

CHAPTER 60

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

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

C.58:10C-1 Short title.

1. Sections 1 through 29 of P.L.2009, c.60 (C.58:10C-1 et seq.) shall be known and may be cited as the "Site Remediation Reform Act."

C.58:10C-2 Definitions relative to site remediation.

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

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

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

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

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

"Department" means the Department of Environmental Protection.

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

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

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

seq.); P.L.1986, c.102 (C.58:10A-21 et seq.); the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.); the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et al.).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C.58:10C-3 Site Remediation Professional Licensing Board.

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

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

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

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

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

(a) six shall be site remediation professionals who hold a license from the board. Of the six members first appointed pursuant to this subparagraph, two shall be appointed to a term of one year, two shall be appointed to a term of two years, one shall be appointed to a term of

three years, and one shall be appointed to a term of four years. Thereafter, all appointments shall be for a term of four years. The members first appointed to the board pursuant to this subparagraph shall hold a temporary site remediation professional license issued by the department pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12);

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

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

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

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

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

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

e. The department shall provide such staff and other persons as are required to assist the board in the performance of its functions and duties pursuant to P.L.2009, c.60 (C.58:10C-1 et al.), including administrative law judges who may conduct adjudicatory proceedings. The board shall make all final decisions in such adjudicatory proceedings.

C.58:10C-4 Powers of board vested in members.

4. The powers of the board shall be vested in the members thereof in office. A majority of the total authorized membership of the board shall constitute a quorum and no action may be taken by the board except upon the affirmative vote of a majority of the total authorized membership of the board.

C.58:10C-5 Powers, duties of board.

5. The board shall have the following powers and duties:

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

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

c. To issue licenses and license renewals to all qualifying site remediation professionals;

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

e. To approve or offer continuing education courses;

- f. To track fulfillment of continuing education requirements by licensed site remediation professionals;
- g. To establish and collect fees for examinations, licenses, renewals, or any other services required for the licensing of site remediation professionals;
- h. To adopt and administer standards for professional conduct for licensed site remediation professionals, as provided in sections 14 and 16 of P.L.2009, c.60 (C.58:10C-14 and C.58:10C-16);
- i. To investigate complaints, impose discipline, and suspend and revoke licenses of site remediation professionals who violate the provisions of P.L.2009, c.60 (C.58:10C-1 et al.);
- j. To publish and maintain the names and contact information of all site remediation professionals licensed pursuant to P.L.2009, c.60 (C.58:10C-1 et al.), and make the list available on the board's internet website;
- k. To publish and maintain a list of all site remediation professionals whose license has been suspended or revoked by the board and make the list available on the board's internet website;
- l. To provide public information on the licensed site remediation professional program; and
- m. To maintain a record of complaints filed against licensed site remediation professionals and provide the public with information upon request.

C.58:10C-6 Rules, regulations.

6. a. No later than 18 months after the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), the board shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations necessary for the implementation, administration, and enforcement of P.L.2009, c.60 (C.58:10C-1 et al.). The rules and regulations shall: (1) establish requirements for the education, continuing education, training, experience, examination and testing, and references for the licensing of site remediation professionals; (2) establish standards for professional conduct of, and the payment of fees by, licensed site remediation professionals; (3) establish procedures for the investigation of complaints concerning licensed site remediation professionals initiated by any person; (4) establish other forms of nonmonetary penalties that the board may impose on a licensed site remediation professional pursuant to section 17 of P.L.2009, c.60 (C.58:10C-17); and (5) provide for enforcement of the provisions of P.L.2009, c.60 (C.58:10C-1 et al.). The rules and regulations shall establish an expiration date for temporary site remediation professional licenses issued by the department pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12).

b. The rules and regulations adopted pursuant to this section shall be sufficient to assure that any response action outcome issued by a site remediation professional licensed pursuant to P.L.2009, c.60 (C.58:10C-1 et al.) shall be consistent with all applicable laws, rules and regulations concerning the remediation of contaminated sites and shall protect public health and safety and the environment.

C.58:10C-7 Establishment of licensing program, requirements.

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

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

laws, rules and regulations, standards and requirements applicable to site remediation and that the applicant is qualified to obtain a license or a license renewal. The board shall also adopt standards for the professional conduct of licensed site remediation professionals pursuant to the provisions of section 16 of P.L.2009, c.60 (C.58:10C-16). The board shall require an applicant to submit references to ensure that the applicant meets the standards and requirements established for training, experience and professional conduct by licensed site remediation professionals. No person may take the licensing examination until the board determines that the applicant meets the standards for education, training and experience.

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

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

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

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

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

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

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

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

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

e. For the purposes of this section, "full-time professional experience" includes experience in which the applicant is required to apply scientific or engineering principles to contaminated site remediation where the resulting conclusions form the basis for reports, studies or other documents connected with the remediation of a contaminated site. The board may consider the applicant's work activities, field of practice, duration of employment, and work products prepared in determining the credit to be allowed for professional experience. The board may allow applicants with relevant advanced degrees up to two years of credit for

professional experience, of which one year of credit may be awarded for applicants who have earned a master's degree in a relevant field of study and up to two years of credit may be awarded for applicants who have earned a doctorate degree in a relevant field of study.

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

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

C.58:10C-8 Suspension, revocation of license; reinstatement.

8. a. The board may suspend or revoke a license pursuant to the provisions of section 17 of P.L.2009, c.60 (C.58:10C-17). The board shall establish standards and requirements for the reinstatement of a site remediation professional license that has been suspended or revoked.

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

C.58:10C-9 Application for renewal of license; fee.

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

C.58:10C-10 Term of validity for license.

10. Each license issued pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) shall be issued to an individual, shall be valid only for the individual to whom it is issued and shall not be transferable. Each license issued pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) shall be valid for a period not to exceed three years, unless a shorter period is specified therein, or unless suspended or revoked.

C.58:10C-11 License required for site remediation professional.

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

C.58:10C-12 Temporary site remediation professional license program.

12. a. No more than 90 days after the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), the department shall establish a temporary site remediation professional license program. The department shall issue a temporary site remediation professional license to any individual who qualifies for the license pursuant to the provisions of section 13 of P.L.2009, c.60 (C.58:10C-13).

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

c. Each temporary license issued by the department shall be issued to an individual, shall be valid only for the individual to whom it is issued and shall not be transferable. Except as provided in this subsection, each temporary license issued by the department pursuant to this section and section 13 of P.L.2009, c.60 (C.58:10C-13) shall be valid for a period not to exceed three years, unless a shorter period is specified therein, or unless suspended or revoked. All temporary site remediation professional licenses shall expire as provided in rules and regulations adopted by the board pursuant to subsection a. of section 6 of P.L.2009, c.60 (C.58:10C-6).

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

C.58:10C-13 Guidelines for procedures for issuance of temporary licenses.

13. a. No more than 90 days after the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), the department shall issue guidelines which shall be published in the New Jersey Register that set forth the procedures for the issuance of temporary site remediation professional licenses. Application for a temporary license shall be made in a manner and on such forms as may be prescribed by the department.

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

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

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

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

(4) has attended and completed a course approved by the department on the State's rules and regulations concerning the technical requirements for site remediation no more than three years prior to the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.);

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

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

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

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

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

C.58:10C-14 Certification of documents by site remediation professional.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C.58:10C-15 Use of certified subsurface evaluator prohibited.

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

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

C.58:10C-16 Protection of public health, safety, environment highest priority.

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

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

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

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

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

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

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

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

i. A licensed site remediation professional shall exercise independent professional judgment, comply with the requirements and procedures set forth in the provisions of P.L.2009, c.60 (C.58:10C-1 et al.), make a good faith and reasonable effort to identify and obtain the relevant and material facts, data, reports and other information evidencing conditions at a contaminated site for which he is responsible that is in possession of the owner of the property, or that is otherwise available, and identify and obtain whatever

additional data and other information as the licensed site remediation professional deems necessary. The licensed site remediation professional shall disclose and explain in any document submitted to the department any facts, data, information, qualifications, or limitations known by the licensed site remediation professional that are not supportive of the conclusions reached in the document.

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

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

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

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

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

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

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

q. A licensed site remediation professional shall cooperate in an investigation by the board or the department by promptly furnishing, in response to formal requests, orders or

subpoenas, any information the board or the department, or persons duly authorized by the board or the department, deems necessary to perform its duties. In an investigation by the board of a license application or a license suspension or revocation, a licensed site remediation professional shall not:

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

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

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

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

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

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

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

- (1) make a material misrepresentation of fact;
- (2) omit a fact when the omission results in a materially misleading description; or
- (3) make a statement that, in the opinion of the board, is likely to create an unjustified expectation about results the licensed site remediation professional may achieve, or state or imply that the licensed site remediation professional may achieve results by means that violate the provisions of applicable environmental statutes, rules or regulations, including the provisions of P.L.2009, c.60 (C.58:10C-1 et al.).

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

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

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

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

C.58:10C-17 Actions of board relative to violations.

17. a. (1) Whenever, on the basis of available information, the board finds that a person is in violation of P.L.2009, c.60 (C.58:10C-1 et al.), or any rule, regulation, or order adopted or issued pursuant thereto, or who knowingly has made any false statement, representation, or certification in any documents or information required to be submitted to the board or the department, the board may:

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

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

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

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

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

or

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

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

(2) A licensed site remediation professional who purposely, knowingly, or recklessly violates a provision of P.L.2009, c.60 (C.58:10C-1 et al.), including making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained pursuant to P.L.2009, c.60 (C.58:10C-1 et al.), or by falsifying, tampering with, or rendering inaccurate any monitoring device or method, institutional or engineering control, shall be guilty, upon conviction, of a crime of the third degree and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$75,000 per day of violation, or by imprisonment, or both.

b. (1) The board may suspend or revoke a license issued to a licensed site remediation professional pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7), or impose another penalty as determined by the board. The board may not suspend or revoke a license or impose another penalty until a violator has been notified by certified mail or personal service. The notice shall: (a) identify the statutory or regulatory basis of the violation; (b) identify the specific act or omission constituting the violation; (c) identify the license to be suspended or revoked, or the penalty to be imposed; and (d) affirm the right of the violator to a hearing on any matter contained in the notice and the procedures for requesting a hearing.

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

c. If a person violates any provision of P.L.2009, c.60 (C.58:10C-1 et al.), or any rule, regulation, or order adopted or issued pursuant thereto, the board may institute a civil action in Superior Court for appropriate relief for any violation of P.L.2009, c.60 (C.58:10C-1 et al.), or any rule, regulation, or order adopted or issued pursuant thereto. Such relief may include, singly or in combination:

(1) A temporary or permanent injunction; or

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

d. (1) Whenever the board finds that any person is in violation of P.L.2009, c.60 (C.58:10C-1 et al.), or any rule, regulation, or order adopted or issued pursuant thereto, the board may issue an order: (a) specifying the provision or provisions of P.L.2009, c.60 (C.58:10C-1 et al.), or the rule, regulation, or order adopted or issued pursuant thereto of which the person is in violation; (b) citing the action which caused the violation; (c) requiring compliance with the provision or provisions; and (d) giving notice to the person of the person's right to a hearing on the matters contained in the order.

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

e. Any person who violates P.L.2009, c.60 (C.58:10C-1 et al.), or any rule, regulation, code of conduct, or order adopted or issued pursuant thereto, or who fails to pay a civil penalty or civil administrative penalty in full or to agree to a schedule of payments therefor,

shall be subject, upon order of a court, to a civil penalty not to exceed \$10,000 for a first violation and not more than \$20,000 for every subsequent violation. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

f. (1) The board may assess a civil administrative penalty of not more than \$10,000 for a first violation and not more than \$20,000 for every subsequent violation of the provisions of P.L.2009, c.60 (C.58:10C-1 et al.) or any rule, regulation, code of conduct, or order adopted or issued pursuant thereto.

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

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

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

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

g. A licensed site remediation professional may not apply for a new license for three years following the date of revocation of the license by the board or for the term established by the board pursuant to subsection b. of section 8 of P.L.2009, c.60 (C.58:10C-8). At the

conclusion of the license revocation, the licensed site remediation professional shall follow the application procedures for licensure in accordance with section 7 of P.L.2009, c.60 (C.58:10C-7).

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

C.58:10C-18 Authority of board, department to enter site.

18. a. The board and the department shall have the authority to enter, at reasonable times and in a reasonable manner, any known or suspected site, vessel, or other location, whether public or private, for the purpose of investigating, sampling, inspecting, or copying any records, condition, equipment, practice, or property relating to activities subject to P.L.2009, c.60 (C.58:10C-1 et al.). The board or the department shall seek a warrant authorizing such entry upon denial of permission to enter. If the board or the department does not wish to provide prior notice to the inspection or entry, a court authorized to issue search warrants may issue a warrant authorizing entry by the board or the department upon a showing that the entry is necessary to allow the board or the department to verify compliance with the provisions of P.L.2009, c.60 (C.58:10C-1 et al.), or any rule, regulation, or order adopted or issued pursuant thereto.

b. Where necessary to ascertain facts relevant to, or not available at, such site, vessel, or other location, any person shall, upon request of any officer, employee, or duly authorized representative of the board or the department, furnish information relating to activities subject to the provisions of P.L.2009, c.60 (C.58:10C-1 et al.), and shall permit the officers, employees, or authorized representatives to have access to, and to copy, all records relating to the activities.

c. If the board or the department has reason to believe that any person has made fraudulent representations to the board or the department or has destroyed or concealed evidence relating to any activity subject to the provisions of P.L.2009, c.60 (C.58:10C-1 et al.), or any rule, regulation, license, or order issued pursuant thereto, the board or the department may seize any records, equipment, property, or other evidence it deems necessary.

d. Whenever, on basis of available information, the board finds that there is a violation of any provision of P.L.2009, c.60 (C.58:10C-1 et al.), or of any rule, regulation, license, or order issued or adopted pursuant thereto, the board may issue to a person causing or contributing, or likely to cause or contribute, to the violation an order pursuant to the provisions of section 17 of P.L.2009, c.60 (C.58:10C-17), requiring the production or analysis of samples, requiring the production of records, or imposing such restraints on or requiring such action by the person. Issuance of an order pursuant to this section shall not preclude, and shall not be deemed an election to forego, any action to suspend or revoke a license, recover damages, or seek injunctive relief, civil or criminal penalties, or any other remedy.

The board shall cause notice of each order, and of the results of all adjudicatory proceedings related thereto, to be given to the department in order to enable the department to implement and enforce the provisions of P.L.2009, c.60 (C.58:10C-1 et al.) and all other applicable laws, rules and regulations.

C.58:10C-19 Establishment of permit program.

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

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

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

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

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

C.58:10C-20 Maintenance of data, documents, information.

20. A licensed site remediation professional shall maintain and preserve all data, documents and information concerning remediation activities at each contaminated site the licensed site remediation professional has worked on, including but not limited to, technical records and contractual documents, raw sampling and monitoring data, whether or not the data and information, including technical records and contractual documents, were developed by the licensed site remediation professional or the licensee's divisions, employees, agents, accountants, contractors, or attorneys, that relate in any way to the contamination at the site.

Three electronic copies of the records shall be submitted to the department at the time the response action outcome is filed with the department.

C.58:10C-21 Inspection of documents, information; review.

21. a. The department shall inspect all documents and information submitted by a licensed site remediation professional concerning a remediation upon receipt. The department may provide additional review of any document submitted for the remediation of a contaminated site upon a determination that: (1) the licensed site remediation professional did not comply with the provisions of section 16 of P.L.2009, c.60 (C.58:10C-16); (2) any deficiencies, errors or omissions will result in an inability to determine if the remediation is protective of the public health, safety, or the environment; or (3) the remediation will not be protective, of the public health, safety, or the environment.

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

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

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

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

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

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

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

(2) the remediation is subject to federal oversight;

(3) the person responsible for conducting the remediation or the licensed site remediation professional conducting the remediation has been out of compliance with P.L.2009, c.60 (C.58:10C-1 et al.), P.L.1993, c.139 (C.58:10B-1 et al.), P.L.1986, c.102 (C.58:10A-21 et seq.), P.L.1983, c.330 (C.13:1K-6 et al.), or P.L.1976, c.141 (C.58:10-23.11 et seq.), or any rules and regulations adopted pursuant to those laws;

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

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

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

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

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

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

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

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

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

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

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

C.58:10C-22 Invalidation of response action outcome.

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

C.58:10C-23 Recommendation for investigation of licensed site remediation professional.

23. The department may recommend to the board that an investigation of a licensed site remediation professional be conducted to consider the suspension or revocation of the license of, or the taking of other appropriate action as necessary against, a licensed site remediation professional based upon the result of an audit performed pursuant to the provisions of section 24 or 25 of P.L.2009, c.60 (C.58:10C-24 or C.58:10C-25) or based upon a document review performed pursuant to section 21 of P.L.2009, c.60 (C.58:10C-21).

C.58:10C-24 Annual audit.

24. The board shall audit annually the submissions and conduct of at least 10 percent of the total number of licensed site remediation professionals. A licensed site remediation professional and the person responsible for conducting the remediation shall cooperate with the board in the conduct of the audit and shall provide any information requested by the board as part of the audit.

C.58:10C-25 Conditions for not conducting an audit.

25. The department shall not audit a response action outcome more than three years after the date the licensed site remediation professional filed the response action outcome with the department, unless:

- a. undiscovered contamination is found on a site for which a response action outcome has been filed;
- b. the board conducts an investigation of the licensed site remediation professional; or
- c. the licensed site remediation professional who issued the response action outcome has had his license suspended or revoked by the board.

C.58:10C-26 Retaliatory action against licensed site remediation professional prohibited.

26. No person shall take retaliatory action if a licensed site remediation professional:

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

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

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

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

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

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

C.58:10C-27 Direct oversight of remediation by department; conditions.

27. a. The department shall undertake direct oversight of a remediation of a contaminated site under the following conditions:

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

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

(3) unless a longer period has been ordered by a court, the person responsible for conducting the remediation has, prior to the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), 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 P.L.2009, c.60 (C.58:10C-1 et al.).

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

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

- (1) the contamination at the site includes chromate chemical production waste;
- (2) the department determines that more than one environmentally sensitive natural resource has been injured by contamination from the site;
- (3) the site has contributed to sediments contaminated by polychlorinated biphenyl, mercury, arsenic, or dioxin in a surface water body; or
- (4) the site is ranked by the department in the category requiring the highest priority pursuant to the ranking system developed pursuant to section 2 of P.L.1982, c.202 (C.58:10-23.16).

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

- (1) the department shall review each document submitted by a licensed site remediation professional and shall approve or deny the submission;
- (2) a feasibility study shall be performed and submitted to the department for approval;
- (3) the department shall select the remedial action for the site;
- (4) the person responsible for conducting the remediation shall establish a remediation trust fund pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3) in the amount of the estimated cost of the remediation;
- (5) all disbursements of funds from the remediation trust fund shall require prior approval by the department;
- (6) all submissions prepared by the licensed site remediation professional concerning the remediation required by the department shall be provided simultaneously to the department and the person responsible for conducting the remediation; and
- (7) the person responsible for conducting the remediation shall implement a public participation plan approved by the department to solicit public comment from the members of the surrounding community concerning the remediation of the site.

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

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

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

C.58:10C-28 Establishment of mandatory remediation timeframes.

28. a. The department shall establish mandatory remediation timeframes, and expedited site specific timeframes when necessary, to protect the public health and safety and the environment, for each of the following:

- (1) a receptor evaluation;
- (2) control of ongoing sources of contamination;

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

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

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

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

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

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

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

C.58:10C-29 Adoption of interim rules, regulations.

29. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the department shall adopt, after notice, interim rules and regulations establishing a program that provides for the responsibilities of persons responsible for conducting a remediation and licensed site remediation professionals in the remediation of contaminated sites pursuant to the provisions of P.L.2009, c.60 (C.58:10C-1 et al.), no later than 180 days after the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.). The interim rules and regulations may include amendments to rules and regulations adopted pursuant to other laws, in order to make them consistent with the provisions of P.L.2009, c.60 (C.58:10C-1 et al.). The interim rules and regulations shall be effective immediately upon filing with the Office of Administrative Law and shall be effective for a

period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the department in accordance with the provisions of the "Administrative Procedure Act."

C.58:10B-1.3 Remediation of discharge of hazardous substance; requirements.

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

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

- (1) hire a licensed site remediation professional to perform the remediation;
- (2) notify the department of the name and license information of the licensed site remediation professional who has been hired to perform the remediation;
- (3) conduct the remediation without the prior approval of the department, unless directed otherwise by the department;
- (4) establish a remediation funding source if a remediation funding source is required pursuant to the provisions of section 25 of P.L.1993, c.139 (C.58:10B-3);
- (5) pay all applicable fees and oversight costs as required by the department;
- (6) provide access to the contaminated site to the department;
- (7) provide access to all applicable documents concerning the remediation to the department;
- (8) meet the mandatory remediation timeframes and expedited site specific timeframes established by the department pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28); and
- (9) obtain all necessary permits.

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

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

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

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

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

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

C.58:10B-13.2 Covenant not to sue, provisions.

31. a. After a licensed site remediation professional issues a response action outcome to the person responsible for conducting the remediation, the person shall be deemed, by operation of law, to have received a covenant not to sue with respect to the real property upon which the remediation has been conducted. The covenant not to sue shall be subject to any conditions and limitations contained in the response action outcome. The covenant not to sue shall be for any area of concern remediated and may apply to the entire real property if the remediation included a preliminary assessment and, if necessary, a site investigation of the entire real property, and any other necessary remedial actions. The covenant remains effective only for as long as the real property for which the covenant was deemed to have been issued continues to meet the conditions of the response action outcome. Upon a finding by the department that real property or a portion thereof to which a covenant not to sue pertains, no longer meets with the conditions of the response action outcome, the department shall provide notice of that fact to the person responsible for maintaining compliance with the response action outcome. The department may allow the person a reasonable time to come into compliance with the terms of the original response action outcome. If the property does not meet the conditions of the response action outcome and if the department does not allow for a period of time to come into compliance or if the person fails to come into compliance within the time period, the covenant not to sue shall be deemed to be revoked by operation of law.

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

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

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

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

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

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

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

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

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

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

C.58:10B-8.1 Conditions for payment of grant from Hazardous Discharge Site Remediation Fund.

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

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

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

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

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

C.13:1K-8 Definitions.

3. As used in this act:

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

"Closing operations" means:

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

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

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

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

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

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

"Transferring ownership or operations" means:

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

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

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

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

"Change in ownership" means:

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

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

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

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

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

"Change in ownership" shall not include:

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

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

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

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

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

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

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

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

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

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

(11) any transfer of personal property pursuant to a valid security agreement, collateral assignment or other lien, including, but not limited to, seizure or replevin of such personal

property which transfer is for the purpose of implementing the secured party's rights in the personal property which is the collateral;

"Department" means the Department of Environmental Protection;

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

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

"Industrial establishment" means any place of business engaged in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or hazardous wastes on-site, above or below ground, having a Standard Industrial Classification number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard Industrial Classifications Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States. Those facilities or parts of facilities subject to operational closure and post-closure maintenance requirements pursuant to the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting Act," sections 1 through 43 of P.L.1981, c.279 (C.13:1E-49 et seq.) or the "Solid Waste Disposal Act" (42 U.S.C. s.6901 et seq.), or any establishment engaged in the production or distribution of agricultural commodities, shall not be considered industrial establishments for the purposes of this act. The department may, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), exempt certain sub-groups or classes of operations within those sub-groups within the Standard Industrial Classification major group numbers listed in this subsection upon a finding that the operation of the industrial establishment does not pose a risk to public health and safety;

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

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

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

substances or hazardous wastes present at the industrial establishment or that have migrated from the site have been remediated in accordance with applicable remediation regulations;

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

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

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

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

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

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

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

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

"Remediation standards" means the combination of numeric standards that establish a level or concentration and narrative standards, to which hazardous substances or hazardous

wastes must be treated, removed, or otherwise cleaned for soil, groundwater, or surface water, as provided by the department pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12) in order to meet the health risk or environmental standards;

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

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

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

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

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

C.13:1K-9 Closing, transfer procedures.

4. a. The owner or operator of an industrial establishment planning to close operations or transfer ownership or operations shall notify the department in writing, no more than five days subsequent to closing operations or of its public release of its decision to close operations, whichever occurs first, or within five days after the execution of an agreement to transfer ownership or operations, as applicable. The notice to the department shall: identify the subject industrial establishment; describe the transaction requiring compliance with P.L.1983, c.330 (C.13:1K-6 et al.); state the date of the closing of operations or the date of the public release of the decision to close operations as evidenced by a copy of the appropriate public announcement, if applicable; state the date of execution of the agreement to transfer ownership or operations and the names, addresses and telephone numbers of the parties to the transfer, if applicable; state the proposed date for closing operations or

transferring ownership or operations; list the name, address, and telephone number of an authorized agent for the owner or operator; and certify that the information submitted is accurate. The notice shall be transmitted to the department in the manner and form required by the department. The department may, by regulation, require the submission of any additional information in order to improve the efficient implementation of P.L.1983, c.330. The owner or operator of the industrial establishment shall also provide all information required to be submitted to the department pursuant to this subsection, to the clerk of the municipality in which the industrial establishment is located, at the same time the information is submitted to the department.

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

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

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

c. The owner or operator of an industrial establishment shall, subsequent to closing operations, or of its public release of its decision to close operations, or prior to transferring ownership or operations except as otherwise provided in subsection e. of this section, as applicable, submit to the department for approval a proposed negative declaration, proposed remedial action workplan, or a remedial action workplan certified by a licensed site remediation professional. The owner or operator shall also provide written notification to the clerk of the municipality in which the industrial site is located, that upon written request, the municipality may receive a copy of the proposed negative declaration, proposed remedial action workplan, or a remedial action workplan certified by a licensed site remediation professional. The owner or operator of the industrial establishment shall provide the requested documents to the clerk of the municipality within five days after receipt of the written request. Except as otherwise provided in section 6 of P.L.1983, c.330 (C.13:1K-11), and sections 13, 16, 17 and 18 of P.L.1993, c.139 (C.13:1K-11.2, C.13:1K-11.5, C.13:1K-11.6 and C.13:1K-11.7), the owner or operator of an industrial establishment shall not transfer ownership or operations until a negative declaration or a remedial action workplan has been approved by the department, a remedial action workplan has been prepared and certified by a licensed site remediation professional and submitted to the department, or the

conditions of subsection e. of this section for remediation agreements or remediation certifications have been met and until, in cases where a remedial action workplan is required to be approved or a remediation agreement has been approved, a remediation funding source, as required pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3), has been established.

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

(2) After the submission and review of the information submitted pursuant to a preliminary assessment, site investigation, remedial investigation, or remedial action, as necessary, the department shall, within 45 days of submission of a complete and accurate negative declaration, approve the negative declaration, or inform the owner or operator of the industrial establishment that a remedial action workplan or additional remediation shall be required. The department shall approve a negative declaration by the issuance of a no further action letter. Upon the remediation of the industrial establishment pursuant to the requirements of section 30 of P.L.2009, c.60 (C.58:10B-1.3), a licensed site remediation professional may file a response action outcome with the department.

e. The owner or operator of an industrial establishment, who has submitted a notice to the department pursuant to subsection a. of this section, may transfer ownership or operations of the industrial establishment prior to the approval of a negative declaration or remedial action workplan upon application to and approval by the department of a remediation agreement or upon submission to the department of a remediation certification. The owner or operator requesting a remediation agreement shall submit the following documents: (1) an estimate of the cost of the remediation that is approved by the department; (2) a certification of the statutory liability of the owner or operator pursuant to P.L.1983, c.330 to perform and to complete a remediation of the industrial establishment in the manner and time limits provided by the department in regulation and consistent with all applicable laws and regulations; however, nothing in this paragraph shall be construed to be an admission of liability, or to impose liability on the owner or operator, pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) or pursuant to any other statute or common law; (3) evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with the provisions of section 25 of P.L.1993, c.139 (C.58:10B-3); (4) a certification that the owner or operator is subject to the provisions of P.L.1983, c.330, including the liability for penalties for violating the act, defenses to liability and limitations thereon, the requirement to perform a remediation as required by the department, allowing the department access to the industrial establishment as provided in section 5 of P.L.1983, c.330 (C.13:1K-10), and the requirement to prepare and submit any document required by the department relevant to the remediation of the industrial establishment; and (5) evidence of the payment of all applicable fees required by the department.

The owner or operator submitting a remediation certification shall provide the following documents to the department: (1) an estimate of the cost of the remediation prepared and certified by a licensed site remediation professional; (2) a certification of the statutory liability of the owner or operator pursuant to P.L.1983, c.330 to perform and to complete a

remediation of the industrial establishment in the manner and time limits provided by the department in regulation and consistent with all applicable laws and regulations; however, nothing in this paragraph shall be construed to be an admission of liability, or to impose liability on the owner or operator, pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) or pursuant to any other statute or common law; (3) evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with the provisions of section 25 of P.L.1993, c.139 (C.58:10B-3); (4) a certification that the owner or operator is subject to the provisions of P.L.1983, c.330, including the liability for penalties for violating the act, defenses to liability and limitations thereon, the requirement to perform a remediation as required by the department, allowing the department access to the industrial establishment as provided in section 5 of P.L.1983, c.330 (C.13:1K-10), the requirement to comply with the provisions of P.L.2009, c.60 (C.58:10C-1 et al.), and the requirement to prepare and submit any document required by the department relevant to the remediation of the industrial establishment; and (5) evidence of the payment of all applicable fees required by the department.

The department may require in the remediation agreement that all plans for and results of the preliminary assessment, site investigation, remedial investigation, and the implementation of the remedial action workplan, prepared or initiated subsequent to the transfer of ownership or operations, be submitted to the department, for review purposes only, at the completion of each phase of the remediation.

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

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

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

g. Except as provided in section 27 of P.L.2009, c.60 (C.58:10C-27), the soil, groundwater, and surface water remediation standard and the remedial action to be implemented on an industrial establishment shall be selected by the owner or operator, and

reviewed and approved by the department, or prepared, certified and submitted to the department by a licensed site remediation professional, based upon the policies, requirements, and criteria enumerated in section 35 of P.L.1993, c.139 (C.58:10B-12).

h. An owner or operator of an industrial establishment may implement a soil remedial action at an industrial establishment without prior department approval of the remedial action workplan for the remediation of soil when the remedial action can reasonably be expected to be completed pursuant to standards, criteria, and time schedules established by the department, which schedules shall not exceed five years from the commencement of the implementation of the remedial action and if the owner or operator is implementing a soil remediation which meets the established minimum residential or nonresidential use soil remediation standards adopted by the department.

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

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

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

j. Except as provided in P.L.2009, c.60 (C.58:10C-1 et al.), an owner or operator proposing to implement a soil remedial action other than one which is set forth in subsection h. of this section must receive department approval prior to implementation of the remedial action.

k. Except as provided in P.L.2009, c.60 (C.58:10C-1 et al.), an owner or operator of an industrial establishment shall not implement a remedial action involving the remediation of groundwater or surface water without the prior review and approval by the department of a remedial action workplan.

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

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

previously been submitted to the department, shall be submitted to the department for its review and approval.

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

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

The department may order additional remediation activities at the industrial establishment, or offsite where necessary, or may require the submission of additional information, where (a) the department determines that the remediation activities undertaken were not in compliance with the applicable rules or regulations of the department; (b) all documents required to be submitted to the department were not submitted or, if submitted, were inaccurate, or deficient; or (c) discharged hazardous substances or hazardous wastes remain at the industrial establishment, or have migrated or are migrating offsite, at levels or concentrations or in a manner that is in violation of the applicable health risk or environmental standards. Upon a finding by the department that the remediation conducted at the industrial establishment was in compliance with all applicable regulations, that no hazardous substances or hazardous wastes remain at the industrial establishment in a manner that is in violation of the applicable health risk or environmental standards, and that all hazardous substances or hazardous wastes that migrated from the industrial establishment have been remediated in conformance with the applicable health risk or environmental standards, the department shall approve the remediation for that industrial establishment by the issuance of a no further action letter. The owner or operator of the industrial establishment may also perform the remediation pursuant to the provisions of P.L.2009, c.60 (C.58:10C-1 et al.)

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

C.58:10-23.11b Definitions.

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

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

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

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

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

"Cleanup and removal costs" means all direct costs associated with a discharge, and those indirect costs that may be imposed by the department pursuant to section 1 of P.L.2002, c.37 associated with a discharge, incurred by the State or its political subdivisions or their agents or any person with written approval from the department in the: (1) removal or attempted removal of hazardous substances, or (2) taking of reasonable measures to prevent or mitigate damage to the public health, safety, or welfare, including, but not limited to, public and

private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property, including wildlife and other natural resources, and shall include costs incurred by the State for the indemnification and legal defense of contractors pursuant to sections 1 through 11 of P.L.1991, c.373 (C.58:10-23.11f8 et seq.);

"Commissioner" means the Commissioner of Environmental Protection;

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

"Department" means the Department of Environmental Protection;

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

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

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

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

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

"Fund" means the New Jersey Spill Compensation Fund;

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

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

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

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

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

- (1) 20,000 gallons or more for hazardous substances which are other than petroleum or petroleum products, or
- (2) 200,000 gallons or more for hazardous substances of all kinds.

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

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

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

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

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

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

"Petroleum" or "petroleum products" means oil or petroleum of any kind and in any form, including, but not limited to, oil, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, and substances or additives to be utilized in

the refining or blending of crude petroleum or petroleum stock in this State; however, any compound designated by specific chemical name on the list of hazardous substances adopted by the department pursuant to this section shall not be considered petroleum or a petroleum product for the purposes of P.L.1976, c.141, unless such compound is to be utilized in the refining or blending of crude petroleum or petroleum stock in this State;

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

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

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

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

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

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

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

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

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

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

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

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

C.58:10-23.11e2 Publication of information relative to contribution suit settlements.

2. At least 30 days prior to its agreement to any administrative or judicially approved settlement entered into pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), the Department of Environmental Protection shall publish in the New Jersey Register and on the New Jersey Department of Environmental Protection's website the name of the case, the names of the parties to the settlement, the location of the property on which the discharge occurred, and a summary of the terms of the settlement, including the amount of any monetary payments made or to be made. The Department of Environmental Protection shall provide written notice of the settlement, which shall include the information listed above, to all other parties in the case and to any other potentially responsible parties of whom the department has notice at the time of the publication.

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

C.58:10-23.11f Cleanup and removal of hazardous substances.

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

(2) (a) Whenever one or more dischargers or persons cleans up and removes a discharge of a hazardous substance, those dischargers and persons shall have a right of contribution against all other dischargers and persons in any way responsible for a discharged hazardous substance or other persons who are liable for the cost of the cleanup and removal of that discharge of a hazardous substance. In an action for contribution, the contribution plaintiffs

need prove only that a discharge occurred for which the contribution defendant or defendants are liable pursuant to the provisions of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), and the contribution defendant shall have only the defenses to liability available to parties pursuant to subsection d. of section 8 of P.L.1976, c.141 (C.58:10-23.11g). In resolving contribution claims, a court may allocate the costs of cleanup and removal among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall affect the right of any party to seek contribution pursuant to any other statute or under common law.

(b) A person who has discharged a hazardous substance or is in any way responsible for the discharge of a hazardous substance who has resolved his liability to the State for cleanup and removal costs, including the payment of compensation for damage to, or the loss of, natural resources, or for the restoration of natural resources, and (i) has received a final remediation document, or (ii) has entered into an administrative or judicially approved settlement with the State, shall not be liable for claims for contribution regarding matters addressed in the settlement or the final remediation document, as the case may be. The settlement shall not release any other person from liability for cleanup and removal costs who is not a party to the settlement, but shall reduce the potential liability of any other discharger or person in any way responsible for a discharged hazardous substance at the site that is the subject of the final remediation document or the settlement by the amount of the final remediation document or the settlement.

(3) In an action for contribution taken pursuant to this subsection, a contribution plaintiff may file a claim with the court for treble damages. A contribution plaintiff may be granted an award of treble damages by the court from one or more contribution defendants only upon a finding by the court that: (a) the contribution defendant is a person who was named on or subject to a directive issued by the department, who failed or refused to comply with such a directive, and who is subject to contribution pursuant to this subsection; (b) the contribution plaintiff gave 30 days' notice to the contribution defendant of the plaintiff's intention to seek treble damages pursuant to this subsection and gave the contribution defendant an opportunity to participate in the cleanup; (c) the contribution defendant failed or refused to enter into a settlement agreement with the contribution plaintiff; and (d) the contribution plaintiff (i) on or after the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), commenced remediation of the site and provided written notice to the department that the contribution plaintiff is remediating or has remediated the property pursuant to the provisions of section 30 of P.L.2009, c.60 (C.58:10B-1.3), or (ii) entered into an agreement with the department to remediate the site. Notwithstanding the foregoing requirements, any authorization to seek treble damages made by the department prior to the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.) shall remain in effect, provided that the department or the contribution plaintiff gave notice to the contribution defendant of the plaintiff's request to the department for authorization to seek treble damages.

A contribution defendant from whom treble damages is sought in a contribution action shall not be assessed treble damages by any court where the contribution defendant, for good cause shown, failed or refused to enter the settlement agreement with the contribution plaintiff or where principles of fundamental fairness will be violated. One third of an award of treble damages in a contribution action pursuant to this paragraph shall be paid to the department, which sum shall be deposited in the New Jersey Spill Compensation Fund. The other two thirds of the treble damages award shall be shared by the contribution plaintiffs in the proportion of the responsibility for the cost of the cleanup and removal that the

contribution plaintiffs have agreed to with the department or in an amount as has been agreed to by those parties.

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

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

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

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

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

(a) Explosiveness;

(b) High flammability;

(c) Radioactivity;

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

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

(f) High toxicity and is stored or being transported in a container or motor vehicle, truck, rail car or other mechanized conveyance from which its discharge is imminent as a result of the significant deterioration or the precarious location of the container, motor vehicle, truck, rail car or other mechanized conveyance, and such discharge would create a substantial risk

of imminent damage to public health or safety or imminent and severe damage to the environment; or

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

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

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

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

f. Any expenditures of cleanup and removal costs and related costs made by the State pursuant to this act shall constitute, in each instance, a debt of the discharger to the fund. The debt shall constitute a lien on all property owned by the discharger when a notice of lien, incorporating a description of the property of the discharger subject to the cleanup and removal and an identification of the amount of cleanup, removal and related costs expended by the State, is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment or order docket the name and address of the discharger and the amount of the lien as set forth in the notice of lien. Upon entry by the clerk, the lien, to the amount committed by the State for cleanup and removal, shall attach to the revenues and all real and personal property of the discharger, whether or not the discharger is insolvent.

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

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

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

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

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

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

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

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

C.58:10-23.11g Liability for cleanup and removal costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To establish that a person had no reason to know that any hazardous substance had been discharged for the purposes of this paragraph (2), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the

property. For the purposes of this paragraph (2), all appropriate inquiry shall mean the performance of a preliminary assessment, and site investigation, if the preliminary assessment indicates that a site investigation is necessary, as defined in section 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with rules and regulations promulgated by the department defining these terms.

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

(e) For the purposes of this subparagraph the person must have (i) acquired the property subsequent to a hazardous substance being discharged on the site and which discharge was discovered at the time of acquisition as a result of the appropriate inquiry, as defined in this paragraph (2), (ii) performed, following the effective date of P.L.1997, c.278, a remediation of the site or discharge consistent with the provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied upon a valid final remediation document for a remediation performed prior to acquisition, or obtained approval of a remedial action workplan by the department after the effective date of P.L.1997, c.278 and continued to comply with the conditions of that workplan, and (iii) established and maintained all engineering and institutional controls as may be required pursuant to sections 35 and 36 of P.L.1993, c.139. A person who complies with the provisions of this subparagraph by actually performing a remediation of the site or discharge as set forth in (ii) above shall be issued, upon application, a no further action letter by the department or a response action outcome by a licensed site remediation professional, as applicable. A person who complies with the provisions of this subparagraph either by receipt of a final remediation document following the effective date of P.L.1997, c.278, or by relying on a previously issued final remediation document shall not be liable for any further remediation including any changes in a remediation standard or for the subsequent discovery of a hazardous substance, at the site, or emanating from the site, if the remediation was for the entire site, and the hazardous substance was discharged prior to the person acquiring the property. Notwithstanding any other provisions of this subparagraph, a person who complies with the provisions of this subparagraph only by virtue of the existence of a previously issued final remediation document shall receive no liability protections for any discharge which occurred during the time period between the issuance of the final remediation document and the property acquisition. Compliance with the provisions of this subparagraph (e) shall not relieve any person of any liability for a discharge that is off the site of the property covered by the final remediation document, for a discharge that occurs at that property after the person acquires the property, for any actions that person negligently takes that aggravates or contributes to a discharge of a hazardous substance, for failure to comply in the future with laws and regulations, or if that person fails to maintain the institutional or engineering controls on the property or to otherwise comply with the provisions of the final remediation document.

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

(4) Any federal, State, or local governmental entity which acquires ownership of real property through bankruptcy, tax delinquency, abandonment, escheat, eminent domain, condemnation or any circumstance in which the governmental entity involuntarily acquires

title by virtue of its function as sovereign, or where the governmental entity acquires the property by any means for the purpose of promoting the redevelopment of that property, shall not be liable, pursuant to subsection c. of this section or pursuant to common law, to the State or to any other person for any discharge which occurred or began prior to that ownership. This paragraph shall not provide any liability protection to any federal, State or local governmental entity which has caused or contributed to the discharge of a hazardous substance. This paragraph shall not provide any liability protection to any federal, State, or local government entity that acquires ownership of real property by condemnation or eminent domain where the real property is being remediated in a timely manner at the time of the condemnation or eminent domain action.

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

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

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

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

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

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

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

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

f. Notwithstanding any other provision of this section, a person, who owns real property acquired on or after the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be

liable for any cleanup and removal costs or damages, under this section or pursuant to any other statutory or civil common law, to any person, other than the State and the federal government, harmed by any hazardous substance discharged on that property prior to acquisition, and any migration off that property related to that discharge, provided all the conditions of this subsection are met:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C.58:10-23.16 Database listing known hazardous discharge sites, cases, areas of concern; ranking system.

2. The department shall prepare and maintain a database that lists all known hazardous discharge sites, cases, and areas of concern. The database shall comprise an inventory of all the known hazardous discharge sites, cases, and areas of concern in the State. No later than one year after the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.) the department shall establish a ranking system that establishes categories in which to rank sites based upon the level of risk to the public health, safety, or the environment, the length of time the site has been undergoing remediation, the economic impact of the contaminated site on the municipality and on surrounding property, and any other factors deemed relevant by the department. The database shall include information concerning each site that identifies the location of the known or suspected contaminated site, the status of the remediation, the contaminants of concern, and whether institutional or engineering controls are in use at the site. The department shall provide public access to reports from the database on its internet website.

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

C.58:10B-1 Definitions.

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

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

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

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

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

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

"Department" means the Department of Environmental Protection;

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

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

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

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

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

"Financial assistance" means loans or loan guarantees;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Site investigation" means the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site or have migrated or are migrating from

the site at levels in excess of the applicable remediation standards. A site investigation shall be developed based upon the information collected pursuant to the preliminary assessment;

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

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

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

C.58:10B-2 Rules, regulations, deviations from regulations.

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

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

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

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

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

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

c. To the extent practicable and in conformance with the standards for remediations as provided in section 35 of P.L.1993, c.139 (C.58:10-12), the department shall adopt rules and regulations that allow for certain remedial actions to be undertaken in a manner prescribed by the department without having to obtain prior approval from or submit detailed documentation to the department. A person who performs a remedial action in the manner prescribed in the rules and regulations of the department, and who certifies this fact to the department, shall obtain a final remediation document for that particular remedial action.

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

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

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

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

C.58:10B-2.1 Departmental oversight of cleanup, remediation; fee, costs, certain, permitted.

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

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

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

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

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

C.58:10B-3 Establishment, maintenance of remediation funding source.

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

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

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

b. The person who established the remediation funding source may use the remediation funding source to pay for the actual cost of the remediation. The department may not require any other financial assurance by the person responsible for conducting the remediation other than that required in this section. In the case of a remediation performed pursuant to

P.L.1983, c.330, the remediation funding source shall be established no more than 14 days after the approval by the department or the certification by the licensed site remediation professional of a remedial action workplan, upon approval of a remediation agreement pursuant to subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or upon submission of a remediation certification pursuant to subsection e. of P.L.1983, c.330, unless the department approves an extension. In the case of a remediation performed pursuant to P.L.1976, c.141, the remediation funding source shall be established as provided in an administrative consent order signed by the parties, as provided by a court, or as directed or ordered by the department. In the case of a remediation performed under the department's oversight pursuant to section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation funding source shall be established at the time the person becomes subject to the department's oversight. The establishment of a remediation funding source for that part of the remediation funding source to be established by a grant or financial assistance from the remediation fund may be established for the purposes of this subsection by the application for a grant or financial assistance from the remediation fund and satisfactory evidence submitted to the department that the grant or financial assistance will be awarded. However, if the financial assistance or grant is denied or the department finds that the person responsible for establishing the remediation funding source did not take reasonable action to obtain the grant or financial assistance, the department shall require that the full amount of the remediation funding source be established within 14 days of the denial or finding. Except as provided in section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation funding source shall be evidenced by the establishment and maintenance of (1) a remediation trust fund, (2) an environmental insurance policy, issued by an entity licensed by the Department of Banking and Insurance to transact business in the State of New Jersey, to fund the remediation, (3) a line of credit from a financial institution regulated pursuant to State or federal law and satisfactory to the department authorizing the person responsible for performing the remediation to borrow money, (4) a self-guarantee, or (5) a letter of credit from a financial institution regulated pursuant to State or federal law that guarantees the performance of the remediation by the person to the satisfaction of the department, or by any combination thereof. Where it can be demonstrated that a person cannot establish and maintain a remediation funding source for the full cost of the remediation by a method specified in this subsection, that person may establish the remediation funding source for all or a portion of the remediation, by securing financial assistance from the Hazardous Discharge Site Remediation Fund as provided in section 29 of P.L.1993, c.139 (C.58:10B-7).

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

The trust fund agreement shall provide that the remediation trust fund may not be revoked or terminated by the person required to establish the remediation funding source or by the trustee without the written consent of the department. The trustee shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those moneys as the department or the licensed site remediation professional authorizes, in writing, to be released. For any remediation subject to the oversight of the department pursuant to section 27 of P.L.2009, c.60 (C.58:10C-27), the person entitled to receive money from the remediation trust fund shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation. Upon a determination by the department that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement of moneys from the remediation trust fund in the amount of the documented costs.

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

d. An environmental insurance policy shall be established pursuant to the provisions of this subsection. An originally signed duplicate of the insurance policy shall be delivered to the department by certified mail, overnight delivery, or personal service within 30 days of receipt of notice from the department that the remedial action workplan or remediation agreement, as provided in subsection e. of section 4 of P.L.1983, c.330, is approved, upon submission of a remediation certification to the department as provided in subsection e. of section 4 of P.L.1983, c.330, or as specified in an administrative consent order, civil order, or order of the department, as applicable. The insurance company shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those moneys as the department or the licensed site remediation professional authorizes, in writing, to be released. The person entitled to receive money from the environmental insurance policy shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation.

e. A line of credit shall be established pursuant to the provisions of this subsection. A line of credit shall allow the person establishing it to borrow money up to a limit established in a written agreement in order to pay for the cost of the remediation for which the line of credit was established. An originally signed duplicate of the line of credit agreement shall be delivered to the department by certified mail, overnight delivery, or personal service within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection e. of section 4 of P.L.1983, c.330 is approved, upon submission of a remediation certification pursuant to subsection e. of P.L.1983, c.330 or as specified in an administrative consent order, civil order, or order of the department, as applicable. The line of credit agreement shall conform to a model agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department.

The person or institution providing the line of credit shall release to the person required to establish the remediation funding source, or to the department or transferee of the property as appropriate, only those moneys as the department or the licensed site remediation professional authorizes, in writing, to be released. The person entitled to draw upon the line of credit shall submit documentation to the department detailing the costs incurred or to be

incurred as part of the remediation. Upon a determination that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement from the line of credit in the amount of the documented costs.

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

f. A person may self-guarantee a remediation funding source upon the submittal of documentation to the department demonstrating that the cost of the remediation as estimated in the remedial action workplan, in the remediation agreement as provided in subsection e. of section 4 of P.L.1983, c.330, in a remediation certification submitted pursuant to subsection e. of P.L.1983, c.330, in an administrative consent order, or as provided in a departmental or court order, would not exceed one-third of the tangible net worth of the person required to establish the remediation funding source, and that the person has a cash flow sufficient to assure the availability of sufficient moneys for the remediation during the time necessary for the remediation. Satisfactory documentation of a person's capacity to self-guarantee a remediation funding source shall consist of audited financial statements, in which the auditor expresses an unqualified opinion, that includes a statement of income and expenses or similar statement of that person and the balance sheet or similar statement of assets and liabilities as used by that person for the fiscal year of the person making the application that ended closest in time to the date of the self-guarantee application. In the case of a special purpose entity established specifically for the purpose of acquiring and redeveloping a contaminated site, and for which a statement of income and expenses is not available, the documentation shall include a statement of assets and liabilities certified by a certified public accountant. The self-guarantee application shall be certified as true to the best of the applicant's information, knowledge, and belief, by the chief financial, or similar officer or employee, or general partner, or principal of the person making the self-guarantee application. A person shall be deemed by the department to possess the required cash flow pursuant to this section if that person's gross receipts exceed its gross payments in that fiscal year in an amount at least equal to the estimated costs of completing the remedial action workplan schedule to be performed in the 12-month period following the date on which the application for self-guarantee is made. In the event that a self-guarantee is required for a period of more than one year, applications for a self-guarantee shall be renewed annually pursuant to this subsection for each successive year. The department may establish requirements and reporting obligations to ensure that the person proposing to self-guarantee a remediation funding source meets the criteria for self-guaranteeing prior to the initiation of remedial action and until completion of the remediation.

g. (1) If the person required to establish the remediation funding source fails to perform the remediation as required, or fails to meet the mandatory remediation timeframes or expedited site specific timeframes established pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28) for the performance of the remedial action, the department shall make a written determination of this fact. A copy of the determination by the department shall be delivered to the person required to establish the remediation funding source and, in the case of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), to any transferee of the property. Following this written determination, the department may perform the

remediation in place of the person required to establish the remediation funding source. In order to finance the cost of the remediation the department may make disbursements from the remediation funding source, or, if sufficient moneys are not available from those funds, from the remediation guarantee fund created pursuant to section 45 of P.L.1993, c.139 (C.58:10B-20).

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

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

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

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

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

C.58:10B-4 Hazardous Discharge Site Remediation Fund.

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

b. The remediation fund shall be credited with:

- (1) moneys as are appropriated by the Legislature;
- (2) moneys deposited into the fund as repayment of principal and interest on outstanding loans made from the fund;
- (3) any return on investment of moneys deposited in the fund;
- (4) (Deleted by amendment, P.L.2009, c.60);
- (5) moneys deposited in the fund as repayment of recoverable grants made by the New Jersey Redevelopment Authority for brownfield redevelopment;
- (6) moneys deposited into the fund from cost recovery subrogation actions; and
- (7) moneys made available to the authority for the purposes of the fund.

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

C.58:10B-8 Financial assistance, grant recipients' compliance, conditions.

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

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

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

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

(4) (Deleted by amendment, P.L.2009, c.60);

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

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

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

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

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

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

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

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

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

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

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

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

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

C.58:10B-11 Remediation funding source surcharge.

33. a. There is imposed upon every person who is required to establish a remediation funding source pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3) a remediation funding source surcharge. The remediation funding source surcharge shall be in an amount equal to 1% of the required amount of the remediation funding source required by the department to be maintained. No surcharge, however, may be imposed upon (1) that amount of the remediation funding source that is met by a self-guarantee as provided in subsection f. of section 25 of P.L.1993, c.139 (C.58:10B-3), (2) that amount of the remediation funding source that is met by financial assistance or a grant from the remediation fund, (3) any person who voluntarily performs a remediation pursuant to an administrative consent order, (4) any person who entered voluntarily into a memorandum of understanding with the department to remediate real property, as long as that person meets the mandatory remediation timeframes

and expedited site specific timeframes established by the department pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28), (5) any person performing a remediation in an environmental opportunity zone, or (6) that portion of the cost of the remediation that is specifically for the use of an innovative technology or to implement a limited restricted use remedial action or an unrestricted use remedial action. The surcharge shall be based on the cost of remediation work remaining to be completed and shall be paid on an annual basis as long as the remediation continues and until the Department of Environmental Protection issues a no further action letter or the licensed site remediation professional issues a response action outcome for the property subject to the remediation. The remediation funding source surcharge shall be due and payable within 14 days of the time of the department's approval of a remedial action workplan or signing an administrative consent order or as otherwise provided by law. The department shall collect the surcharge and shall remit all moneys collected to the Remediation Guarantee Fund established pursuant to section 45 of P.L.1993, c.139 (C.58:10B-20).

b. By February 1 of each year, the department shall issue a report to the Senate Environment Committee and to the Assembly Environment and Solid Waste Committee, or their successors, listing, for the prior calendar year, each person who owed the remediation funding source surcharge, the amount of the surcharge paid, and the total amount collected.

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

C.58:10B-12 Adoption of remedial standards.

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

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

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

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

b. In developing minimum remediation standards the department shall:

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

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

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

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

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

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

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

d. The department shall develop minimum remediation standards for soil, groundwater, and surface water intended to be protective of public health and safety taking into account the provisions of this section. In developing these minimum health risk remediation standards the department shall identify the hazards posed by a contaminant to determine whether exposure to that contaminant can cause an increase in the incidence of an adverse

health effect and whether the adverse health effect may occur in humans. The department shall set minimum soil remediation health risk standards for both residential and nonresidential uses that:

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

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

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

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

f. (1) A person performing a remediation of contaminated real property, in lieu of using the established minimum soil remediation standard for either residential use or nonresidential use adopted by the department pursuant to subsection c. of this section, may submit to the department a request to use an alternative residential use or nonresidential use soil remediation standard. The use of an alternative soil remediation standard shall be based upon site specific factors which may include (1) physical site characteristics which may vary from those used by the department in the development of the soil remediation standards adopted pursuant to this section; or (2) a site specific risk assessment. If a person performing a remediation requests to use an alternative soil remediation standard based upon a site specific risk assessment, that person shall demonstrate to the department that the requested deviation from the risk assessment protocol used by the department in the development of soil remediation standards pursuant to this section is consistent with the guidance and regulations for exposure assessment developed by the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C.s.9601 et seq. and other statutory authorities as applicable. A site specific risk assessment may consider exposure scenarios and assumptions that take into account the form of the contaminant present, natural biodegradation, fate and transport of the contaminant, available toxicological data that are based upon generally accepted and peer reviewed scientific evidence or methodologies, and physical characteristics of the site, including, but not limited to, climatic conditions and topographic conditions. Nothing in this subsection shall be construed to authorize the use of an alternative soil remediation standard in those instances where an engineering control is the

appropriate remedial action, as determined by the department, to prevent exposure to contamination.

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

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

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

(1) Unrestricted use remedial actions, limited restricted use remedial actions and restricted use remedial actions shall be allowed except that unrestricted use remedial actions and limited restricted use remedial actions shall be preferred over restricted use remedial actions. For any remediation initiated one year after the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), the department shall require the use of an unrestricted use remedial action, or a presumptive remedy or an alternative remedy as provided in paragraph (10) of this subsection, at a site or area of concern where new construction is proposed for residential purposes, for use as a child care center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.), or as a public school or private school as defined in N.J.S.18A:1-1, as a charter school established pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.), 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 P.L.2009, c.60 (C.58:10C-1 et al.), the department may require the use of an unrestricted use remedial action or a presumptive remedy as provided in guidelines adopted pursuant to paragraph (10) of this subsection 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. Except as provided in this subsection, and section 27 of P.L.2009, c.60 (C.58:10C-27), the department, however, may not disapprove the use of a restricted use remedial action or a limited restricted use remedial action so long as the selected remedial action meets the health risk standard established in subsection d. of this section, and where,

as applicable, is protective of the environment. Except as provided in this subsection and section 27 of P.L.2009, c.60 (C.58:10C-27), the choice of the remedial action to be implemented shall be made by the person responsible for conducting the remediation in accordance with regulations adopted by the department and that choice of the remedial action shall be approved by the department if all the criteria for remedial action selection enumerated in this section, as applicable, are met. Except as provided in section 27 of P.L.2009, c.60 (C.58:10C-27), the department may not require a person to compare or investigate any alternative remedial action as part of its review of the selected remedial action. 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;

(2) Contamination may, upon the department's approval, be left onsite at levels or concentrations that exceed the minimum soil remediation standards for residential use if the implementation of institutional or engineering controls at that site will result in the protection of public health, safety and the environment at the health risk standard established in subsection d. of this section, if the requirements established in subsections a., b., c. and d. of section 36 of P.L.1993, c.139 (C.58:10B-13), and paragraphs (1) and (10) of this subsection, are met. 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;

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

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

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

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

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

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

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

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

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

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

The burden to demonstrate that a remedial action is protective of public health, safety and the environment, as applicable, and has been selected in conformance with the provisions of this subsection is with the person responsible for conducting the remediation.

The department may require the person responsible for conducting the remediation to supply the information required pursuant to this subsection as is necessary for the department to make a determination.

h. (1) The department shall adopt regulations which establish a procedure for a person to demonstrate that a particular parcel of land contains large quantities of historical fill

material. Upon a determination by the department that large quantities of historic fill material exist on that parcel of land, there is a rebuttable presumption that the department shall not require any person to remove or treat the fill material in order to comply with applicable health risk or environmental standards. In these areas the department shall establish by regulation the requirement for engineering or institutional controls that are designed to prevent exposure of these contaminants to humans, that allow for the continued use of the property, that are less costly than removal or treatment, which maintain the health risk standards as established in subsection d. of this section, and, as applicable, are protective of the environment. The department may rebut the presumption only upon a finding by the preponderance of the evidence that the use of engineering or institutional controls would not be effective in protecting public health, safety, and the environment. The department may not adopt any rule or regulation that has the effect of shifting the burden of rebutting the presumption. For the purposes of this paragraph "historic fill material" means generally large volumes of non-indigenous material, no matter what date they were emplaced on the site, used to raise the topographic elevation of a site, which were contaminated prior to emplacement and are in no way connected with the operations at the location of emplacement and which include, but are not limited to, construction debris, dredge spoils, incinerator residue, demolition debris, fly ash, and non-hazardous solid waste. Historic fill material shall not include any material which is substantially chromate chemical production waste or any other chemical production waste or waste from processing of metal or mineral ores, residues, slags or tailings.

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

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

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

j. Upon the approval by the department or by a licensed site remediation professional of a remedial action workplan, or similar plan that describes the extent of contamination at a site and the remedial action to be implemented to address that contamination, the department may not subsequently require a change to that workplan or similar plan in order to compel a different remediation standard due to the fact that the established remediation standards have changed; however, the department may compel a different remediation standard if the difference between the new remediation standard and the remediation standard approved in the workplan or other plan differs by an order of magnitude. The limitation to the

department's authority to change a workplan or similar plan pursuant to this subsection shall only apply if the workplan or similar plan is being implemented in a reasonable timeframe, as may be indicated in the approved remedial action workplan or similar plan.

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

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

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

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

o. A person who has remediated a site pursuant to the provisions of this section, who was liable for the cleanup and removal costs of that discharge pursuant to the provisions of paragraph (1) of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who remains liable for the discharge on that site due to a possibility that a remediation standard may change, undiscovered contamination may be found, or because an engineering control was used to remediate the discharge, shall maintain with the department a current address at which that person may be contacted in the event additional remediation needs to be performed at the site. The requirement to maintain the current address shall be made part of the conditions of the permit issued pursuant to section 19 of P.L.2009, c.60 (C.58:10C-19) and the final remediation document.

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

C.58:10B-13 Use of nonresidential standards or other controls, requirements.

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

(1) implement any engineering or institutional controls the department requires to prevent exposure to the contaminants, provide maintenance, as necessary, of those controls, and provide for the restriction of the use of the property by the owner in a manner that prevents exposure;

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

(3) provide written notice to the governing body of each municipality in which the property is located that contaminants will exist at the property above residential use soil remediation standards or any other remediation standards and specifying the restrictions on the use of or access to all or part of that property and of the specific engineering or institutional controls at the property that exist and that shall be maintained;

(4) post signs, as required by the department, at any location at the site where access is restricted or in those areas that must be maintained in a prescribed manner, to inform persons on the property that there are restrictions on the use of that property or restrictions on access to any part of the site;

(5) maintain a list of the restrictions on site for inspection by governmental enforcement officials; and

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

b. If the owner of the real property does not consent to the recording of a notice pursuant to paragraph (2) of subsection a. of this section, the person responsible for conducting the remediation shall implement a remedial action that meets the residential soil remediation standard in the remediation of that real property.

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

d. The owner or lessee of any real property, or any person operating a business on real property, which has been remediated to a nonresidential use soil remediation standard or on which a remedial action that includes engineering or institutional controls for soil,

groundwater, or surface water has been implemented to protect the public health, safety, or the environment, as applicable, shall maintain the engineering or institutional controls as required by the department. An owner, lessee, or operator who takes any action that results in the improper alteration or removal of engineering or institutional controls or who fails to maintain the engineering or institutional controls as required by the department, shall be subject to the penalties and actions set forth in section 22 of P.L.1976, c.141 (C.58:10-23.11u) and, where applicable, shall be liable for any additional remediation and damages pursuant to the provisions of section 8 of P.L.1976, c.141 (C.58:10-23.11g). The provisions of this subsection shall not apply if a notification received pursuant to subsection c. of this section authorizes all restrictions or controls to be removed from the subject property.

e. Notwithstanding the provisions of any other law, or any rule, regulation, or order adopted pursuant thereto to the contrary, whenever contamination at a property is remediated in compliance with all applicable soil, groundwater or surface water remediation standards that were in effect or approved by the department at the completion of the remediation, no person, except as otherwise provided in this section, shall be liable for the cost of any additional remediation that may be required by a subsequent adoption by the department of a more stringent remediation standard for a particular contaminant. Upon the adoption of a regulation that amends a remediation standard, or where the adoption of a regulation would change a remediation standard which was otherwise approved by the department, only a person who is liable to clean up and remove that contamination pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not have a defense to liability pursuant to subsection d. of that section, shall be liable for any additional remediation costs necessary to bring the site into compliance with the new remediation standards except that no person shall be so liable unless the difference between the new remediation standard and the level or concentration of a contaminant at the property differs by an order of magnitude. The department may compel a person who is liable for the additional remediation costs to perform additional remediation activities to meet the new remediation standard except that a person may not be compelled to perform any additional remediation activities on the site if that person can demonstrate that the existing engineering or institutional controls on the site prevent exposure to the contamination and that the site remains protective of public health, safety and the environment pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12). The burden to prove that a site remains protective is on the person liable for the additional remediation costs. A person liable for the additional remediation costs who is relying on engineering or institutional controls to make a site protective, shall comply with the provisions of subsections a., b., c. and d. of this section.

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

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

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

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

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

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

C.58:10B-13.1 No further action letter; covenant not to sue.

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

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

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

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

(a) a provision requiring the person, or any subsequent owner, lessee, or operator during the person's period of ownership, tenancy, or operation, to maintain those controls, conduct periodic monitoring for compliance, and submit to the department, on a biennial basis, a certification that the engineering and institutional controls are being properly maintained and

continue to be protective of public health and safety and of the environment. The certification shall state the underlying facts and shall include the results of any tests or procedures performed that support the certification; and

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

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

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

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

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

e. The covenant not to sue may be issued to any person who obtains a no further action letter as provided in subsection a. of this section. The covenant not to sue shall not provide relief from any liability, either under statutory or common law, to any person who is liable for cleanup and removal costs pursuant to subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not have a defense to liability pursuant to subsection d. of that section.

f. (1) Except as provided in paragraph (2) of this subsection, the department shall not issue covenants not to sue after the issuance of licenses to site remediation professionals pursuant to the provisions of section 12 of P.L.2009, c.60 (C.58:10C-12).

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

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

C.58:10B-17.1 Commencement of civil actions under environmental laws, limitations; definitions.

5. a. (1) Except where a limitations provision expressly and specifically applies to actions commenced by the State or where a longer limitations period would otherwise apply, and subject to any statutory provisions or common law rules extending limitations periods, any

civil action concerning the remediation of a contaminated site or the closure of a sanitary landfill facility commenced by the State pursuant to the State's environmental laws shall be commenced within three years next after the cause of action shall have accrued.

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

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

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

c. As used in this section:

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

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

d. Nothing in the amendatory provisions to this section adopted pursuant to P.L.2009, c.60 (C.58:10C-1 et al.) shall extend a limitations period that has expired prior to the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.).

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

C.58:10B-20 Remediation Guarantee Fund.

45. a. There is created in the Department of Environmental Protection a special, revolving fund to be known as the Remediation Guarantee Fund. The fund shall be credited with all remediation funding source surcharges imposed pursuant to section 33 of P.L.1993, c.139 (C.58:10B-11), all moneys appropriated to it by law, all moneys collected in subrogation

actions to recover moneys expended from the fund, and all moneys earned from the investment of the moneys in the fund.

b. (Deleted by amendment, P.L.2009, c.60)

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

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

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

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

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

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

C.58:10B-26 Definitions relative to redevelopment agreements.

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

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

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

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

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

"No further action letter" means a written determination by the Department of Environmental Protection that based upon an evaluation of the historical use of a particular site, or of an area of concern or areas of concern at that site, as applicable, and any other

investigation or action the department deems necessary, there are no discharged contaminants present at the site, at the area of concern or areas of concern, at any other site to which a discharge originating at the site has migrated, or that any discharged contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation regulations.

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

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

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

"Remediation costs" means all reasonable costs associated with the remediation of a contaminated site except that "remediation costs" shall not include any costs incurred in financing the remediation.

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

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

C.58:10B-28 Eligibility for reimbursement; certification.

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

provisions of this section upon the commencement of a business operation, or the completion of the construction of one or more new residences, within a redevelopment project.

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

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

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

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

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

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

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

C.58:10B-29 Qualification for certification of reimbursement for remediation costs; memorandum of agreement.

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

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

c. After the developer has entered into a memorandum of agreement, or other oversight document with the Commissioner of Environmental Protection, or after the developer has notified the Department of Environmental Protection of the name and license information of

the licensed site remediation professional who has been hired to perform the remediation as required pursuant to subsection b. of section 30 of P.L.2009, c.60 (C.58:10B-1.3), the commissioner shall submit a copy thereof to the developer, the clerk of the municipality in which the subject property is located, the Division of Business Assistance, Marketing and International Trade in the New Jersey Economic Development Authority, and the director.

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

C.58:10B-31 Reimbursement of remediation costs.

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

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

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

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

Approved May 7, 2009.