "Authority" means the New Jersey Economic Development  
42 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et  
43 seq.);

44 "Brownfield development area" means an area that has been so  
45 designated by the department, in writing, pursuant to the provisions  
46 of section 7 of P.L.2005, c.223 (C.58:10B-25.1);

47 "Brownfield site" means any former or current commercial or  
48 industrial site that is currently vacant or underutilized and on which

1 there has been, or there is suspected to have been, a discharge of a  
2 contaminant;

3 "Contamination" or "contaminant" means any discharged  
4 hazardous substance as defined pursuant to section 3 of P.L.1976,  
5 c.141 (C.58:10-23.11b), hazardous waste as defined pursuant to  
6 section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined  
7 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

8 "Department" means the Department of Environmental  
9 Protection;

10 "Discharge" means an intentional or unintentional action or  
11 omission resulting in the releasing, spilling, leaking, pumping,  
12 pouring, emitting, emptying, or dumping of a contaminant onto the  
13 land or into the waters of the State;

14 "Engineering controls" means any mechanism to contain or  
15 stabilize contamination or ensure the effectiveness of a remedial  
16 action. Engineering controls may include, without limitation, caps,  
17 covers, dikes, trenches, leachate collection systems, signs, fences  
18 and physical access controls;

19 "Environmental opportunity zone" has the meaning given that  
20 term pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);

21 "Final remediation document" means a no further action letter  
22 issued by the department pursuant to P.L.1993, c.139 (C.58:10B-1  
23 et al.), or a response action outcome issued by a licensed site  
24 remediation professional pursuant to section 14 of P.L.2009, c.60  
25 (C.58:10C-14);

26 "Financial assistance" means loans or loan guarantees;

27 "Institutional controls" means a mechanism used to limit human  
28 activities at or near a contaminated site, or to ensure the  
29 effectiveness of the remedial action over time, when contaminants  
30 remain at a contaminated site in levels or concentrations above the  
31 applicable remediation standard that would allow unrestricted use  
32 of that property. Institutional controls may include, without  
33 limitation, structure, land, and natural resource use restrictions, well  
34 restriction areas, and deed notices;

35 "Licensed site remediation professional" means an individual  
36 who is licensed by the Site Remediation Professional Licensing  
37 Board pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) or the  
38 department pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12);

39 "Limited restricted use remedial action" means any remedial  
40 action that requires the continued use of institutional controls but  
41 does not require the use of an engineering control;

42 "No further action letter" means a written determination by the  
43 department that based upon an evaluation of the historical use of a  
44 particular site, or of an area of concern or areas of concern at that  
45 site, as applicable, and any other investigation or action the  
46 department deems necessary, there are no discharged contaminants  
47 present at the site, at the area of concern or areas of concern, at any  
48 other site to which a discharge originating at the site has migrated,  
49 or that any discharged contaminants present at the site or that have

1 migrated from the site have been remediated in accordance with  
2 applicable remediation regulations;

3 "Person" means an individual, corporation, company,  
4 partnership, firm, or other private business entity;

5 "Person responsible for conducting the remediation" means (1)  
6 any person who executes or is otherwise subject to an oversight  
7 document to remediate a contaminated site, (2) the owner or  
8 operator of an industrial establishment subject to P.L.1983, c.330  
9 (C.13:1K-6 et al.), for the remediation of a discharge, (3) the owner  
10 or operator of an underground storage tank subject to P.L.1986,  
11 c.102 (C.58:10A-21 et seq.), for the remediation of a discharge, (4)  
12 any other person who discharges a hazardous substance or is in any  
13 way responsible for a hazardous substance, pursuant to section 8 of  
14 P.L.1976, c.141 (C.58:10-23.11g), that was discharged at a  
15 contaminated site, or (5) any other person who is remediating a site;

16 "Preliminary assessment" means the first phase in the process of  
17 identifying areas of concern and determining whether contaminants  
18 are or were present at a site or have migrated or are migrating from  
19 a site, and shall include the initial search for and evaluation of,  
20 existing site specific operational and environmental information,  
21 both current and historic, to determine if further investigation  
22 concerning the documented, alleged, suspected or latent discharge  
23 of any contaminant is required. The evaluation of historic  
24 information shall be conducted from 1932 to the present, except that  
25 the department may require the search for and evaluation of  
26 additional information relating to ownership and use of the site  
27 prior to 1932 if such information is available through diligent  
28 inquiry of the public records;

29 "Presumptive remedy" means a remedial action established by  
30 the department pursuant to paragraph (10) of subsection g. of  
31 section 35 of P.L.1993, c.139 (C.58:10B-12);

32 "Recreation and conservation purposes" means the use of lands  
33 for beaches, biological or ecological study, boating, camping,  
34 fishing, forests, greenways, hunting, natural areas, parks,  
35 playgrounds, protecting historic properties, water reserves,  
36 watershed protection, wildlife preserves, active sports, or a similar  
37 use for either public outdoor recreation or conservation of natural  
38 resources, or both;

39 "Remedial action" means those actions taken at a site or offsite if  
40 a contaminant has migrated or is migrating therefrom, as may be  
41 required by the department, including the removal, treatment,  
42 containment, transportation, securing, or other engineering or  
43 treatment measures, whether to an unrestricted use or otherwise,  
44 designed to ensure that any discharged contaminant at the site or  
45 that has migrated or is migrating from the site, is remediated in  
46 compliance with the applicable health risk or environmental  
47 standards;

48 "Remedial action workplan" means a plan for the remedial action  
49 to be undertaken at a site, or at any area to which a discharge



1 originating at a site is migrating or has migrated; a description of  
2 the remedial action to be used to remediate a site; a time schedule  
3 and cost estimate of the implementation of the remedial action; and  
4 any other information the department deems necessary;

5 "Remedial investigation" means a process to determine the  
6 nature and extent of a discharge of a contaminant at a site or a  
7 discharge of a contaminant that has migrated or is migrating from  
8 the site and the problems presented by a discharge, and may include  
9 data collected, site characterization, sampling, monitoring, and the  
10 gathering of any other sufficient and relevant information necessary  
11 to determine the necessity for remedial action and to support the  
12 evaluation of remedial actions if necessary;

13 "Remediation" or "remediate" means all **【necessary】** actions to  
14 investigate **【and】** , clean up , or respond to any known, suspected,  
15 or threatened discharge of contaminants, including **【, as necessary,】**  
16 the preliminary assessment, site investigation, remedial  
17 investigation, and remedial action, or any portion thereof, provided,  
18 however, that "remediation" or "remediate" shall not include the  
19 payment of compensation for damage to, or loss of, natural  
20 resources;

21 "Remediation fund" means the Hazardous Discharge Site  
22 Remediation Fund established pursuant to section 26 of P.L.1993,  
23 c.139 (C.58:10B-4);

24 "Remediation funding source" means the methods of financing  
25 the remediation of a discharge required to be established by a  
26 person performing the remediation pursuant to section 25 of  
27 P.L.1993, c.139 (C.58:10B-3);

28 "Remediation standards" means the combination of numeric  
29 standards that establish a level or concentration, and narrative  
30 standards to which contaminants must be treated, removed, or  
31 otherwise cleaned for soil, groundwater, or surface water, as  
32 provided by the department pursuant to section 35 of P.L.1993,  
33 c.139 (C.58:10B-12) in order to meet the health risk or  
34 environmental standards;

35 "Response action outcome" means a written determination by a  
36 licensed site remediation professional that the contaminated site  
37 was remediated in accordance with all applicable statutes and  
38 regulations, and based upon an evaluation of the historical use of  
39 the site, or of any area of concern at that site, as applicable, and any  
40 other investigation or action the department deems necessary, there  
41 are no contaminants present at the site, or at any area of concern, at  
42 any other site to which a discharge originating at the site has  
43 migrated, or that any contaminants present at the site or that have  
44 migrated from the site have been remediated in accordance with  
45 applicable remediation regulations, and all applicable permits and  
46 authorizations have been obtained;

47 "Restricted use remedial action" means any remedial action that  
48 requires the continued use of engineering and institutional controls

1 in order to meet the established health risk or environmental  
2 standards;

3 "Site investigation" means the collection and evaluation of data  
4 adequate to determine whether or not discharged contaminants exist  
5 at a site or have migrated or are migrating from the site at levels in  
6 excess of the applicable remediation standards. A site investigation  
7 shall be developed based upon the information collected pursuant to  
8 the preliminary assessment;

9 "Unrestricted use remedial action" means any remedial action  
10 that does not require the continued use of engineering or  
11 institutional controls in order to meet the established health risk or  
12 environmental standards;

13 "Voluntarily perform a remediation" means performing a  
14 remediation without having been ordered or directed to do so by the  
15 department or by a court and without being compelled to perform a  
16 remediation pursuant to the provisions of P.L.1983, c.330  
17 (C.13:1K-6 et al.).

18 (cf: P.L.2009, c.60, s.40)

19

20 7. Section 30 of P.L.2009, c.60 (C.58:10B-1.3) is amended to  
21 read as follows:

22 30. a. An owner or operator of an industrial establishment  
23 subject to the provisions of P.L.1983, c.330 (C.13:1K-6 et al.), the  
24 discharger of a hazardous substance or a person in any way  
25 responsible for a hazardous substance pursuant to the provisions of  
26 subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), or  
27 the owner or operator of an underground storage tank regulated  
28 pursuant to the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.),  
29 that has discharged a hazardous substance, shall remediate the  
30 discharge of a hazardous substance.

31 b. A person who initiates a remediation **【of a contaminated**  
32 **site】** at least 180 days after the date of enactment of P.L.2009, c.60  
33 (C.58:10C-1 et al.) shall:

34 (1) **【hire】** retain a licensed site remediation professional to  
35 perform the remediation;

36 (2) notify the department of the name and license information of  
37 the licensed site remediation professional who has been **【hired】**  
38 retained to perform the remediation;

39 (3) conduct the remediation without the prior approval of the  
40 department, unless directed otherwise by the department;

41 (4) establish a remediation funding source if a remediation  
42 funding source is required pursuant to the provisions of section 25  
43 of P.L.1993, c.139 (C.58:10B-3);

44 (5) pay all applicable fees and oversight costs as required by the  
45 department;

46 (6) provide access to the contaminated site to the department;

47 (7) provide access to all applicable documents concerning the  
48 remediation to the department;

1 (8) meet the mandatory remediation timeframes and expedited  
2 site specific timeframes established by the department pursuant to  
3 section 28 of P.L.2009, c.60 (C.58:10C-28); and

4 (9) obtain all necessary permits.

5 c. (1) Any person who initiates a remediation prior to the date  
6 of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), or prior to the  
7 issuance of temporary licenses to site remediation professionals  
8 pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12), shall  
9 comply with the provisions of paragraphs (4) through (9) of  
10 subsection b. of this section.

11 (2) The department may require a person required to perform a  
12 remediation pursuant to subsection a. of this section, or a person  
13 who has initiated a remediation prior to the date of enactment of  
14 P.L.2009, c.60 (C.58:10C-1 et al.), to comply with the provisions of  
15 subsection b. of this section if, after the date of enactment of  
16 P.L.2009, c.60 (C.58:10C-1 et al.), the department (a) issues a final  
17 order or a penalty becomes due and payable, concerning the  
18 performance of the remediation, or (b) issues a demand for  
19 stipulated penalties pursuant to the provisions of an oversight  
20 document in which the person waived a right to a hearing on the  
21 penalties.

22 (3) No later than three years after the date of enactment of  
23 P.L.2009, c.60 (C.58:10C-1 et al.), a person responsible for  
24 conducting the remediation, no matter when the remediation is  
25 initiated, shall comply with the provisions of subsection b. of this  
26 section.

27 d. (1) The provisions of this section shall not apply to any  
28 person who remediates a discharge from an unregulated heating oil  
29 tank. For any person who remediates a discharge from an  
30 unregulated heating oil tank, the provisions of section 15 of  
31 P.L.2009, c.60 (C.58:10C-15) shall apply.

32 (2) The provisions of this section shall not apply to any person  
33 who: (a) does not own a contaminated site, (b) conducts a  
34 preliminary assessment or site investigation of the contaminated site  
35 for the purpose of conducting all appropriate inquiry into the  
36 previous ownership and uses of the property as provided in section  
37 8 of P.L.1976, c.141 (C.58:10-23.11g), and (c) has not discharged a  
38 hazardous substance at the site or is not in any way responsible for  
39 a hazardous substance discharged at the site pursuant to section 8 of  
40 P.L.1976, c.141 (C.58:10-23.11g).

41 e. Any person who fails to comply with the provisions of this  
42 section shall be liable to the enforcement provisions established  
43 pursuant to section 22 of P.L.1976, c.141 (C.58:10-23.11u).

44 (cf: P.L.2009, c.60, s.30)

45  
46 8. Section 25 of P.L.1993, c.139 (C.58:10B-3) is amended to  
47 read as follows:

48 25. a. Except as otherwise provided in section 27 of P.L.2009,  
49 c.60 (C.58:10C-27), the owner or operator of an industrial

1 establishment or any other person required to perform remediation  
2 activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), or a  
3 discharger, a person in any way responsible for a hazardous  
4 substance, or a person otherwise liable for cleanup and removal  
5 costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) who has  
6 been issued a directive or an order by a State agency, who has  
7 entered into an administrative consent order with a State agency, or  
8 who has been ordered by a court to clean up and remove a  
9 hazardous substance or hazardous waste discharge pursuant to  
10 P.L.1976, c.141 (C.58:10-23.11 et seq.), shall establish and  
11 maintain a remediation funding source in the amount necessary to  
12 pay the estimated cost of the required remediation. A person who  
13 [voluntarily undertakes a remediation pursuant to a memorandum  
14 of agreement with the department, or without the department's  
15 oversight, or who] performs a remediation in an environmental  
16 opportunity zone is not required to establish or maintain a  
17 remediation funding source. A person who uses an innovative  
18 technology or who, in a timely fashion, implements an unrestricted  
19 use remedial action or a limited restricted use remedial action for all  
20 or part of a remedial action is not required to establish a  
21 remediation funding source for the cost of the remediation  
22 involving the innovative technology or permanent remedy. A  
23 government entity, a person who undertakes a remediation at their  
24 primary or secondary residence, the owner or operator of a child  
25 care center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.)  
26 who performs a remediation at the licensed child care center, or the  
27 person responsible for conducting a remediation at a public school  
28 or private school as defined in N.J.S.18A:1-1, or a charter school  
29 established pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.), shall  
30 not be required to establish or maintain a remediation funding  
31 source. A person required to establish a remediation funding source  
32 pursuant to this section shall provide to the department satisfactory  
33 documentation that the requirement has been met.

34 The remediation funding source shall be established in an  
35 amount equal to or greater than the cost estimate of the  
36 implementation of the remediation (1) as approved by the  
37 department or as determined by the licensed site remediation  
38 professional, as applicable, in accordance with rules and regulations  
39 adopted by the department pursuant to section 29 of P.L.2009, c.60  
40 (C.58:10C-29), (2) as provided in an administrative consent order or  
41 remediation agreement or remediation certification as required  
42 pursuant to subsection e. of section 4 of P.L.1983, c.330, (3) as  
43 stated in a departmental order or directive, or (4) as agreed to by a  
44 court, and shall be in effect for a term not less than the actual time  
45 necessary to perform the remediation at the site. Whenever the  
46 remediation cost estimate increases, the person required to establish  
47 the remediation funding source shall cause the amount of the  
48 remediation funding source to be increased to an amount at least  
49 equal to the new estimate. Whenever the remediation cost estimate

1 decreases, the person required to obtain the remediation funding  
2 source may file a written request to the department to decrease the  
3 amount in the remediation funding source or may submit written  
4 documentation to the department certified by the licensed site  
5 remediation professional of the details of the decrease in the cost  
6 estimate, as applicable. The remediation funding source may be  
7 decreased to the amount of the new estimate upon written approval  
8 by the department delivered to the person who established the  
9 remediation funding source or upon submission of the certification  
10 by the licensed site remediation professional, as applicable.

11 b. **【**The person who established the remediation funding source  
12 may use the remediation funding source to pay for the actual cost of  
13 the remediation.**】** The department may not require any other  
14 financial assurance by the person responsible for conducting the  
15 remediation other than that required in this section. In the case of a  
16 remediation performed pursuant to P.L.1983, c.330, the remediation  
17 funding source shall be established no more than 14 days after the  
18 approval by the department or the certification by the licensed site  
19 remediation professional of a remedial action workplan, upon  
20 approval of a remediation agreement pursuant to subsection e. of  
21 section 4 of P.L.1983, c.330 (C.13:1K-9), or upon submission of a  
22 remediation certification pursuant to subsection e. of P.L.1983,  
23 c.330, unless the department approves an extension. In the case of  
24 a remediation performed pursuant to P.L.1976, c.141, the  
25 remediation funding source shall be established as provided in an  
26 administrative consent order signed by the parties, as provided by a  
27 court, or as directed or ordered by the department. In the case of a  
28 remediation performed under the department's oversight pursuant to  
29 section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation  
30 funding source shall be established at the time the person becomes  
31 subject to the department's oversight. The establishment of a  
32 remediation funding source for that part of the remediation funding  
33 source to be established by a grant or financial assistance from the  
34 remediation fund may be established for the purposes of this  
35 subsection by the application for a grant or financial assistance from  
36 the remediation fund and satisfactory evidence submitted to the  
37 department that the grant or financial assistance will be awarded.  
38 However, if the financial assistance or grant is denied or the  
39 department finds that the person responsible for establishing the  
40 remediation funding source did not take reasonable action to obtain  
41 the grant or financial assistance, the department shall require that  
42 the full amount of the remediation funding source be established  
43 within 14 days of the denial or finding. Except as provided in  
44 section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation  
45 funding source shall be evidenced by the establishment and  
46 maintenance of (1) a remediation trust fund, administered by an  
47 entity that has the authority to act as a trustee and whose trust  
48 operations are regulated and examined by a federal or State agency,  
49 or governed by court rule, (2) an environmental insurance policy,

1 issued by an entity licensed by the Department of Banking and  
2 Insurance to transact business in the State of New Jersey, to fund  
3 the remediation, (3) a line of credit from a financial institution  
4 regulated pursuant to State or federal law and satisfactory to the  
5 department authorizing the person responsible for performing the  
6 remediation to borrow money, (4) a self-guarantee, **【or】** (5) a letter  
7 of credit from a financial institution regulated pursuant to State or  
8 federal law that guarantees the performance of the remediation by  
9 the person to the satisfaction of the department, or (6) a surety bond  
10 from an entity that is listed as an acceptable surety on federal  
11 bonds in United States Treasury Department Circular 570, or by any  
12 combination thereof. Where it can be demonstrated that a person  
13 cannot establish and maintain a remediation funding source for the  
14 full cost of the remediation by a method specified in this subsection,  
15 that person may establish the remediation funding source for all or a  
16 portion of the remediation, by securing financial assistance from the  
17 Hazardous Discharge Site Remediation Fund as provided in section  
18 29 of P.L.1993, c.139 (C.58:10B-7).

19 c. A remediation trust fund shall be established pursuant to the  
20 provisions of this subsection. An originally signed duplicate of the  
21 trust agreement shall be delivered to the department (1) by certified  
22 mail , overnight delivery, or personal service within 14 days of  
23 receipt of notice from the department that the remedial action  
24 workplan or remediation agreement as provided in subsection e. of  
25 section 4 of P.L.1983, c.330 (C.13:1K-9) is approved, (2) within 14  
26 days of submission to the department of a remedial action workplan  
27 certified by a licensed site remediation professional as provided in  
28 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon  
29 submission of a remediation certification to the department as  
30 provided in subsection e. of section 4 of P.L.1983, c.330, or (4) as  
31 specified in an administrative consent order, civil order, or order of  
32 the department, as applicable. The remediation trust fund  
33 agreement shall conform to a model trust fund agreement as  
34 established by the department and shall be accompanied by a  
35 certification of acknowledgment that conforms to a model  
36 established by the department. The trustee shall be an entity which  
37 has the authority to act as a trustee and whose trust operations are  
38 regulated and examined by a federal or New Jersey agency.

39 The trust fund agreement shall provide that the remediation trust  
40 fund may not be revoked or terminated by the person required to  
41 establish the remediation funding source or by the trustee without  
42 the written consent of the department. The person who establishes  
43 the remediation funding source in the form of a trust fund may use  
44 the remediation funding source to pay for the actual cost of the  
45 remediation. The trustee shall **【release】** disburse to the person  
46 required to establish the remediation funding source, or to the  
47 department or transferee of the property, as appropriate, only those  
48 moneys as the department or the licensed site remediation  
49 professional authorizes, in writing, to be **【released】** disbursed. The

1 trustee shall release to the person who established the remediation  
2 funding source, or to the department or transferee of the property,  
3 as appropriate, only those moneys as the department authorizes, in  
4 writing, to be released. For any remediation subject to the oversight  
5 of the department pursuant to section 27 of P.L.2009, c.60  
6 (C.58:10C-27), the person entitled to receive money from the  
7 remediation trust fund shall submit documentation to the  
8 department detailing the costs incurred or to be incurred as part of  
9 the remediation. Upon a determination by the department that the  
10 costs are consistent with the remediation of the site, the department  
11 shall, in writing, authorize a disbursement of moneys from the  
12 remediation trust fund in the amount of the documented costs.

13 The department shall return the original remediation trust fund  
14 agreement to the trustee for termination after the **【**person required  
15 to establish the remediation funding source substitutes **】** department  
16 receives an alternative remediation funding source as specified in  
17 this section or the department notifies the person required to  
18 establish and maintain the remediation funding source that that  
19 person is no longer required to maintain a remediation funding  
20 source for remediation of the contaminated site.

21 d. An environmental insurance policy shall be established  
22 pursuant to the provisions of this subsection. An originally signed  
23 duplicate of the insurance policy shall be delivered to the  
24 department (1) by certified mail, overnight delivery, or personal  
25 service within **【30】** 14 days of receipt of notice from the  
26 department that the remedial action workplan or remediation  
27 agreement, as provided in subsection e. of section 4 of P.L.1983,  
28 c.330, is approved, (2) within 14 days of submission to the  
29 department of a remedial action workplan certified by a licensed  
30 site remediation professional as provided in subsection e. of section  
31 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon submission of a  
32 remediation certification to the department as provided in  
33 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or (4) as  
34 specified in an administrative consent order, civil order, or order of  
35 the department, as applicable. **【**The insurance company shall  
36 release to the person required to establish the remediation funding  
37 source, or to the department or transferee of the property, as  
38 appropriate, only those moneys as the department or the licensed  
39 site remediation professional authorizes, in writing, to be released.  
40 The person entitled to receive money from the environmental  
41 insurance policy shall submit documentation to the department  
42 detailing the costs incurred or to be incurred as part of the  
43 remediation. **】** The environmental insurance policy shall be issued  
44 by an entity that is licensed by the New Jersey Department of  
45 Banking and Insurance to transact business in the State.

46 An environmental insurance policy cannot be revoked or  
47 terminated without the prior written approval of the department,  
48 except upon failure by the insured to pay the premium. The issuer  
49 of the environmental insurance policy may revoke or terminate the

1 policy for failure to pay the premium only after notifying the person  
2 who established the remediation funding source and the department,  
3 by certified mail, of the decision to revoke or terminate the policy.

4 The insurance company that provides the environmental  
5 insurance policy shall reduce the policy only as the department  
6 directs in writing. The insurance company that provides the  
7 environmental insurance policy shall release to the department or to  
8 a person authorized to perform the remediation pursuant to  
9 subsection g. of this section only moneys authorized by the  
10 department, in writing, to be released. The department shall  
11 authorize, in writing, the termination of the environmental  
12 insurance policy after the department receives an alternative  
13 remediation funding source as specified in this section or the  
14 department notifies the person required to establish and maintain  
15 the funding source that the person is no longer required to maintain  
16 a remediation funding source for the remediation of the  
17 contaminated site.

18 e. A line of credit shall be established pursuant to the  
19 provisions of this subsection. A line of credit shall allow the person  
20 establishing it to borrow money up to a limit established in a written  
21 agreement in order to pay for the cost of the remediation for which  
22 the line of credit was established. An originally signed duplicate of  
23 the line of credit agreement shall be delivered to the department (1)  
24 by certified mail, overnight delivery, or personal service within 14  
25 days of receipt of notice from the department that the remedial  
26 action workplan or remediation agreement as provided in subsection  
27 e. of section 4 of P.L.1983, c.330 is approved, (2) within 14 days of  
28 submission to the department of a remedial action workplan  
29 certified by a licensed site remediation professional as provided in  
30 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon  
31 submission of a remediation certification [pursuant to] to the  
32 department as provided in subsection e. of section 4 of P.L.1983,  
33 c.330 (C.13:1K-9), or (4) as specified in an administrative consent  
34 order, civil order, or order of the department, as applicable. The  
35 line of credit agreement shall conform to a model agreement as  
36 established by the department and shall be accompanied by a  
37 certification of acknowledgment that conforms to a model  
38 established by the department. The line of credit shall be issued by  
39 an institution that is licensed by the New Jersey Department of  
40 Banking and Insurance to transact business in the State, or by a  
41 federally regulated bank.

42 The line of credit shall not be allowed to expire, unless the  
43 institution provides the appropriate notification to the department  
44 and the borrower, as defined in a model agreement established by  
45 the department. The person who establishes the remediation  
46 funding source in the form of a line of credit may use the  
47 remediation funding source to pay for the actual cost of the  
48 remediation. The institution providing the line of credit shall  
49 disburse to the person required to establish the remediation funding



1 source, or to the department or transferee of the property, as  
2 appropriate, only those moneys as the department or the licensed  
3 site remediation professional authorizes, in writing, to be disbursed.  
4 The **【person or】** institution providing the line of credit shall release  
5 to the person **【required to establish】** who established the  
6 remediation funding source, or to the department or transferee of  
7 the property as appropriate, only those moneys as the department  
8 **【or the licensed site remediation professional】** authorizes, in  
9 writing, to be released. **【The person entitled to draw upon the line**  
10 **of credit shall submit documentation to the department detailing the**  
11 **costs incurred or to be incurred as part of the remediation. Upon a**  
12 **determination that the costs are consistent with the remediation of**  
13 **the site, the department shall, in writing, authorize a disbursement**  
14 **from the line of credit in the amount of the documented costs.】**

15 The department shall return the original line of credit agreement  
16 to the **【person or】** institution providing the line of credit for  
17 termination after the **【person required to establish the remediation**  
18 **funding source substitutes】** department receives an alternative  
19 remediation funding source as specified in this section, or after the  
20 department notifies the person required to establish and maintain  
21 the remediation funding source that that person is no longer  
22 required to maintain a remediation funding source for remediation  
23 of the contaminated site.

24 f. A person may self-guarantee a remediation funding source  
25 upon the submittal of documentation to the department  
26 demonstrating that the cost of the remediation **【as estimated in the**  
27 **remedial action workplan, in the remediation agreement as provided**  
28 **in subsection e. of section 4 of P.L.1983, c.330, in a remediation**  
29 **certification submitted pursuant to subsection e. of P.L.1983, c.330,**  
30 **in an administrative consent order, or as provided in a departmental**  
31 **or court order,】** would not exceed one-third of the tangible net  
32 worth of the person required to establish the remediation funding  
33 source, and that the person has a cash flow sufficient to assure the  
34 availability of sufficient moneys for the remediation during the time  
35 necessary for the remediation. Documentation shall be delivered to  
36 the department (1) by certified mail, overnight delivery, or personal  
37 service within 14 days of receipt of notice from the department that  
38 the remedial action workplan or remediation agreement as provided  
39 in subsection e. of section 4 of P.L.1983, c.330 is approved, (2)  
40 within 14 days of submission to the department of a remedial action  
41 workplan certified by a licensed site remediation professional as  
42 provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-  
43 9), (3) upon submission of a remediation certification pursuant to  
44 the department as provided in subsection e. of section 4 of  
45 P.L.1983, c.330 (C.13:1K-9), or (4) as specified in an  
46 administrative consent order, civil order, or order of the department,  
47 as applicable. Satisfactory documentation of a person's capacity to  
48 self-guarantee a remediation funding source shall consist of audited

1 financial statements, in which the auditor expresses an unqualified  
2 opinion, that includes a statement of income and expenses or similar  
3 statement of that person and the balance sheet or similar statement  
4 of assets and liabilities as used by that person for the fiscal year of  
5 the person making the application that ended closest in time to the  
6 date of the self-guarantee application. In the case of a special  
7 purpose entity established specifically for the purpose of acquiring  
8 and redeveloping a contaminated site, and for which a statement of  
9 income and expenses is not available, the documentation shall  
10 include a statement of assets and liabilities certified by a certified  
11 public accountant. The self-guarantee application shall be certified  
12 as true to the best of the applicant's information, knowledge, and  
13 belief, by the chief financial, or similar officer or employee, or  
14 general partner, or principal of the person making the self-guarantee  
15 application. A person shall be deemed by the department to possess  
16 the required cash flow pursuant to this section if that person's gross  
17 receipts exceed its gross payments in that fiscal year in an amount  
18 at least equal to the estimated costs of completing the remedial  
19 action workplan schedule to be performed in the 12-month period  
20 following the date on which the application for self-guarantee is  
21 made and the individual or entity possesses a net cash flow  
22 provided by operating activities in an amount at least equal to the  
23 estimated costs of completing the remediation in the 12-month  
24 period following the date the application is made. In the event that  
25 a self-guarantee is required for a period of more than one year,  
26 applications for a self-guarantee shall be renewed annually pursuant  
27 to this subsection for each successive year. The department may  
28 establish requirements and reporting obligations to ensure that the  
29 person proposing to self-guarantee a remediation funding source  
30 meets the criteria for self-guaranteeing prior to the initiation of  
31 remedial action and until completion of the remediation.

32 g. (1) If the person required to establish the remediation  
33 funding source fails to perform the remediation as required, or fails  
34 to meet the conditions established pursuant to paragraph (3) of  
35 subsection a. of section 27 of P.L.2009, c.60 (C.58:10C-27) or  
36 section 1 of P.L.2013, c.283 (C.58:10C-27.1), or the mandatory  
37 remediation timeframes or expedited site specific timeframes  
38 established pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28)  
39 for the performance of the remedial action, the department shall  
40 make a written determination of this fact. A copy of the  
41 determination by the department shall be delivered to the person  
42 required to establish the remediation funding source and, in the case  
43 of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6  
44 et al.), to any transferee of the property. Following this written  
45 determination, the department may perform the remediation in place  
46 of the person required to establish the remediation funding source.  
47 In order to finance the cost of the remediation the department may  
48 make disbursements from the remediation funding source, or, if  
49 sufficient moneys are not available from those funds, from the

1 remediation guarantee fund created pursuant to section 45 of  
2 P.L.1993, c.139 (C.58:10B-20).

3 (2) The transferee of property subject to a remediation  
4 conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), may, at  
5 any time after the department's determination of nonperformance by  
6 the owner or operator required to establish the remediation funding  
7 source, petition the department, in writing, with a copy being sent to  
8 the owner and operator, for authority to perform the remediation at  
9 the industrial establishment. The department, upon a determination  
10 that the transferee is competent to do so, may grant that petition  
11 which shall authorize the transferee to perform the remediation as  
12 specified in an approved remedial action workplan, or to perform  
13 the activities as required in a remediation agreement, or as provided  
14 in a remediation certification, and to avail itself of the moneys in  
15 the remediation trust fund, letter of credit, **[or]** line of credit , or  
16 surety bond, or to make claims upon the environmental insurance  
17 policy for these purposes. The petition of the transferee shall not be  
18 granted by the department if the owner or operator continues or  
19 begins to perform its obligations within 14 days of the petition  
20 being filed with the department.

21 (3) After the department has begun to perform the remediation  
22 in the place of the person required to establish the remediation  
23 funding source or has granted the petition of the transferee to  
24 perform the remediation, the person required to establish the  
25 remediation funding source shall not be permitted by the  
26 department to continue its performance obligations except upon the  
27 agreement of the department or the transferee, as applicable, or  
28 except upon a determination by the department that the transferee is  
29 not adequately performing the remediation.

30 h. A letter of credit shall be established pursuant to the  
31 provisions of this subsection. A letter of credit shall allow a person  
32 to guarantee the availability of funds up to a limit established in a  
33 written agreement in order to guarantee the payment of the cost of  
34 the remediation for which the letter of credit was established. An  
35 originally signed duplicate of the letter of credit agreement shall be  
36 delivered to the department (1) by certified mail, overnight  
37 delivery, or personal service within 14 days of receipt of notice  
38 from the department that the remedial action workplan or  
39 remediation agreement as provided in subsection e. of section 4 of  
40 P.L.1983, c.330 (C.13:1K-9) is approved, (2) within 14 days of  
41 submission to the department of a remedial action workplan  
42 certified by a licensed site remediation professional as provided in  
43 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon  
44 submission of a remediation certification [pursuant to] to the  
45 department as provided in subsection e. of section 4 of P.L.1983,  
46 c.330 (C.13:1K-9), or (4) as specified in an administrative consent  
47 order, civil order, or order of the department, as applicable. The  
48 letter of credit agreement shall conform to a model agreement as  
49 established by the department and shall be accompanied by a

1 certification of acknowledgment that conforms to a model  
2 established by the department. The letter of credit shall be issued  
3 by an entity that is licensed by the New Jersey Department of  
4 Banking and Insurance to transact business in the State, or by a  
5 federally regulated bank.

6 The letter of credit shall not be allowed to expire unless the  
7 financial institution provides the appropriate notification to the  
8 department and the application, as defined by a model agreement  
9 established by the department. The financial institution that  
10 provides the letter of credit shall release to the department or to a  
11 person authorized to perform the remediation pursuant to subsection  
12 g. of this section, only moneys authorized by the department, **[**or  
13 the authorized licensed site remediation professional,**]** in writing, to  
14 be released. The department shall return the original letter of credit  
15 to the financial institution providing the letter of credit for  
16 termination after the **[**person required to establish the remediation  
17 funding source substitutes**]** department receives an alternative  
18 remediation funding source as authorized in this section, or after the  
19 department notifies the person required to establish and maintain  
20 the remediation funding source that that person is no longer  
21 required to maintain a remediation funding source for the  
22 remediation of the contaminated site.

23 i. A surety bond shall be established pursuant to the provisions  
24 of this subsection. A surety bond shall allow a person to guarantee  
25 the availability of funds up to a limit established in a written  
26 agreement in order to guarantee the payment of the cost of the  
27 remediation for which the surety bond was established. An  
28 originally signed duplicate of the surety bond agreement shall be  
29 delivered to the department (1) by certified mail, overnight  
30 delivery, or personal service within 14 days of receipt of notice  
31 from the department that the remedial action workplan or  
32 remediation agreement as provided in subsection e. of section 4 of  
33 P.L.1983, c.330 (C.13:1K-9) is approved, (2) within 14 days of  
34 submission to the department of a licensed site remediation  
35 professional certified remedial action workplan as provided in  
36 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon  
37 submission of a remediation certification to the department as  
38 provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-  
39 9), or (4) as specified in an administrative consent order, civil order,  
40 or order of the department, as applicable. The surety bond  
41 agreement shall conform to a model agreement established by the  
42 department and shall be accompanied by a certification of  
43 acknowledgment that conforms to a model established by the  
44 department. The surety company issuing the bond must be a  
45 company that is listed as an acceptable surety on federal bonds in  
46 United States Treasury Department Circular 570.

47 The surety bond shall not be cancelled unless the surety company  
48 provides the appropriate notice of cancellation to the department  
49 and the principal, as defined in a model agreement established by

1 the department. The surety company that provides the surety bond  
2 shall release to the department, or to a person authorized to perform  
3 the remediation pursuant to subsection g. of this section, only  
4 monies authorized by the department, in writing, to be released.  
5 The department shall return the original surety bond to the surety  
6 company for termination after the department receives an  
7 alternative remediation funding source as specified in this section or  
8 the department notifies the person that that person is no longer  
9 required to maintain a remediation funding source for remediation  
10 of the contaminated site.

11 (cf: P.L.2009, c.60, s.43)

12

13 9. (New section) The department shall encourage the use of  
14 green and sustainable practices during the remediation of a  
15 contaminated site. The use of green and sustainable practices shall  
16 not alter the requirement that the remediation be protective of the  
17 public health and safety and of the environment.

18

19 10. Section 39 of P.L.1993, c.139 (C.58:10B-15) is amended to  
20 read as follows:

21 39. a. Any person who, before the effective date of P.L.1993,  
22 c.139 (C.13:1K-9.6 et al.), has discharged a hazardous substance in  
23 violation of P.L.1976, c.141, and:

24 (1) has not been issued a directive to remove or arrange for the  
25 removal of the discharge pursuant to section 7 of P.L.1976, c.141  
26 (C.58:10-23.11f);

27 (2) has not been assessed a civil penalty, a civil administrative  
28 penalty, or is not the subject of an action pursuant to the provisions  
29 of section 22 of P.L.1976, c.141 (C.58:10-23.11u);

30 (3) has not entered into an administrative consent order to clean  
31 up and remove the discharge; and

32 (4) has not been ordered by a court to clean up and remove the  
33 discharge, shall not be subject to a monetary penalty for the failure  
34 to report the discharge or for any civil violation of P.L.1976, c.141  
35 (C.58:10-23.11 et seq.) or P.L.1977, c.74 (C.58:10A-1 et seq.) that  
36 resulted in the discharge if the person notifies the department of the  
37 discharge and enters into an administrative consent order **【**or a  
38 memorandum of agreement**】** with the department to remediate the  
39 discharge in accordance with the provisions of P.L.1976, c.141  
40 (C.58:10-23.11 et seq.), or any rules or regulations adopted  
41 pursuant thereto, within one year of the effective date of P.L.1993,  
42 c.139 (C.13:1K-9.6 et al.). Any person who notifies the department  
43 of the discharge pursuant to this section shall be liable for all  
44 cleanup and removal costs as provided in section 8 of P.L.1976,  
45 c.141 (C.58:10-23.11g).

46 b. Notwithstanding the provisions of subsection a. of this  
47 subsection, any person who enters into **【**a memorandum of  
48 agreement or**】** an administrative consent order pursuant to this  
49 section and fails to remediate the discharge in accordance with the

1 **【**memorandum of agreement or**】** administrative consent order, shall  
2 be subject to all penalties for violations that occurred before the  
3 effective date of P.L.1993, c.139 (C.13:1K-9.6 et al.) as well as any  
4 penalties for subsequent violations.

5 c. The provisions of this section shall not apply to violations of  
6 a permit issued pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.).

7 d. Any documents or information provided to the department  
8 pursuant to this section may not be used in a criminal investigation  
9 or criminal prosecution against the person providing the  
10 information or documents for those violations that occurred before  
11 the effective date of **【**this act**】** P.L.1993, c.139 as long as the person  
12 remediates the discharge in conformance with the administrative  
13 consent order **【**or memorandum of agreement**】** entered into  
14 pursuant to subsection a. of this section.

15 (cf: P.L.1993, c.139, s.39)

16

17 11. Section 1 of P.L.2006, c.65 (C.58:10B-24.1) is amended to  
18 read as follows:

19 1. a. Prior to the initiation of the remedial **【**action**】**  
20 investigation phase of the remediation of a contaminated site, any  
21 person who is responsible for conducting a remediation of the  
22 contaminated site, including the Department of Environmental  
23 Protection when it conducts a remediation of a contaminated site  
24 using public monies, shall provide written notification describing  
25 the activities that are to take place at the contaminated site to the  
26 clerk of the municipality and to the county health department and  
27 the local health agency wherein the site is located. The written  
28 notice shall include notice of the location of the contaminated site,  
29 including address and the lot and block number of the contaminated  
30 site. The written notice shall also inform the municipality, county  
31 health department, and local health agency that they may receive a  
32 copy of the remedial action workplan **【**and any updates or status  
33 reports**】** , any other workplan, report, or validated data required by  
34 the department, and any updates thereto, and a copy of the site  
35 health and safety plan, from the responsible party, upon request.  
36 For any remediation of a contaminated site that will take longer  
37 than two years to complete, the person responsible for conducting  
38 the remediation shall provide the notification **【**shall be provided**】**  
39 required by this section every two years until remediation is  
40 complete.

41 b. Notice required pursuant to this section shall not be required  
42 when the remediation of a contaminated site is caused by a leaking  
43 residential underground storage tank used to store heating oil for  
44 on-site consumption in a one to four family residential building or  
45 an emergency response action.

46 (cf: P.L.2007, c.276, s.1)

1       12. Section 2 of P.L.2006, c.65 (C.58:10B-24.2) is amended to  
2 read as follows:

3       2. Upon request of a municipality, any person who is  
4 responsible for conducting a remediation of a contaminated site  
5 shall submit a copy of a remedial action workplan , any other  
6 workplan, report, or validated data required by the department, and  
7 any updates or status reports pursuant to the "Industrial Site  
8 Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), the "Brownfield  
9 and Contaminated Site Remediation Act," P.L.1997, c.278  
10 (C.58:10B-1.1 et al.), or the "Spill Compensation and Control Act,"  
11 P.L.1976, c.141 (C.58:10-23.11 et seq.), and a copy of the site  
12 health and safety plan, to the clerk of the municipality wherein the  
13 contaminated site is located at the same time as **【the workplan is】**  
14 those documents are submitted to the **【Department of**  
15 **Environmental Protection】** department. Upon request of a county  
16 health department or a local health agency, the person who is  
17 responsible for conducting a remediation of a contaminated site  
18 shall also submit a copy of the remedial action workplan **【and】** ,  
19 any other workplan, report, or validated data required by the  
20 department, any updates or status reports, and a copy of the site  
21 health and safety plan, to the county health department or local  
22 health agency, respectively.

23 (cf: P.L.2007, c.276, s.2)

24

25       13. Section 3 of P.L.2006, c.65 (C.58:10B-24.3) is amended to  
26 read as follows:

27       3. a. Any person who is responsible for conducting a  
28 remediation of a contaminated site shall be responsible for notifying  
29 the public of the remediation of the contaminated site pursuant to  
30 rules and regulations adopted by the Department of Environmental  
31 Protection pursuant to subsection b. of this section.

32       b. Within six months after the date of enactment of this act, the  
33 Department of Environmental Protection shall adopt, pursuant to  
34 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
35 seq.), rules and regulations setting forth the notice requirements  
36 pursuant to subsection a. of this section. The rules and regulations  
37 to be adopted by the department pursuant to this section shall  
38 require any person who is responsible for conducting a remediation  
39 of a contaminated site to provide written notification to any local  
40 property owners and tenants who reside within 200 feet of the  
41 contaminated site. The notification shall summarize site conditions  
42 and provide information about actions being taken to remediate the  
43 site and may require written notification **【or】** and the posting of a  
44 sign visible to the public which shall be located on the boundaries  
45 of the contaminated site.

46       c. A person responsible for conducting a remediation shall  
47 respond to any inquiries from the public that the person receives, or  
48 that the department receives and forwards to the person responsible  
49 for conducting the remediation, by providing either: (1) specific

1 information or documents that are responsive to the public inquiry;  
2 or (2) a written status report for the remediation, which shall be  
3 made in a form and manner as prescribed by the department  
4 pursuant to rules and regulations. A person responsible for  
5 conducting a remediation may designate a licensed site remediation  
6 professional to respond to public inquiries pursuant to this  
7 subsection.

8 (cf: P.L.2006, c.65, s.3)

9

10 14. Section 1 of P.L.2005, c.360 (C.58:10B-27.2) is amended to  
11 read as follows:

12 1. a. The provisions of any other law, or rule or regulation  
13 adopted pursuant thereto, to the contrary notwithstanding, the State  
14 may enter into a redevelopment agreement pursuant to sections 35  
15 and 36 of P.L.1997, c.278 (C.58:10B-27 and 58:10B-28) for a  
16 redevelopment project that was commenced prior to the effective  
17 date of sections 34 through 39 of P.L.1997, c.278 (C.58:10B-26  
18 through 58:10B-31) in which the State may agree to reimburse a  
19 developer for 75 **【%】** percent of remediation costs incurred  
20 subsequent to entering into the redevelopment agreement, provided  
21 that the **【Chief Executive Officer and Secretary of the Commerce**  
22 **and Economic Growth Commission】** Executive Director of the New  
23 Jersey Economic Development Authority, in consultation with the  
24 State Treasurer, finds that:

25 (1) the remediation that has not yet been performed on the  
26 subject real property is necessary to ensure that the public health  
27 and safety and the environment are protected; and

28 (2) (a) the cost or extent of remediation was unanticipated at  
29 the time the redevelopment project was commenced; (b) changes to  
30 the rules and regulations governing site remediation were adopted  
31 after the redevelopment project was commenced; (c) principles of  
32 fairness and consistency indicate that the reimbursement of  
33 remediation costs provided by P.L.1997, c.278 should be made  
34 available to the developer who agreed to remediate and redevelop a  
35 brownfield prior to the enactment of P.L.1997, c.278; (d) an  
36 estimate of the cost of the remediation to be performed subsequent  
37 to entry into the redevelopment agreement as approved by the  
38 Department of Environmental Protection exceeds \$10 million; (e)  
39 the subject real property is situated within a Planning Area 1 as  
40 designated in the State Development and Redevelopment Plan; and  
41 (f) a phase of the redevelopment project has not been commenced.

42 b. A developer that enters into a redevelopment agreement  
43 pursuant to this section shall be eligible for reimbursement of  
44 remediation costs pursuant to sections 36 and 37 of P.L.1997, c.278  
45 (C.58:10B-28 and 58:10B-29), provided that:

46 (1) in estimating the amount of State taxes that are anticipated to  
47 be derived from a redevelopment project the director shall only  
48 consider tax revenues generated subsequent to the date of the  
49 redevelopment agreement from a phase of the redevelopment



1 project that has not generated tax revenues prior to January 1, 2006;  
2 and

3 (2) a developer has entered into **【a memorandum of agreement**  
4 **or other】** an oversight document with the Commissioner of  
5 Environmental Protection for the remediation of a contaminated site  
6 located on the site of the redevelopment project and the developer is  
7 in compliance with the **【memorandum of agreement or】** oversight  
8 document.

9 c. Nothing in this section shall require that a no further action  
10 letter be obtained by a developer for remediation of groundwater  
11 beneath the subject real property prior to reimbursement of the  
12 remediation costs, provided that the developer has completed any  
13 capital construction or infrastructure required for the remediation of  
14 groundwater on the site.

15 (cf: P.L.2005, c.360, s.1)

16

17 15. Section 36 of P.L.1997, c.278 (C.58:10B-28) is amended to  
18 read as follows:

19 36. a. The provisions of any other law, or rule or regulation  
20 adopted pursuant thereto, to the contrary notwithstanding, any  
21 developer that enters into a redevelopment agreement pursuant to  
22 section 35 of P.L.1997, c.278 (C.58:10B-27), may be eligible for  
23 reimbursement of up to 75 **【%】** percent of the costs of the  
24 remediation of the subject real property pursuant to the provisions  
25 of this section upon the commencement of a business operation, or  
26 the completion of the construction of one or more new residences,  
27 within a redevelopment project.

28 b. To be eligible for reimbursement of the costs of remediation,  
29 a developer shall submit an application, in writing, to the director  
30 for review and certification of the reimbursement. The director  
31 shall review the request for the reimbursement upon receipt of an  
32 application therefor, and shall approve or deny the application for  
33 certification on a timely basis. The director shall also make a  
34 finding of the occupancy rate of the property subject to the  
35 redevelopment agreement in the frequency set forth in the  
36 redevelopment agreement as provided in section 35 of P.L.1997,  
37 c.278 (C.58:10B-27).

38 The director shall certify a developer to be eligible for the  
39 reimbursement if the director finds that:

40 (1) residential construction is complete, or a place of business is  
41 located, in the area subject to the redevelopment agreement that has  
42 generated new tax revenues;

43 (2) the developer had (i) entered into **【a memorandum of**  
44 **agreement, or other】** an oversight document, with the  
45 Commissioner of Environmental Protection, after the developer  
46 entered into the redevelopment agreement, for the remediation of  
47 contamination located on the site of the redevelopment project  
48 pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29) and the

1 developer is in compliance with the **【**memorandum of agreement**】**  
2 oversight document, or (ii) complied with the requirements set forth  
3 in subsection b. of section 30 of P.L.2009, c.60 (C.58:10B-1.3); and

4 (3) the costs of the remediation were actually and reasonably  
5 incurred. In making this finding the director may consult with the  
6 Department of Environmental Protection.

7 c. When filing an application for certification for a  
8 reimbursement pursuant to this section, the developer shall submit  
9 to the director a certification of the total remediation costs incurred  
10 by the developer for the remediation of the subject property located  
11 at the site of the redevelopment project as provided in the  
12 redevelopment agreement, information concerning the occupancy  
13 rate of the buildings or other work areas located on the property  
14 subject to the redevelopment agreement, and such other information  
15 as the director deems necessary in order to make the certifications  
16 and findings pursuant to this section.

17 (cf: P.L.2009, c.60, s.53)

18

19 16. Section 37 of P.L.1997, c.278 (C.58:10B-29) is amended to  
20 read as follows:

21 37. a. To qualify for the certification of reimbursement of the  
22 remediation costs authorized pursuant to section 36 of P.L.1997,  
23 c.278 (C.58:10B-28), a developer shall: (1) enter into **【**a  
24 memorandum of agreement, or other**】** an oversight document with  
25 the Commissioner of Environmental Protection; or (2) comply with  
26 the requirements set forth in subsection b. of section 30 of  
27 P.L.2009, c.60 (C.58:10B-1.3), for the remediation of the site of the  
28 redevelopment project.

29 b. Under the **【**memorandum of agreement, or other**】** oversight  
30 document, the developer shall agree to perform and complete any  
31 remediation activity as may be required by the Department of  
32 Environmental Protection to ensure the remediation is conducted  
33 pursuant to the regulations adopted by the Department of  
34 Environmental Protection pursuant to P.L.1993, c.139 (C.58:10B-1  
35 et al.).

36 c. After the developer has entered into **【**a memorandum of  
37 agreement, or other**】** an oversight document with the Commissioner  
38 of Environmental Protection, or after the developer has notified the  
39 Department of Environmental Protection of the name and license  
40 information of the licensed site remediation professional who has  
41 been **【**hired**】** retained to perform the remediation as required  
42 pursuant to subsection b. of section 30 of P.L.2009, c.60 (C.58:10B-  
43 1.3), the commissioner shall submit a copy thereof to the developer,  
44 the clerk of the municipality in which the subject property is  
45 located, the Division of Business Assistance, Marketing and  
46 International Trade in the New Jersey Economic Development  
47 Authority, and the director.

48 (cf: P.L.2009, c.60, s.54)

1       17. Section 39 of P.L.1997, c.278 (C.58:10B-31) is amended to  
2 read as follows:

3       39. a. The State Treasurer shall reimburse the developer the  
4 amount of the remediation costs agreed upon in the redevelopment  
5 agreement, and as provided in sections 35 and 36 of P.L.1997, c.278  
6 (C.58:10B-27 and C.58:10B-28) upon issuance of the certification  
7 by the director pursuant to section 36 of P.L.1997, c.278 (C.58:10B-  
8 28). The developer shall be entitled to periodic payments from the  
9 fund in an amount, in the frequency, and over the time period as  
10 provided in the redevelopment agreement. Notwithstanding any  
11 other provision of sections 34 through 39 of P.L.1997, c.278  
12 (C.58:10B-26 through C.58:10B-31), the State Treasurer may not  
13 reimburse the developer any amount of the remediation costs from  
14 the fund until the State Treasurer is satisfied that the anticipated tax  
15 revenues from the redevelopment project have been realized by the  
16 State in an amount sufficient to pay for the cost of the  
17 reimbursements.

18       b. A developer shall submit to the director updated remediation  
19 costs actually incurred by the developer for the remediation of the  
20 contaminated property located at the site of the redevelopment  
21 project as provided in the redevelopment agreement. The  
22 reimbursement authorized pursuant to this section shall continue  
23 until such time as the aggregate dollar amount of the agreed upon  
24 reimbursement. To remain entitled to the reimbursement authorized  
25 pursuant to this section, the developer shall perform and complete  
26 all remediation activities as may be required pursuant to the  
27 **【memorandum of agreement or other】** oversight **【agreement】**  
28 **document** entered into with the Commissioner of Environmental  
29 Protection pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29)  
30 or as may be required by the licensed site remediation professional  
31 in order to issue a response action outcome for the site. The  
32 Department of Environmental Protection may review the  
33 remediation costs incurred by the developer to determine if they are  
34 reasonable.

35       Reimbursable remediation costs shall include costs that are  
36 incurred in preparing the area of land whereon the contaminated site  
37 is located for remediation and may include costs of dynamic  
38 compaction of soil necessary for the remediation.

39 (cf: P.L.2009, c.60, s.55)

40

41       18. Section 2 of P.L.2009, c.60 (C.58:10C-2) is amended to read  
42 as follows:

43       2. As used in sections 1 through 29 of P.L.2009, c.60  
44 (C.58:10C-1 et seq.):

45       "Area of concern" means any location where contaminants are or  
46 were known or suspected to have been discharged, generated,  
47 manufactured, refined, transported, stored, handled, treated, or  
48 disposed, or where contaminants have or may have migrated.

1 "Board" means the Site Remediation Professional Licensing  
2 Board established pursuant to section 3 of P.L.2009, c.60  
3 (C.58:10C-3).

4 "Certified subsurface evaluator" means a person certified to  
5 perform services at the site of an unregulated heating oil tank  
6 pursuant to P.L.1991, c.123 (C.58:10A-24.1 et seq.) as a subsurface  
7 evaluator.

8 "Contamination" or "contaminant" means any discharged  
9 hazardous substance as defined pursuant to section 3 of P.L.1976,  
10 c.141 (C.58:10-23.11b), hazardous waste as defined pursuant to  
11 section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined  
12 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3).

13 "Department" means the Department of Environmental  
14 Protection.

15 "Discharge" means any intentional or unintentional action or  
16 omission resulting in the releasing, spilling, leaking, pumping,  
17 pouring, emitting, emptying or dumping of hazardous substances  
18 into the waters or onto the lands of the State, or into waters outside  
19 the jurisdiction of the State when damage may result to the lands,  
20 waters or natural resources within the jurisdiction of the State.

21 "Engineering controls" means any mechanism to contain or  
22 stabilize contamination or ensure the effectiveness of a remedial  
23 action. Engineering controls may include, without limitation, caps,  
24 covers, dikes, trenches, leachate collection systems, signs, fences  
25 and physical access controls.

26 "Environmental crime" means any criminal violation of one of  
27 the following State laws: R.S.12:5-1 et seq.; P.L.1975, c.232  
28 (C.13:1D-29 et al.); the "Solid Waste Management Act," P.L.1970,  
29 c.39 (C.13:1E-1 et seq.); section 17 of P.L.1975, c.326 (C.13:1E-  
30 26); the "Comprehensive Regulated Medical Waste Management  
31 Act," sections 1 **【though】** through 25 of P.L.1989, c.34 (C.13:1E-  
32 48.1 et seq.); P.L.1989, c.151 (C.13:1E-99.21a et al.); the "New  
33 Jersey Statewide Mandatory Source Separation and Recycling Act,"  
34 P.L.1987, c.102 (C.13:1E-99.11 et al.); the "Pesticide Control Act  
35 of 1971," P.L.1971, c.176 (C.13:1F-1 et seq.); the "Industrial Site  
36 Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.); the "Toxic  
37 Catastrophe Prevention Act," P.L.1985, c.403 (C.13:1K-19 et seq.);  
38 "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.);  
39 the "Freshwater Wetlands Protection Act," P.L.1987, c.156  
40 (C.13:9B-1 et al.); the "Coastal Area Facility Review Act,"  
41 P.L.1973, c.185 (C.13:19-1 et seq.); the "Air Pollution Control Act  
42 (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.); the "Water Supply  
43 Management Act," P.L.1981, c.262 (C.58:1A-1 et al.); P.L.1947,  
44 c.377 (C.58:4A-5 et seq.); the "Spill Compensation and Control  
45 Act," P.L.1976, c.141 (C.58:10-23.11 et seq.); the "Water Pollution  
46 Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.); P.L.1986, c.102  
47 (C.58:10A-21 et seq.); the "Safe Drinking Water Act," P.L.1977,  
48 c.224 (C.58:12A-1 et al.); the "Flood Hazard Area Control Act,"  
49 P.L.1962, c.19 (C.58:16A-50 et seq.).

1 "Feasibility study" means a study to develop and evaluate  
2 options for remedial action using data gathered during the remedial  
3 investigation to develop the objectives of the remedial action, and  
4 to develop possible remedial action alternatives, to evaluate those  
5 alternatives and create a list of feasible alternatives, and to analyze  
6 the engineering, scientific, institutional, human health,  
7 environmental, and cost of each selected alternative.

8 "Hazardous substance" means the "environmental hazardous  
9 substances" on the environmental hazardous substance list adopted  
10 by the department pursuant to section 4 of P.L.1983, c.315  
11 (C.34:5A-4); such elements and compounds, including petroleum  
12 products, which are defined as such by the department, after public  
13 hearing, and which shall be consistent to the maximum extent  
14 possible with, and which shall include, the list of hazardous  
15 substances adopted by the federal Environmental Protection Agency  
16 pursuant to section 311 of the Federal Water Pollution Control Act  
17 Amendments of 1972, Pub. L.92-500, as amended by the Clean  
18 Water Act of 1977, Pub. L.95-217 (33 U.S.C. s.1251 et seq.); the  
19 list of toxic pollutants designated by Congress or the federal  
20 Environmental Protection Agency pursuant to section 307 of that  
21 act; and the list of hazardous substances adopted by the federal  
22 Environmental Protection Agency pursuant to section 101 of the  
23 "Comprehensive Environmental Response, Compensation and  
24 Liability Act of 1980," Pub. L.96-510 (42 U.S.C. s.9601 et seq.);  
25 provided, however, that sewage and sewage sludge shall not be  
26 considered as hazardous substances for the purposes of P.L.1976,  
27 c.141 (C.58:10-23.11 et seq.).

28 "Immediate environmental concern" means **[a condition at a**  
29 **contaminated site where there is]**: (1) confirmed contamination in a  
30 well used for potable purposes at concentrations **[at or]** above the  
31 ground water remediation standards; (2) confirmed contamination  
32 that has migrated into **[an occupied] a structure currently used or**  
33 **able to be used for human occupancy** or a confined space producing  
34 a toxic or harmful atmosphere resulting in an unacceptable human  
35 health exposure, or producing an oxygen-deficient atmosphere, or  
36 resulting in demonstrated physical damage to essential underground  
37 services; (3) confirmed contamination at the site of a nature that  
38 either dermal contact, ingestion, or inhalation of the contamination  
39 could result in an acute human health exposure; or (4) any other  
40 **[condition] confirmed contamination** that poses an immediate  
41 threat to the environment or to the public health and safety.

42 "Institutional controls" means a mechanism used to limit human  
43 activities at or near a contaminated site, or to ensure the  
44 effectiveness of the remedial action over time, when contaminants  
45 remain at a contaminated site in levels or concentrations above the  
46 applicable remediation standard that would allow unrestricted use  
47 of that property. Institutional controls may include, without  
48 limitation, structure, land, and natural resource use restrictions, well  
49 restriction areas, and deed notices.

1 "Licensed site remediation professional" means an individual  
2 who is licensed by the board pursuant to section 7 of P.L.2009, c.60  
3 (C.58:10C-7) or the department pursuant to section 12 of P.L.2009,  
4 c.60 (C.58:10C-12).

5 "Limited restricted use remedial action" means any remedial  
6 action that requires the continued use of institutional controls but  
7 does not require the use of an engineering control.

8 "Person" means an individual, public or private corporation,  
9 company, association, society, firm, partnership, joint stock  
10 company, the State, and any of its political subdivisions or agents.

11 "Person responsible for conducting the remediation" means (1)  
12 any person who executes or is otherwise subject to an oversight  
13 document to remediate a contaminated site, (2) the owner or  
14 operator of an industrial establishment subject to P.L.1983, c.330  
15 (C.13:1K-6 et al.), for the remediation of a discharge, (3) the owner  
16 or operator of an underground storage tank subject to P.L.1986,  
17 c.102 (C.58:10A-21 et seq.), for the remediation of a discharge, (4)  
18 any other person who discharges a hazardous substance or is in any  
19 way responsible for a hazardous substance, pursuant to section 8 of  
20 P.L.1976, c.141 (C.58:10-23.11g), that was discharged at a  
21 contaminated site, or (5) any other person who is remediating a site.

22 "Preliminary assessment" means the first phase in the process of  
23 identifying areas of concern and determining whether contaminants  
24 are or were present at a site or have migrated or are migrating from  
25 a site, and shall include the initial search for and evaluation of,  
26 existing site specific operational and environmental information,  
27 both current and historic, to determine if further investigation  
28 concerning the documented, alleged, suspected or latent discharge  
29 of any contaminant is required. The evaluation of historic  
30 information shall be conducted from 1932 to the present, except that  
31 the department may require the search for and evaluation of  
32 additional information relating to ownership and use of the site  
33 prior to 1932 if such information is available through diligent  
34 inquiry of the public records.

35 "Receptor evaluation" means an evaluation of the potential  
36 impact of contamination on humans and environmentally sensitive  
37 natural resources.

38 "Remedial action" means those actions taken at a site or offsite if  
39 a contaminant has migrated or is migrating therefrom, as may be  
40 required by the department, including the removal, treatment,  
41 containment, transportation, securing, or other engineering or  
42 treatment measures, whether to an unrestricted use or otherwise,  
43 designed to ensure that any discharged contaminant at the site or  
44 that has migrated or is migrating from the site, is remediated in  
45 compliance with the applicable health risk or environmental  
46 standards.

47 "Remedial action workplan" means a plan for the remedial action  
48 to be undertaken at a site, or at any area to which a discharge  
49 originating at a site is migrating or has migrated; a description of

1 the remedial action to be used to remediate a site; a time schedule  
2 and cost estimate of the implementation of the remedial action; and  
3 any other information the department deems necessary.

4 "Remedial investigation" means a process to determine the  
5 nature and extent of a discharge of a contaminant at a site or a  
6 discharge of a contaminant that has migrated or is migrating from  
7 the site and the problems presented by a discharge, and may include  
8 data collected, site characterization, sampling, monitoring, and the  
9 gathering of any other sufficient and relevant information necessary  
10 to determine the necessity for remedial action and to support the  
11 evaluation of remedial actions if necessary.

12 "Remediation" or "remediate" means all **【necessary】** actions to  
13 investigate **【and】** , clean up , or respond to any known, suspected,  
14 or threatened discharge of contaminants, including **【, as necessary,】**  
15 the preliminary assessment, site investigation, remedial  
16 investigation, and remedial action, or any portion thereof, provided,  
17 however, that "remediation" or "remediate" shall not include the  
18 payment of compensation for damage to, or loss of, natural  
19 resources.

20 "Remediation standards" means the combination of numeric  
21 standards that establish a level or concentration, and narrative  
22 standards to which contaminants must be treated, removed, or  
23 otherwise cleaned for soil, groundwater, or surface water, as  
24 provided by the department pursuant to section 35 of P.L.1993,  
25 c.139 (C.58:10B-12) in order to meet the health risk or  
26 environmental standards.

27 "Response action outcome" means a written determination by a  
28 licensed site remediation professional that the contaminated site  
29 was remediated in accordance with all applicable statutes and  
30 regulations, and based upon an evaluation of the historical use of  
31 the site, or of any area of concern at that site, as applicable, and any  
32 other investigation or action the department deems necessary, there  
33 are no contaminants present at the site, or at any area of concern, at  
34 any other site to which a discharge originating at the site has  
35 migrated, or that any contaminants present at the site or that have  
36 migrated from the site have been remediated in accordance with  
37 applicable remediation regulations, and all applicable permits and  
38 authorizations have been obtained.

39 "Restricted use remedial action" means any remedial action that  
40 requires the continued use of engineering and institutional controls  
41 in order to meet the established health risk or environmental  
42 standards.

43 "Retained" means hired, individually or through a firm or other  
44 person, by or on behalf of a person responsible for conducting  
45 remediation, to perform, manage, or supervise remediation or to  
46 periodically review and evaluate a remediation performed by other  
47 persons.

48 "Site investigation" means the collection and evaluation of data  
49 adequate to determine whether or not discharged contaminants exist

1 at a site or have migrated or are migrating from the site at levels in  
2 excess of the applicable remediation standards. A site investigation  
3 shall be developed based upon the information collected pursuant to  
4 the preliminary assessment.

5 "Small business" means a business entity that does not acquire  
6 property for development or redevelopment, and that, during the  
7 prior three tax years, employed not more than 50 full-time  
8 employees or the equivalent thereof, and qualifies as a small  
9 business concern within the meaning of the federal "Small Business  
10 Act," 15 U.S.C. s.631 et seq.

11 "Temporary license" means a license issued by the department  
12 pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12) to conduct  
13 business as a licensed site remediation professional in the State.

14 "Unregulated heating oil tank" means any one or combination of  
15 tanks, including appurtenant pipes, lines, fixtures, and other related  
16 equipment, used to contain an accumulation of heating oil for on-  
17 site consumption in a residential building, or those tanks with a  
18 capacity of 2,000 gallons or less used to store heating oil for on-site  
19 consumption in a nonresidential building, the volume of which,  
20 including the volume of the appurtenant pipes, lines, fixtures and  
21 other related equipment, is 10 **【%】** percent or more below the  
22 ground.

23 "Waters" means the ocean and its estuaries to the seaward limit  
24 of the State's jurisdiction, all springs, streams and bodies of surface  
25 or groundwater, whether natural or artificial, within the boundaries  
26 of the State.

27 (cf: P.L.2009, c.60, s.2)

28

29 19. Section 7 of P.L.2009, c.60 (C.58:10C-7) is amended to read  
30 as follows:

31 7. a. The board shall establish a licensing program and  
32 licensing requirements for site remediation professionals, and shall  
33 oversee their licensing and performance.

34 b. The board shall establish standards for education, training  
35 and experience that shall be required of any person who applies for  
36 a license or a license renewal. The board shall conduct  
37 examinations to certify that an applicant possesses sufficient  
38 knowledge of the State laws, rules and regulations, standards and  
39 requirements applicable to site remediation and that the applicant is  
40 qualified to obtain a license or a license renewal. The board shall  
41 also adopt standards for the professional conduct of licensed site  
42 remediation professionals pursuant to the provisions of section 16  
43 of P.L.2009, c.60 (C.58:10C-16). The board shall require an  
44 applicant to submit references to ensure that the applicant meets the  
45 standards and requirements established for training, experience and  
46 professional conduct by licensed site remediation professionals. No  
47 person may take the licensing examination until the board  
48 determines that the applicant meets the standards for education,  
49 training and experience.



1 c. An application for a license shall be made in a manner and  
2 on such forms as may be prescribed by the board. The filing of an  
3 application shall be accompanied by an application fee that shall  
4 cover the costs of processing the application and developing and  
5 conducting the examinations. The board may also charge an annual  
6 license fee that shall cover the costs of the licensing program.

7 d. An applicant for a site remediation professional license shall  
8 demonstrate to the board that the applicant:

9 (1) holds a bachelor's degree or higher in natural, chemical or  
10 physical science, or an engineering degree in a discipline related to  
11 site remediation, from an accredited institution of higher education,  
12 or has been issued a temporary license to remediate discharges from  
13 underground storage tanks only pursuant to subsection d. of section  
14 13 of P.L.2009, c.60 (C.58:10C-13) and meets the other  
15 requirements established in this subsection and in subsection f. of  
16 this section;

17 (2) has eight years of full-time professional experience, as  
18 described in subsection e. of this section, in the field of site  
19 remediation, of which five years shall have occurred in New Jersey  
20 and at least three years shall have occurred in New Jersey  
21 **【immediately】** within the five years prior to submission of the  
22 application;

23 (3) has a minimum of 5,000 hours of relevant professional  
24 experience within the State over the five years immediately prior to  
25 submission of the application that is of a professional grade and  
26 character that indicates the applicant is competent to issue a  
27 response action outcome;

28 (4) has attended and completed the minimum environmental  
29 health and safety education and training provided pursuant to 29  
30 C.F.R. Section 1910.120 no more than one year prior to submission  
31 of an application for a license pursuant to this section;

32 (5) has attended and completed a course approved by the  
33 department on the State's rules and regulations concerning the  
34 technical requirements for site remediation no more than three years  
35 prior to submission of the application;

36 (6) has not been convicted of, or plead guilty to, an  
37 environmental crime, any similar or related criminal offense under  
38 federal or state law, or any crime involving fraud, breach of trust,  
39 theft by deception, forgery , or any offense that would qualify the  
40 person for registration pursuant to section 2 of P.L.1994, c.133  
41 (C.2C:7-2), or any other crime or offense involving moral turpitude,  
42 or any similar or related offense under federal or state law . For the  
43 purposes of this section, a conviction or plea of guilty shall include  
44 a non vult, nolo contendere, no contest, or finding of guilt by a  
45 judge or jury; and

46 (7) has not had a professional license or certification revoked by  
47 any state licensing board or any other professional licensing agency  
48 within the previous 10 years , and has not surrendered a

1 professional license or certification in response to a disciplinary  
2 investigation within the previous 10 years.

3 e. For the purposes of this section, "full-time professional  
4 experience" includes experience in which the applicant is required  
5 to apply scientific or engineering principles to contaminated site  
6 remediation where the resulting conclusions form the basis for  
7 reports, studies or other documents connected with the remediation  
8 of a contaminated site. The board may consider the applicant's  
9 work activities, field of practice, duration of employment, and work  
10 products prepared in determining the credit to be allowed for  
11 professional experience. The board may allow applicants with  
12 relevant advanced degrees up to two years of credit for professional  
13 experience, of which one year of credit may be awarded for  
14 applicants who have earned a master's degree in a relevant field of  
15 study and up to two years of credit may be awarded for applicants  
16 who have earned a doctorate degree in a relevant field of study.

17 f. The board shall authorize an applicant who has been issued a  
18 temporary license pursuant to subsection d. of section 13 of  
19 P.L.2009, c.60 (C.58:10C-13), who meets all other requirements  
20 established pursuant to this section but does not hold a bachelor's  
21 degree from an accredited institution of higher education to take the  
22 licensing examination to qualify for a license pursuant to this  
23 section. An applicant who does not satisfactorily complete the  
24 examination authorized pursuant to this subsection shall not be  
25 authorized to reapply for a license.

26 g. No person may obtain a license unless that person meets the  
27 standards established for education, training and experience  
28 required in subsection b. of this section, satisfactorily passes the  
29 examination, and satisfies any other requirements established by the  
30 board to ensure that licensed site remediation professionals meet the  
31 requirements established pursuant to this section.

32 (cf: P.L.2009, c.60, s.7)

33

34 20. Section 11 of P.L.2009, c.60 (C.58:10C-11) is amended to  
35 read as follows:

36 11. a. No person shall be, act as, advertise as, or hold himself  
37 out to be, or represent himself as being, a licensed site remediation  
38 professional unless that person has been issued a valid license  
39 pursuant to P.L.2009, c.60 (C.58:10C-1 et al.).

40 b. Except as provided in subsection d. of section 30 of  
41 P.L.2009, c.60 (C.58:10B-1.3), a person who is not a licensed site  
42 remediation professional shall not perform remediation unless the  
43 remediation is managed, supervised, or periodically reviewed and  
44 evaluated by a licensed site remediation professional.

45 (cf: P.L.2009, c.60, s.11)

46

47 21. Section 14 of P.L.2009, c.60 (C.58:10C-14) is amended to  
48 read as follows:

1 14. a. For any site for which a licensed site remediation  
2 professional is required to be **【hired】** retained pursuant to the  
3 provisions of section 30 of P.L.2009, c.60 (C.58:10B-1.3), the  
4 person responsible for conducting the remediation shall certify all  
5 documents submitted to the department concerning the remediation  
6 of the contaminated site. The licensed site remediation professional  
7 shall certify that the work was performed, the licensed site  
8 remediation professional managed, supervised, or performed the  
9 work that is the basis of the submission, and that the work and the  
10 submitted documents are consistent with all applicable remediation  
11 requirements adopted by the department.

12 b. A licensed site remediation professional shall certify  
13 electronic submissions made to the department concerning the  
14 remediation of a contaminated site. The licensed site remediation  
15 professional shall attest that no other person is authorized or able to  
16 use any password, encryption method, or electronic signature  
17 provided to the licensed site remediation professional by the board  
18 or the department.

19 c. The licensed site remediation professional shall employ the  
20 following remediation requirements in providing professional  
21 services for the remediation of contaminated sites:

22 (1) The licensed site remediation professional shall make each  
23 decision concerning a contaminated site in order to meet the  
24 following standards:

25 (a) health risk and environmental standards established pursuant  
26 to section 35 of P.L.1993, c.139 (C.58:10B-12);

27 (b) remediation standards adopted by the department pursuant to  
28 section 35 of P.L.1993, c.139 (C.58:10B-12);

29 (c) maximum contaminant levels for building interiors adopted  
30 by the Department of Health and Senior Services pursuant to  
31 section 1 of P.L.2007, c.1 (C.52:27D-130.4) as applicable; and

32 (d) any other applicable standards adopted pursuant to law.

33 (2) The licensed site remediation professional shall apply the  
34 following regulations:

35 (a) rules and regulations adopted by the Site Remediation  
36 Professional Licensing Board pursuant to section 6 of P.L.2009,  
37 c.60 (C.58:10C-6);

38 (b) technical standards for site remediation adopted by the  
39 department pursuant to P.L.1993, c.139 (C.58:10B-1 et al.);

40 **【(b)】** (c) mandatory remediation timeframes and expedited site  
41 specific timeframes adopted by the department pursuant to section  
42 28 of P.L.2009, c.60 (C.58:10C-28); **【and】**

43 **【(c)】** (d) presumptive remedies adopted by the department  
44 pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12); and

45 (e) any other applicable rules and regulations concerning the  
46 remediation.

47 (3) The licensed site remediation professional shall apply any  
48 available and appropriate technical guidelines concerning site  
49 remediation as issued by the department. The department shall

1 provide interested parties the opportunity to participate in the  
2 development and review of technical guidelines issued for the  
3 remediation of contaminated sites.

4 (4) When there is no specific requirement provided by the  
5 technical standards for site remediation adopted by the department,  
6 and guidelines issued by the department are not appropriate or  
7 necessary, in the professional judgment of the licensed site  
8 remediation professional, to meet the remediation requirements  
9 listed in paragraph (1) of this subsection, the licensed site  
10 remediation professional may use the following additional  
11 guidelines to make decisions regarding a remediation, and shall set  
12 forth justification , including, if applicable, the scientific, technical,  
13 or other justification, for such use, in the relevant submittal to the  
14 department:

15 (a) relevant guidance from the federal Environmental Protection  
16 Agency or other states; and

17 (b) other relevant, applicable, and appropriate methods and  
18 practices that ensure the protection of the public health and safety,  
19 and of the environment.

20 d. Upon completion of the remediation, the licensed site  
21 remediation professional shall issue a response action outcome to  
22 the person responsible for conducting the remediation when, in the  
23 opinion of the licensed site remediation professional, the site has  
24 been remediated so that it is in compliance with all applicable  
25 statutes, rules and regulations protective of public health and safety  
26 and the environment. The licensed site remediation professional  
27 shall file the response action outcome with the department when it  
28 is issued to the person responsible for conducting the remediation.

29 (cf: P.L.2009, c.60, s.14)

30

31 22. Section 16 of P.L.2009, c.60 (C.58:10C-16) is amended to  
32 read as follows:

33 16. a. A licensed site remediation professional's highest priority  
34 in the performance of professional services shall be the protection  
35 of public health and safety and the environment.

36 b. A licensed site remediation professional shall exercise  
37 reasonable care and diligence, and shall apply the knowledge and  
38 skill ordinarily exercised by licensed site remediation professionals  
39 in good standing practicing in the State at the time the services are  
40 performed.

41 c. A licensed site remediation professional shall not provide  
42 professional services outside the areas of professional competency,  
43 unless the licensed site remediation professional has relied upon the  
44 technical assistance of another professional whom the licensed site  
45 remediation professional has reasonably determined to be qualified  
46 by education, training, and experience. A licensed site remediation  
47 professional shall not perform services that constitute the practice  
48 of professional engineering unless the licensed site remediation  
49 professional is a professional engineer licensed in the State.

- 1 d. A licensed site remediation professional retained by a person  
2 responsible for conducting the remediation shall notify the  
3 department within 15 calendar days after being retained. In  
4 addition, a licensed site remediation professional shall notify the  
5 department within 15 calendar days after being released from  
6 responsibility for a remediation if the release occurs prior to  
7 issuance of the response action outcome for the site by the licensed  
8 site remediation professional.
- 9 e. A licensed site remediation professional and the person  
10 responsible for conducting the remediation shall correct any  
11 deficiency the department identifies in a document submitted  
12 concerning a remediation. The deficiency shall be corrected in  
13 accordance with timeframes established by the department.
- 14 f. A licensed site remediation professional may complete any  
15 phase of remediation based on remediation work performed under  
16 the supervision of another licensed site remediation professional,  
17 provided that the licensed site remediation professional: (1)  
18 reviews all available documentation on which he relies; (2)  
19 conducts a site visit to observe current conditions and to verify the  
20 status of as much of the work as is reasonably observable; and (3)  
21 concludes, in the exercise of independent professional judgment,  
22 that there is sufficient information upon which to complete any  
23 additional phase of remediation and prepare workplans and reports  
24 related thereto.
- 25 g. A licensed site remediation professional who has taken over  
26 the responsibility for the remediation of a contaminated site from  
27 another licensed site remediation professional shall correct all  
28 deficiencies in a document submitted by the previous licensed site  
29 remediation professional identified by the department in accordance  
30 with timeframes established by the department.
- 31 h. A licensed site remediation professional shall not certify any  
32 document submitted to the department unless the licensed site  
33 remediation professional : (1) believes that the information in the  
34 submission is true, accurate, and complete; and (2) has managed,  
35 supervised or performed the work that is the basis of the  
36 submission, or has periodically reviewed and evaluated the work  
37 performed by other persons that forms the basis for the information  
38 in the submission, or has completed the work of another licensed  
39 site remediation professional and has concluded such work is  
40 reliable pursuant to subsection f. of this section. A licensed site  
41 remediation professional shall not knowingly make any false  
42 statement, representation, or certification in any document or  
43 information required to be submitted to the board or the department.
- 44 i. A licensed site remediation professional shall exercise  
45 independent professional judgment, comply with the requirements  
46 and procedures set forth in the provisions of P.L.2009, c.60  
47 (C.58:10C-1 et al.), make a good faith and reasonable effort to  
48 identify and obtain the relevant and material facts, data, reports and  
49 other information evidencing conditions at a contaminated site for

1 which he is **【responsible】** retained that is in possession of the  
2 owner of the property, or that is otherwise available, and identify  
3 and obtain whatever additional data and other information as the  
4 licensed site remediation professional deems necessary. The  
5 licensed site remediation professional shall disclose and explain in  
6 any document submitted to the department any facts, data,  
7 information, qualifications, or limitations known by the licensed  
8 site remediation professional that are not supportive of the  
9 conclusions reached in the document.

10 j. If a licensed site remediation professional **【identifies】**  
11 obtains specific knowledge of a condition **【at a contaminated site】**  
12 that in his independent professional judgment is an immediate  
13 environmental concern, then the licensed site remediation  
14 professional shall: (1) immediately verbally advise , and confirm in  
15 writing to, the person responsible for conducting the remediation of  
16 that person's duty to notify the department of the condition ,  
17 provided the person is known to the licensed site remediation  
18 professional; and (2) immediately notify the department of the  
19 condition by calling the department's telephone hotline.

20 k. If a licensed site remediation professional retained to  
21 perform remediation at a site or any portion of a site obtains  
22 specific knowledge that a discharge has occurred **【on a**  
23 **contaminated site for which he is responsible】** at any location on  
24 the site, the licensed site remediation professional shall: (1) notify  
25 the person responsible for conducting the remediation of the  
26 existence of the discharge; and (2) notify the department of the  
27 discharge by calling the department's telephone hotline. The person  
28 responsible for conducting the remediation shall also be responsible  
29 for notifying the department of the existence of the discharge. The  
30 provisions of this subsection shall not apply to a discharge that may  
31 be a result of the existence of historic fill material.

32 l. If a licensed site remediation professional learns of an action  
33 or decision by a client that results in a deviation from the remedial  
34 action workplan or other report concerning the remediation  
35 developed by the licensed site remediation professional, the  
36 licensed site remediation professional shall promptly notify the  
37 client and the department, in writing, of the deviation.

38 m. A licensed site remediation professional shall not reveal  
39 information obtained in a professional capacity, except as may be  
40 authorized or required by law, without the prior consent of the  
41 client, if the client has notified the licensed site remediation  
42 professional, in writing, that the information is confidential. The  
43 provisions of this subsection shall not apply to information that is in  
44 the public domain.

45 n. A licensed site remediation professional who learns of  
46 material facts, data or other information subsequent to the  
47 completion of a report concerning a phase of remediation, which  
48 would result in a report with material differences from the report

1 submitted, shall promptly notify the client and the department in  
2 writing of those facts, data, information, and circumstances.

3 o. A licensed site remediation professional who succeeds  
4 another licensed site remediation professional before the issuance of  
5 a response action outcome, and who learns of material facts, data or  
6 other information concerning a phase of the remediation for which a  
7 report was submitted to the department and the material facts, data  
8 or other information were not disclosed in the report, shall promptly  
9 notify the client and the department in writing of those facts, data,  
10 information, and circumstances.

11 p. A licensed site remediation professional shall not allow the  
12 use of his name by a person, and shall not associate with a person in  
13 a business venture, if the licensed site remediation professional  
14 knows or should know that the person engages in fraudulent or  
15 dishonest business or professional practices regarding the  
16 professional responsibilities of a licensed site remediation  
17 professional.

18 q. A licensed site remediation professional shall cooperate in  
19 an investigation by the board or the department by promptly  
20 furnishing, in response to formal requests, orders or subpoenas, any  
21 information the board or the department, or persons duly authorized  
22 by the board or the department, deems necessary to perform its  
23 duties. In an investigation by the board of a license application or a  
24 license suspension or revocation, a licensed site remediation  
25 professional shall not:

26 (1) knowingly make a false statement of material fact;

27 (2) fail to disclose a fact necessary to correct a material  
28 misunderstanding known by the licensed site remediation  
29 professional to have arisen in the matter;

30 (3) knowingly and materially falsify, tamper with, alter, conceal,  
31 or destroy any document, data record, remedial system, or  
32 monitoring device that is relevant to the investigation, without  
33 obtaining the prior approval of the department; or

34 (4) knowingly allow or tolerate any employee, agent, or  
35 contractor of the licensed site remediation professional to engage in  
36 any of the foregoing activities.

37 r. A licensed site remediation professional shall be jointly  
38 responsible for a violation of any provision of this section  
39 committed by another licensed site remediation professional whose  
40 work he supervises or reviews if:

41 (1) the licensed site remediation professional orders, directs, or  
42 agrees to the provision of professional services conducted or  
43 prepared by another licensed site remediation professional under his  
44 supervision;

45 (2) the licensed site remediation professional knows that the  
46 professional services constitute a violation of this section; and

47 (3) the licensed site remediation professional fails to take  
48 reasonable steps to avoid or mitigate the violation.

- 1 s. A licensed site remediation professional shall comply with  
2 all conditions imposed by the board as a result of a license  
3 suspension or other disciplinary proceeding conducted by the board.
- 4 t. A licensed site remediation professional shall inform a client  
5 or prospective client of any relevant and material assumptions,  
6 limitations, or qualifications underlying their communication.  
7 Evidence that a licensed site remediation professional has provided  
8 the client or prospective client with timely written documentation of  
9 these assumptions, limitations, or qualifications shall be deemed by  
10 the board or the department to have satisfied the requirements of  
11 this subsection.
- 12 u. A licensed site remediation professional shall not state or  
13 imply, as an inducement or a threat to a client or prospective client,  
14 an ability to improperly influence a government agency or official.
- 15 v. In any description of qualifications, experience, or ability to  
16 provide services, a licensed site remediation professional shall not  
17 knowingly:
- 18 (1) make a material misrepresentation of fact;  
19 (2) omit a fact when the omission results in a materially  
20 misleading description; or  
21 (3) make a statement that, in the opinion of the board, is likely  
22 to create an unjustified expectation about results the licensed site  
23 remediation professional may achieve, or state or imply that the  
24 licensed site remediation professional may achieve results by means  
25 that violate the provisions of applicable environmental statutes,  
26 rules or regulations, including the provisions of P.L.2009, c.60  
27 (C.58:10C-1 et al.).
- 28 w. A licensed site remediation professional shall provide any  
29 notification to the board or the department required pursuant to this  
30 section, even if the licensed site remediation professional is  
31 discharged by the client prior to doing so.
- 32 x. A licensed site remediation professional shall not accept  
33 compensation, financial or otherwise, for professional services  
34 pertaining to a contaminated site from two or more persons whose  
35 interests are adverse or conflicting unless the circumstances are  
36 fully disclosed and agreed to by all clients engaging the licensed  
37 site remediation professional.
- 38 y. A licensed site remediation professional shall not be a  
39 salaried employee of the person responsible for conducting the  
40 remediation, or any related entities, for which the licensed site  
41 remediation professional is providing remediation services.
- 42 z. A licensed site remediation professional shall not allow any  
43 ownership interest, compensation, or promise of continued  
44 employment, of the licensed site remediation professional or any  
45 immediate family member, to affect the professional services  
46 provided by the licensed site remediation professional.
- 47 aa. Except as provided in subsection d. of section 30 of  
48 P.L.2009, c.60 (C.58:10B-1.3), a licensed site remediation  
49 professional shall not facilitate, aid, assist, or cooperate with any



1 person in retaining or arranging for the retention of any person who  
2 is not a licensed site remediation professional to perform  
3 remediation, unless the remediation is managed, supervised, or  
4 periodically reviewed and evaluated by a licensed site remediation  
5 professional retained for that purpose, and the department has been  
6 notified of the retention.

7 bb. Except as provided in subsection d. of section 30 of  
8 P.L.2009, c.60 (C.58:10B-1.3), a licensed site remediation  
9 professional shall not manage, supervise, perform, engage, or  
10 participate in remediation unless:

11 (1) the licensed site remediation professional has been retained  
12 by a person responsible for conducting the remediation, and the  
13 department has been notified of the retention; or

14 (2) the remediation is being managed, supervised, or performed  
15 by another licensed site remediation professional retained by the  
16 person responsible for conducting the remediation, and the  
17 department has been notified of the retention of the other licensed  
18 site remediation professional.

19 (cf: P.L.2009, c.60, s.16)

20

21 23. (New section) If a licensed site remediation professional  
22 obtains specific knowledge of a condition in an unoccupied  
23 structure, that, in his independent professional judgment, constitutes  
24 an immediate environmental concern, and the person responsible  
25 for conducting the remediation provides to the department a written  
26 certification from the property owner that the building (i) is not  
27 occupied, (ii) will not be occupied, and (iii) will be demolished,  
28 then no further remediation relative to the immediate environmental  
29 concern in the unoccupied structure shall be required, provided the  
30 conditions of the certification are maintained. Nothing in this  
31 section shall be construed to limit the responsibility of a license site  
32 remediation professional to comply with the notification  
33 requirements of subsection j. of section 16 of P.L.2009, c.60  
34 (C.58:10C-16), or the responsibility of a person to report a  
35 discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.). The  
36 department shall prescribe the form and manner of the written  
37 certification pursuant to this section.

38

39 24. Section 19 of P.L.2009, c.60 (C.58:10C-19) is amended to  
40 read as follows:

41 19. a. The department shall establish a permit program to  
42 regulate the operation, maintenance and inspection of engineering  
43 or institutional controls and related systems installed as part of a  
44 remedial action of a contaminated site. The department may require  
45 periodic monitoring, inspections, and maintenance by the person  
46 responsible for the engineering or institutional controls and the  
47 submission of certifications regarding those activities. The  
48 department may issue a permit, permit by rule, or general permit  
49 pursuant to this section.

1       b. The department may require any person who is responsible  
2 for the monitoring, operation, and maintenance of an engineering or  
3 institutional control implemented before the date of enactment of  
4 P.L.2009, c.60 (C.58:10C-1 et al.), and any person required to  
5 submit a certification on a biennial basis pursuant to section 6 of  
6 P.L.1997, c.278 (C.58:10B-13.1), that engineering or institutional  
7 controls and related systems are properly maintained and that  
8 periodic monitoring for compliance is conducted, to obtain a permit  
9 pursuant to this section.

10       c. (1) Except as provided in paragraph (2) of this subsection,  
11 the department may require that a person issued a permit pursuant  
12 to this section maintain insurance, financial assurance or another  
13 financial instrument to guarantee that funding is available to  
14 operate, maintain, and inspect the engineering controls installed as  
15 part of a remedial action of a contaminated site for the period that  
16 such controls are required. The person required to maintain the  
17 funding source pursuant to this section may petition the department  
18 on an annual basis to decrease the amount of funding required to be  
19 maintained.

20       (2) A government entity, a person who is not otherwise liable  
21 for cleanup and removal costs pursuant to P.L.1976, c.141  
22 (C.58:10-23.11 et seq.) who purchases contaminated property  
23 before the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.)  
24 and undertakes a remediation of the property, a person who  
25 undertakes a remediation at their primary or secondary residence,  
26 the owner or operator of a child care center licensed pursuant to  
27 P.L.1983, c.492 (C.30:5B-1 et seq.) who performs a remediation at  
28 the licensed child care center, the person responsible for conducting  
29 a remediation at a public school or private school as defined in  
30 N.J.S.18A:1-1, or a charter school established pursuant to P.L.1995,  
31 c.426 (C.18A:36A-1 et seq.), or the owner or operator of a small  
32 business responsible for performing a remediation at their business  
33 property, shall not be required to establish or maintain a funding  
34 source pursuant to this section, for the operation, maintenance, and  
35 inspection of the engineering controls installed as part of a remedial  
36 action of a contaminated site.

37       d. A person who is issued a permit pursuant to this section  
38 shall retain a licensed site remediation professional to manage,  
39 supervise, or perform the requirements of the permit for the  
40 duration of the permit.

41       e. The department may charge, in accordance with a schedule  
42 adopted pursuant to the "Administrative Procedure Act," P.L.1968,  
43 c.410 (C.52:14B-1 et seq.), reasonable application fees to cover the  
44 costs of processing the application, and reasonable annual fees to  
45 cover the costs of the administration and enforcement of the  
46 permits.

47 (cf: P.L.2009, c.60, s.19)

1       25. Section 20 of P.L.2009, c.60 (C.58:10C-20) is amended to  
2 read as follows:

3       20. A licensed site remediation professional shall , for each  
4 contaminated site, maintain and preserve all data, documents and  
5 information concerning the remediation **【activities at each**  
6 **contaminated site】** that the licensed site remediation professional  
7 has **【worked on】** prepared or relied upon, including but not limited  
8 to, technical records and contractual documents, raw sampling and  
9 monitoring data, whether or not the data and information, including  
10 technical records and contractual documents, were developed by the  
11 licensed site remediation professional or the licensee's divisions,  
12 employees, agents, accountants, contractors, or attorneys, that relate  
13 in any way to the contamination at the site. **【Three】** An electronic  
14 **【copies】** copy of the records shall be submitted to the department at  
15 the time the response action outcome is filed with the department.  
16 (cf: P.L.2009, c.60, s.20)

17  
18       26. Section 27 of P.L.2009, c.60 (C.58:10C-27) is amended to  
19 read as follows:

20       27. a. Except as provided in section 1 of P.L.2013, c.283 (C.  
21 58:10C-27.1), and this section, the department shall undertake  
22 direct oversight of a remediation of a contaminated site under the  
23 following conditions:

24       (1) the person responsible for conducting the remediation has a  
25 history of noncompliance with the laws concerning remediation, or  
26 any rule or regulation adopted pursuant thereto, that includes the  
27 issuance of at least two enforcement actions after the date of  
28 enactment of P.L.2009, c.60 (C.58:10C-1 et al.) during any five-  
29 year period concerning a remediation;

30       (2) the person responsible for conducting the remediation at a  
31 contaminated site has failed to meet a mandatory remediation  
32 timeframe or an expedited site specific timeframe adopted by the  
33 department pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28),  
34 including any extension thereof granted by the department, or a  
35 schedule established pursuant to an administrative order or court  
36 order; or

37       (3) unless a longer period has been ordered by a court, the  
38 person responsible for conducting the remediation has, prior to the  
39 date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), failed to  
40 complete the remedial investigation of the entire contaminated site  
41 10 years after the discovery of a discharge at the site and has failed  
42 to complete the remedial investigation of the entire contaminated  
43 site within five years after the date of enactment of P.L.2009, c.60  
44 (C.58:10C-1 et al.).

45       If a person responsible for conducting a remediation fails to meet  
46 the conditions established in paragraph (3) of this subsection, or a  
47 requirement established pursuant to subsection a. of section 1 of  
48 P.L.2013, c.283 (C.58:10C-27.1), the department shall not

1 undertake direct oversight of the contaminated site if the person  
2 demonstrates, and the department finds, that:

3 (1) the person was unable to meet the applicable timeframe  
4 because he was unable to enter the contaminated site because he  
5 does not own the property, and the person took all appropriate and  
6 timely action pursuant to section 40 of P.L.1993, c.139 (C.58:10B-  
7 16) prior to the applicable timeframe; or

8 (2) the contaminated site is subject to federal oversight, the  
9 person has made timely submissions to the department, and the  
10 person was unable to meet the applicable timeframe due to the  
11 performance of additional review by the department pursuant to  
12 subsection c. of section 21 of P.L.2009, c.60 (C.58:10C-21).

13 As used in this subsection, "enforcement action" means an  
14 administrative order, a notice of civil administrative penalty, or a  
15 court order.

16 b. The department may undertake direct oversight of a  
17 remediation of a contaminated site under the following conditions:

18 (1) the contamination at the site includes chromate chemical  
19 production waste;

20 (2) the department determines that more than one  
21 environmentally sensitive natural resource has been injured by  
22 contamination from the site;

23 (3) the site has contributed to sediments contaminated by  
24 polychlorinated biphenyl, mercury, arsenic, or dioxin in a surface  
25 water body; or

26 (4) the site is ranked by the department in the category requiring  
27 the highest priority pursuant to the ranking system developed  
28 pursuant to section 2 of P.L.1982, c.202 (C.58:10-23.16).

29 c. For any site subject to direct oversight by the department  
30 pursuant to this section:

31 (1) the department shall review each document submitted by a  
32 licensed site remediation professional and shall approve or deny the  
33 submission;

34 (2) a feasibility study shall be performed and submitted to the  
35 department for approval;

36 (3) the department shall select the remedial action for the site;

37 (4) the person responsible for conducting the remediation shall  
38 establish a remediation **【trust fund】** funding source other than a  
39 self-guarantee pursuant to section 25 of P.L.1993, c.139 (C.58:10B-  
40 3) in the amount of the estimated cost of the remediation;

41 (5) all disbursements of funds from the remediation **【trust fund】**  
42 funding source shall require prior approval by the department;

43 (6) all submissions prepared by the licensed site remediation  
44 professional concerning the remediation required by the department  
45 shall be provided simultaneously to the department and the person  
46 responsible for conducting the remediation; and

47 (7) the person responsible for conducting the remediation shall  
48 implement a public participation plan approved by the department

1 to solicit public comment from the members of the surrounding  
2 community concerning the remediation of the site.

3 d. The department shall issue guidelines establishing specific  
4 criteria for the conditions under which a site may be subject to  
5 direct oversight pursuant to subsection b. of this section.

6 e. (1) Any oversight procedure, remedy, or other obligation in  
7 P.L.2009, c.60 (C.58:10C-1 et al.) shall not affect a remediation  
8 conducted pursuant to and in compliance with a settlement of  
9 litigation to which the department is a party if the settlement (a)  
10 occurred prior to the date of enactment of P.L.2009, c.60  
11 (C.58:10C-1 et al.), or (b) is a settlement of litigation pending on  
12 the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.).

13 (2) For any litigation pending or settled on the date of enactment  
14 of P.L.2009, c.60 (C.58:10C-1 et al.), concerning a remediation  
15 performed pursuant to the "Resource Conservation and Recovery  
16 Act," 42 U.S.C. s.6921 et seq., nothing in P.L.2009, c.60  
17 (C.58:10C-1 et al.) shall affect an oversight procedure, remedy, or  
18 other obligation imposed by a federal administrative order or  
19 federal court order.

20 f. When a contaminated site is subject to direct oversight  
21 pursuant to this section, the requirements of direct oversight shall  
22 run with the site, regardless of who owns the property, and  
23 regardless of whether there is a transfer of ownership of the  
24 property.

25 g. (1) The department may modify the direct oversight  
26 requirements of subsection c. of this section for a contaminated site  
27 if:

28 (a) the person responsible for conducting the remediation  
29 demonstrates financial hardship that prevents the performance of  
30 the remediation due to the imposition of direct oversight pursuant to  
31 this section; or

32 (b) there is a public emergency resulting from a natural disaster,  
33 as declared by the Governor or the President of the United States, or  
34 an official authorized to act on their behalf, that resulted in a delay  
35 in meeting the mandatory or expedited site-specific timeframe or  
36 other condition that triggered direct oversight.

37 (2) The department may modify the direct oversight  
38 requirements of subsection c. of this section for a contaminated site  
39 if the department makes a written determination that the  
40 modification is in the public interest and protective of the public  
41 health and safety and the environment. At least 60 days prior to  
42 making a modification pursuant to this paragraph, the department  
43 shall publish its written determination and the proposed  
44 modification to the requirements of direct oversight, including the  
45 reasons for its determination, on the department's Internet website.  
46 The department shall solicit and accept public comments on the  
47 proposed modification for a period of at least 30 days after the date  
48 of publication. The department shall consider the public comments

1 received during the comment period prior to making a modification  
2 pursuant to this paragraph.

3 (3) The department may, prior to a change in ownership of a  
4 contaminated site, enter into an administrative consent order with  
5 the prospective purchaser of the contaminated site providing for the  
6 modification of any or all of the direct oversight requirements of  
7 subsection c. of this section for the contaminated site.

8 (4) The department may reinstate any or all of the direct  
9 oversight requirements that it modifies pursuant to paragraphs (1),  
10 (2), and (3) of this subsection if, after the modification, the  
11 department finds that the person responsible for conducting the  
12 remediation has failed to comply with any applicable timeframe,  
13 administrative consent order modifying the requirements of direct  
14 oversight, or any law, rule, or regulation concerning the remediation  
15 of contaminated sites.

16 (cf: P.L.2013, c.283, s.2)

17

18 27. This act shall take effect immediately.

19

20

21

## STATEMENT

22

23 This bill would make various changes to the laws governing the  
24 remediation of contaminated sites and licensed site remediation  
25 professionals (LSRPs).

26 The bill would require a plaintiff, in any action for damages for  
27 personal injuries, wrongful death, or property damage resulting  
28 from an alleged act of malpractice or negligence by an LSRP, to  
29 provide each defendant with an affidavit of merit. An affidavit of  
30 merit is a sworn statement from an appropriate licensed person  
31 stating that there exists a reasonable probability that the care, skill,  
32 or knowledge exercised or exhibited in the practice or work that is  
33 the subject of the complaint fell outside acceptable professional or  
34 occupational standards. If a plaintiff fails to file an affidavit of  
35 merit, his case would be dismissed for failure to state a cause of  
36 action. The State currently requires an affidavit of merit for suits  
37 against various other licensed professionals including doctors,  
38 accountants, attorneys, and engineers.

39 The bill would authorize the Superior Court and the municipal  
40 courts to impose a civil penalty for a violation of the "Spill  
41 Compensation and Control Act," P.L.1976, c.141 (C. 58:10-23.11 et  
42 seq.), to be assessed in accordance with the "Penalty Enforcement  
43 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

44 The bill makes several changes to laws governing the  
45 establishment of remediation funding sources, and when and how  
46 those remediation funding sources may be used, dispersed, and  
47 released. The bill provides that a person may establish, as a  
48 remediation funding source, a surety bond from an entity that is  
49 listed as an acceptable surety on federal bonds in United States

1 Treasury Department Circular 570. The bill also establishes  
2 requirements for utilizing a surety bond as a remediation funding  
3 source.

4 The bill would require the Department of Environmental  
5 Protection (DEP) to encourage the use of green and sustainable  
6 practices during the remediation of a contaminated site. However,  
7 the use of green and sustainable practices would not alter the  
8 requirement that the remediation be protective of the public health  
9 and safety and of the environment.

10 Current law requires a person responsible for conducting a  
11 remediation to provide written notice of the remediation to the  
12 municipality and county in which the contaminated site is located  
13 prior to initiating the remedial action. The bill would require that  
14 such written notice be provided earlier in the site remediation  
15 process – prior to the initiation of the remedial investigation. The  
16 bill would also expand the types of documents a person responsible  
17 for conducting a remediation is required to provide to a  
18 municipality or county, upon request.

19 The bill would require a person responsible for conducting a  
20 remediation to respond to any inquiries from the public that the  
21 person receives or that the DEP receives and forwards to that  
22 person. Under the bill, the person's response must include either:  
23 (1) specific information or documents that are responsive to the  
24 public inquiry; or (2) a written status report for the remediation in a  
25 form and manner as determined by the DEP. A person responsible  
26 for conducting a remediation would be permitted to designate an  
27 LSRP to respond to public inquiries under the bill.

28 Current law provides that an "immediate environmental concern"  
29 includes "confirmed contamination that has migrated into an  
30 occupied structure..." The bill would expand the definition to  
31 include "confirmed contamination that has migrated into a structure  
32 currently used or able to be used for human occupancy..." Under  
33 existing law, the DEP has established expedited timeframes to  
34 address immediate environmental concerns. However, under the  
35 bill, no further remediation relative to an immediate environmental  
36 concern that affects an unoccupied structure would be required if a  
37 person responsible for conducting the remediation provides to the  
38 DEP a written certification from the property owner that the  
39 building: (1) is not occupied; (2) will not be occupied; and (3) will  
40 be demolished.

41 Under existing law, if an LSRP identifies a condition that, in his  
42 independent professional judgment, is an immediate environmental  
43 concern, then the LSRP must, among other things, immediately  
44 verbally advise the person responsible for conducting the  
45 remediation of that person's duty to notify the DEP. The bill would  
46 require an LSRP to notify the person responsible for conducting the  
47 remediation, in writing, of the person's duty to notify the DEP of  
48 the condition.

1       The bill provides that, if an LSRP who is retained to perform  
2 remediation at a site or any portion of a site obtains specific  
3 knowledge that a discharge has occurred at any location on the site,  
4 the LSRP must notify the person responsible for conducting the  
5 remediation and the DEP.

6       The bill makes certain changes to the licensing requirements for  
7 LSRPs. Under current law, an applicant for an LSRP license must  
8 demonstrate, among other things, that the applicant has the requisite  
9 number of years of full-time professional experience in the field of  
10 site remediation, of which five years must have occurred in New  
11 Jersey, and at least three years must have occurred in the State  
12 immediately prior to submission of the application. The bill would  
13 change this requirement to provide that an applicant must have  
14 worked at least three years in the State within the five years  
15 immediately prior to submission of the application, to account for  
16 applicants who may have been absent from work for personal  
17 reasons.

18       Current law specifies the crimes and other offenses that  
19 disqualify a person from becoming an LSRP. This bill would  
20 expand that list to include any criminal offense involving breach of  
21 trust, and any offense that would qualify the person for registration  
22 on the State's sex offender registry, or any other crime or offense  
23 involving moral turpitude. Under the bill, an applicant for an LSRP  
24 license would need to demonstrate that he has not had a  
25 professional certification revoked, and has not surrendered a  
26 professional license or certification in response to a disciplinary  
27 investigation, within the previous 10 years.

28       The bill provides that a person who is not an LSRP may not  
29 perform remediation unless the remediation is managed, supervised,  
30 or periodically reviewed and evaluated by an LSRP. The bill  
31 specifies that an LSRP, when providing professional services for  
32 the remediation of a contaminated site, must apply the rules and  
33 regulations adopted by the Site Remediation Professional Licensing  
34 Board (board), and any other applicable rules and regulations  
35 concerning the remediation.

36       The bill specifies that an LSRP may not certify any document  
37 submitted to the DEP unless the LSRP believes that the information  
38 in the submission is true, accurate, and complete. The bill would  
39 also explicitly prohibit an LSRP from knowingly making any false  
40 statement, representation, or certification in any document or  
41 information required to be submitted to the DEP or the board.

42       The bill provides that an LSRP is prohibited from facilitating,  
43 aiding, assisting, or cooperating with any person in retaining or  
44 arranging for the retention of any person who is not an LSRP to  
45 perform remediation, unless the remediation is managed,  
46 supervised, or periodically reviewed and evaluated by an LSRP  
47 retained for that purpose, and the DEP has been notified of the  
48 retention. Additionally, under the bill, an LSRP would be  
49 prohibited from managing, supervising, performing, engaging, or



1 participating in a remediation unless: (1) the LSRP has been  
2 retained by a person responsible for conducting the remediation,  
3 and the DEP has been notified of the retention; or (2) the  
4 remediation is being managed, supervised, or performed by another  
5 LSRP retained by the person responsible for conducting the  
6 remediation, and the DEP has been notified of the retention of the  
7 other LSRP.

8 The bill requires a person who is issued a remedial action permit  
9 for the operation, maintenance, and inspection of engineering or  
10 institutional controls and related systems installed as part of a  
11 remedial action to retain an LSRP to manage, supervise, or perform  
12 the requirements of the permit for the duration of the permit.

13 Under the bill, if a person responsible for conducting a  
14 remediation fails to meet certain conditions, the DEP would not  
15 undertake direct oversight of the contaminated site if the person  
16 demonstrates, and the DEP finds, that: (1) the person was unable to  
17 meet the applicable timeframe because he was unable to enter the  
18 contaminated site because he does not own the property, and the  
19 person took all appropriate and timely action to gain access to the  
20 site; or (2) the contaminated site is subject to federal oversight, the  
21 person has made timely submissions to the DEP, and the person was  
22 unable to meet the applicable timeframe due to the performance of  
23 additional review by the DEP.

24 The bill provides that, when a contaminated site is subject to  
25 direct oversight, the requirements of direct oversight run with the  
26 site, regardless of who owns the property, and regardless of whether  
27 there is a transfer of ownership of the property.

28 The bill authorizes the DEP to modify the requirements of direct  
29 oversight if: (1) the person responsible for conducting the  
30 remediation demonstrates financial hardship that prevents the  
31 performance of the remediation due to the imposition of direct  
32 oversight; or (2) there is a public emergency resulting from a  
33 natural disaster, as declared by the State or federal government, that  
34 resulted in a delay in meeting the mandatory or expedited site-  
35 specific timeframe or other condition that triggered direct oversight.  
36 The DEP would also be authorized to modify the requirements of  
37 direct oversight for a contaminated site if the DEP makes a written  
38 determination that the modification is in the public interest and  
39 protective of the public health and safety and the environment. The  
40 DEP would be required to publish its written determination,  
41 including the reasons for its determination, on the DEP's Internet  
42 website, and solicit and consider public comments on the proposed  
43 modification.

44 The bill also authorizes the DEP, prior to a change in ownership  
45 of a contaminated site, to enter into an administrative consent order  
46 with the prospective purchaser of the contaminated site providing  
47 for the modification of the requirements of direct oversight. The  
48 DEP would be authorized to reinstate the direct oversight  
49 requirements that it modifies under the bill if, after the

1 modification, the DEP finds that the person responsible for  
2 conducting the remediation failed to comply with any applicable  
3 timeframe, administrative consent order, or any law, rule, or  
4 regulation concerning site remediation.

5 The bill makes certain changes to the definition of the term  
6 “remediation,” used in various existing site remediation laws. The  
7 bill also adds a definition for the term “retained” in the "Site  
8 Remediation Reform Act," P.L.2009, c.60 (C.58:10C-1 et seq.), and  
9 makes consistent the use of that term throughout that law.

10 The bill deletes various references in the site remediation laws to  
11 the term “memorandum of agreement.”

# SENATE ENVIRONMENT AND ENERGY COMMITTEE

## STATEMENT TO

### **SENATE, No. 3682**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 17, 2019

The Senate Environment and Energy Committee favorably reports Senate Bill No. 3682, with committee amendments.

This bill, as amended by the committee, would make various changes to the laws governing the remediation of contaminated sites and licensed site remediation professionals (LSRPs).

The bill would require a plaintiff, in any action for damages for personal injuries, wrongful death, or property damage resulting from an alleged act of malpractice or negligence by an LSRP, to provide each defendant with an affidavit of merit. (An affidavit of merit is a sworn statement from an appropriate licensed person stating that there exists a reasonable probability that the care, skill, or knowledge exercised or exhibited in the practice or work that is the subject of the complaint fell outside acceptable professional or occupational standards.) If a plaintiff fails to file an affidavit of merit, the case would be dismissed for failure to state a cause of action.

The bill would authorize the Superior Court and the municipal courts to impose a civil penalty for a violation of the “Spill Compensation and Control Act,” to be assessed in accordance with the “Penalty Enforcement Law of 1999.”

The bill makes several changes to laws governing the establishment of remediation funding sources, and when and how those remediation funding sources may be used, dispersed, and released. The bill provides that a person may establish, as a remediation funding source, a surety bond from an entity that is listed as an acceptable surety on federal bonds in United States Treasury Department Circular 570. The bill also establishes requirements for utilizing a surety bond as a remediation funding source.

The bill would require the Department of Environmental Protection (DEP) to encourage the use of green and sustainable practices during the remediation of a contaminated site. The use of green and sustainable practices would not alter the requirement that the remediation be protective of the public health and safety and of the environment.

Under the bill, a person would not be required to retain an LSRP to conduct sampling or investigation to confirm or evaluate a remediation performed or supervised by a retained LSRP, provided that the

sampling or investigation: (1) is not required pursuant to this section or any other law, rule, regulation, or order; (2) is not conducted in order to obtain a response action outcome; and (3) is not conducted in order to investigate, clean up, or respond to any known, suspected, or threatened discharge of a contaminant.

Current law requires a person responsible for conducting a remediation to provide written notice of the remediation to the municipality and county in which the contaminated site is located prior to initiating the remedial action. The bill would require that such written notice be provided earlier in the site remediation process – prior to the initiation of the remedial investigation. The bill would also expand the types of documents a person responsible for conducting a remediation is required to provide to a municipality or county, upon request.

The bill would require a person responsible for conducting a remediation to respond to any inquiries from the public regarding the status of the remediation that the person receives or that the DEP receives and forwards to that person. Under the bill, the person's response must include either: (1) information or documents that are responsive to the public inquiry; or (2) a written summary status report for the remediation in a form and manner as determined by the DEP. A person responsible for conducting a remediation would be permitted to designate an LSRP to respond to public inquiries under the bill.

Current law provides that an "immediate environmental concern" includes "confirmed contamination that has migrated into an occupied structure..." The bill would remove the word "occupied," so that the definition reads, in relevant part, "confirmed contamination that has migrated into a structure..." Under existing law, the DEP has established expedited timeframes to address immediate environmental concerns. However, under the bill, no further remediation relative to an immediate environmental concern that affects an unoccupied structure would be required if a person responsible for conducting the remediation provides to the DEP a written certification from the property owner that the building: (1) is not occupied; (2) will not be occupied; and (3) will be demolished.

Under existing law, if an LSRP identifies a condition that, in the LSRP's independent professional judgment, is an immediate environmental concern, then the LSRP must, among other things, immediately verbally advise the person responsible for conducting the remediation of that person's duty to notify the DEP. The bill would require an LSRP to also notify the person responsible for conducting the remediation, in writing, of the person's duty to notify the DEP of the condition.

The bill provides that, if an LSRP who is retained to perform remediation at a site or any portion of a site obtains specific knowledge that a discharge has occurred at any location on the site, the

LSRP must notify the person responsible for conducting the remediation and the DEP.

The bill makes certain changes to the licensing requirements for LSRPs. Under current law, an applicant for an LSRP license must demonstrate, among other things, that the applicant has the requisite number of years of full-time professional experience in the field of site remediation, of which five years must have occurred in the State, and at least three years must have occurred in the State immediately prior to submission of the application. The bill would change this requirement to provide that an applicant must have worked at least three years in the State within the five years immediately prior to submission of the application, to account for applicants who may have been absent from work for personal reasons.

Current law specifies the crimes and other offenses that disqualify a person from becoming an LSRP. This bill would expand that list to include any crime involving breach of trust, and any crime or offense that would qualify the person for registration on the State's sex offender registry, or any other crime involving moral turpitude. Under the bill, an applicant for an LSRP license would need to demonstrate that the person has not had a professional certification revoked, and has not surrendered a professional license or professional certification in response to a disciplinary investigation, within the previous 10 years.

The bill provides that a person who is not an LSRP may not perform remediation unless the remediation is managed, supervised, or periodically reviewed and evaluated by an LSRP. The bill specifies that an LSRP, when providing professional services for the remediation of a contaminated site, must apply the rules and regulations adopted by the Site Remediation Professional Licensing Board (board), and any other applicable rules and regulations concerning the remediation.

The bill specifies that an LSRP may not certify any document submitted to the DEP unless the LSRP believes that the information in the submission is true, accurate, and complete. The bill would also explicitly prohibit an LSRP from knowingly making any false statement, representation, or certification in any document or information required to be submitted to the DEP or the board.

The bill provides that an LSRP is prohibited from facilitating, aiding, assisting, or cooperating with any person in retaining or arranging for the retention of any person who is not an LSRP to perform remediation, unless the remediation is managed, supervised, or periodically reviewed and evaluated by an LSRP retained for that purpose, and the DEP has been notified of the retention. Additionally, under the bill, an LSRP would be prohibited from managing, supervising, performing, engaging, or participating in a remediation unless: (1) the LSRP has been retained by a person responsible for conducting the remediation, and the DEP has been notified of the

retention; or (2) the remediation is being managed, supervised, or performed by another LSRP retained by the person responsible for conducting the remediation, and the DEP has been notified of the retention of the other LSRP.

The bill requires a person who is issued a remedial action permit for the operation, maintenance, and inspection of engineering or institutional controls and related systems installed as part of a remedial action to retain an LSRP to manage, supervise, or perform the requirements of the permit for the duration of the permit.

Under the bill, if a person responsible for conducting a remediation fails to meet certain conditions, the DEP would not undertake direct oversight of the contaminated site if the person demonstrates, and the DEP finds, that: (1) the person was unable to meet the applicable timeframe because the person was unable to enter the contaminated site because the person does not own the property, and the person took all appropriate and timely action to gain access to the site; or (2) the contaminated site is subject to federal oversight, the person has made timely submissions to the DEP, and the person was unable to meet the applicable timeframe due to the performance of additional review by the DEP.

The bill provides that, when a contaminated site is subject to direct oversight, the requirements of direct oversight run with the site, regardless of who owns the property, and regardless of whether there is a transfer of ownership of the property.

The bill authorizes the DEP to modify the requirements of direct oversight if: (1) the person responsible for conducting the remediation demonstrates financial hardship that prevents the performance of the remediation due to the imposition of direct oversight; or (2) there is a public emergency, as declared by the State or federal government, that resulted in a delay in meeting the mandatory or expedited site-specific timeframe or other condition that triggered direct oversight. The DEP would also be authorized to modify the requirements of direct oversight for a contaminated site if the DEP makes a written determination that the modification is in the public interest and protective of the public health and safety and the environment. The DEP would be required to publish its written determination, including the reasons for its determination, on the DEP's Internet website, and solicit and consider public comments on the proposed modification.

The bill also authorizes the DEP, prior to a change in ownership of a contaminated site, to enter into an administrative consent order with the prospective purchaser of the contaminated site providing for the modification of the requirements of direct oversight, with certain exceptions. The DEP would be authorized to reinstate the direct oversight requirements that it modifies under the bill if, after the modification, the DEP finds that the person responsible for conducting the remediation failed to comply with any applicable timeframe,

administrative consent order, or any law, rule, or regulation concerning site remediation.

The bill makes certain changes to the definition of the term “remediation,” used in various existing site remediation laws. The bill also adds a definition for the term “retained” in the “Site Remediation Reform Act,” and makes consistent the use of that term throughout that law.

Lastly, the bill deletes various references in the site remediation laws to the term “memorandum of agreement.”

#### COMMITTEE AMENDMENTS

The committee amendments to the bill:

(1) revise the definition of the term “remediation” in section 3 of P.L.1983, c.330 (C.13:1K-8) to make it consistent with other laws, by specifying that “remediation” does not include the payment of compensation for damage to, or loss of, natural resources;

(2) provide that a person is not required to retain an LSRP to conduct sampling or investigation to confirm or evaluate a remediation performed or supervised by a retained LSRP, provided that the sampling or investigation: (1) is not required pursuant to this section or any other law, rule, regulation, or order; (2) is not conducted in order to obtain a response action outcome; and (3) is not conducted in order to investigate, clean up, or respond to any known, suspected, or threatened discharge of a contaminant;

(3) specify that a person responsible for conducting a remediation is required to provide to a municipality, upon request, any other workplan, report, or validated data required by the DEP pursuant to law, rule, or regulation;

(4) clarify that a person responsible for conducting a remediation is required to respond to any written or email inquiries from the public regarding the status of the remediation that the person receives, or that the DEP receives and forwards to the person;

(5) specify that the status report that a person responsible for conducting remediation may provide in response to a public inquiry is a written summary status report;

(6) amend the definition of the term “immediate environmental concern” in section 2 of P.L.2009, c.60 (C.58:10C-2) to provide that it includes “confirmed contamination that has migrated into a structure or a confined space...”;

(7) remove language providing that a person can be disqualified from becoming an LSRP for “offenses” involving moral turpitude, and instead provide that a person can be disqualified only for “crimes” involving moral turpitude;

(8) specify that a person may be disqualified from becoming an LSRP if a professional certification is revoked within the previous 10 years, as opposed to any certification;

(9) provide that, when the DEP, pursuant to the bill, modifies the requirement of direct oversight due to a public emergency, that public emergency does not need to be the result of a natural disaster;

(10) provide that the DEP may not enter into a pre-purchaser administrative consent order to modify the requirements of direct oversight with any person who: (a) has discharged a hazardous substance at the contaminated site, is in any way responsible for a hazardous substance at the site, or is otherwise liable for cleanup and removal costs at the site, (b) has owned or operated the contaminated site, or (c) is a predecessor, successor, subsidiary, partner, shareholder, assign, trustee in bankruptcy, responsible corporate official, or receiver appointed pursuant to a proceeding in law or equity, to any person described in subparagraphs (a) and (b) above; and

(11) make technical corrections to the bill.



# Governor Murphy Takes Action on Legislation

08/23/2019

## Governor Murphy Takes Action on Legislation

**TRENTON** – Today, Governor Phil Murphy signed the following bills and resolutions into law:

**A3118 (Burzichelli, Schepisi, Jasey/Bucco, Thompson)** - Establishes licensure for master hearth specialists.

**A4420 (Holley/Scutari)** - Modifies certain fees charged by check casher licensees.

**A4482 (Verrelli, Murphy, Downey/Greenstein)** - Establishes "Task Force on the Prevention of Sexual Violence Against Persons with Developmental Disabilities" in DHS.

**A5293 (Pinkin, Zwicker, Lopez, McKeon/Smith, Bateman, Greenstein)** - Makes various changes to laws governing remediation of contaminated sites.

**A5390 (Tucker, Mukherji, Timberlake/Gopal, Oroho)** - Provides in-State tuition at public institutions of higher education to individuals living in NJ who are entitled to educational assistance under US Department of Veterans Affairs' Vocational Rehabilitations and Employment Program.

**S499 (Vitale, Madden/Downey, Houghtaling, Zwicker)** - Provides for improved system for eligibility determination for Medicaid and NJ FamilyCare.

[Copy of Statement on S499](#)

**S785 (Sarlo, Lagana/Calabrese, Mukherji)** - Requires Police Training Commission to develop supplemental training course for certain county corrections officers.

**S1014 (Rice/Wimberly, Mukherji)** - Changes composition of State Employment and Training Commission.

**S1126 (Bucco, Doherty, Bucco/Coughlin, Webber)** - Requires public school districts to provide instruction on "New Jersey Safe Haven Infant Protection Act" as part of New Jersey Student Learning Standards.

**S1403 (Diegnan, Singleton/DeAngelo, Mazzeo, Sumter)** - Permits service credit transferred from another State-administered retirement system to apply toward creditable service requirement for retirement in SPRS.

**S1887 (Singleton, Greenstein/DeAngelo, Wirths, Space)** - Directs Commissioner of Labor and Workforce Development to establish pilot program to assist certain unemployed and underemployed individuals to complete industry-valued Credentials in 12 months.

**S1948 (Vitale/Quijano, Holley, Lopez)** - Makes Supplemental Nutrition Assistance Program Employment and Training Provider Demonstration Project permanent and renames program.

**S2507 (Singleton, Pou/Danielsen, DeCroce)** - Prohibits sale or lease of access to certain dental provider network contracts.

**S2538 (Singleton, Pennacchio/Kean, Murphy, DeCroce, Armato)** - Makes New Jersey National Guard members with NGB-22 form eligible for certain veterans' benefits.

**S2660 (Gopal, Sarlo/Downey, Houghtaling, Schaer)** - Establishes grant program and tuition reimbursement program for certain teachers of science, technology, engineering, and mathematics; appropriates \$5 million to DOE.

[Copy of Statement on S2660](#)

**S2690 (Ruiz, Cryan, Beach, Turner, Andrzejczak/McKeon, Dancer, Land)** - Prohibits pharmacy benefits managers and carriers from engaging in "clawback" and "gag clause" practices; requires certain disclosures by pharmacists; requires Director of Division of Consumer Affairs to conduct public information campaign.

**S2691 (Kean, Cunningham/Quijano, Vainieri Huttle, Reynolds-Jackson)** - Makes supplemental appropriation of \$100,000 to Commission on Human Trafficking.

[Copy of Statement on S2691](#)

**S3100 (Weinberg, Addiego/Benson, Vainieri Huttle, Mukherji)** - Revises definition of hemophilia and expands hemophilia treatment program.

**SJR73 (Singleton/Murphy, Verrelli, Dancer)** - Urges U.S. Congress to pass "Military Hunger Prevention Act."

Governor Murphy conditionally vetoed the following bills:

**A3717 (Mukherji, Downey, Houghtaling/Greenstein, Gopal)** - Prohibits pharmacy benefits managers from making certain retroactive reductions in claims payments to pharmacies; requires pharmacy benefits managers to disclose certain product information to pharmacies.

[Copy of Statement on A3717](#)

**A5363 (Burzichelli, Benson, Murphy/Gopal)** - Requires carriers that offer health benefits plans to provide new or existing subscribers with notification of certain hospital and health system contract expirations.

[Copy of Statement on A5363](#)

**S834 (Scutari, Greenstein/Jones, Pintor Marin)** - Prohibits resale of non-prescription diabetes test devices by pharmacists.

[Copy of Statement on S834](#)

**S2804 (Ruiz, Turner/Lopez, McKnight, Verrelli)** - Requires young children entering public schools or Head Start Programs for first time to have comprehensive eye examination completed.

[Copy of Statement on S2804](#)

**S3075 (Weinberg, Ruiz/Lampitt, Mukherji, Vainieri Huttle)** - Requires DOH to regulate and license embryo storage facilities.

[Copy of Statement on S3075](#)

**S3309 (Vitale, Greenstein/Greenwald, Pintor Marin, Reynolds-Jackson)** - Establishes New Jersey Violence Intervention Program to fund violence reduction initiatives.

[Copy of Statement on S3309](#)

**S3330 (Addiego, Singleton/Jones, Vainieri Huttle, Lampitt, Murphy)** - Establishes pilot program in DCF to study impact of child care services provided by community providers operating in public school facilities; requires community providers to meet certain criteria.

[Copy of Statement on S3330](#)

**S3661 (Singleton, Oroho/Jasey, Wirths, Webber)** - Clarifies assessment payment and election participation requirements in planned real estate developments.

[Copy of Statement on S3661](#)

Governor Murphy absolute vetoed the following bills and resolutions:

**A4135 (Land, Taliaferro/Sweeney, Andrzejczak)** - Concerns use of digital parking meters to monitor parking compliance; establishes fund to encourage designated drivers.

[Copy of Statement on A4135](#)

**AJR158 (Houghtaling, Downey, Mosquera/Gopal)** - Establishes New Jersey Task Force on Medicaid Financial

Resource Limits.

[Copy of Statement on AJR158](#)

**S1364 (Andrzejczak/Land, Milam)** - Provides funding from the General Fund to the Greater Wildwoods Tourism Improvement and Development Authority; appropriates \$4 million.

[Copy of Statement on S1364](#)