



<b>VETO MESSAGE:</b>	No
<b>GOVERNOR'S PRESS RELEASE ON SIGNING:</b>	Yes
<b>GOVERNOR'S EXECUTIVE ORDER NO. 140</b>	Yes

**FOLLOWING WERE PRINTED:**

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<b>REPORTS:</b>	Yes
<b>HEARINGS:</b>	No
<b>NEWSPAPER ARTICLES:</b>	Yes

"N.J. will privatize toxic-site cleanups," The Philadelphia Inquirer, 5-8-09, p. B01  
 "Cleanup of toxic sites now private," The Record, 5-8-09, p. A01  
 "New law speeds site approvals," Courier-Post, 5-8-09, p. \_\_

974.90 P777, 2008

Public hearing before Senate Environment Committee [and] Assembly Environment and Solid Waste Committee : testimony concerning proposed reforms to the Department of Environmental Protection's site remediation program : [April 15, 2008, Trenton, New Jersey] / meeting recorded and transcribed by the Office of Legislative Services, Public Information Office, Hearing Unit.

974.90 P777, 2008a

Committee meeting of Senate Environment Committee : Senate bill no. 1897 (establishes licensed site professional program for site remediation and makes various changes to site remediation laws) : [June 16, 2008, Trenton, New Jersey] / meeting recorded and transcribed by the Office of Legislative Services, Public Information Office, Hearing Unit.

974.90 P777, 2009a

Committee meeting of Senate Environment Committee [and] Assembly Environment and Solid Waste Committee: Senate committee substitute for Senate no. 1897 [and] Assembly Committee substitute for Assembly no. 2962 (establishes licensed site professional program of site remediation and makes various changes to site remediation laws): [February 26, 2009, Trenton, New Jersey] / meeting recorded and transcribed by the Office of Legislative Services, Public Information Office, Hearing Unit.

974.90 P777, 2009b

Committee meeting of Senate Environment Committee : Senate bill no. 1897 (establishes licensed site professional program of site remediation and makes various changes to site remediation laws) : [February 2, 2009, Trenton, New Jersey] / meeting recorded and transcribed by the Office of Legislative Services, Public Information Office, Hearing Unit.

LAW/RWH 9/9/09

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 2962**

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

ADOPTED FEBRUARY 26, 2009

**Sponsored by:**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex)**

**Assemblyman JOSEPH CRYAN**

**District 20 (Union)**

**Assemblyman PETER J. BARNES, III**

**District 18 (Middlesex)**

**Assemblyman ALBERT COUTINHO**

**District 29 (Essex and Union)**

**Assemblywoman NELLIE POU**

**District 35 (Bergen and Passaic)**

**Co-Sponsored by:**

**Assemblywoman Wagner, Senators B.Smith, Sweeney, Lesniak, Oroho,  
Van Drew, Ciesla, Gordon, Bateman and Beach**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Assembly Environment and Solid Waste Committee.

(Sponsorship Updated As Of: 3/17/2009)

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

3

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

6

7 1. (New section) Sections 1 through 29 of P.L. , c. (C. )  
8 (pending before the Legislature as this bill) shall be known and may  
9 be cited as the "Site Remediation Reform Act."

10

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

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

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

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

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

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

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

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

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

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

**Matter underlined thus is new matter.**



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

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

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

1 considered as hazardous substances for the purposes of P.L.1976,  
2 c.141 (C.58:10-23.11 et seq.).

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

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

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

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

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

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

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 "Receptor evaluation" means an evaluation of the potential  
15 impact of contamination on humans and environmentally sensitive  
16 natural resources.

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

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

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

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

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

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

20 "Restricted use remedial action" means any remedial action that  
21 requires the continued use of engineering and institutional controls  
22 in order to meet the established health risk or environmental  
23 standards.

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

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

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

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

1 "Waters" means the ocean and its estuaries to the seaward limit  
2 of the State's jurisdiction, all springs, streams and bodies of surface  
3 or groundwater, whether natural or artificial, within the boundaries  
4 of the State.

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

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

13 (1) The Commissioner of Environmental Protection, or a  
14 designee, who shall serve ex officio, and who shall be the  
15 chairperson of the board;

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

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

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

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

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

46 (d) one shall be a member of the academic community who is  
47 knowledgeable with respect to issues involving responding to

1 discharges of hazardous substances and who shall be appointed for  
2 a term of four years.

3 c. Each member shall serve for the term of the appointment and  
4 until a successor shall have been appointed and qualified. Any  
5 vacancy shall be filled in the same manner as the original  
6 appointment for the unexpired term only.

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

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

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

19

20 4. (New section) The powers of the board shall be vested in the  
21 members thereof in office. A majority of the total authorized  
22 membership of the board shall constitute a quorum and no action  
23 may be taken by the board except upon the affirmative vote of a  
24 majority of the total authorized membership of the board.

25

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

28 a. To review and approve or deny applications for licensing site  
29 remediation professionals;

30 b. To administer and evaluate licensing examinations for site  
31 remediation professionals;

32 c. To issues licenses and license renewals to all qualifying site  
33 remediation professionals;

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

36 e. To approve or offer continuing education courses;

37 f. To track fulfillment of continuing education requirements by  
38 licensed site remediation professionals;

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

42 h. To adopt and administer standards for professional conduct  
43 for licensed site remediation professionals, as provided in sections  
44 14 and 16 of P.L. , c. (C. ) (pending before the Legislature as  
45 this bill);

46 i. To investigate complaints, impose discipline, and suspend and  
47 revoke licenses of site remediation professionals who violate the

1 provisions of P.L. , c. (C. ) (pending before the Legislature as  
2 this bill);

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

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

10 l. To provide public information on the licensed site remediation  
11 professional program; and

12 m. To maintain a record of complaints filed against licensed site  
13 remediation professionals and provide the public with information  
14 upon request.

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

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

45  
46 7. (New section) a. The board shall establish a licensing  
47 program and licensing requirements for site

1 remediation professionals, and shall oversee their licensing and  
2 performance.

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

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

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

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

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

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

45 (4) has attended and completed the minimum environmental  
46 health and safety education and training provided pursuant to 29



1 C.F.R. Section 1910.120 no more than one year prior to submission  
2 of an 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 plead guilty to, an  
8 environmental crime, any similar or related criminal offense under  
9 federal or state law, or any crime involving fraud, theft by  
10 deception, forgery or any similar or related offense under federal or  
11 state law; and

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

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

29 f. The board shall authorize an applicant who has been issued a  
30 temporary license pursuant to subsection d. of section 13 of P.L. ,  
31 c. (C. ) (pending before the Legislature as this bill), who meets  
32 all other requirements established pursuant to this section but does  
33 not hold a bachelor's degree from an accredited institution of higher  
34 education to take the licensing examination to qualify for a license  
35 pursuant to this section. An applicant who does not satisfactorily  
36 complete the examination authorized pursuant to this subsection  
37 shall not be authorized to reapply for a license.

38 g. No person may obtain a license unless that person meets the  
39 standards established for education, training and experience  
40 required in subsection b. of this section, satisfactorily passes the  
41 examination, and satisfies any other requirements established by the  
42 board to ensure that licensed site remediation professionals meet the  
43 requirements established pursuant to this section.

44  
45 8. (New section) a. The board may suspend or revoke a license  
46 pursuant to the provisions of section 17 of P.L. , c. (C. )  
47 (pending before the Legislature as this bill). The board shall

1 establish standards and requirements for the reinstatement of a site  
2 remediation professional license that has been suspended or  
3 revoked.

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

10

11 9. (New section) A licensed site remediation professional shall  
12 submit an application for license renewal at least 90 days and no  
13 more than 120 days prior to expiration of the license. The board  
14 shall establish standards and requirements for the renewal of the site  
15 remediation professional license and may require training or  
16 continuing education, experience or other requirements as a  
17 condition for renewal of a license. An application for a license  
18 renewal shall be accompanied by an application fee.

19

20 10. (New section) Each license issued pursuant to section 7 of  
21 P.L. , c. (C. ) (pending before the Legislature as this bill)  
22 shall be issued to an individual, shall be valid only for the  
23 individual to whom it is issued and shall not be transferable. Each  
24 license issued pursuant to section 7 of P.L. , c. (C. ) (pending  
25 before the Legislature as this bill) shall be valid for a period not to  
26 exceed three years, unless a shorter period is specified therein, or  
27 unless suspended or revoked.

28

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

34

35 12. (New section) a. No more than 90 days after the date of  
36 enactment of P.L. , c. (C. ) (pending before the Legislature as  
37 this bill), the department shall establish a temporary site  
38 remediation professional license program. The department shall  
39 issue a temporary site remediation professional license to any  
40 individual who qualifies for the license pursuant to the provisions of  
41 section 13 of P.L. , c. (C. ) (pending before the Legislature as  
42 this bill).

43 b. An application for a temporary license or license renewal  
44 shall be accompanied by an application fee established by the  
45 department that shall cover all costs of processing the application  
46 and developing and conducting license exams. The department may  
47 also establish an annual fee that shall be charged to a person who

1 qualifies for a temporary license that shall cover all costs of  
2 administering and enforcing the temporary license program.

3 c. Each temporary license issued by the department shall be  
4 issued to an individual, shall be valid only for the individual to  
5 whom it is issued and shall not be transferable. Except as provided  
6 in this subsection, each temporary license issued by the department  
7 pursuant to this section and section 13 of P.L. , c. (C. ) (pending  
8 before the Legislature as this bill) shall be valid for a period not to  
9 exceed three years, unless a shorter period is specified therein, or  
10 unless suspended or revoked. All temporary site remediation  
11 professional licenses shall expire as provided in rules and  
12 regulations adopted by the board pursuant to subsection a. of  
13 section 6 of P.L. , c. (C. ) (pending before the Legislature as  
14 this bill).

15 d. The department may deny an application for a temporary  
16 license or an application for a license renewal. The department may  
17 prohibit any person whose application for a temporary license or for  
18 a license renewal is denied from applying for a license for a period  
19 of not more than three years. The term during which reapplication is  
20 prohibited shall be established as part of the determination of the  
21 department in the proceedings concerning the denial.

22

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

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

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

36 (2) has 10 years of full-time professional experience, as  
37 described in subsection c. 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 prior to submission of the application;

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

45 (4) has attended and completed a course approved by the  
46 department on the State's rules and regulations concerning the  
47 technical requirements for site remediation no more than three years

1 prior to the date of enactment of P.L. , c. (C. ) (pending before the  
2 Legislature as this bill);

3 (5) has not been convicted of, or plead guilty to, an  
4 environmental crime, or any similar or related criminal offense  
5 under federal or state law, or any crime involving fraud, theft by  
6 deception, forgery, or any similar or related criminal offense under  
7 federal or state law; and

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

11 c. 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 department may consider the  
17 applicant's work activities, field of practice, duration of  
18 employment, and work products prepared in determining the credit  
19 to be allowed for professional experience. The department may  
20 allow applicants with relevant advanced degrees up to two years of  
21 credit for professional experience, of which one year of credit may  
22 be awarded for applicants who have earned a master's degree in a  
23 relevant field of study and up to two years of credit may be awarded  
24 for applicants who have earned a doctorate degree in a relevant field  
25 of study.

26 d. For the purposes of this section, the department may issue a  
27 temporary license to an applicant for the remediation of discharges  
28 from underground storage tanks only. For those temporary licenses  
29 issued pursuant to this subsection, the department may provide for  
30 the substitution of full-time professional experience in the field of  
31 contaminated site remediation for the holding of a bachelor's  
32 degree. An applicant who does not hold a bachelor's degree from  
33 an accredited institution of higher education shall have at least 14  
34 years of full-time professional experience, of which at least five  
35 years shall have occurred in New Jersey immediately prior to  
36 submission of the application. The applicant shall meet all other  
37 requirements as provided in subsection b. of this section.

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

41

42 14. (New section) a. For any site for which a licensed site  
43 remediation professional is required to be hired pursuant to the  
44 provisions of section 30 of P.L. , c. (C. ) (pending before the  
45 Legislature as this bill), the person responsible for conducting the  
46 remediation shall certify all documents submitted to the department  
47 concerning the remediation of the contaminated site. The licensed

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

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

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

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

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

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

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

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

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

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

32 (b) mandatory remediation timeframes and expedited site  
33 specific timeframes adopted by the department pursuant to section  
34 28 of P.L. , c. (C ) (pending before the Legislature as this  
35 bill); and

36 (c) presumptive remedies adopted by the department pursuant to  
37 section 35 of P.L.1993, c.139 (C.58:10B-12).

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

44 (4) When there is no specific requirement provided by the  
45 technical standards for site remediation adopted by the department,  
46 and guidelines issued by the department are not appropriate or  
47 necessary, in the professional judgment of the licensed site

1 remediation professional, to meet the remediation requirements  
2 listed in paragraph (1) of this subsection, the licensed site  
3 remediation professional may use the following additional  
4 guidelines to make decisions regarding a remediation, and shall set  
5 forth justification for such use, in the relevant submittal:

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

8 (b) other relevant, applicable, and appropriate methods and  
9 practices that ensure the protection of the public health and safety,  
10 and of the environment.

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

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

25 b. Any person who remediates a discharge from an unregulated  
26 heating oil tank may hire a certified subsurface evaluator or a  
27 licensed site remediation professional to perform the remediation.  
28

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

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

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

46 d. A licensed site remediation professional retained by a person  
47 responsible for conducting the remediation shall notify the

1 department within 15 calendar days after being retained. In  
2 addition, a licensed site remediation professional shall notify the  
3 department within 15 calendar days after being released from  
4 responsibility for a remediation if the release occurs prior to  
5 issuance of the response action outcome for the site by the licensed  
6 site remediation professional.

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

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

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

29 h. A licensed site remediation professional shall not certify any  
30 document submitted to the department unless the licensed site  
31 remediation professional has managed, supervised or performed the  
32 work that is the basis of the submission, or has periodically  
33 reviewed and evaluated the work performed by other persons that  
34 forms the basis for the information in the submission, or has  
35 completed the work of another licensed site remediation  
36 professional and has concluded such work is reliable pursuant to  
37 subsection f. of this section.

38 i. A licensed site remediation professional shall exercise  
39 independent professional judgment, comply with the requirements  
40 and procedures set forth in the provisions of P.L. , c. (C. )  
41 (pending before the Legislature as this bill), make a good faith and  
42 reasonable effort to identify and obtain the relevant and material  
43 facts, data, reports and other information evidencing conditions at a  
44 contaminated site for which he is responsible that is in possession  
45 of the owner of the property, or that is otherwise available, and  
46 identify and obtain whatever additional data and other information  
47 as the licensed site remediation professional deems necessary. The

1 licensed site remediation professional shall disclose and explain in  
2 any document submitted to the department any facts, data,  
3 information, qualifications, or limitations known by the licensed  
4 site remediation professional that are not supportive of the  
5 conclusions reached in the document.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

46 t. A licensed site remediation professional shall inform a client  
47 or prospective client of any relevant and material assumptions,

1 limitations, or qualifications underlying their communication.  
2 Evidence that a licensed site remediation professional has provided  
3 the client or prospective client with timely written documentation of  
4 these assumptions, limitations, or qualifications shall be deemed by  
5 the board or the department to have satisfied the requirements of  
6 this subsection.

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

10 v. In any description of qualifications, experience, or ability to  
11 provide services, a licensed site remediation professional shall not  
12 knowingly:

13 (1) make a material misrepresentation of fact;

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

16 (3) make a statement that, in the opinion of the board, is likely to  
17 create an unjustified expectation about results the licensed site  
18 remediation professional may achieve, or state or imply that the  
19 licensed site remediation professional may achieve results by means  
20 that violate the provisions of applicable environmental statutes,  
21 rules or regulations, including the provisions of P.L. , c. (C. )  
22 (pending before the Legislature as this bill).

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

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

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

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

42  
43 17. (New section) a. (1) Whenever, on the basis of available  
44 information, the board finds that a person is in violation of P.L. , c.  
45 (C. ) (pending before the Legislature as this bill), or any rule,  
46 regulation, or order adopted or issued pursuant thereto, or who  
47 knowingly has made any false statement, representation, or

1 certification in any documents or information required to be  
2 submitted to the board or the department, the board may:

3 (a) Suspend or revoke the license of a licensed site remediation  
4 professional or impose another penalty on the licensed site  
5 remediation professional as determined by the board in accordance  
6 with subsection b. of this section;

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

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

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

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

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

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

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

31 b. (1) The board may suspend or revoke a license issued to a  
32 licensed site remediation professional pursuant to section 7 of  
33 P.L. , c. (C. ) (pending before the Legislature as this bill), or  
34 impose another penalty as determined by the board. The board may  
35 not suspend or revoke a license or impose another penalty until a  
36 violator has been notified by certified mail or personal service. The  
37 notice shall: (a) identify the statutory or regulatory basis of the  
38 violation; (b) identify the specific act or omission constituting the  
39 violation; (c) identify the license to be suspended or revoked, or the  
40 penalty to be imposed; and (d) affirm the right of the violator to a  
41 hearing on any matter contained in the notice and the procedures for  
42 requesting a hearing.

43 (2) A violator shall have 35 days from receipt of the notice  
44 within which to request a hearing on any matter contained in the  
45 notice, and shall comply with all procedures for requesting a  
46 hearing. Failure to submit a timely request or to comply with all  
47 procedures set forth by the board shall constitute grounds for denial

1 of a hearing request. After a hearing and upon a finding that a  
2 violation has occurred, the board shall issue a final order  
3 suspending or revoking the license, or imposing the penalty  
4 specified in the notice. If a violator does not request a hearing or  
5 fails to satisfy the statutory and administrative requirements for  
6 requesting a hearing, the notice of intent to suspend or revoke the  
7 license or to impose the penalty shall become final after the  
8 expiration of the 35-day period. If the board denies a hearing  
9 request, the notice of denial shall become a final order, suspending  
10 or revoking the license, or imposing the penalty, upon receipt of the  
11 notice by the violator. Upon a determination of the board that the  
12 conduct of the licensed site remediation professional is so egregious  
13 as to pose an imminent threat to public health, safety, or the  
14 environment if the licensed site remediation professional is allowed  
15 to conduct remediation of sites or areas of concern pending a  
16 hearing on a revocation of the license, the board may suspend the  
17 license prior to the outcome of the hearing. Any order issued by the  
18 board suspending or revoking a license shall provide for the  
19 licensee's obligations regarding the maintenance and preservation of  
20 records regarding the licensee's remediation activities at  
21 contaminated sites.

22 c. If a person violates any provision of P.L. , c. (C. )  
23 (pending before the Legislature as this bill), or any rule, regulation,  
24 or order adopted or issued pursuant thereto, the board may institute  
25 a civil action in Superior Court for appropriate relief for any  
26 violation of P.L. , c. (C. ) (pending before the Legislature as this  
27 bill), or any rule, regulation, or order adopted or issued pursuant  
28 thereto. Such relief may include, singly or in combination:

29 (1) A temporary or permanent injunction; or  
30 (2) Assessment of the violator for the reasonable costs of any  
31 investigation which led to the establishment of the violation, and for  
32 the reasonable costs of preparing and litigating the case under this  
33 subsection.

34 d. (1) Whenever the board finds that any person is in violation  
35 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
36 or any rule, regulation, or order adopted or issued pursuant thereto,  
37 the board may issue an order: (a) specifying the provision or  
38 provisions of P.L. , c. (C. ) (pending before the Legislature as  
39 this bill), or the rule, regulation, or order adopted or issued pursuant  
40 thereto of which the person is in violation; (b) citing the action  
41 which caused the violation; (c) requiring compliance with the  
42 provision or provisions; and (d) giving notice to the person of the  
43 person's right to a hearing on the matters contained in the order.

44 (2) A violator shall have 35 days from receipt of the notice  
45 within which to request a hearing on any matter contained in the  
46 notice, and shall comply with all procedures for requesting a  
47 hearing. Failure to submit a timely request or to comply with all

1 procedures set forth by the board shall constitute grounds for denial  
 2 of a hearing request. After a hearing and upon a finding that a  
 3 violation has occurred, the board shall issue a final order. If a  
 4 violator does not request a hearing or fails to satisfy the statutory  
 5 and administrative requirements for requesting a hearing, the  
 6 administrative order shall become final after the expiration of the  
 7 35-day period. If the board denies a hearing request, the notice of  
 8 denial shall become a final order, upon receipt of the notice by the  
 9 violator.

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

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

26 Prior to assessment of a penalty under this subsection, the board  
 27 shall notify the person committing the violation by certified mail or  
 28 personal service that the penalty is being assessed. In the notice the  
 29 board shall: (a) identify the statutory or regulatory basis of the  
 30 violation; (b) identify the specific citation of the act or omission  
 31 constituting the violation; (c) state the basis for the amount of the  
 32 civil penalties to be assessed; and (d) affirm the right of the violator  
 33 to a hearing on any matter contained in the notice and the  
 34 procedures for requesting a hearing.

35 (2) (a) A violator shall have 35 days from the receipt of the  
 36 notice within which to request a hearing on any matter contained in  
 37 the notice, and shall comply with all procedures for requesting a  
 38 hearing. Failure to submit a timely request or to comply with all  
 39 procedures set forth by the board shall constitute grounds for denial  
 40 of a hearing request. After a hearing and upon a finding that a  
 41 violation has occurred, the board shall issue a final order assessing  
 42 the amount of the civil administrative penalty specified in the  
 43 notice. If a violator does not request a hearing or fails to satisfy the  
 44 statutory and administrative requirements for requesting a hearing,  
 45 the notice of assessment of a civil administrative penalty shall  
 46 become a final order after the expiration of the 35-day period. If the

1 board denies a hearing request, the notice of denial shall become a  
2 final order upon receipt of the notice by the violator.

3 (b) Payment of the assessed penalty is due when a final  
4 administrative enforcement order is issued or the notice becomes a  
5 final order. The authority to levy a civil administrative order is in  
6 addition to all other enforcement provisions, and the payment of  
7 any assessment shall not be deemed to affect the availability of any  
8 other enforcement provisions in connection with the violation for  
9 which the assessment is levied. The board may compromise any  
10 civil administrative penalty assessed under this section in an  
11 amount and with conditions the board determines appropriate. A  
12 civil administrative penalty assessed, including a portion thereof  
13 required to be paid pursuant to a payment schedule approved by the  
14 board, which is not paid within 30 days of the date that payment of  
15 the penalty is due, shall be subject to an interest charge on the  
16 amount of the penalty, or portion thereof, which shall accrue as of  
17 the date payment is due. If the penalty is contested, no additional  
18 interest charge shall accrue on the amount of the penalty until after  
19 the date on which a final order is issued. Interest charges assessed  
20 and collectible pursuant to this subsection shall be based on the rate  
21 of interest on judgments provided in the New Jersey Rules of Court.

22 (3) The board may assess and recover, by civil administrative  
23 order, the costs of any investigation incurred by the board, and any  
24 other State agency, and the reasonable costs of preparing and  
25 successfully enforcing a civil administrative penalty pursuant to this  
26 subsection. The assessment may be recovered at the same time as a  
27 civil administrative penalty, and shall be in addition to the penalty  
28 assessment.

29 g. A licensed site remediation professional may not apply for a  
30 new license for three years following the date of revocation of the  
31 license by the board or for the term established by the board  
32 pursuant to subsection b. of section 8 of P.L. , c. (C. ) (pending  
33 before the Legislature as this bill). At the conclusion of the license  
34 revocation, the licensed site remediation professional shall follow  
35 the application procedures for licensure in accordance with section  
36 7 of P.L. , c. (C. ) (pending before the Legislature as this bill).

37 h. Upon the second revocation of a license, a licensed site  
38 remediation professional shall be permanently prohibited from  
39 applying for a site remediation professional license in this State.

40

41 18. (New section) a. The board and the department shall have  
42 the authority to enter, at reasonable times and in a reasonable  
43 manner, any known or suspected site, vessel, or other location,  
44 whether public or private, for the purpose of investigating,  
45 sampling, inspecting, or copying any records, condition, equipment,  
46 practice, or property relating to activities subject to P.L. , c.  
47 (C. ) (pending before the Legislature as this bill). The board or the

1 department shall seek a warrant authorizing such entry upon denial  
2 of permission to enter. If the board or the department does not wish  
3 to provide prior notice to the inspection or entry, a court authorized  
4 to issue search warrants may issue a warrant authorizing entry by  
5 the board or the department upon a showing that the entry is  
6 necessary to allow the board or the department to verify compliance  
7 with the provisions of P.L. , c. (C. ) (pending before the  
8 Legislature as this bill), or any rule, regulation, or order adopted or  
9 issued pursuant thereto.

10 b. Where necessary to ascertain facts relevant to, or not  
11 available at, such site, vessel, or other location, any person shall,  
12 upon request of any officer, employee, or duly authorized  
13 representative of the board or the department, furnish information  
14 relating to activities subject to the provisions of P.L. , c. (C. )  
15 (pending before the Legislature as this bill), and shall permit the  
16 officers, employees, or authorized representatives to have access to,  
17 and to copy, all records relating to the activities.

18 c. If the board or the department has reason to believe that any  
19 person has made fraudulent representations to the board or the  
20 department or has destroyed or concealed evidence relating to any  
21 activity subject to the provisions of P.L. , c. (C. ) (pending  
22 before the Legislature as this bill), or any rule, regulation, license,  
23 or order issued pursuant thereto, the board or the department may  
24 seize any records, equipment, property, or other evidence it deems  
25 necessary.

26 d. Whenever, on basis of available information, the board finds  
27 that there is a violation of any provision of P.L. , c. , (C. )  
28 (pending before the Legislature as this bill), or of any rule,  
29 regulation, license, or order issued or adopted pursuant thereto, the  
30 board may issue to a person causing or contributing, or likely to  
31 cause or contribute, to the violation an order pursuant to the  
32 provisions of section 17 of P.L. , c. (C. ) (pending in the  
33 Legislature as this bill), requiring the production or analysis of  
34 samples, requiring the production of records, or imposing such  
35 restraints on or requiring such action by the person. Issuance of an  
36 order pursuant to this section shall not preclude, and shall not be  
37 deemed an election to forego, any action to suspend or revoke a  
38 license, recover damages, or seek injunctive relief, civil or criminal  
39 penalties, or any other remedy.

40 The board shall cause notice of each order, and of the results of  
41 all adjudicatory proceedings related thereto, to be given to the  
42 department in order to enable the department to implement and  
43 enforce the provisions of P.L. , c. (C. ) (pending before the  
44 Legislature as this bill) and all other applicable laws, rules and  
45 regulations.

1 19. (New section) a. The department shall establish a permit  
2 program to regulate the operation, maintenance and inspection of  
3 engineering or institutional controls and related systems installed as  
4 part of a remedial action of a contaminated site. The department  
5 may require periodic monitoring, inspections, and maintenance by  
6 the person responsible for the engineering or institutional controls  
7 and the submission of certifications regarding those activities. The  
8 department may issue a permit, permit by rule, or general permit  
9 pursuant to this section.

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

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

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



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

7  
8 20. (New section) A licensed site remediation professional shall  
9 maintain and preserve all data, documents and information  
10 concerning remediation activities at each contaminated site the  
11 licensed site remediation professional has worked on, including but  
12 not limited to, technical records and contractual documents, raw  
13 sampling and monitoring data, whether or not the data and  
14 information, including technical records and contractual documents,  
15 were developed by the licensed site remediation professional or the  
16 licensee's divisions, employees, agents, accountants, contractors, or  
17 attorneys, that relate in any way to the contamination at the site.  
18 Three electronic copies of the records shall be submitted to the  
19 department at the time the response action outcome is filed with the  
20 department.

21  
22 21. (New section) a. The department shall inspect all documents  
23 and information submitted by a licensed site remediation  
24 professional concerning a remediation upon receipt. The  
25 department may provide additional review of any document  
26 submitted for the remediation of a contaminated site upon a  
27 determination that: (1) the licensed site remediation professional  
28 did not comply with the provisions of section 16 of P.L. , c.  
29 (C. ) (pending before the Legislature as this bill); (2) any  
30 deficiencies, errors or omissions will result in an inability to  
31 determine if the remediation is protective of the public health,  
32 safety, or the environment; or (3) the remediation will not be  
33 protective, of the public health, safety, or the environment.

34 b. The department shall perform additional review of any  
35 document, or shall review the performance of a remediation, if:

36 (1) the contamination at the site poses a significant detrimental  
37 impact on public health, safety, or the environment as determined  
38 by a receptor evaluation or the site is ranked by the department in  
39 the category requiring the highest priority pursuant to the ranking  
40 system developed pursuant to section 2 of P.L.1982, c.202  
41 (C.58:10-23.16);

42 (2) the contamination at the site may affect a licensed child care  
43 center, school or other sensitive population;

44 (3) the contaminated site is located in a low-income community  
45 of color that has a higher density of contaminated sites and  
46 permitted discharges with the potential for increased health and  
47 environmental impacts, as compared to other communities; or

1 (4) State grants or loans are being used to remediate the site or  
2 area of concern.

3 c. The department may perform additional review of any  
4 document, or may review the performance of a remediation, if:

5 (1) the site or a portion thereof is in a brownfield development  
6 area or other economic development priority area;

7 (2) the remediation is subject to federal oversight;

8 (3) the person responsible for conducting the remediation or the  
9 licensed site remediation professional conducting the remediation  
10 has been out of compliance with P.L. , c. (C. ) (pending before  
11 the Legislature as this bill), P.L.1993, c.139 (C.58:10B-1 et seq.),  
12 P.L.1986, c.102 (C.58:10A-21 et seq.), P.L.1983, c.330 (C.13:1K-6  
13 et seq.), or P.L.1976, c.141 (C.58:10-23.11 et seq.), or any rules and  
14 regulations adopted pursuant to those laws;

15 (4) the contaminated site has had an impact on a natural  
16 resource;

17 (5) an oversight document, administrative order or remediation  
18 agreement is in effect for the contaminated site that requires  
19 department review and approval of submissions;

20 (6) there is substantial public interest in the contaminated site;

21 (7) the person responsible for conducting the remediation has  
22 proposed the use of alternative or site specific remediation  
23 standards for the contaminated site;

24 (8) the remediation requires the issuance of a permit by the  
25 department;

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

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

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

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

36 e. Unless directed otherwise by the department, the person  
37 responsible for conducting the remediation and the licensed site  
38 remediation professional may continue to conduct the remediation  
39 while the department conducts any inspection or additional review  
40 of documents pursuant to this section.

41 f. The department shall, at a minimum, provide additional  
42 review pursuant to this section of at least 10 percent of all  
43 documents submitted annually by licensed site remediation  
44 professionals.

45  
46 22. (New section) The department shall invalidate a response  
47 action outcome issued by a licensed site remediation professional if

1 the department determines that the remedial action is not protective  
2 of public health, safety, or the environment or if a presumptive  
3 remedy was not implemented as required pursuant to the provisions  
4 of subsection g. of section 35 of P.L.1993, c.139 (C.58:10B-12).  
5 However, if a presumptive remedy is not implemented as required  
6 pursuant to the provisions of subsection g. of section 35 of  
7 P.L.1993, c.139 (C.58:10B-12), but the department determines the  
8 remedial action is as protective of the public health, safety, and the  
9 environment as the presumptive remedy, the department shall not  
10 invalidate the response action outcome.

11

12 23. (New section) The department may recommend to the board  
13 that an investigation of a licensed site remediation professional be  
14 conducted to consider the suspension or revocation of the license  
15 of, or the taking of other appropriate action as necessary against, a  
16 licensed site remediation professional based upon the result of an  
17 audit performed pursuant to the provisions of section 24 or 25 of  
18 P.L. , c. (C. ) (pending before the Legislature as this bill) or based  
19 upon a document review performed pursuant to section 21 of P.L. ,  
20 c. (C. ) (pending before the Legislature as this bill).

21

22 24. (New section) The board shall audit annually the  
23 submissions and conduct of at least 10 percent of the total number  
24 of licensed site remediation professionals. A licensed site  
25 remediation professional and the person responsible for conducting  
26 the remediation shall cooperate with the board in the conduct of the  
27 audit and shall provide any information requested by the board as  
28 part of the audit.

29

30 25. (New section) The department shall not audit a response  
31 action outcome more than three years after the date the licensed site  
32 remediation professional filed the response action outcome with the  
33 department, unless:

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

36 b. the board conducts an investigation of the licensed site  
37 remediation professional; or

38 c. the licensed site remediation professional who issued the  
39 response action outcome has had his license suspended or revoked  
40 by the board.

41

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

44 a. discloses, or undertakes to disclose, to the board or to the  
45 department an activity, policy or practice that the licensed site  
46 remediation professional reasonably believes: (1) is a violation of  
47 law, or a rule or regulation adopted pursuant to law, including any

1 violation involving deception of, or misrepresentation to, any client,  
2 customer, the department, or any other governmental entity; or (2)  
3 is fraudulent or criminal, including any activity, policy or practice  
4 of deception or misrepresentation that the licensed site remediation  
5 professional reasonably believes may defraud any client, customer,  
6 the department, or any other governmental entity;

7 b. provides information to, or testifies before, any public body  
8 conducting an investigation, hearing, or inquiry into any violation  
9 of law, or a rule or regulation adopted pursuant to law, by a client  
10 or customer with whom there is a business relationship, including  
11 any violation involving deception of, or misrepresentation to, any  
12 client, customer, the department or any other governmental entity,  
13 or, in the case of a licensed site remediation professional, provides  
14 information to, or testifies before, any public body conducting an  
15 investigation, hearing, or inquiry into the quality of remediation of  
16 a contaminated site; or

17 c. objects to, or refuses to participate in, any activity, policy or  
18 practice which the licensed site remediation professional reasonably  
19 believes:

20 (1) is in violation of law, or a rule or regulation adopted pursuant  
21 to law, including any violation involving deception of, or  
22 misrepresentation to, any, client, customer, the department or any  
23 governmental entity;

24 (2) is fraudulent or criminal, including any activity, policy or  
25 practice of deception or misrepresentation which the licensed site  
26 remediation professional reasonably believes may defraud any  
27 client, customer, the department, or any other governmental entity;  
28 or

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

32  
33 27. (New section) a. The department shall undertake direct  
34 oversight of a remediation of a contaminated site under the  
35 following conditions:

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

42 (2) the person responsible for conducting the remediation at a  
43 contaminated site has failed to meet a mandatory remediation  
44 timeframe or an expedited site specific timeframe adopted by the  
45 department pursuant to section 28 of P.L. , c. (C. ) (pending  
46 before the Legislature as this bill), including any extension thereof

1 granted by the department, or a schedule established pursuant to an  
2 administrative order or court order; or

3 (3) unless a longer period has been ordered by a court, the  
4 person responsible for conducting the remediation has, prior to the  
5 date of enactment of P.L. , c. (C. ) (pending before the  
6 Legislature as this bill), failed to complete the remedial  
7 investigation of the entire contaminated site 10 years after the  
8 discovery of a discharge at the site and has failed to complete the  
9 remedial investigation of the entire contaminated site within five  
10 years after the date of enactment of P.L. , c. (C. ) (pending  
11 before the Legislature as this bill).

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (7) the person responsible for conducting the remediation shall  
47 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. , c. (C. ) (pending in the Legislature as this bill) shall not  
 8 affect a remediation conducted pursuant to and in compliance with a  
 9 settlement of litigation to which the department is a party if the  
 10 settlement (a) occurred prior to the date of enactment of P.L. , c.  
 11 (C. ) (pending before the Legislature as this bill), or (b) is a  
 12 settlement of litigation pending on the date of enactment of P.L. ,  
 13 c. (C. ) (pending before the Legislature as this bill).

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

21  
 22 28. (New section) a. The department shall establish mandatory  
 23 remediation timeframes, and expedited site specific timeframes  
 24 when necessary, to protect the public health and safety and the  
 25 environment, for each of the following:

- 26 (1) a receptor evaluation;
- 27 (2) control of ongoing sources of contamination;
- 28 (3) establishment of interim remedial measures;
- 29 (4) addressing immediate environmental concern conditions;
- 30 (5) the performance of each phase of the remediation including  
 31 preliminary assessment, site investigation, remedial investigation  
 32 and remedial action;
- 33 (6) completion of remediation; and
- 34 (7) any other activities deemed necessary by the department to  
 35 effectuate timely remediation.

36 b. In establishing remediation timeframes pursuant to subsection  
 37 a. of this section, the department shall take the following into  
 38 account:

- 39 (1) the potential risk to the public health, safety, and the  
 40 environment;
- 41 (2) the results of the receptor evaluation;
- 42 (3) the ongoing industrial or commercial operations at the site;
- 43 (4) whether, for operating industrial or commercial facilities,  
 44 there are no releases of contamination to the groundwater or surface  
 45 water from the site; and
- 46 (5) the complexity of the contaminated site.

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

3 (1) a delay by the department in reviewing or granting a permit,  
4 provided that there was a timely filing of a technically and  
5 administratively complete permit application;

6 (2) a delay in the provision of State funding for remediation,  
7 provided that there was a timely filing of a technically and  
8 administratively complete application for funding; or

9 (3) a delay by the department for an approval or permit required  
10 for long-term operation, maintenance and monitoring of an  
11 engineering control at the site provided the request for approval or  
12 permit application is technically and administratively complete.

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

15 (1) a delay in obtaining access to property, provided the person  
16 responsible for conducting the remediation demonstrates that good  
17 faith efforts have been undertaken to gain access, access has not  
18 been granted by the property owner, and, after good faith efforts  
19 have been exhausted, a complaint was filed with the Superior Court  
20 to gain access, in accordance with applicable rules and regulations;

21 (2) other circumstances beyond the control of the person  
22 responsible for conducting the remediation, such as fire, flood, riot,  
23 or strike; or

24 (3) other site-specific circumstances that may warrant an  
25 extension as determined by the department.

26  
27 29. (New section) Notwithstanding the provisions of the  
28 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
29 seq.) to the contrary, the department shall adopt, after notice,  
30 interim rules and regulations establishing a program that provides  
31 for the responsibilities of persons responsible for conducting a  
32 remediation and licensed site remediation professionals in the  
33 remediation of contaminated sites pursuant to the provisions of  
34 P.L. , c. (C. ) (pending before the Legislature as this bill), no  
35 later than 180 days after the date of enactment of P.L. , c. (C. )  
36 (pending before the Legislature as this bill). The interim rules and  
37 regulations may include amendments to rules and regulations  
38 adopted pursuant to other laws, in order to make them consistent  
39 with the provisions of P.L. , c. (C. ) (pending before the  
40 Legislature as this bill). The interim rules and regulations shall be  
41 effective immediately upon filing with the Office of Administrative  
42 Law and shall be effective for a period not to exceed 18 months,  
43 and may, thereafter, be amended, adopted or readopted by the  
44 department in accordance with the provisions of the  
45 "Administrative Procedure Act."

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

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

13       (1) hire a licensed site remediation professional to perform the  
14 remediation;

15       (2) notify the department of the name and license information of  
16 the licensed site remediation professional who has been hired to  
17 perform the remediation;

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

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

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

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

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

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

32       (9) obtain all necessary permits.

33       c. (1) Any person who initiates a remediation prior to the date  
34 of enactment of P.L. , c. (C. ) (pending before the Legislature  
35 as this bill), or prior to the issuance of temporary licenses to site  
36 remediation professionals pursuant to section 12 of P.L. , c.  
37 (C. ) (pending before the Legislature as this bill), shall comply  
38 with the provisions of paragraphs (4) through (9) of subsection b. of  
39 this section.

40       (2) The department may require a person required to perform a  
41 remediation pursuant to subsection a. of this section, or a person  
42 who has initiated a remediation prior to the date of enactment of  
43 P.L. , c. (C. ) (pending before the Legislature as this bill), to  
44 comply with the provisions of subsection b. of this section if, after  
45 the date of enactment of P.L. , c. (C. ) (pending before the  
46 Legislature as this bill), the department (a) issues a final order or a  
47 penalty becomes due and payable, concerning the performance of



1 the remediation, or (b) issues a demand for stipulated penalties  
2 pursuant to the provisions of an oversight document in which the  
3 person waived a right to a hearing on the penalties.

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

9 d. (1) The provisions of this section shall not apply to any  
10 person who remediates a discharge from an unregulated heating oil  
11 tank. For any person who remediates a discharge from an  
12 unregulated heating oil tank, the provisions of section 15 of P.L. ,  
13 c. (C. ) (pending before the Legislature as this bill) shall apply.

14 (2) The provisions of this section shall not apply to any person  
15 who; (a) does not own a contaminated site, (b) conducts a  
16 preliminary assessment or site investigation of the contaminated site  
17 for the purpose of conducting all appropriate inquiry into the  
18 previous ownership and uses of the property as provided in section  
19 8 of P.L.1976, c.141 (C.58:10-23.11g), and (c) has not discharged a  
20 hazardous substance at the site or is not in any way responsible for  
21 a hazardous substance discharged at the site pursuant to section 8 of  
22 P.L.1976, c.141 (C.58:10-23.11g).

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

26  
27 31. (New section) a. After a licensed site remediation  
28 professional issues a response action outcome to the person  
29 responsible for conducting the remediation, the person shall be  
30 deemed, by operation of law, to have received a covenant not to sue  
31 with respect to the real property upon which the remediation has  
32 been conducted. The covenant not to sue shall be subject to any  
33 conditions and limitations contained in the response action  
34 outcome. The covenant not to sue shall be for any area of concern  
35 remediated and may apply to the entire real property if the  
36 remediation included a preliminary assessment and, if necessary, a  
37 site investigation of the entire real property, and any other  
38 necessary remedial actions. The covenant remains effective only  
39 for as long as the real property for which the covenant was deemed  
40 to have been issued continues to meet the conditions of the response  
41 action outcome. Upon a finding by the department that real  
42 property or a portion thereof to which a covenant not to sue  
43 pertains, no longer meets with the conditions of the response action  
44 outcome, the department shall provide notice of that fact to the  
45 person responsible for maintaining compliance with the response  
46 action outcome. The department may allow the person a reasonable  
47 time to come into compliance with the terms of the original

1 response action outcome. If the property does not meet the  
2 conditions of the response action outcome and if the department  
3 does not allow for a period of time to come into compliance or if  
4 the person fails to come into compliance within the time period, the  
5 covenant not to sue shall be deemed to be revoked by operation of  
6 law.

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

10 (1) a provision releasing the person who undertook the  
11 remediation from all civil liability to the State to perform any  
12 additional remediation, to pay compensation for damage to, or loss  
13 of, natural resources, for the restoration of natural resources in  
14 connection with the discharge on the property or for any cleanup  
15 and removal costs;

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

18 (a) a provision requiring the person, or any subsequent owner,  
19 lessee, or operator during the person's period of ownership, tenancy,  
20 or operation, to maintain those controls, conduct periodic  
21 monitoring for compliance, and submit to the department, on a  
22 biennial basis, a certification that the engineering and institutional  
23 controls are being properly maintained and continue to be protective  
24 of public health and safety and of the environment. The  
25 certification shall state the underlying facts and shall include the  
26 results of any tests or procedures performed that support the  
27 certification; and

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

31 (3) for a remediation that involves the use of engineering  
32 controls but not for any remediation that involves the use of  
33 institutional controls only, a provision barring the person or persons  
34 whom the covenant not to sue benefits, from making a claim against  
35 the New Jersey Spill Compensation Fund and the Sanitary Landfill  
36 Facility Contingency Fund for any costs or damages relating to the  
37 real property and remediation covered by the covenant not to sue.  
38 The covenant not to sue shall not bar a claim by any person against  
39 the New Jersey Spill Compensation Fund and the Sanitary Landfill  
40 Contingency Fund for any remediation that involves only the use of  
41 institutional controls if, after a valid response action outcome has  
42 been issued, the department orders additional remediation, except  
43 that the covenant shall bar such a claim if the department ordered  
44 additional remediation in order to remove the institutional control.

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

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

5 d. A covenant not to sue and the protections it affords shall not  
6 apply to any discharge that occurs subsequent to the issuance of the  
7 response action outcome which was the basis of the issuance of the  
8 covenant, nor shall a covenant not to sue and the protections it  
9 affords relieve any person of the obligations to comply in the future  
10 with laws, rules and regulations.

11 e. The covenant not to sue shall be deemed to apply to any  
12 person who obtains a response action outcome as provided in  
13 subsection a. of this section. The covenant not to sue shall not  
14 provide relief from any liability, either under statutory or common  
15 law, to any person who is liable for cleanup and removal costs  
16 pursuant to subsection c. of section 8 of P.L.1976, c.141 (C.58:10-  
17 23.11g), and who does not have a defense to liability pursuant to  
18 subsection d. of that section.

19  
20 32. (New section) a. The New Jersey Economic Development  
21 Authority shall require that payment of a grant or financial  
22 assistance from the Hazardous Discharge Site Remediation Fund  
23 shall be conditioned upon the subrogation to the department of all  
24 rights of the recipient to recover remediation costs from an  
25 insurance carrier, discharger, or person in any way responsible for a  
26 hazardous substance pursuant to subsection c. of section 8 of  
27 P.L.1976, c.141 (C.58:10-23.11g) and who does not have a defense  
28 to liability pursuant to subsection d. of that section, upon the failure  
29 of the recipient to repay the financial assistance to the State.  
30 Nothing in this subsection shall be construed to limit or otherwise  
31 affect the authority or rights of the department concerning the  
32 discharge of a hazardous substance pursuant to P.L.1976, c.141, any  
33 other law, or pursuant to common law, against a discharger or a  
34 person in any way responsible for a hazardous substance.

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

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

1 d. All moneys collected in a cost recovery subrogation action  
2 shall be deposited into the Hazardous Discharge Site Remediation  
3 Fund.

4  
5 33. Section 3 of P.L.1983, c.330 (C.13:1K-8) is amended to read  
6 as follows:

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

14 "Closing operations" means:

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

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

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

33 (4) the initiation of bankruptcy proceedings pursuant to Chapter  
34 7 of the federal Bankruptcy Code, 11 U.S.C. s.701 et seq. or the  
35 filing of a plan of reorganization that provides for a liquidation  
36 pursuant to Chapter 11 of the federal Bankruptcy Code, 11 U.S.C.  
37 s.1101 et seq.;

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

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

44 "Transferring ownership or operations" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

43 "Preliminary assessment" means the first phase in the process of  
44 identifying areas of concern and determining whether hazardous  
45 substances or hazardous wastes are or were present at an industrial  
46 establishment or have migrated or are migrating from the industrial  
47 establishment, and shall include the initial search for and evaluation



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

10 "Remediation" or "remediate" means all necessary actions to  
11 investigate and clean up or respond to any known, suspected, or  
12 threatened discharge of hazardous substances or hazardous wastes,  
13 including, as necessary, the preliminary assessment, site  
14 investigation, remedial investigation, and remedial action;

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

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

33 "Remedial investigation" means a process to determine the  
34 nature and extent of a discharge of hazardous substances or  
35 hazardous wastes at an industrial establishment or a discharge of  
36 hazardous substances or hazardous wastes that have migrated or are  
37 migrating from the site and the problems presented by a discharge,  
38 and may include data collection, site characterization, sampling,  
39 monitoring, and the gathering of any other sufficient and relevant  
40 information necessary to determine the necessity for remedial  
41 action and to support the evaluation of remedial actions if  
42 necessary;

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

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

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

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

16

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

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

46 b. (1) Subsequent to the submittal of the notice required pursuant  
47 to subsection a. of this section, the owner or operator of an

1 industrial establishment shall, except as otherwise provided by  
2 P.L.1983, c.330 or P.L.1993, c.139 (C.13:1K-9.6 et al.), remediate  
3 the industrial establishment. The remediation shall be conducted in  
4 accordance with criteria, procedures, and time schedules established  
5 by the department.

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

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

28 c. The owner or operator of an industrial establishment shall,  
29 subsequent to closing operations, or of its public release of its  
30 decision to close operations, or prior to transferring ownership or  
31 operations except as otherwise provided in subsection e. of this  
32 section, as applicable, submit to the department for approval a  
33 proposed negative declaration **[or]**, proposed remedial action  
34 workplan, or a remedial action workplan certified by a licensed site  
35 remediation professional. The owner or operator shall also provide  
36 written notification to the clerk of the municipality in which the  
37 industrial site is located, that upon written request, the municipality  
38 may receive a copy of the proposed negative declaration **[or]**,  
39 proposed remedial action workplan, or a remedial action workplan  
40 certified by a licensed site remediation professional. The owner or  
41 operator of the industrial establishment shall provide the requested  
42 documents to the clerk of the municipality within five days after  
43 receipt of the written request. Except as otherwise provided in  
44 section 6 of P.L.1983, c.330 (C.13:1K-11), and sections 13, 16, 17  
45 and 18 of P.L.1993, c.139 (C.13:1K-11.2, C.13:1K-11.5, C.13:1K-  
46 11.6 and C.13:1K-11.7), the owner or operator of an industrial  
47 establishment shall not transfer ownership or operations until a

1 negative declaration or a remedial action workplan has been  
2 approved by the department, a remedial action workplan has been  
3 prepared and certified by a licensed site remediation professional  
4 and submitted to the department, or the conditions of subsection e.  
5 of this section for remediation agreements or remediation  
6 certifications have been met and until, in cases where a remedial  
7 action workplan is required to be approved or a remediation  
8 agreement has been approved, a remediation funding source, as  
9 required pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3),  
10 has been established.

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

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

33 e. The owner or operator of an industrial establishment, who  
34 has submitted a notice to the department pursuant to subsection a.  
35 of this section, may transfer ownership or operations of the  
36 industrial establishment prior to the approval of a negative  
37 declaration or remedial action workplan upon application to and  
38 approval by the department of a remediation agreement or upon  
39 submission to the department of a remediation certification. The  
40 owner or operator requesting a remediation agreement shall submit  
41 the following documents: (1) an estimate of the cost of the  
42 remediation that is approved by the department; (2) a certification  
43 of the statutory liability of the owner or operator pursuant to  
44 P.L.1983, c.330 to perform and to complete a remediation of the  
45 industrial establishment in the manner and time limits provided by  
46 the department in regulation and consistent with all applicable laws  
47 and regulations; however, nothing in this paragraph shall be

1 construed to be an admission of liability, or to impose liability on  
2 the owner or operator, pursuant to P.L.1976, c.141 (C.58:10-23.11  
3 et seq.) or pursuant to any other statute or common law; (3)  
4 evidence of the establishment of a remediation funding source in an  
5 amount of the estimated cost of the remediation and in accordance  
6 with the provisions of section 25 of P.L.1993, c.139 (C.58:10B-3);  
7 (4) a certification that the owner or operator is subject to the  
8 provisions of P.L.1983, c.330, including the liability for penalties  
9 for violating the act, defenses to liability and limitations thereon,  
10 the requirement to perform a remediation as required by the  
11 department, allowing the department access to the industrial  
12 establishment as provided in section 5 of P.L.1983, c.330 (C.13:1K-  
13 10), and the requirement to prepare and submit any document  
14 required by the department relevant to the remediation of the  
15 industrial establishment; and (5) evidence of the payment of all  
16 applicable fees required by the department.

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

43 The department may require in the remediation agreement that  
44 all plans for and results of the preliminary assessment, site  
45 investigation, remedial investigation, and the implementation of the  
46 remedial action workplan, prepared or initiated subsequent to the  
47 transfer of ownership or operations, be submitted to the department,

1 for review purposes only, at the completion of each phase of the  
2 remediation.

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

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

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

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

44 h. An owner or operator of an industrial establishment may  
45 implement a soil remedial action at an industrial establishment  
46 without prior department approval of the remedial action workplan  
47 for the remediation of soil when the remedial action can reasonably

1 be expected to be completed pursuant to standards, criteria, and  
2 time schedules established by the department, which schedules shall  
3 not exceed five years from the commencement of the  
4 implementation of the remedial action and if the owner or operator  
5 is implementing a soil remediation which meets the established  
6 minimum residential or nonresidential use soil remediation  
7 standards adopted by the department.

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

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

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

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

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

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

46 Upon receipt of a complete and accurate submission, the  
47 department shall review and approve or disapprove the submission

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g), that was  
2 discharged at a contaminated site, or (5) any other person who is  
3 remediating a site;

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

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

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

46 "Remediation" or "remediate" means all necessary actions to  
47 investigate and clean up or respond to any known, suspected, or

1 threatened discharge, including, as necessary, the preliminary  
2 assessment, site investigation, remedial investigation, and remedial  
3 action, provided, however, that "remediation" or "remediate" shall  
4 not include the payment of compensation for damage to, or loss of,  
5 natural resources;

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

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

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

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

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

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

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

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

43

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

46 2. At least 30 days prior to its agreement to any administrative  
47 or judicially approved settlement entered into pursuant to P.L.1976,

1 c.141 (C.58:10-23.11 et seq.), [or at least 30 days prior to the  
2 issuance of any no further action letter issued pursuant to P.L.1993,  
3 c.139 (C.58:10B-1 et seq.), on or after the effective date of  
4 P.L.2005, c.348 (C.58:10-23.11e2 et al.),] the Department of  
5 Environmental Protection shall publish in the New Jersey Register  
6 and on the New Jersey Department of Environmental Protection's  
7 website the name of the case, the names of the parties to the  
8 settlement [or the no further action letter, as the case may be] , the  
9 location of the property on which the discharge occurred, and a  
10 summary of the terms of the settlement [or the no further action  
11 letter], including the amount of any monetary payments made or to  
12 be made. The Department of Environmental Protection shall  
13 provide written notice of the settlement [or of the no further action  
14 letter], which shall include the information listed above, to all other  
15 parties in the case and to any other potentially responsible parties of  
16 whom the department has notice at the time of the publication.  
17 (cf: P.L.2005, c.348, s.2)

18

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

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

35 (2) (a) Whenever one or more dischargers or persons cleans up  
36 and removes a discharge of a hazardous substance, those  
37 dischargers and persons shall have a right of contribution against all  
38 other dischargers and persons in any way responsible for a  
39 discharged hazardous substance or other persons who are liable for  
40 the cost of the cleanup and removal of that discharge of a hazardous  
41 substance. In an action for contribution, the contribution plaintiffs  
42 need prove only that a discharge occurred for which the  
43 contribution defendant or defendants are liable pursuant to the  
44 provisions of subsection c. of section 8 of P.L.1976, c.141  
45 (C.58:10-23.11g), and the contribution defendant shall have only  
46 the defenses to liability available to parties pursuant to subsection d.  
47 of section 8 of P.L.1976, c.141 (C.58:10-23.11g). In resolving

1 contribution claims, a court may allocate the costs of cleanup and  
2 removal among liable parties using such equitable factors as the  
3 court determines are appropriate. Nothing in this subsection shall  
4 affect the right of any party to seek contribution pursuant to any  
5 other statute or under common law.

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

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

1 provided that the department or the contribution plaintiff gave  
2 notice to the contribution defendant of the plaintiff's request to the  
3 department for authorization to seek treble damages.

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

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

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

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



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

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

9 (a) Explosiveness;

10 (b) High flammability;

11 (c) Radioactivity;

12 (d) Chemical properties which in combination with any  
13 discharged hazardous substance at the same storage facility would  
14 create a substantial risk of imminent damage to public health or  
15 safety or an imminent and severe damage to the environment;

16 (e) Is stored in a container from which its discharge is imminent  
17 as a result of contact with a hazardous substance which has already  
18 been discharged and such additional discharge would create a  
19 substantial risk of imminent damage to public health or safety or  
20 imminent and severe damage to the environment; or

21 (f) High toxicity and is stored or being transported in a  
22 container or motor vehicle, truck, rail car or other mechanized  
23 conveyance from which its discharge is imminent as a result of the  
24 significant deterioration or the precarious location of the container,  
25 motor vehicle, truck, rail car or other mechanized conveyance, and  
26 such discharge would create a substantial risk of imminent damage  
27 to public health or safety or imminent and severe damage to the  
28 environment; or

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

31 c. If and to the extent that he determines that funds are  
32 available, the administrator shall approve and make payments for  
33 any cleanup and removal costs incurred by the department for the  
34 cleanup and removal of a hazardous substance other than petroleum  
35 as authorized by subsection b. of this section; provided that in  
36 determining the availability of funds, the administrator shall not  
37 include as available funds revenues realized or to be realized from  
38 the tax on the transfer of petroleum, to the extent that such revenues  
39 result from a tax levied at a rate in excess of \$0.01 per barrel,  
40 pursuant to subsection b. of section 9 of P.L.1976, c.141 (C.58:10-  
41 23.11h), unless the administrator determines that the sum of claims  
42 paid by the fund on behalf of petroleum discharges or cleanup and  
43 removals plus pending reasonable claims against the fund on behalf  
44 of petroleum discharges or cleanup and removals is greater than  
45 30% of the sum of all claims paid by the fund plus all pending  
46 reasonable claims against the fund.

1       d. The administrator may only approve and make payments for  
2 any cleanup and removal costs incurred by the department for the  
3 cleanup and removal of a hazardous substance discharged prior to  
4 the effective date of P.L.1976, c.141, pursuant to subsection b. of  
5 this section, if, and to the extent that, he determines that adequate  
6 funds from another source are not or will not be available; and  
7 provided further, with regard to the cleanup and removal costs  
8 incurred for discharges which occurred prior to the effective date of  
9 P.L.1976, c.141, the administrator may not during any one-year  
10 period pay more than \$18,000,000 in total or more than \$3,000,000  
11 for any discharge or related set or series of discharges.

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

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

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

1 subject to the cleanup and removal, shall have priority from the day  
2 of the filing of the notice of the lien over all other claims and liens  
3 filed against the property, but shall not affect any valid lien, right,  
4 or interest in the property filed in accordance with established  
5 procedure prior to the filing of a notice of lien pursuant to this  
6 subsection.

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

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

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

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

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

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

30

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

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

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

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

44 (3) Loss of income or impairment of earning capacity due to  
45 damage to real or personal property, including natural resources  
46 destroyed or damaged by a discharge; provided that such loss or  
47 impairment exceeds 10% of the amount which claimant derives,

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

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

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

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

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

36 (2) In addition to the persons liable pursuant to this subsection,  
37 in the case of a discharge of a hazardous substance from a vessel  
38 into the waters of the State, the owner or operator of a refinery,  
39 storage, transfer, or pipeline facility to which the vessel was en  
40 route to deliver the hazardous substance who, by contract,  
41 agreement, or otherwise, was scheduled to assume ownership of the  
42 discharged hazardous substance, and any other person who was so  
43 scheduled to assume ownership of the discharged hazardous  
44 substance, shall be strictly liable, jointly and severally, without  
45 regard to fault, for all cleanup and removal costs if the owner or  
46 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.

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

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

1 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance  
2 with rules and regulations promulgated by the department defining  
3 these terms.

4 Nothing in this paragraph (2) shall be construed to alter liability  
5 of any person who acquired real property prior to September 14,  
6 1993; and

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

1 takes that aggravates or contributes to a discharge of a hazardous  
2 substance, for failure to comply in the future with laws and  
3 regulations, or if that person fails to maintain the institutional or  
4 engineering controls on the property or to otherwise comply with  
5 the provisions of the [no further action letter] final remediation  
6 document.

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

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

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

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

43 (b) (i) at the time the person acquired the real property, the  
44 person did not know and had no reason to know that any hazardous  
45 substance had been discharged at the real property, or (ii) the person  
46 acquired the real property by devise or succession, except that any  
47 other funds or property received by that person from the deceased



1 real property owner who discharged a hazardous substance or was  
2 in any way responsible for a hazardous substance, shall be made  
3 available to satisfy the requirements of P.L.1976, c.141;

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

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

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

17 Nothing in this paragraph (5) shall be construed to alter liability  
18 of any person who acquired real property on or after September 14,  
19 1993.

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

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

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

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

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

3 (4) (a) within 30 days after acquisition of the property, the  
4 person commenced a remediation of the discharge, including any  
5 migration, pursuant to a department oversight document executed  
6 prior to acquisition, or (b) for property acquired after the date of  
7 enactment of P.L. , c. (C. ) (pending before the Legislature as  
8 this bill), the person provides written notice of the acquisition to the  
9 department prior to or on the date of acquisition and the person  
10 remediates the property pursuant to the provisions of section 30 of  
11 P.L. , c. (C. ) (pending before the Legislature as this bill), and  
12 (c) the department is satisfied that remediation was completed in a  
13 timely and appropriate fashion; and

14 (5) Within ten days after acquisition of the property, or within  
15 30 days after the expiration of the period or periods allowed for the  
16 right of redemption pursuant to tax foreclosure law, the person  
17 agrees in writing to provide access to the State for remediation and  
18 related activities, as determined by the State.

19 The provisions of this subsection shall not relieve any person of  
20 any liability:

21 (1) for a discharge that occurs at that property after the person  
22 acquired the property;

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

25 (3) if that person fails to maintain the institutional or  
26 engineering controls on the property or to otherwise comply with  
27 the provisions of a [no further action letter] final remediation  
28 document or a remedial action workplan and a person is harmed  
29 thereby;

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

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

36 g. Nothing in the amendatory provisions to this section adopted  
37 pursuant to P.L.1997, c.278 shall be construed to remove any  
38 defense to liability that a person may have had pursuant to  
39 subsection e. of this section that existed prior to the effective date  
40 of P.L.1997, c.278.

41 h. Nothing in this section shall limit the requirements of any  
42 person to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).  
43 (cf: P.L.2005, c.238, s.1)

44  
45 39. Section 2 of P.L.1982, c.202 (C.58:10-23.16) is amended to  
46 read as follows:

1       2. The department shall prepare and [adopt a master list for the  
2 cleanup of] maintain a database that lists all known hazardous  
3 discharge sites , cases, and areas of concern. The [master list]  
4 database shall comprise an inventory of all the known hazardous  
5 discharge sites , cases, and areas of concern in the State [which  
6 have been cleaned up prior to the effective date of this act, which  
7 have been identified as in need of cleanup, or which will be cleaned  
8 up subsequent to the effective date of this act, and a ranking, based  
9 on criteria established by the department pursuant to P.L. 198(3),  
10 c.(222) (C.(58:10-23.20)), of the sites in the order in which the  
11 department intends to clean up the sites] . No later than one year  
12 after the date of enactment of P.L. , c. (C. ) (pending before the  
13 Legislature as this bill) the department shall establish a ranking  
14 system that establishes categories in which to rank sites based upon  
15 the level of risk to the public health, safety, or the environment, the  
16 length of time the site has been undergoing remediation, the  
17 economic impact of the contaminated site on the municipality and  
18 on surrounding property, and any other factors deemed relevant by  
19 the department. The database shall include information concerning  
20 each site that identifies the location of the known or suspected  
21 contaminated site, the status of the remediation, the contaminants of  
22 concern, and whether institutional or engineering controls are in use  
23 at the site . The department shall [review the master list at least  
24 once every six months and modify it as necessary] provide public  
25 access to reports from the database on its internet website.

26 (cf: P.L.1982, c.202, s.2)

27

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

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

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

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

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

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

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

6 "Department" means the Department of Environmental  
7 Protection;

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

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

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

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

24 "Financial assistance" means loans or loan guarantees;

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

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

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

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

1 or that any discharged contaminants present at the site or that have  
2 migrated from the site have been remediated in accordance with  
3 applicable remediation regulations;

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

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

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

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

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

41 "Remedial action" means those actions taken at a site or offsite if  
42 a contaminant has migrated or is migrating therefrom, as may be  
43 required by the department, including the removal, treatment,  
44 containment, transportation, securing, or other engineering or  
45 treatment measures, whether to an unrestricted use or otherwise,  
46 designed to ensure that any discharged contaminant at the site or  
47 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, or  
19 threatened discharge of contaminants, including, as necessary, the  
20 preliminary assessment, site investigation, remedial investigation,  
21 and remedial action, provided, however, that "remediation" or  
22 "remediate" shall not include the payment of compensation for  
23 damage to, or loss of, natural resources;

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

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

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

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 "Restricted use remedial action" means any remedial action that  
4 requires the continued use of engineering and institutional controls  
5 in order to meet the established health risk or environmental  
6 standards;

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

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

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

23

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

26 24. a. The department shall, pursuant to the "Administrative  
27 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules  
28 and regulations establishing criteria and **[minimum]** standards  
29 necessary for the submission, evaluation and approval of plans or  
30 results of preliminary assessments, site investigations, remedial  
31 investigations, and remedial action workplans and for the  
32 implementation thereof. The documents for the preliminary  
33 assessment, site investigation, remedial investigation, and remedial  
34 action workplan required to be submitted for a remediation, shall  
35 not be identical to the criteria and standards used for similar  
36 documents submitted pursuant to federal law, except as may be  
37 required by federal law. In establishing criteria and **[minimum]**  
38 standards for these terms the department shall strive to be result  
39 oriented, provide for flexibility, and to avoid duplicate or  
40 unnecessarily costly or time consuming conditions or standards.

41 b. The regulations adopted by the department pursuant to  
42 subsection a. of this section shall provide that a person performing a  
43 remediation may deviate from the strict adherence to the  
44 regulations, in a variance procedure or by another method  
45 prescribed by the department, if that person can demonstrate that  
46 the deviation and the resulting remediation would be as protective  
47 of human health, safety, and the environment, as appropriate, as the

1 department's regulations and that the health risk standards  
2 established in subsection d. of section 35 of P.L.1993, c.139  
3 (C.58:10B-12) and any applicable environmental standards would  
4 be met. Factors to be considered in determining if the deviation  
5 should be allowed are whether the alternative method:

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

8 (2) reflects current technology as documented in peer-reviewed  
9 professional journals;

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

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

14 [The department shall make available to the public, and shall  
15 periodically update, a list of alternative remediation methods used  
16 successfully or approved by the department as provided in  
17 paragraph (1) of this subsection.]

18 c. To the extent practicable and in conformance with the  
19 standards for remediations as provided in section 35 of P.L.1993,  
20 c.139 (C.58:10-12), the department shall adopt rules and regulations  
21 that allow for certain remedial actions to be undertaken in a manner  
22 prescribed by the department without having to obtain prior  
23 approval from or submit detailed documentation to the department.  
24 A person who performs a remedial action in the manner prescribed  
25 in the rules and regulations of the department, and who certifies this  
26 fact to the department, shall obtain a [no further action letter from  
27 the department] final remediation document for that particular  
28 remedial action.

29 d. The department shall develop regulatory procedures that  
30 encourage the use of innovative technologies in the performance of  
31 remedial actions and other remediation activities.

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

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

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



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

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

16       b. In the case of the remediation of a contaminated site  
17 performed by any person not subject to the provisions of subsection  
18 a. of this section, the fees for department oversight of the  
19 remediation performed after the effective date of P.L.2002, c.37  
20 shall not include any indirect costs, but may include **[only]** those  
21 program costs directly related to the oversight of the remediation  
22 and the costs related to the department's oversight charged to the  
23 department by other State departments or agencies.

24       c. In the case of the cleanup and removal of a discharged  
25 hazardous substance at a person's primary residence, the fees for  
26 department oversight of the remediation performed after the  
27 effective date of P.L.2002, c.37 shall not include any indirect costs,  
28 but may include only those program costs directly related to the  
29 oversight of the remediation.

30       d. The department shall not establish or impose a fee for the  
31 oversight of any cleanup and removal of a discharged hazardous  
32 substance or for the remediation of a contaminated site that includes  
33 direct program costs and indirect costs which together exceed seven  
34 and one-half percent of the cost of the remediation of a  
35 contaminated site or the cleanup and removal of a discharged  
36 hazardous substance.

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

38

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

41       25. a. **[The]** Except as otherwise provided in section 27 of  
42 P.L. , c. (C. ) (pending before the Legislature as this bill), the  
43 owner or operator of an industrial establishment or any other person  
44 required to perform remediation activities pursuant to P.L.1983,  
45 c.330 (C.13:1K-6 et al.), or a discharger, a person in any way  
46 responsible for a hazardous substance, or a person otherwise liable  
47 for cleanup and removal costs pursuant to P.L.1976, c.141

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

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

1 decrease the amount in the remediation funding source or may  
2 submit written documentation to the department certified by the  
3 licensed site remediation professional of the details of the decrease  
4 in the cost estimate, as applicable . The remediation funding source  
5 may be decreased to the amount of the new estimate upon written  
6 approval by the department delivered to the person who established  
7 the remediation funding source [and to the trustee or the person or  
8 institution providing the remediation trust, the environmental  
9 insurance policy, or the line of credit, as applicable. The  
10 department shall approve the request upon a finding that the  
11 remediation cost estimate decreased by the requested amount. The  
12 department shall review and respond to the request to decrease the  
13 remediation funding source within 45 days of receipt of the  
14 request] or upon submission of the certification by the licensed site  
15 remediation professional, as applicable.

16 b. The person [responsible for performing the remediation  
17 and] who established the remediation funding source may use the  
18 remediation funding source to pay for the actual cost of the  
19 remediation. The department may not require any other financial  
20 assurance by the person responsible for [performing] conducting  
21 the remediation other than that required in this section. In the case  
22 of a remediation performed pursuant to P.L.1983, c.330, the  
23 remediation funding source shall be established no more than 14  
24 days after the approval by the department or the certification by the  
25 licensed site remediation professional of a remedial action workplan  
26 [or], upon approval of a remediation agreement pursuant to  
27 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9) , or upon  
28 submission of a remediation certification pursuant to subsection e.  
29 of P.L.1983, c.330 , unless the department approves an extension.  
30 In the case of a remediation performed pursuant to P.L.1976, c.141,  
31 the remediation funding source shall be established as provided in  
32 an administrative consent order signed by the parties, as provided  
33 by a court, or as directed or ordered by the department. In the case  
34 of a remediation performed under the department's oversight  
35 pursuant to section 27 of P.L. , c. (C. ) (pending before the  
36 Legislature as this bill), the remediation funding source shall be  
37 established at the time the person becomes subject to the  
38 department's oversight. The establishment of a remediation funding  
39 source for that part of the remediation funding source to be  
40 established by a grant or financial assistance from the remediation  
41 fund may be established for the purposes of this subsection by the  
42 application for a grant or financial assistance from the remediation  
43 fund and satisfactory evidence submitted to the department that the  
44 grant or financial assistance will be awarded. However, if the  
45 financial assistance or grant is denied or the department finds that  
46 the person responsible for establishing the remediation funding  
47 source did not take reasonable action to obtain the grant or financial

1 assistance, the department shall require that the full amount of the  
2 remediation funding source be established within 14 days of the  
3 denial or finding. **【The】** Except as provided in section 27 of  
4 P.L. , c. (C. ) (pending before the Legislature as this bill), the  
5 remediation funding source shall be evidenced by the establishment  
6 and maintenance of (1) a remediation trust fund, (2) an  
7 environmental insurance policy, issued by an entity licensed by the  
8 Department of Banking and Insurance to transact business in the  
9 State of New Jersey, to fund the remediation, (3) a line of credit  
10 from a **【person or】** financial institution regulated pursuant to State  
11 or federal law and satisfactory to the department authorizing the  
12 person responsible for performing the remediation to borrow  
13 money, **【or】** (4) a self-guarantee, or (5) a letter of credit from a  
14 financial institution regulated pursuant to State or federal law that  
15 guarantees the performance of the remediation by the person to the  
16 satisfaction of the department, or by any combination thereof.  
17 Where it can be demonstrated that a person cannot establish and  
18 maintain a remediation funding source for the full cost of the  
19 remediation by a method specified in this subsection, that person  
20 may establish the remediation funding source for all or a portion of  
21 the remediation, by securing financial assistance from the  
22 Hazardous Discharge Site Remediation Fund as provided in section  
23 29 of P.L.1993, c.139 (C.58:10B-7).

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

40 The trust fund agreement shall provide that the remediation trust  
41 fund may not be revoked or terminated by the person required to  
42 establish the remediation funding source or by the trustee without  
43 the written consent of the department. The trustee shall release to  
44 the person required to establish the remediation funding source, or  
45 to the department or transferee of the property, as appropriate, only  
46 those moneys as the department or the licensed site remediation  
47 professional authorizes, in writing, to be released. **【The】** For any

1 remediation subject to the oversight of the department pursuant to  
2 section 27 of P.L. , c. (C. ) (pending before the Legislature as  
3 this bill), the person entitled to receive money from the remediation  
4 trust fund shall submit documentation to the department detailing  
5 the costs incurred or to be incurred as part of the remediation.  
6 Upon a determination by the department that the costs are  
7 consistent with the remediation of the site, the department shall, in  
8 writing, authorize a disbursement of moneys from the remediation  
9 trust fund in the amount of the documented costs.

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

17 d. An environmental insurance policy shall be established  
18 pursuant to the provisions of this subsection. An originally signed  
19 duplicate of the insurance policy shall be delivered to the  
20 department by certified mail, overnight delivery, or personal service  
21 within 30 days of receipt of notice from the department that the  
22 remedial action workplan or remediation agreement, as provided in  
23 subsection e. of section 4 of P.L.1983, c.330, is approved, upon  
24 submission of a remediation certification to the department as  
25 provided in subsection e. of section 4 of P.L.1983, c.330, or as  
26 specified in an administrative consent order, civil order, or order of  
27 the department, as applicable. [The environmental insurance policy  
28 may not be revoked or terminated without the written consent of the  
29 department.] The insurance company shall release to the person  
30 required to establish the remediation funding source, or to the  
31 department or transferee of the property, as appropriate, only those  
32 moneys as the department or the licensed site remediation  
33 professional authorizes, in writing, to be released. The person  
34 entitled to receive money from the environmental insurance policy  
35 shall submit documentation to the department detailing the costs  
36 incurred or to be incurred as part of the remediation.

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

1 c.330 or as specified in an administrative consent order, civil order,  
2 or order of the department, as applicable. The line of credit  
3 agreement shall conform to a model agreement as established by the  
4 department and shall be accompanied by a certification of  
5 acknowledgment that conforms to a model established by the  
6 department.

7 [A line of credit agreement shall provide that the line of credit  
8 may not be revoked or terminated by the person required to obtain  
9 the remediation funding source or the person or institution  
10 providing the line of credit without the written consent of the  
11 department.] The person or institution providing the line of credit  
12 shall release to the person required to establish the remediation  
13 funding source, or to the department or transferee of the property as  
14 appropriate, only those moneys as the department or the licensed  
15 site remediation professional authorizes, in writing, to be released.  
16 The person entitled to draw upon the line of credit shall submit  
17 documentation to the department detailing the costs incurred or to  
18 be incurred as part of the remediation. Upon a determination that  
19 the costs are consistent with the remediation of the site, the  
20 department shall, in writing, authorize a disbursement from the line  
21 of credit in the amount of the documented costs.

22 The department shall return the original line of credit agreement  
23 to the person or institution providing the line of credit for  
24 termination after the person required to establish the remediation  
25 funding source substitutes an alternative remediation funding source  
26 as specified in this section, or after the department notifies the  
27 person that that person is no longer required to maintain a  
28 remediation funding source for remediation of the contaminated  
29 site.

30 f. A person may self-guarantee a remediation funding source  
31 upon the submittal of documentation to the department  
32 demonstrating that the cost of the remediation as estimated in the  
33 remedial action workplan, in the remediation agreement as provided  
34 in subsection e. of section 4 of P.L.1983, c.330, in a remediation  
35 certification submitted pursuant to subsection e. of P.L.1983, c.330,  
36 in an administrative consent order, or as provided in a departmental  
37 or court order, would not exceed one-third of the tangible net worth  
38 of the person required to establish the remediation funding source,  
39 and that the person has a cash flow sufficient to assure the  
40 availability of sufficient moneys for the remediation during the time  
41 necessary for the remediation. Satisfactory documentation of a  
42 person's capacity to self-guarantee a remediation funding source  
43 shall consist of audited financial statements, in which the auditor  
44 expresses an unqualified opinion, that includes a statement of  
45 income and expenses or similar statement of that person and the  
46 balance sheet or similar statement of assets and liabilities as used by  
47 that person for the fiscal year of the person making the application

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

25 g. (1) If the person required to establish the remediation funding  
26 source fails to perform the remediation as required, or fails to meet  
27 the mandatory remediation timeframes or expedited site specific  
28 timeframes established pursuant to section 28 of P.L. , c. (C. )  
29 (pending before the Legislature as this bill) for the performance of  
30 the remedial action, the department shall make a written  
31 determination of this fact. A copy of the determination by the  
32 department shall be delivered to the person required to establish the  
33 remediation funding source and, in the case of a remediation  
34 conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), to any  
35 transferee of the property. Following this written determination, the  
36 department may perform the remediation in place of the person  
37 required to establish the remediation funding source. In order to  
38 finance the cost of the remediation the department may make  
39 disbursements from the [remediation trust fund or the line of credit  
40 or claims upon the environmental insurance policy, as appropriate]  
41 remediation funding source , or, if sufficient moneys are not  
42 available from those funds, from the remediation guarantee fund  
43 created pursuant to section 45 of P.L.1993, c.139 (C.58:10B-20).

44 (2) The transferee of property subject to a remediation  
45 conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), may, at  
46 any time after the department's determination of nonperformance by  
47 the owner or operator required to establish the remediation funding

1 source, petition the department, in writing, with a copy being sent to  
2 the owner and operator, for authority to perform the remediation at  
3 the industrial establishment. The department, upon a determination  
4 that the transferee is competent to do so, may grant that petition  
5 which shall authorize the transferee to perform the remediation as  
6 specified in an approved remedial action workplan, or to perform  
7 the activities as required in a remediation agreement, or as provided  
8 in a remediation certification, and to avail itself of the moneys in  
9 the remediation trust fund , letter or credit, or line of credit or to  
10 make claims upon the environmental insurance policy for these  
11 purposes. The petition of the transferee shall not be granted by the  
12 department if the owner or operator continues or begins to perform  
13 its obligations within 14 days of the petition being filed with the  
14 department.

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

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

41 The financial institution that provides the letter of credit shall  
42 release to the department or to a person authorized to perform the  
43 remediation pursuant to subsection g. of this section, only moneys  
44 authorized by the department, or the authorized licensed site  
45 remediation professional, in writing, to be released. The  
46 department shall return the original letter of credit to the financial  
47 institution providing the letter of credit for termination after the



1 person required to establish the remediation funding source  
2 substitutes an alternative remediation funding source as authorized  
3 in this section, or after the department notifies the person that that  
4 person is no longer required to maintain a remediation funding  
5 source for the remediation of the contaminated site.

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

7

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

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

21 b. The remediation fund shall be credited with:

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

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

25 (3) any return on investment of moneys deposited in the fund;

26 (4) **[remediation funding source surcharges imposed pursuant to**  
27 **section 33 of P.L.1993, c.139 (C.58:10B-11)]** ~~(Deleted by~~  
28 ~~amendment, P.L. , c. )(pending before the Legislature as this bill);~~

29 (5) moneys deposited in the fund as repayment of recoverable  
30 grants made by the New Jersey Redevelopment Authority for  
31 brownfield redevelopment;

32 (6) moneys deposited into the fund from cost recovery  
33 subrogation actions; and

34 (7) moneys made available to the authority for the purposes of  
35 the fund.

36 (cf: P.L.2007, c.135, s.1)

37

38 45. Section 30 of P.L.1993, c.139 (C.58:10B-8) is amended to  
39 read as follows:

40 30. a. The authority shall, by rule or regulation:

41 (1) require a financial assistance or grant recipient to provide to  
42 the authority, as necessary or upon request, evidence that financial  
43 assistance or grant moneys are being spent for the purposes for  
44 which the financial assistance or grant was made, and that the  
45 applicant is adhering to all of the terms and conditions of the  
46 financial assistance or grant agreement;

1 (2) require the financial assistance or grant recipient to provide  
2 access at reasonable times to the subject property to determine  
3 compliance with the terms and conditions of the financial assistance  
4 or grant;

5 (3) establish a priority system for rendering financial assistance  
6 or grants for remediations identified by the department as involving  
7 an imminent and significant threat to a public water source, human  
8 health, or to a sensitive or significant ecological area pursuant to  
9 subsection a. of section 28 of P.L.1993, c.139 (C.58:10B-6);

10 (4) [provide that payment of a grant shall be conditioned upon  
11 the subrogation to the department of all rights of the recipient to  
12 recover remediation costs from the discharger or other liable  
13 parties. All moneys collected in a cost recovery subrogation action  
14 shall be deposited into the remediation fund] (Deleted by  
15 amendment, P.L. , c. )(pending before the Legislature as this  
16 bill);

17 (5) provide that an applicant for financial assistance or a grant  
18 pay a reasonable fee for the application which shall be used by the  
19 authority for the administration of the loan and grant program;

20 (6) provide that where financial assistance to a person other than  
21 a municipality, a county, or a redevelopment entity authorized to  
22 exercise redevelopment powers pursuant to section 4 of P.L.1992,  
23 c.79 (C.40A:12A-4), is for a portion of the remediation cost, that  
24 the proceeds thereof not be disbursed to the applicant until the costs  
25 of the remediation for which a remediation funding source has been  
26 established has been expended;

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

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

35 b. An applicant for financial assistance or a grant shall be  
36 required to:

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

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

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

7 d. In establishing requirements for financial assistance or grant  
8 applications and financial assistance or grant agreements, the  
9 authority:

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

12 (2) may not require financial assistance or grant conditions that  
13 interfere with the everyday normal operations of the recipient's  
14 business activities, except to the extent necessary to ensure the  
15 recipient's ability to repay the financial assistance and to preserve  
16 the value of the loan collateral; and

17 (3) shall expeditiously process all financial assistance or grant  
18 applications in accordance with a schedule established by the  
19 authority for the review and the taking of final action on the  
20 application, which schedule shall reflect the degree of complexity  
21 of a financial assistance or grant application.

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

23  
24 46. Section 33 of P.L.1993, c.139 (C.58:10B-11) is amended to  
25 read as follows:

26 33. a. There is imposed upon every person who is required to  
27 establish a remediation funding source pursuant to section 25 of  
28 P.L.1993, c.139 (C.58:10B-3) a remediation funding source  
29 surcharge. The remediation funding source surcharge shall be in an  
30 amount equal to 1% of the required amount of the remediation  
31 funding source required by the department to be maintained. No  
32 surcharge, however, may be imposed upon (1) that amount of the  
33 remediation funding source that is met by a self-guarantee as  
34 provided in subsection f. of section 25 of P.L.1993, c.139  
35 (C.58:10B-3), (2) that amount of the remediation funding source  
36 that is met by financial assistance or a grant from the remediation  
37 fund, (3) any person who voluntarily performs a remediation  
38 pursuant to an administrative consent order, (4) any person who  
39 entered voluntarily into a memorandum of understanding with the  
40 department to remediate real property, as long as that person  
41 **[continues the remediation in a reasonable manner, or as required**  
42 **by law, even if subsequent to initiation of the memorandum of**  
43 **understanding, the person received an order by the department or**  
44 **entered into an administrative consent order to perform the**  
45 **remediation]** meets the mandatory remediation timeframes and  
46 expedited site specific timeframes established by the department  
47 pursuant to section 28 of P.L. , c. (C. ) (pending before the

1 Legislature as this bill, (5) any person performing a remediation in  
2 an environmental opportunity zone, or (6) that portion of the cost of  
3 the remediation that is specifically for the use of an innovative  
4 technology or to implement a limited restricted use remedial action  
5 or an unrestricted use remedial action. The surcharge shall be based  
6 on the cost of remediation work remaining to be completed and  
7 shall be paid on an annual basis as long as the remediation  
8 continues and until the Department of Environmental Protection  
9 issues a no further action letter or the licensed site remediation  
10 professional issues a response action outcome for the property  
11 subject to the remediation. The remediation funding source  
12 surcharge shall be due and payable within 14 days of the time of the  
13 department's approval of a remedial action workplan or signing an  
14 administrative consent order or as otherwise provided by law. The  
15 department shall collect the surcharge and shall remit all moneys  
16 collected to the [Economic Development Authority for deposit into  
17 the Hazardous Discharge Site Remediation Fund] Remediation  
18 Guarantee Fund established pursuant to section 45 of P.L.1993,  
19 c.139 (C.58:10B-20).

20 b. By February 1 of each year, the department shall issue a  
21 report to the Senate Environment Committee and to the Assembly  
22 [Agriculture and Waste Management] Environment and Solid  
23 Waste Committee, or their successors, listing, for the prior calendar  
24 year, each person who owed the remediation funding source  
25 surcharge, the amount of the surcharge paid, and the total amount  
26 collected.

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

28

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

31 35. a. The Department of Environmental Protection shall adopt  
32 minimum remediation standards for soil, groundwater, and surface  
33 water quality necessary for the remediation of contamination of real  
34 property. The remediation standards shall be developed to ensure  
35 that the potential for harm to public health and safety and to the  
36 environment is minimized to acceptable levels, taking into  
37 consideration the location, the surroundings, the intended use of the  
38 property, the potential exposure to the discharge, and the  
39 surrounding ambient conditions, whether naturally occurring or  
40 man-made.

41 Until the minimum remediation standards for the protection of  
42 public health and safety as described herein are adopted, the  
43 department shall apply public health and safety remediation  
44 standards for contamination at a site on a case-by-case basis based  
45 upon the considerations and criteria enumerated in this section.

46 The department shall not propose or adopt remediation standards  
47 protective of the environment pursuant to this section, except

1 standards for groundwater or surface water, until recommendations  
2 are made by the Environment Advisory Task Force created pursuant  
3 to section 37 of P.L.1993, c.139. Until the Environment Advisory  
4 Task Force issues its recommendations and the department adopts  
5 remediation standards protective of the environment as required by  
6 this section, the department shall continue to determine the need for  
7 and the application of remediation standards protective of the  
8 environment on a case-by-case basis in accordance with the  
9 guidance and regulations of the United States Environmental  
10 Protection Agency pursuant to the "Comprehensive Environmental  
11 Response, Compensation and Liability Act of 1980," 42 U.S.C.  
12 s.9601 et seq. and other statutory authorities as applicable.

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

17 b. In developing minimum remediation standards the  
18 department shall:

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

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

25 (3) avoid the use of redundant conservative assumptions. The  
26 department shall avoid the use of redundant conservative  
27 assumptions by the use of parameters that provide an adequate  
28 margin of safety and which avoid the use of unrealistic conservative  
29 exposure parameters and which guidelines make use of the guidance  
30 and regulations for exposure assessment developed by the United  
31 States Environmental Protection Agency pursuant to the  
32 "Comprehensive Environmental Response, Compensation, and  
33 Liability Act of 1980," 42 U.S.C. s.9601 et seq. and other statutory  
34 authorities as applicable;

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

38 (5) consider and utilize, in the absence of other standards used  
39 or developed by the Department of Environmental Protection and  
40 the United States Environmental Protection Agency, the toxicity  
41 factors, slope factors for carcinogens and reference doses for non-  
42 carcinogens from the United States Environmental Protection  
43 Agency's Integrated Risk Information System (IRIS).

44 c. (1) The department shall develop residential and  
45 nonresidential soil remediation standards that are protective of  
46 public health and safety. For contaminants that are mobile and  
47 transportable to groundwater or surface water, the residential and

1 nonresidential soil remediation standards shall be protective of  
2 groundwater and surface water. Residential soil remediation  
3 standards shall be set at levels or concentrations of contamination  
4 for real property based upon the use of that property for residential  
5 or similar uses and which will allow the unrestricted use of that  
6 property without the need of engineering devices or any  
7 institutional controls and without exceeding a health risk standard  
8 greater than that provided in subsection d. of this section.  
9 Nonresidential soil remediation standards shall be set at levels or  
10 concentrations of contaminants that recognize the lower likelihood  
11 of exposure to contamination on property that will not be used for  
12 residential or similar uses, which will allow for the unrestricted use  
13 of that property for nonresidential purposes, and that can be met  
14 without the need of engineering controls. Whenever real property is  
15 remediated to a nonresidential soil remediation standard, except as  
16 otherwise provided in paragraph (3) of subsection g. of this section,  
17 the department shall require, pursuant to section 36 of P.L.1993,  
18 c.139 (C.58:10B-13), that the use of the property be restricted to  
19 nonresidential or other uses compatible with the extent of the  
20 contamination of the soil and that access to that site be restricted in  
21 a manner compatible with the allowable use of that property.

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

27 d. The department shall develop minimum remediation  
28 standards for soil, groundwater, and surface water intended to be  
29 protective of public health and safety taking into account the  
30 provisions of this section. In developing these minimum health risk  
31 remediation standards the department shall identify the hazards  
32 posed by a contaminant to determine whether exposure to that  
33 contaminant can cause an increase in the incidence of an adverse  
34 health effect and whether the adverse health effect may occur in  
35 humans. The department shall set minimum soil remediation health  
36 risk standards for both residential and nonresidential uses that:

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

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

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

45 e. Remediation standards and other remediation requirements  
46 established pursuant to this section and regulations adopted  
47 pursuant thereto shall apply to remediation activities required

1 pursuant to the "Spill Compensation and Control Act," P.L.1976,  
2 c.141 (C.58:10-23.11 et seq.), the "Water Pollution Control Act,"  
3 P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21  
4 et seq.), the "Industrial Site Recovery Act," P.L.1983, c.330  
5 (C.13:1K-6 et al.), the "Solid Waste Management Act," P.L.1970,  
6 c.39 (C.13:1E-1 et seq.), the "Comprehensive Regulated Medical  
7 Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the  
8 "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279  
9 (C.13:1E-49 et seq.), the "Sanitary Landfill Facility Closure and  
10 Contingency Fund Act," P.L.1981, c.306 (C.13:1E-100 et seq.), the  
11 "Regional Low-Level Radioactive Waste Disposal Facility Siting  
12 Act," P.L.1987, c.333 (C.13:1E-177 et seq.), or any other law or  
13 regulation by which the State may compel a person to perform  
14 remediation activities on contaminated property. However, nothing  
15 in this subsection shall be construed to limit the authority of the  
16 department to establish discharge limits for pollutants or to  
17 prescribe penalties for violations of those limits pursuant to  
18 P.L.1977, c.74 (C.58:10A-1 et seq.), or to require the complete  
19 removal of nonhazardous solid waste pursuant to law.

20 f. (1) A person performing a remediation of contaminated real  
21 property, in lieu of using the established minimum soil remediation  
22 standard for either residential use or nonresidential use adopted by  
23 the department pursuant to subsection c. of this section, may submit  
24 to the department a request to use an alternative residential use or  
25 nonresidential use soil remediation standard. The use of an  
26 alternative soil remediation standard shall be based upon site  
27 specific factors which may include (1) physical site characteristics  
28 which may vary from those used by the department in the  
29 development of the soil remediation standards adopted pursuant to  
30 this section; or (2) a site specific risk assessment. If a person  
31 performing a remediation requests to use an alternative soil  
32 remediation standard based upon a site specific risk assessment, that  
33 person shall demonstrate to the department that the requested  
34 deviation from the risk assessment protocol used by the department  
35 in the development of soil remediation standards pursuant to this  
36 section is consistent with the guidance and regulations for exposure  
37 assessment developed by the United States Environmental  
38 Protection Agency pursuant to the "Comprehensive Environmental  
39 Response, Compensation, and Liability Act of 1980," 42  
40 U.S.C.s.9601 et seq. and other statutory authorities as applicable. A  
41 site specific risk assessment may consider exposure scenarios and  
42 assumptions that take into account the form of the contaminant  
43 present, natural biodegradation, fate and transport of the  
44 contaminant, available toxicological data that are based upon  
45 generally accepted and peer reviewed scientific evidence or  
46 methodologies, and physical characteristics of the site, including,  
47 but not limited to, climatic conditions and topographic conditions.

1 Nothing in this subsection shall be construed to authorize the use of  
2 an alternative soil remediation standard in those instances where an  
3 engineering control is the appropriate remedial action, as  
4 determined by the department, to prevent exposure to  
5 contamination.

6 Upon a determination by the department that the requested  
7 alternative remediation standard satisfies the department's  
8 regulations, is protective of public health and safety, as established  
9 in subsection d. of this section, and is protective of the environment  
10 pursuant to subsection a. of this section, the alternative residential  
11 use or nonresidential use soil remediation standard shall be  
12 approved by the department. The burden to demonstrate that the  
13 requested alternative remediation standard is protective rests with  
14 the person requesting the alternative standard and the department  
15 may require the submission of any documentation as the department  
16 determines to be necessary in order for the person to meet that  
17 burden.

18 (2) The department may, upon its own initiative, require an  
19 alternative remediation standard for a particular contaminant for a  
20 specific real property site, in lieu of using the established minimum  
21 residential use or nonresidential use soil remediation standard  
22 adopted by the department for a particular contaminant pursuant to  
23 this section. The department may require an alternative remediation  
24 standard pursuant to this paragraph upon a determination by the  
25 department, based on the weight of the scientific evidence, that due  
26 to specific physical site characteristics of the subject real property,  
27 including, but not limited to, its proximity to surface water, the use  
28 of the adopted residential use or nonresidential use soil remediation  
29 standards would not be protective, or would be unnecessarily  
30 overprotective, of public health or safety or of the environment, as  
31 appropriate.

32 g. The development, selection, and implementation of any  
33 remediation standard or remedial action shall ensure that it is  
34 protective of public health, safety, and the environment, as  
35 applicable, as provided in this section. In determining the  
36 appropriate remediation standard or remedial action that shall occur  
37 at a site, the department and any person performing the remediation,  
38 shall base the decision on the following factors:

39 (1) Unrestricted use remedial actions, limited restricted use  
40 remedial actions and restricted use remedial actions shall be  
41 allowed except that unrestricted use remedial actions and limited  
42 restricted use remedial actions shall be preferred over restricted use  
43 remedial actions. 【The】 For any remediation initiated one year after  
44 the date of enactment of P.L. , c. (C. ) (pending before the  
45 Legislature as this bill), the department shall require the use of an  
46 unrestricted use remedial action, or a presumptive remedy or an  
47 alternative remedy as provided in paragraph (10) of this subsection,



1 at a site or area of concern where new construction is proposed for  
2 residential purposes, for use as a child care center licensed pursuant  
3 to P.L.1983, c.492 (C.30:5B-1 et seq.), or as a public school or  
4 private school as defined in N.J.S.18A:1-1, as a charter school  
5 established pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.), or  
6 where there will be a change in the use of the site to residential,  
7 child care, or public school, private school, or charter school  
8 purposes or another purpose that involves use by a sensitive  
9 population. For any remediation initiated on or after the date of  
10 enactment of P.L. , c. (C. ) (pending before the Legislature as  
11 this bill), the department may require the use of an unrestricted use  
12 remedial action or a presumptive remedy as provided in guidelines  
13 adopted pursuant to paragraph (10) of this subsection for a site or  
14 area of concern that is to be used for residential, child care, or  
15 public school, private school, or charter school purposes or another  
16 purpose that involves use by a sensitive population. Except as  
17 provided in this subsection, and section 27 of P.L. , c. (C. )  
18 (pending before the Legislature as this bill), the department,  
19 however, may not disapprove the use of a restricted use remedial  
20 action or a limited restricted use remedial action so long as the  
21 selected remedial action meets the health risk standard established  
22 in subsection d. of this section, and where, as applicable, is  
23 protective of the environment. [The] Except as provided in this  
24 subsection and section 27 of P.L. , c. (C. ) (pending before the  
25 Legislature as this bill), the choice of the remedial action to be  
26 implemented shall be made by the person [performing] responsible  
27 for conducting the remediation in accordance with regulations  
28 adopted by the department and that choice of the remedial action  
29 shall be approved by the department if all the criteria for remedial  
30 action selection enumerated in this section , as applicable, are met.  
31 [The] Except as provided in section 27 of P.L. , c. (C. )  
32 (pending before the Legislature as this bill), the department may not  
33 require a person to compare or investigate any alternative remedial  
34 action as part of its review of the selected remedial action . The  
35 department may disapprove the selection of a remedial action for a  
36 site on which the proposed remedial action will render the property  
37 unusable for future redevelopment or for recreational use ;

38 (2) Contamination may, upon the department's approval, be left  
39 onsite at levels or concentrations that exceed the minimum soil  
40 remediation standards for residential use if the implementation of  
41 institutional or engineering controls at that site will result in the  
42 protection of public health, safety and the environment at the health  
43 risk standard established in subsection d. of this section [and] , if  
44 the requirements established in subsections a., b., c. and d. of  
45 section 36 of P.L.1993, c.139 (C.58:10B-13) , and paragraphs (1)  
46 and (10) of this subsection, are met. The department may also  
47 require the treatment or removal of contaminated material that

1 would pose an acute health or safety hazard in the event of failure  
2 of an engineering control ;

3 (3) Real property on which there is soil that has not been  
4 remediated to the residential soil remediation standards, or real  
5 property on which the soil, groundwater, or surface water has been  
6 remediated to meet the required health risk standard by the use of  
7 engineering or institutional controls, may be developed or used for  
8 residential purposes, or for any other similar purpose, if (a) all areas  
9 of that real property at which a person may come into contact with  
10 soil are remediated to meet the residential soil remediation  
11 standards **[and]** , (b) it is clearly demonstrated that for all areas of  
12 the real property, other than those described in subparagraph (a)  
13 above, engineering and institutional controls can be implemented  
14 and maintained on the real property sufficient to meet the health  
15 risk standard as established in subsection d. of this section , and (c)  
16 a presumptive remedy established and approved by the department  
17 pursuant to paragraph (10) of this subsection, or an alternative  
18 remedy approved by the department pursuant to paragraph (10) of  
19 this subsection, has been approved, as provided in paragraphs (1)  
20 and (10) of this subsection ;

21 (4) Remediation shall not be required beyond the regional  
22 natural background levels for any particular contaminant. The  
23 department shall develop regulations that set forth a process to  
24 identify background levels of contaminants for a particular region.  
25 For the purpose of this paragraph "regional natural background  
26 levels" means the concentration of a contaminant consistently  
27 present in the environment of the region of the site and which has  
28 not been influenced by localized human activities;

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

34 (6) Groundwater that is contaminated shall not be required to be  
35 remediated to a level or concentration for any particular  
36 contaminant lower than the level or concentration that is migrating  
37 onto the property from another property owned and operated by  
38 another person;

39 (7) The technical performance, effectiveness and reliability of  
40 the proposed remedial action in attaining and maintaining  
41 compliance with applicable remediation standards and required  
42 health risk standards shall be considered. In reviewing a proposed  
43 remedial action, the department or the licensed site remediation  
44 professional shall also consider the ability of the owner or operator  
45 to implement the proposed remedial action within a reasonable time  
46 frame without jeopardizing public health, safety or the environment;

1 (8) The use of a remedial action for soil contamination that is  
2 determined by the department to be effective in its guidance  
3 document created pursuant to section 38 of P.L.1993, c.139  
4 (C.58:10B-14), is presumed to be an appropriate remedial action if  
5 it is to be implemented on a site in the manner described by the  
6 department in the guidance document and applicable regulations  
7 and if all of the conditions for remedy selection provided for in this  
8 section are met. The burden to prove compliance with the criteria  
9 in the guidance document is with the person **[performing]**  
10 responsible for conducting the remediation;

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

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

35 (11) The department may authorize a person conducting a  
36 remediation to divide a contaminated site into one or more areas of  
37 concern. For each area of concern, a different remedial action may  
38 be selected provided the requirements of this subsection are met and  
39 the remedial action selected is consistent with the future use of the  
40 property; and

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

46 The burden to demonstrate that a remedial action is protective of  
47 public health, safety and the environment, as applicable, and has

1 been selected in conformance with the provisions of this subsection  
2 is with the person [proposing the remedial action] responsible for  
3 conducting the remediation.

4 The department may require the person [performing]  
5 responsible for conducting the remediation to supply the  
6 information required pursuant to this subsection as is necessary for  
7 the department to make a determination.

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

39 (2) The department shall develop recommendations for remedial  
40 actions in large areas of historic industrial contamination. These  
41 recommendations shall be designed to meet the health risk  
42 standards established in subsection d. of this section, and to be  
43 protective of the environment and shall take into account the  
44 industrial history of these sites, the extent of the contamination that  
45 may exist, the costs of remedial actions, the economic impacts of  
46 these policies, and the anticipated uses of these properties. The  
47 department shall issue a report to the Senate Environment

1 Committee and to the Assembly [Agriculture and Waste  
2 Management] Environment and Solid Waste Committee, or their  
3 successors, explaining these recommendations and making any  
4 recommendations for legislative or regulatory action.

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

11 i. The department may not require a remedial action workplan  
12 to be prepared or implemented or engineering or institutional  
13 controls to be imposed upon any real property unless sampling  
14 performed at that real property demonstrates the existence of  
15 contamination above the applicable remediation standards.

16 j. Upon the approval by the department or by a licensed site  
17 remediation professional of a remedial action workplan, or similar  
18 plan that describes the extent of contamination at a site and the  
19 remedial action to be implemented to address that contamination,  
20 the department may not subsequently require a change to that  
21 workplan or similar plan in order to compel a different remediation  
22 standard due to the fact that the established remediation standards  
23 have changed; however, the department may compel a different  
24 remediation standard if the difference between the new remediation  
25 standard and the remediation standard approved in the workplan or  
26 other plan differs by an order of magnitude. The limitation to the  
27 department's authority to change a workplan or similar plan  
28 pursuant to this subsection shall only apply if the workplan or  
29 similar plan is being implemented in a reasonable timeframe, as  
30 may be indicated in the approved remedial action workplan or  
31 similar plan.

32 k. Notwithstanding any other provisions of this section, all  
33 remediation standards and remedial actions that involve real  
34 property located in the Pinelands area shall be consistent with the  
35 provisions of the "Pinelands Protection Act," P.L.1979, c.111  
36 (C.13:18A-1 et seq.), any rules and regulations promulgated  
37 pursuant thereto, and with section 502 of the "National Parks and  
38 Recreation Act of 1978," 16 U.S.C. s.471i; and all remediation  
39 standards and remedial actions that involve real property located in  
40 the Highlands preservation area shall be consistent with the  
41 provisions of the "Highlands Water Protection and Planning Act,"  
42 P.L.2004, c.120 (C.13:20-1 et al.), and any rules and regulations  
43 and the Highland regional master plan adopted pursuant thereto.

44 l. Upon the adoption of a remediation standard for a particular  
45 contaminant in soil, groundwater, or surface water pursuant to this  
46 section, the department may amend that remediation standard only  
47 upon a finding that a new standard is necessary to maintain the

1 health risk standards established in subsection d. of section 35 of  
2 P.L.1993, c.139 (C.58:10B-12) or to protect the environment, as  
3 applicable. The department may not amend a public health based  
4 soil remediation standard to a level that would result in a health risk  
5 standard more protective than that provided for in subsection d. of  
6 section 35 of P.L.1993, c.139 (C.58:10B-12).

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

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

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

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

34  
35 48. Section 36 of P.L.1993, c.39 (C.58:10B-13) is amended to  
36 read as follows:

37 36. a. When real property is remediated to a nonresidential soil  
38 remediation standard or engineering or institutional controls are  
39 used in lieu of remediating a site to meet an established remediation  
40 standard for soil, groundwater, or surface water, the **[department]**  
41 person responsible for conducting the remediation shall, as a  
42 condition of the use of that standard or control measure:

43 (1) **[require the establishment of]** implement any engineering or  
44 institutional controls the department **[determines are reasonably  
45 necessary]** requires to prevent exposure to the contaminants,  
46 **[require]** provide maintenance, as necessary, of those controls, and

1 **[require]** provide for the restriction of the use of the property by  
2 the owner in a manner that prevents exposure;

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

19 (3) **[require a]** provide written notice to the governing body of  
20 each municipality in which the property is located that contaminants  
21 will exist at the property above residential use soil remediation  
22 standards or any other remediation standards and specifying the  
23 restrictions on the use of or access to all or part of that property and  
24 of the specific engineering or institutional controls at the property  
25 that exist and that shall be maintained;

26 (4) **[require, when determined necessary by the department,**  
27 **that]** post signs [be posted] , as required by the department, at any  
28 location at the site where access is restricted or in those areas that  
29 must be maintained in a prescribed manner, to inform persons on  
30 the property that there are restrictions on the use of that property or  
31 restrictions on access to any part of the site;

32 (5) **[require that]** maintain a list of the restrictions **[be kept]** on  
33 site for inspection by governmental enforcement officials; and

34 (6) **[require a person,]** prior to commencing a remedial action,  
35 **[to]** notify , in writing, the governing body of each municipality  
36 wherein the property being remediated is located. The notice shall  
37 include, but not be limited to, the commencement date for the  
38 remedial action; the name, mailing address and business telephone  
39 number of the person implementing the remedial action, or his  
40 designated representative; and a brief description of the remedial  
41 action.

42 b. If the owner of the real property does not consent to the  
43 recording of a notice pursuant to paragraph (2) of subsection a. of  
44 this section, the **[department]** person responsible for conducting the  
45 remediation shall **[require the use of a]** implement a remedial

1 action that meets the residential soil remediation standard in the  
2 remediation of that real property.

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

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

35 e. Notwithstanding the provisions of any other law, or any rule,  
36 regulation, or order adopted pursuant thereto to the contrary,  
37 whenever contamination at a property is remediated in compliance  
38 with [any] all applicable soil, [or any] groundwater or surface  
39 water remediation standards that were in effect or approved by the  
40 department at the completion of the remediation, no person, except  
41 as otherwise provided in this section, shall be liable for the cost of  
42 any additional remediation that may be required by a subsequent  
43 adoption by the department of a more stringent remediation  
44 standard for a particular contaminant. Upon the adoption of a  
45 regulation that amends a remediation standard, or where the  
46 adoption of a regulation would change a remediation standard  
47 which was otherwise approved by the department, only a person



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

23 Nothing in the provisions of this subsection shall be construed to  
24 affect the authority of the department, pursuant to subsection f. of  
25 this section, to require additional remediation on real property  
26 where engineering controls were implemented.

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

31 f. Whenever the department approves or has approved , or a  
32 licensed site remediation professional implements a remedial action  
33 that includes, the use of engineering controls for the remediation of  
34 soil, groundwater, or surface water, to protect public health, safety  
35 or the environment, the department may require additional  
36 remediation of that site only if the engineering controls no longer  
37 are protective of public health, safety, or the environment.

38 g. Whenever the department approves or has approved , or a  
39 licensed site remediation professional implements a remedial action  
40 that includes, the use of engineering or institutional controls for the  
41 remediation of soil, groundwater, or surface water, to protect public  
42 health, safety or the environment, the department shall inspect that  
43 site at least once every five years in order to ensure that the  
44 engineering and institutional controls are being properly maintained  
45 and that the controls remain protective of public health and safety  
46 and of the environment.

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

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

7  
8 49. Section 6 of P.L.1997, c.278 (C.58:10B-13.1) is amended to  
9 read as follows:

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

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

41 (1) a provision releasing the person who undertook the  
42 remediation from all civil liability to the State to perform any  
43 additional remediation, to pay compensation for damage to, or loss  
44 of, natural resources, for the restoration of natural resources in  
45 connection with the discharge on the property or for any cleanup  
46 and removal costs;

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

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

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

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

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

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

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

45 e. The covenant not to sue may be issued to any person who  
46 obtains a no further action letter as provided in subsection a. of this  
47 section. The covenant not to sue shall not provide relief from any

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

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

10 (2) The department may issue a covenant not to sue pursuant to  
11 this section when it issues a no further action letter for a  
12 remediation of a discharge from an unregulated heating oil tank.  
13 (cf: P.L.2005, c.4, s.3)

14

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

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

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

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

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

1 c. As used in this section:

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

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

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

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

30

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

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

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

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

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

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

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

28 f. Moneys in the fund may be appropriated to pay for the costs  
29 to administer the fund except that those appropriations may not  
30 exceed the amount of moneys deposited into the fund earned from  
31 the investment of moneys in the fund.  
32 (cf: P. L.1993, c.139, s.45)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16

17 53. 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% of the costs of the remediation of the  
24 subject real property pursuant to the provisions of this section upon  
25 the commencement of a business operation, or the completion of the  
26 construction of one or more new residences, within a redevelopment  
27 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 oversight document, with the Commissioner of  
45 Environmental Protection, after the developer entered into the  
46 redevelopment agreement, for the remediation of contamination  
47 located on the site of the redevelopment project pursuant to section



1 37 of P.L.1997, c.278 (C.58:10B-29) and the developer is in  
2 compliance with the memorandum of agreement, or (ii) complied  
3 with the requirements set forth in subsection b. of section 30 of  
4 P.L. , c. (C. ) (pending before the Legislature as this bill) ; and

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

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

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

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

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

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

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

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

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

4

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

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

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

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

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

43

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

1 any other person liable for the discharge pursuant to section 8 of  
2 P.L.1976, c.141 (C.58:10-23.11g) triple the amount of moneys  
3 expended for the remediation.

4 f. Moneys in the fund may be appropriated to pay for the costs  
5 to administer the fund except that those appropriations may not  
6 exceed the amount of moneys deposited into the fund earned from  
7 the investment of moneys in the fund.

8 g. The balance of the fund shall not exceed \$100,000,000.  
9 When the balance of the fund equals \$100,000,000, all surcharges  
10 collected pursuant to subsection k. of section 25 of P.L.1993, c.139  
11 (C.58:10B-3) and the remediation funding source surcharge  
12 imposed pursuant to 33 of P.L.1993, c.139 (C.58:10B-11) shall be  
13 deposited into the Hazardous Discharge Site Remediation Fund and  
14 shall be used for the purposes of that fund. When the balance of the  
15 Remediation Guarantee Fund is reduced to \$100,000, all surcharges  
16 shall be deposited in the Remediation Guarantee Fund.

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

18  
19 30. This act shall take effect immediately.

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21  
22 SPONSOR'S STATEMENT

23  
24 This bill would establish a licensed site professional program  
25 within the Department of Environmental Protection (DEP). No  
26 more than 90 days after the effective date, any submissions  
27 concerning the remediation of a contaminated site shall be signed  
28 and certified by a licensed site professional, or by a certified  
29 subsurface evaluator. The bill also authorizes the issuance of a  
30 temporary site remediation professional license that would be  
31 effective upon issuance and would remain effective for 180 days  
32 after the adoption of rules establishing permanent standards for the  
33 licensed site professional program. The bill establishes a code of  
34 professional conduct for licensed site professionals and subsurface  
35 evaluators and provisions for license suspension or revocation.  
36 Further, the bill provides for penalties for violations of the act.

37 The bill would also establish criteria for a ranking system for  
38 contaminated sites. The bill provides for varying levels of  
39 oversight depending on the ranking of the site. The bill allows the  
40 DEP to audit a licensed site professional at least once during the  
41 three year licensing period and provides for the audit of cases.

42 The bill would also make changes to the provisions of the  
43 "Brownfield and Contaminated Site Remediation Act" to change the  
44 oversight requirements for persons who clean up contaminated sites  
45 and the requirements for the establishment of a remediation funding  
46 source. The bill would impose a 1% annual surcharge on persons  
47 responsible for conducting a remediation and would require the  
48 payment of a surcharge of 5% of the total cost of the remedial

**A2962 MCKEON, CRYAN**

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1 action when a limited restricted use or a restricted use remedial  
2 action is implemented. The surcharges would be deposited in the  
3 Remediation Guarantee Fund and may be used by the department to  
4 conduct remediation when a person fails to do so. The moneys in  
5 the fund may also be awarded as grants by the department to an  
6 individual, homeowner association or government entity for  
7 additional remediation activities required due to changes in the  
8 remediation standards, or when an engineering control is no longer  
9 protective of the public health, safety and the environment. The bill  
10 would also make numerous other changes to the laws concerning  
11 the cleanup of contaminated sites.

ASSEMBLY ENVIRONMENT AND SOLID WASTE  
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 2962**

**STATE OF NEW JERSEY**

DATED: FEBRUARY 26, 2009

The Assembly Environment and Solid Waste Committee reports favorably an Assembly Committee Substitute for Assembly Bill No.2962.

The Assembly Committee Substitute for Assembly Bill No.2962 establishes a program for the licensing of site remediation professionals and makes changes to the laws concerning the remediation of contaminated sites.

The bill establishes a Site Remediation Professional Licensing Board that would oversee the licensing, continuing education, and professional conduct of site remediation professionals. The board would consist of 13 members: the Commissioner of Environmental Protection; the State Geologist; six licensed site remediation professionals; three members of Statewide environmental organizations, one of whom would be a licensed site remediation professional; one member of the business community; and one member of the academic community. The bill establishes standards for the education, training and experience to be required of a licensed site remediation professional and requires the board to develop license requirements and procedures, examinations and continuing education requirements. Until the board is established, the bill authorizes the Department of Environmental Protection (DEP) to issue temporary licenses. The bill establishes standards for the professional conduct for licensed site remediation professionals and provisions for license suspension or revocation. Further, the bill provides for penalties for violations.

The bill requires an owner or operator of an industrial establishment subject to the provisions of the "Industrial Site Recovery Act," the discharger of a hazardous substance or a person in any way responsible for a hazardous substance pursuant to the provisions of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), or the owner or operator of an underground storage tank regulated pursuant to the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), that has discharged a hazardous substance, to remediate the discharge of a hazardous substance.

Any person who initiates a remediation of a contaminated site at least 180 days after the date of enactment of the bill into law must hire a licensed site remediation professional to perform the remediation. For those sites where the remediation has been initiated prior to the date of enactment of the bill into law, the person responsible for conducting the remediation is not required to hire a licensed site remediation professional, except under limited circumstances. However, the bill provides that no later than three years after the date of enactment of the bill, all remediations, no matter when initiated, must be performed using a licensed site remediation professional.

The bill would require the department to establish mandatory remediation time frames, and expedited site specific timeframes when necessary. Under the bill, the licensed site remediation professional would be responsible for conducting the remediation without the prior approval of the department. The licensed site remediation professional is required under the bill to make decisions concerning the remediation of a contaminated site in order to meet health risk and environmental standards established pursuant to law, remediation standards adopted by the department, indoor air standards, as applicable, adopted by the Department of Health and Senior Services, and any other applicable standards adopted pursuant to law. The licensed site remediation professional must follow the technical standards for site remediation adopted by the DEP by rule and regulation, must follow mandatory remediation timeframes and expedited site specific timeframes adopted under this bill, must choose presumptive remedies established under this bill for sites to be used for residential purposes or for child care centers, public or private schools or charter schools, and must follow technical guidelines. Finally, the bill provides that when there is no specific requirement provided by the technical standards for site remediation adopted by the department, and guidelines issued by the department are not appropriate or necessary, in the professional judgment of the licensed site remediation professional, to meet the remediation requirements, the licensed site remediation professional may use relevant guidance from the federal Environmental Protection Agency or other states and other relevant, applicable, and appropriate methods and practices that ensure the protection of the public health and safety, and of the environment. The bill requires that when other guidance is used, the justification for such use must be set forth in the relevant submittal.

Upon the completion of the remediation, the licensed site remediation professional would issue a determination, called a response action outcome, that the site has been remediated in accordance with all applicable statutes, rules and regulations. The response action outcome would be issued to the person conducting the remediation and filed with the department.

The bill adds a new term - "final remediation document" - to existing law that would include both a response action outcome issued

pursuant to the provisions of the bill and a no further action letter as issued under current law. The bill would amend the liability provisions in the "Spill Compensation and Control Act" to provide the same liability protection to recipients of a response action outcome as is currently provided under the law to recipients of a no further action letter. In addition, recipients of a response action outcome would be deemed, by operation of law, to have received a covenant not to sue. The department will not issue a covenant not to sue after the issuance of licenses to site remediation professionals, except that the department may issue a covenant not to sue when it issues a no further action letter for a remediation of a discharge from an unregulated heating oil tank.

The bill would establish a permit program to regulate the operation, maintenance, and inspection of engineering and institutional controls and related systems installed as part of a remedial action at a contaminated site.

The bill would require the department to inspect all documents submitted by a licensed site remediation professional concerning a remediation. The department may provide for additional review of a document if the professional did not comply with professional standards, there are deficiencies, errors or omissions that result in the inability to determine if the remediation will be protective of public health, safety and the environment, or if the remediation is not protective of public health, safety or the environment. Further, the bill provides for mandatory DEP review of a submission based upon certain criteria, or for a discretionary review. At a minimum, the department is required to perform additional review of at least 10 percent of the documents submitted annually. The bill requires the board to audit the conduct and submissions of at least 10 percent of all licensed site remediation professionals annually. Finally, the bill authorizes the department to invalidate a response action outcome under certain circumstances.

The bill requires the department to undertake direct oversight of a remediation when: the person responsible for conducting the remediation has a history of noncompliance with the laws concerning remediation that includes at least two enforcement actions after the date of enactment of the bill into law during any five year period concerning a remediation; the person has failed to meet a mandatory remediation timeframe or an expedited site specific timeframe; or the person, prior to the date of enactment of the bill into law, has failed to complete the remedial investigation of the entire contaminated site 10 years after the discovery of a discharge at the site and has failed to complete the remedial investigation of the entire contaminated site within five years after the date of enactment of the bill into law. The bill would authorize the department to undertake direct oversight of a remediation when: the contamination at the site includes chromate chemical production waste; the department determines that more than

one environmentally sensitive natural resource has been damaged by contamination from the site; the site has contributed to sediments contaminated by polychlorinated biphenyl, mercury, arsenic, or dioxin in a surface water body; or the site is ranked by the department in the category requiring the highest priority pursuant to the ranking system developed by the department. For any site subject to direct oversight by the department, the bill would require that: the department review each document submitted by a licensed site remediation professional and approve or deny the submission; a feasibility study be performed and submitted to the department for approval; the department select the remedial action for the site; the person responsible for conducting the remediation establish a remediation trust fund in the amount of the estimated cost of the remediation; all disbursements of funds from the remediation trust fund receive prior approval by the department; all submissions prepared by the licensed site remediation professional concerning the remediation be provided simultaneously to the department and the person responsible for conducting the remediation; and the person responsible for conducting the remediation implement a public participation plan approved by the department to solicit public comment from members of the surrounding community concerning the remediation of the site.

The bill also makes changes to the “Brownfield and Contaminated Site Remediation Act” and makes numerous other changes to the laws concerning the cleanup of contaminated sites to reflect the establishment of the licensed site remediation professional program. In addition, the bill makes changes to the Hazardous Discharge Site Remediation Fund and the Remediation Guarantee Fund.

The bill also amends current law regarding the selection and implementation of a remedial action. For any remediation initiated one year after the date of enactment of the bill into law, the department would require the use of an unrestricted use remedial action, a presumptive remedy or an alternative remedy as provided in the bill, at a site or area of concern where new construction is proposed for residential purposes, for use as a licensed child care center, or as a public school, private school or charter school, or where there will be a change in the use of the site to residential, child care, or public school, private school, or charter school purposes or another purpose that involves use by a sensitive population. For any remediation initiated on or after the date of enactment of the bill into law, the department may require the use of an unrestricted use remedial action or a presumptive remedy as provided in guidelines adopted by the department, for a site or area of concern that is to be used for residential, child care, or public school, private school, or charter school purposes or another purpose that involves use by a sensitive population. The bill also requires the department, by rule or regulation, to establish presumptive remedies to be required on any site or area of concern to be used for residential purposes, as a child



care center, or for use as a public school, private school, or charter school. In addition, the bill provides that the department may disapprove the selection of a remedial action for a site on which the proposed remedial action will render the property unusable for future redevelopment or for recreational use, and the department may also require the treatment or removal of contaminated material that would pose an acute health or safety hazard in the event of failure of an engineering control. Further, under the bill, the construction of single family residences, public schools, private schools, charter schools, or child care centers would be prohibited on a landfill that undergoes a remediation if engineering controls are required for the management of landfill gas or leachate.

The bill would amend the statute of limitations for the recovery by the State of natural resource damages to provide that no cause of action shall be deemed to have accrued until the completion of the remedial action for the entire contaminated site or the entire sanitary landfill. Under current law, a cause of action accrues upon the completion of the remedial investigation for the contaminated site or the sanitary landfill. The bill provides, however, that this change would not extend a limitations period that has expired prior to the date of enactment of the bill into law.

As reported by the committee, this committee substitute is identical to the committee substitute reported by the Senate Environment Committee for Senate Bill No. 1897.

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY COMMITTEE SUBSTITUTE FOR**  
**ASSEMBLY, No. 2962**  
**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

DATED: MARCH 30, 2009

**SUMMARY**

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

**Type of Impact:** No impact. Program fees should offset operating costs.

**Agencies Affected:** Department of Environmental Protection

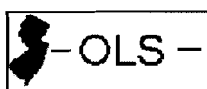
**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	Indeterminate - See comments below.		

- The committee substitute establishes a program to license site remediation professionals and makes changes to the laws concerning the remediation of contaminated sites.
- It establishes a Site Remediation Professional Licensing Board that would oversee the licensing, continuing education, and professional conduct of site remediation professionals.
- The Department of Environmental Protection (DEP) is directed to establish a permit program to regulate the operation, maintenance, and inspection of engineering and institutional controls and related systems installed as part of a remedial action at a contaminated site.
- The Office of Legislative Services (OLS) cannot estimate fiscal impacts at this time due to time constraints and insufficient data, but contends that any operational costs incurred would likely be supported by license and permit fees established under the committee substitute.

**BILL DESCRIPTION**

Assembly Committee Substitute for Assembly Bill No. 2962 of 2008 would establish a program for the licensing of site remediation professionals and would make changes to the laws concerning the remediation of contaminated sites. Licensing fees would be established to cover any operating costs incurred in managing this program.



The committee substitute establishes a Site Remediation Professional Licensing Board that would oversee the licensing, continuing education, and professional conduct of site remediation professionals. It establishes standards for the education, training and experience to be required of a licensed site remediation professional and requires the board to develop license requirements and procedures, examinations and continuing education requirements. Until the board is established, the committee substitute authorizes the DEP to issue temporary licenses. It also establishes standards for the professional conduct of licensed site remediation professionals, as well as provisions for license suspension or revocation and penalties.

The committee substitute requires that any person who initiates a remediation of a contaminated site at least 180 days after the date of enactment must hire a licensed site remediation professional to perform the remediation. The licensed site remediation professional would be responsible for conducting the remediation without the prior approval of the department.

Upon the completion of the remediation, the licensed site remediation professional would issue a determination, called a response action outcome, that the site has been remediated in accordance with all applicable statutes, rules and regulations. The response action outcome would be issued to the person conducting the remediation and filed with the department.

The committee substitute would establish a permit program to regulate the operation, maintenance, and inspection of engineering and institutional controls and related systems installed as part of a remedial action at a contaminated site. Permit fees would be established to cover operating costs the DEP may incur in managing this program. The DEP would also be required to inspect all documents submitted by a licensed site remediation professional concerning a remediation. Further, the committee substitute provides for mandatory DEP review of a submission based upon certain criteria, or for a discretionary review. Last, it requires the board to audit the conduct and submissions of at least 10 percent of all licensed site remediation professionals annually.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS cannot estimate the immediate fiscal impact the committee substitute may have on State funds or the DEP budget due to time constraints and insufficient data upon which to base any sound projections. However, it appears that any additional operating costs incurred by the board or the DEP could be met by establishing an appropriate licensing and permit fee schedule, as authorized under the committee substitute. In addition, the DEP did not indicate at the legislative committee hearings on the committee substitute that it would require more staff to carry out the provisions of the committee substitute.

With respect to DEP staff oversight of licensed site remediation professionals, the committee substitute is designed to augment or enhance the effectiveness of DEP staff by allowing the licensed professionals to undertake some of the more time-consuming or “boilerplate” functions that DEP staff now perform. In other words, the work performed by licensed site remediation professionals on project applications, documentation and implementation may serve to facilitate

and expedite DEP review and approval procedures. If the proposed system works effectively, existing DEP site remediation staff should also be able to work more efficiently on a greater number of projects, thereby reducing the backlog of site remediation projects that now exists.

*Section: Environment, Agriculture, Energy and Natural Resources*

*Analyst: Richard M. Handelman  
Senior Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-1 et seq.).

1 any other person liable for the discharge pursuant to section 8 of  
2 P.L.1976, c.141 (C.58:10-23.11g) triple the amount of moneys  
3 expended for the remediation.

4 f. Moneys in the fund may be appropriated to pay for the costs  
5 to administer the fund except that those appropriations may not  
6 exceed the amount of moneys deposited into the fund earned from  
7 the investment of moneys in the fund.

8 g. The balance of the fund shall not exceed \$100,000,000.  
9 When the balance of the fund equals \$100,000,000, all surcharges  
10 collected pursuant to subsection k. of section 25 of P.L.1993, c.139  
11 (C.58:10B-3) and the remediation funding source surcharge  
12 imposed pursuant to 33 of P.L.1993, c.139 (C.58:10B-11) shall be  
13 deposited into the Hazardous Discharge Site Remediation Fund and  
14 shall be used for the purposes of that fund. When the balance of the  
15 Remediation Guarantee Fund is reduced to \$100,000, all surcharges  
16 shall be deposited in the Remediation Guarantee Fund.

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

18  
19 30. This act shall take effect immediately.

20  
21  
22 SPONSOR'S STATEMENT

23  
24 This bill would establish a licensed site professional program  
25 within the Department of Environmental Protection (DEP). No  
26 more than 90 days after the effective date, any submissions  
27 concerning the remediation of a contaminated site shall be signed  
28 and certified by a licensed site professional, or by a certified  
29 subsurface evaluator. The bill also authorizes the issuance of a  
30 temporary site remediation professional license that would be  
31 effective upon issuance and would remain effective for 180 days  
32 after the adoption of rules establishing permanent standards for the  
33 licensed site professional program. The bill establishes a code of  
34 professional conduct for licensed site professionals and subsurface  
35 evaluators and provisions for license suspension or revocation.  
36 Further, the bill provides for penalties for violations of the act.

37 The bill would also establish criteria for a ranking system for  
38 contaminated sites. The bill provides for varying levels of  
39 oversight depending on the ranking of the site. The bill allows the  
40 DEP to audit a licensed site professional at least once during the  
41 three year licensing period and provides for the audit of cases.

42 The bill would also make changes to the provisions of the  
43 "Brownfield and Contaminated Site Remediation Act" to change the  
44 oversight requirements for persons who clean up contaminated sites  
45 and the requirements for the establishment of a remediation funding  
46 source. The bill would impose a 1% annual surcharge on persons  
47 responsible for conducting a remediation and would require the  
48 payment of a surcharge of 5% of the total cost of the remedial

**S1897 B. SMITH**

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1 action when a limited restricted use or a restricted use remedial  
2 action is implemented. The surcharges would be deposited in the  
3 Remediation Guarantee Fund and may be used by the department to  
4 conduct remediation when a person fails to do so. The moneys in  
5 the fund may also be awarded as grants by the department to an  
6 individual, homeowner association or government entity for  
7 additional remediation activities required due to changes in the  
8 remediation standards, or when an engineering control is no longer  
9 protective of the public health, safety and the environment. The bill  
10 would also make numerous other changes to the laws concerning  
11 the cleanup of contaminated sites.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

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

**STATE OF NEW JERSEY**

DATED: FEBRUARY 26, 2009

The Senate Environment Committee reports favorably a Senate Committee Substitute for Senate Bill No. 1897.

This bill would establish a program for the licensing of site remediation professionals and would make changes to the laws concerning the remediation of contaminated sites.

The bill establishes a Site Remediation Professional Licensing Board that would oversee the licensing, continuing education, and professional conduct of site remediation professionals. The board would consist of 13 members: the Commissioner of Environmental Protection; the State Geologist; six licensed site remediation professionals; three members of Statewide environmental organizations, one of whom would be a licensed site remediation professional; one member of the business community; and one member of the academic community. The bill establishes standards for the education, training and experience to be required of a licensed site remediation professional and requires the board to develop license requirements and procedures, examinations and continuing education requirements. Until the board is established, the bill authorizes the Department of Environmental Protection (DEP) to issue temporary licenses. The bill establishes standards for the professional conduct for licensed site remediation professionals and provisions for license suspension or revocation. Further, the bill provides for penalties for violations.

The bill requires an owner or operator of an industrial establishment subject to the provisions of the "Industrial Site Recovery Act," the discharger of a hazardous substance or a person in any way responsible for a hazardous substance pursuant to the provisions of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), or the owner or operator of an underground storage tank regulated pursuant to the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), that has discharged a hazardous substance, to remediate the discharge of a hazardous substance.

Any person who initiates a remediation of a contaminated site at least 180 days after the date of enactment of the bill into law must hire a licensed site remediation professional to perform the remediation.

For those sites where the remediation has been initiated prior to the date of enactment of the bill into law, the person responsible for conducting the remediation is not required to hire a licensed site remediation professional, except under limited circumstances. However, the bill provides that no later than three years after the date of enactment of the bill, all remediations, no matter when initiated, must be performed using a licensed site remediation professional.

The bill would require the department to establish mandatory remediation time frames, and expedited site specific timeframes when necessary. Under the bill, the licensed site remediation professional would be responsible for conducting the remediation without the prior approval of the department. The licensed site remediation professional is required under the bill to make decisions concerning the remediation of a contaminated site in order to meet health risk and environmental standards established pursuant to law, remediation standards adopted by the department, indoor air standards, as applicable, adopted by the Department of Health and Senior Services, and any other applicable standards adopted pursuant to law. The licensed site remediation professional must follow the technical standards for site remediation adopted by the DEP by rule and regulation, must follow mandatory remediation timeframes and expedited site specific timeframes adopted under this bill, must choose presumptive remedies established under this bill for sites to be used for residential purposes or for child care centers, public or private schools or charter schools, and must follow technical guidelines. Finally, the bill provides that when there is no specific requirement provided by the technical standards for site remediation adopted by the department, and guidelines issued by the department are not appropriate or necessary, in the professional judgment of the licensed site remediation professional, to meet the remediation requirements, the licensed site remediation professional may use relevant guidance from the federal Environmental Protection Agency or other states and other relevant, applicable, and appropriate methods and practices that ensure the protection of the public health and safety, and of the environment. The bill requires that when other guidance is used, the justification for such use must be set forth in the relevant submittal.

Upon the completion of the remediation, the licensed site remediation professional would issue a determination, called a response action outcome, that the site has been remediated in accordance with all applicable statutes, rules and regulations. The response action outcome would be issued to the person conducting the remediation and filed with the department.

The bill adds a new term - "final remediation document" - to existing law that would include both a response action outcome issued pursuant to the provisions of the bill and a no further action letter as issued under current law. The bill would amend the liability provisions in the "Spill Compensation and Control Act" to provide the



same liability protection to recipients of a response action outcome as is currently provided under the law to recipients of a no further action letter. In addition, recipients of a response action outcome would be deemed, by operation of law, to have received a covenant not to sue. The department will not issue a covenant not to sue after the issuance of licenses to site remediation professionals, except that the department may issue a covenant not to sue when it issues a no further action letter for a remediation of a discharge from an unregulated heating oil tank.

The bill would establish a permit program to regulate the operation, maintenance, and inspection of engineering and institutional controls and related systems installed as part of a remedial action at a contaminated site.

The bill would require the department to inspect all documents submitted by a licensed site remediation professional concerning a remediation. The department may provide for additional review of a document if the professional did not comply with professional standards, there are deficiencies, errors or omissions that result in the inability to determine if the remediation will be protective of public health, safety and the environment, or if the remediation is not protective of public health, safety or the environment. Further, the bill provides for mandatory DEP review of a submission based upon certain criteria, or for a discretionary review. At a minimum, the department is required to perform additional review of at least 10 percent of the documents submitted annually. The bill requires the board to audit the conduct and submissions of at least 10 percent of all licensed site remediation professionals annually. Finally, the bill authorizes the department to invalidate a response action outcome under certain circumstances.

The bill requires the department to undertake direct oversight of a remediation when: the person responsible for conducting the remediation has a history of noncompliance with the laws concerning remediation that includes at least two enforcement actions after the date of enactment of the bill into law during any five year period concerning a remediation; the person has failed to meet a mandatory remediation timeframe or an expedited site specific timeframe; or the person, prior to the date of enactment of the bill into law, has failed to complete the remedial investigation of the entire contaminated site 10 years after the discovery of a discharge at the site and has failed to complete the remedial investigation of the entire contaminated site within five years after the date of enactment of the bill into law. The bill would authorize the department to undertake direct oversight of a remediation when: the contamination at the site includes chromate chemical production waste; the department determines that more than one environmentally sensitive natural resource has been damaged by contamination from the site; the site has contributed to sediments contaminated by polychlorinated biphenyl, mercury, arsenic, or dioxin

in a surface water body; or the site is ranked by the department in the category requiring the highest priority pursuant to the ranking system developed by the department. For any site subject to direct oversight by the department, the bill would require that: the department review each document submitted by a licensed site remediation professional and approve or deny the submission; a feasibility study be performed and submitted to the department for approval; the department select the remedial action for the site; the person responsible for conducting the remediation establish a remediation trust fund in the amount of the estimated cost of the remediation; all disbursements of funds from the remediation trust fund receive prior approval by the department; all submissions prepared by the licensed site remediation professional concerning the remediation be provided simultaneously to the department and the person responsible for conducting the remediation; and the person responsible for conducting the remediation implement a public participation plan approved by the department to solicit public comment from members of the surrounding community concerning the remediation of the site.

The bill also makes changes to the “Brownfield and Contaminated Site Remediation Act” and makes numerous other changes to the laws concerning the cleanup of contaminated sites to reflect the establishment of the licensed site remediation professional program. In addition, the bill makes changes to the Hazardous Discharge Site Remediation Fund and the Remediation Guarantee Fund.

The bill also amends current law regarding the selection and implementation of a remedial action. For any remediation initiated one year after the date of enactment of the bill into law, the department would require the use of an unrestricted use remedial action, a presumptive remedy or an alternative remedy as provided in the bill, at a site or area of concern where new construction is proposed for residential purposes, for use as a licensed child care center, or as a public school, private school or charter school, or where there will be a change in the use of the site to residential, child care, or public school, private school, or charter school purposes or another purpose that involves use by a sensitive population. For any remediation initiated on or after the date of enactment of the bill into law, the department may require the use of an unrestricted use remedial action or a presumptive remedy as provided in guidelines adopted by the department, for a site or area of concern that is to be used for residential, child care, or public school, private school, or charter school purposes or another purpose that involves use by a sensitive population. The bill also requires the department, by rule or regulation, to establish presumptive remedies to be required on any site or area of concern to be used for residential purposes, as a child care center, or for use as a public school, private school, or charter school. In addition, the bill provides that the department may disapprove the selection of a remedial action for a site on which the

proposed remedial action will render the property unusable for future redevelopment or for recreational use, and the department may also require the treatment or removal of contaminated material that would pose an acute health or safety hazard in the event of failure of an engineering control. Further, under the bill, the construction of single family residences, public schools, private schools, charter schools, or child care centers would be prohibited on a landfill that undergoes a remediation if engineering controls are required for the management of landfill gas or leachate.

The bill would amend the statute of limitations for the recovery by the State of natural resource damages to provide that no cause of action shall be deemed to have accrued until the completion of the remedial action for the entire contaminated site or the entire sanitary landfill. Under current law, a cause of action accrues upon the completion of the remedial investigation for the contaminated site or the sanitary landfill. The bill provides, however, that this change would not extend a limitations period that has expired prior to the date of enactment of the bill into law.

As reported by the committee, this committee substitute is identical to the committee substitute reported by the Assembly Environment and Solid Waste Committee for Assembly Bill No. 2962.

**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE COMMITTEE SUBSTITUTE FOR**  
**SENATE, No. 1897**  
**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

DATED: MARCH 30, 2009

**SUMMARY**

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

**Type of Impact:** No impact. Program fees should offset operating costs.

**Agencies Affected:** Department of Environmental Protection

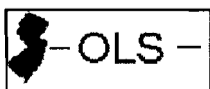
**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	Indeterminate - See comments below		

- The committee substitute establishes a program to license site remediation professionals and makes changes to the laws concerning the remediation of contaminated sites.
- It establishes a Site Remediation Professional Licensing Board that would oversee the licensing, continuing education, and professional conduct of site remediation professionals.
- The Department of Environmental Protection (DEP) is directed to establish a permit program to regulate the operation, maintenance, and inspection of engineering and institutional controls and related systems installed as part of a remedial action at a contaminated site.
- The Office of Legislative Services (OLS) cannot estimate fiscal impacts at this time due to time constraints and insufficient data, but contends that any operational costs incurred would likely be supported by license and permit fees established under the committee substitute.

**BILL DESCRIPTION**

Senate Committee Substitute for Senate Bill No. 1897 of 2008 would establish a program for the licensing of site remediation professionals and would make changes to the laws concerning the remediation of contaminated sites. Licensing fees would be established to cover any operating costs incurred in managing this program.



The committee substitute establishes a Site Remediation Professional Licensing Board that would oversee the licensing, continuing education, and professional conduct of site remediation professionals. It establishes standards for the education, training and experience to be required of a licensed site remediation professional and requires the board to develop license requirements and procedures, examinations and continuing education requirements. Until the board is established, the committee substitute authorizes the DEP to issue temporary licenses. It also establishes standards for the professional conduct of licensed site remediation professionals, as well as provisions for license suspension or revocation and penalties.

The committee substitute requires that any person who initiates a remediation of a contaminated site at least 180 days after the date of enactment must hire a licensed site remediation professional to perform the remediation. The licensed site remediation professional would be responsible for conducting the remediation without the prior approval of the department.

Upon the completion of the remediation, the licensed site remediation professional would issue a determination, called a response action outcome, that the site has been remediated in accordance with all applicable statutes, rules and regulations. The response action outcome would be issued to the person conducting the remediation and filed with the department.

The committee substitute would establish a permit program to regulate the operation, maintenance, and inspection of engineering and institutional controls and related systems installed as part of a remedial action at a contaminated site. Permit fees would be established to cover operating costs the DEP may incur in managing this program. The DEP would also be required to inspect all documents submitted by a licensed site remediation professional concerning a remediation. Further, the committee substitute provides for mandatory DEP review of a submission based upon certain criteria, or for a discretionary review. Last, it requires the board to audit the conduct and submissions of at least 10 percent of all licensed site remediation professionals annually.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS cannot estimate the immediate fiscal impact the committee substitute may have on State funds or the DEP budget due to time constraints and insufficient data upon which to base any sound projections. However, it appears that any additional operating costs incurred by the board or the DEP could be met by establishing an appropriate licensing and permit fee schedule, as authorized under the committee substitute. In addition, the DEP did not indicate at the legislative committee hearings on the committee substitute that it would require more staff to carry out the provisions of the committee substitute.

With respect to DEP staff oversight of licensed site remediation professionals, the committee substitute is designed to augment or enhance the effectiveness of DEP staff by allowing the licensed professionals to undertake some of the more time-consuming or “boilerplate” functions that DEP staff now perform. In other words, the work performed by licensed site remediation professionals on project applications, documentation and implementation may serve to facilitate and expedite DEP review and approval procedures. If the proposed system works effectively,

SCS for S1897

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existing DEP site remediation staff should also be able to work more efficiently on a greater number of projects, thereby reducing the backlog of site remediation projects that now exists.

*Section: Environment, Agriculture, Energy and Natural Resources*

*Analyst: Richard M. Handelman  
Senior Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C. 52:13B-1 et seq.).



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JON S. CORZINE  
Governor

**For Immediate Release:**  
Date: May 7, 2009

**For More Information:**  
Robert Corrales

**Phone:** 609-777-2600

## Governor Corzine Signs Bill Reforming Cleanup of Polluted Sites

### Issues Executive Order Establishing Comprehensive Oversight and Transparency

**TRENTON** – Governor Jon S. Corzine today signed legislation to reform the clean-up of contaminated sites. The Governor also issued an Executive Order to provide strong oversight, accountability and transparency to the new law.

"The actions I've taken today reaffirm that we are protecting the environment and the health and safety of New Jerseyans," Governor Corzine said. "At the same time, this new law, along with the Executive Order, will cut through the bureaucracy to streamline the clean-up process and allow more than 19,000 contaminated sites to be evaluated more quickly. To be clear, we are cutting the red tape and keeping a watchful eye over those who would choose profit over public safety."

The Executive Order establishes additional oversight and transparency on projects of significance, such as sites that may be redeveloped for housing, schools, playgrounds, child care centers as well as sites where groundwater has been impacted by pollutants above remediation standards. The Executive Order also calls for every report submitted by licensed site remediation professionals to be posted online once such an internet site is established.

"New Jersey has the dubious distinction of having more than 20,000 contaminated sites, including Superfund sites, with the lack of cleanup largely due to the state's backlog of remediation projects," said Assemblyman John McKeon (D-Essex). "This new law ensures site remediation professionals are properly licensed and that they receive proper oversight to ensure the quick and proper clean-up of toxic sites."

"This new law also will boost the state's economy by transforming barren properties into productive sites that will generate new tax revenue and business in communities across the state," said Assemblyman Joseph Cryan (D-Union).

"We are better safeguarding New Jersey families by making clean-up guidelines more stringent for sites where a school, child care facility or residential housing will be developed," said Assemblyman Peter Barnes (D-Middlesex).

"Licensed professionals will take over many of the more time-consuming functions that have bogged down the DEP, helping to expedite the review and approval process for contaminated sites across the state," said Assemblyman Albert Coutinho (D-Essex). "This law will help the state's site remediation program operate more efficiently."

"This board will ensure site remediation professionals are qualified to perform the highest level of clean-up at blighted sites across the state," said Assemblywoman Nellie Pou (D-Passaic). "We must have better oversight of the clean-up of toxic sites which have long-term and critical impacts for our families, neighborhoods and communities across New Jersey."

"This new law represents a huge step forward in revitalizing and remediating contaminated sites and transforming them into viable real estate," said Senator Smith, (D-Middlesex and Somerset). "For so long, polluted sites have been allowed to linger because the State simply didn't have the resources in the DEP to cut down on the backlog. Through this law, environmental consultants would be deputized by the DEP to handle non-sensitive site clean-up approval, and we can finally begin to reclaim some of these sites for the people of the Garden State."

The full text of the executive order is below:

EXECUTIVE ORDER NO. 140

WHEREAS, the State of New Jersey has been endowed by nature with extraordinary and diverse ecosystems; ranging from the Highlands to the Shore; from the Delaware and New York Bays to the Hudson, Delaware, Passaic, and Raritan rivers; from the dunes and grasslands on the Atlantic to the Pinelands; from flatlands and marshes to forests and mountains; from rich soils to pristine ponds, lakes, and aquifers; and

WHEREAS, partially as a result of this diversity, the State is the most densely populated in the Nation, with its population able to enjoy natural settings of enormous beauty and ecosystems of great variety; and

WHEREAS, since colonial times, the richness of the State's natural heritage has allowed the State to flourish and created abundant opportunities for agriculture, trade, and commerce, and the growth of business has attracted more residents and reinforced the development of business within the State, which in turn attracted more residents, and this dynamic, with the Nation's technological development, eventually brought heavy industry as well as large numbers of manufacturing, chemical, and refining enterprises to the State; and

WHEREAS, for decades, these industries have contributed to the State's growth and prosperity, providing jobs and enriching living standards for all, yet many of these same enterprises have released pollution into the State's air, soil, surface and ground water, and these by-products of industrial production have damaged numerous natural resources, threatened human health and safety, and degraded our environment; and

WHEREAS, our economic prosperity and, as science has shown, our existence as a species depend on responsible stewardship of our environment and protecting our varied ecosystems from pollution and other harmful by-products of industrial production; and

WHEREAS, for more than three decades, the State has made extraordinary efforts to reduce or eliminate the health and safety impact of pollution on humans, especially children and other sensitive populations, and halt the impact of pollution on the State's ecosystems, its natural resources, its soils, and waters, particularly through its Site Remediation Program that oversees the clean-up of sites where a hazardous substance has been discharged; and

WHEREAS, there are more than 19,000 sites in the Site Remediation Program with more being added daily, and given resource limitations, the Program has had difficulty in evaluating the sites, moving them quickly through the clean-up process, and verifying that the work was done appropriately; and

WHEREAS, almost three years ago, the New Jersey Department of Environmental Protection (DEP) began to work with all interested entities, from members of the State Legislature to environmental advocacy groups to consultants and persons responsible for conducting site clean-ups to include more sites in the clean-up program, improve the speed of site clean-ups, reduce the chance that any site-based pollution would damage human health, compromise safety of workers or eventual residents, threaten natural resources, including bodies of water, drinking water, and aquifers; and the environment; and

WHEREAS, participants in those same meetings also resolved to expand DEP's legal authority to address site-based pollution; and

WHEREAS, as the culmination of that inclusive process, both houses of the Legislature passed the Assembly Committee Substitute for Assembly Bill No. 2962, a lengthy and complex bill, which establishes a licensing program for site remediation professionals and makes various other changes to the statutes governing the remediation of polluted sites (the Legislation); and

WHEREAS, the Legislation moves the DEP from direct supervision of the clean-up of polluted sites to a compliance and enforcement and monitoring role of independent professionals conducting such work; and

WHEREAS, among its other provisions, the Legislation establishes the Site Remediation Professional Licensing Board (the Board), requires the DEP to inspect all documents and information submitted by an LSRP, authorizes the DEP to review the performance of a clean-up under a broad range of circumstances, and mandates that the DEP shall undertake direct oversight of a contaminated site under certain conditions and authorizes, but does not require the DEP to undertake that direct oversight under other conditions; and

WHEREAS, the DEP will promulgate rules to implement the Legislation, and given the complexity and range of issues, it would be helpful for those affected by the Legislation to have a sense of the direction of how the DEP and the Office of the Governor will work together to implement it;

NOW, THEREFORE, I, JON S. CORZINE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. At sites where groundwater has been impacted by pollutants above remediation standards, or where the site may be used as residential housing, or for educational purposes, including use as a child care or day care center, a public, private, or charter school, or a playground or ball field, the DEP shall increase its auditing, monitoring, and review of conditions at the site, including the performance of on-site inspections, and its inspection of the LSRP's submissions to ensure that public health, safety, and the environment are protected as the Site Remediation Program transitions to a compliance and enforcement role.
2. Within 60 days of this Order, the DEP shall develop guidelines governing the circumstances in which it is authorized to undertake direct oversight of a remediation of a contaminated site, as set forth in section 27.b of the Legislation.
3. During the 24 months immediately following the effective date of the Legislation, the DEP's review of 10% of all documents submitted by LSRPs shall include at least one review of case documents submitted by every LSRP.
4. The DEP shall prepare annual reports on the implementation of the Legislation to the Governor, the Senate Environment Committee, and the Assembly Environment and Solid Waste Committee. The first report shall be due on or before December 31, 2010, and the remaining reports shall



- be due on or before December 31 of each following year.
5. The DEP shall issue technical assistance grants to a minimum of five local community environmental groups per year during the temporary phase of the LSRP program to evaluate remediation methods or interpret the work of temporary LSRPs.
  6. To further the transparency of the operations of the Site Remediation Program, as soon as an internet site with document posting capability is established, the DEP shall post on such site every document submitted by an LSRP in connection with a contaminated site as well as all audit findings within 60 days of their being finalized.
  7. The DEP shall work with the Governor's Appointments Office to locate persons of the highest professional caliber to serve as members of the Board. In addition to the qualifications set forth in the Legislation, the Appointments Office shall make every reasonable effort to ensure that one appointee to the Board shall have expertise in public health, and another appointee shall be a hydrologist, provided that nothing in this Order alters the number or functioning of Board. The Appointments Office shall not submit initial nominations to the Senate until each of the eleven nominees have been named; subsequent nominations shall not be subject to this process. As soon as the Board can begin work, it shall promulgate rules insulating an LSRP's professional judgment from economic pressures to the maximum extent practicable.
  8. The DEP shall take steps to ensure that the appropriate provisions of this Executive Order are proposed as rules.
  9. This Order shall take effect immediately.

###

Photos from Governor Corzine's public events are available in the Governor's Newsroom section on the State of New Jersey web page, <http://www.nj.gov/governor/news/>

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Office of the Governor  
PO box 001  
Trenton, NJ 08626  
609-292-6000

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WHEREAS, partially as a result of this diversity, the State is the most densely populated in the Nation, with its population able to enjoy natural settings of enormous beauty and ecosystems of great variety; and

WHEREAS, since colonial times, the richness of the State's natural heritage has allowed the State to flourish and created abundant opportunities for agriculture, trade, and commerce, and the growth of business has attracted more residents and reinforced the development of business within the State, which in turn attracted more residents, and this dynamic, with the Nation's technological development, eventually brought heavy industry as well as large numbers of manufacturing, chemical, and refining enterprises to the State; and

WHEREAS, for decades, these industries have contributed to the State's growth and prosperity, providing jobs and enriching living standards for all, yet many of these same enterprises have released pollution into the State's air, soil, surface and ground water, and these by-products of industrial production have damaged numerous natural resources, threatened human health and safety, and degraded our environment; and

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8. The DEP shall take steps to ensure that the appropriate provisions of this Executive Order are proposed as rules.

9. This Order shall take effect immediately.

GIVEN, under my hand and seal this  
7th day of May,  
Two Thousand and Nine, and of  
the Independence of the  
United States, the Two  
Hundred and Thirty-Third.

/s/ Jon S. Corzine

Governor

[seal]

Attest:

/s/ William J. Castner, Jr.

Chief Counsel to the Governor