

Title 58.  
Chapter  
10C.(New)  
Site Remediation  
Professional  
Licensing and  
Regulation  
§§1-29 –  
C.58:10C-1 to  
58:10C-29  
§30 –  
C.58:10B-1.3  
§31 –  
C.58:10B-13.2  
§32 –  
C.58:10B-8.1  
§56 - Note to  
§§33-49 & 58-55

P.L. 2009, CHAPTER 60, *approved May 7, 2009*  
Assembly Committee Substitute for  
Assembly, No. 2962

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

3

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

6

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

10

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

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

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

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

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

**Matter underlined thus is new matter.**

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

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

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

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

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

43 "Feasibility study" means a study to develop and evaluate  
44 options for remedial action using data gathered during the remedial  
45 investigation to develop the objectives of the remedial action, and  
46 to develop possible remedial action alternatives, to evaluate those  
47 alternatives and create a list of feasible alternatives, and to analyze

1 the engineering, scientific, institutional, human health,  
2 environmental, and cost of each selected alternative.

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

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

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

44 "Licensed site remediation professional" means an individual  
45 who is licensed by the board pursuant to section 7 of P.L. , c.  
46 (C. ) (pending before the Legislature as this bill) or the department

1 pursuant to section 12 of P.L. , c. (C. ) (pending before the  
2 Legislature as this bill).

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

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

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

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

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

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

46 "Remedial action workplan" means a plan for the remedial action  
47 to be undertaken at a site, or at any area to which a discharge

1 originating at a site is migrating or has migrated; a description of  
2 the remedial action to be used to remediate a site; a time schedule  
3 and cost estimate of the implementation of the remedial action; and  
4 any other information the department deems necessary.

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

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

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

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

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

43 "Site investigation" means the collection and evaluation of data  
44 adequate to determine whether or not discharged contaminants exist  
45 at a site or have migrated or are migrating from the site at levels in  
46 excess of the applicable remediation standards. A site investigation

1 shall be developed based upon the information collected pursuant to  
2 the preliminary assessment.

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

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

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

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

25

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

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

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

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

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

41 (a) six shall be site remediation professionals who hold a license  
42 from the board. Of the six members first appointed pursuant to this  
43 subparagraph, two shall be appointed to a term of one year, two  
44 shall be appointed to a term of two years, one shall be appointed to  
45 a term of three years, and one shall be appointed to a term of four  
46 years. Thereafter, all appointments shall be for a term of four years.  
47 The members first appointed to the board pursuant to this

1 subparagraph shall hold a temporary site remediation professional  
2 license issued by the department pursuant to section 12 of P.L. , c.  
3 (C. ) (pending before the Legislature as this bill);

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

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

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

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

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

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

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

39

40 4. (New section) The powers of the board shall be vested in the  
41 members thereof in office. A majority of the total authorized  
42 membership of the board shall constitute a quorum and no action  
43 may be taken by the board except upon the affirmative vote of a  
44 majority of the total authorized membership of the board.

45

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

- 1 a. To review and approve or deny applications for licensing site  
2 remediation professionals;
  - 3 b. To administer and evaluate licensing examinations for site  
4 remediation professionals;
  - 5 c. To issues licenses and license renewals to all qualifying site  
6 remediation professionals;
  - 7 d. To establish standards and requirements for continuing  
8 education of licensed site remediation professionals;
  - 9 e. To approve or offer continuing education courses;
  - 10 f. To track fulfillment of continuing education requirements by  
11 licensed site remediation professionals;
  - 12 g. To establish and collect fees for examinations, licenses,  
13 renewals, or any other services required for the licensing of site  
14 remediation professionals;
  - 15 h. To adopt and administer standards for professional conduct  
16 for licensed site remediation professionals, as provided in sections  
17 14 and 16 of P.L. , c. (C. ) (pending before the Legislature as  
18 this bill);
  - 19 i. To investigate complaints, impose discipline, and suspend and  
20 revoke licenses of site remediation professionals who violate the  
21 provisions of P.L. , c. (C. ) (pending before the Legislature as  
22 this bill);
  - 23 j. To publish and maintain the names and contact information of  
24 all site remediation professionals licensed pursuant to P.L. , c.  
25 (C. ) (pending before the Legislature as this bill), and make the list  
26 available on the board's internet website;
  - 27 k. To publish and maintain a list of all site remediation  
28 professionals whose license has been suspended or revoked by the  
29 board and make the list available on the board's internet website;
  - 30 l. To provide public information on the licensed site remediation  
31 professional program; and
  - 32 m. To maintain a record of complaints filed against licensed site  
33 remediation professionals and provide the public with information  
34 upon request.
- 35
- 36 6. (New section) a. No later than 18 months after the date of  
37 enactment of P.L. , c. (C. ) (pending before the Legislature as  
38 this bill), the board shall, pursuant to the "Administrative Procedure  
39 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and  
40 regulations necessary for the implementation, administration, and  
41 enforcement of P.L. , c. (C. ) (pending before the Legislature as  
42 this bill). The rules and regulations shall: (1) establish requirements  
43 for the education, continuing education, training, experience,  
44 examination and testing, and references for the licensing of site  
45 remediation professionals; (2) establish standards for professional  
46 conduct of, and the payment of fees by, licensed site remediation  
47 professionals; (3) establish procedures for the investigation of



1 complaints concerning licensed site remediation professionals  
2 initiated by any person; (4) establish other forms of nonmonetary  
3 penalties that the board may impose on a licensed site remediation  
4 professional pursuant to section 17 of P.L. , c. (C. ) (pending  
5 before the Legislature as this bill); and (5) provide for enforcement  
6 of the provisions of P.L. , c. (C. ) (pending before the  
7 Legislature as this bill). The rules and regulations shall establish an  
8 expiration date for temporary site remediation professional licenses  
9 issued by the department pursuant to section 12 of P.L. , c.  
10 (C. ) (pending before the Legislature as this bill).

11 b. The rules and regulations adopted pursuant to this section  
12 shall be sufficient to assure that any response action outcome issued  
13 by a site remediation professional licensed pursuant to P.L. , c.  
14 (C. ) (pending before the Legislature as this bill) shall be  
15 consistent with all applicable laws, rules and regulations concerning  
16 the remediation of contaminated sites and shall protect public health  
17 and safety and the environment.

18

19 7. (New section) a. The board shall establish a licensing  
20 program and licensing requirements for site  
21 remediation professionals, and shall oversee their licensing and  
22 performance.

23 b. The board shall establish standards for education, training  
24 and experience that shall be required of any person who applies for  
25 a license or a license renewal. The board shall conduct  
26 examinations to certify that an applicant possesses sufficient  
27 knowledge of the State laws, rules and regulations, standards and  
28 requirements applicable to site remediation and that the applicant is  
29 qualified to obtain a license or a license renewal. The board shall  
30 also adopt standards for the professional conduct of licensed site  
31 remediation professionals pursuant to the provisions of section 16  
32 of P.L. , c. (C. ) (pending before the Legislature as this bill).  
33 The board shall require an applicant to submit references to ensure  
34 that the applicant meets the standards and requirements established  
35 for training, experience and professional conduct by licensed site  
36 remediation professionals. No person may take the licensing  
37 examination until the board determines that the applicant meets the  
38 standards for education, training and experience.

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

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

1 (1) holds a bachelor's degree or higher in natural, chemical or  
2 physical science, or an engineering degree in a discipline related to  
3 site remediation, from an accredited institution of higher education,  
4 or has been issued a temporary license to remediate discharges from  
5 underground storage tanks only pursuant to subsection d. of section  
6 13 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
7 and meets the other requirements established in this subsection and  
8 in subsection f. of this section;

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

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

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

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

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

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

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

1 study and up to two years of credit may be awarded for applicants  
2 who have earned a doctorate degree in a relevant field of study.

3 f. The board shall authorize an applicant who has been issued a  
4 temporary license pursuant to subsection d. of section 13 of P.L. ,  
5 c. (C. ) (pending before the Legislature as this bill), who meets  
6 all other requirements established pursuant to this section but does  
7 not hold a bachelor's degree from an accredited institution of higher  
8 education to take the licensing examination to qualify for a license  
9 pursuant to this section. An applicant who does not satisfactorily  
10 complete the examination authorized pursuant to this subsection  
11 shall not be authorized to reapply for a license.

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

18  
19 8. (New section) a. The board may suspend or revoke a license  
20 pursuant to the provisions of section 17 of P.L. , c. (C. )  
21 (pending before the Legislature as this bill). The board shall  
22 establish standards and requirements for the reinstatement of a site  
23 remediation professional license that has been suspended or  
24 revoked.

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

31  
32 9. (New section) A licensed site remediation professional shall  
33 submit an application for license renewal at least 90 days and no  
34 more than 120 days prior to expiration of the license. The board  
35 shall establish standards and requirements for the renewal of the site  
36 remediation professional license and may require training or  
37 continuing education, experience or other requirements as a  
38 condition for renewal of a license. An application for a license  
39 renewal shall be accompanied by an application fee.

40  
41 10. (New section) Each license issued pursuant to section 7 of  
42 P.L. , c. (C. ) (pending before the Legislature as this bill)  
43 shall be issued to an individual, shall be valid only for the  
44 individual to whom it is issued and shall not be transferable. Each  
45 license issued pursuant to section 7 of P.L. , c. (C. ) (pending  
46 before the Legislature as this bill) shall be valid for a period not to

1 exceed three years, unless a shorter period is specified therein, or  
2 unless suspended or revoked.

3

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

9

10 12. (New section) a. No more than 90 days after the date of  
11 enactment of P.L. , c. (C. ) (pending before the Legislature as  
12 this bill), the department shall establish a temporary site  
13 remediation professional license program. The department shall  
14 issue a temporary site remediation professional license to any  
15 individual who qualifies for the license pursuant to the provisions of  
16 section 13 of P.L. , c. (C. ) (pending before the Legislature as  
17 this bill).

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

25 c. Each temporary license issued by the department shall be  
26 issued to an individual, shall be valid only for the individual to  
27 whom it is issued and shall not be transferable. Except as provided  
28 in this subsection, each temporary license issued by the department  
29 pursuant to this section and section 13 of P.L. , c. (C. ) (pending  
30 before the Legislature as this bill) shall be valid for a period not to  
31 exceed three years, unless a shorter period is specified therein, or  
32 unless suspended or revoked. All temporary site remediation  
33 professional licenses shall expire as provided in rules and  
34 regulations adopted by the board pursuant to subsection a. of  
35 section 6 of P.L. , c. (C. ) (pending before the Legislature as  
36 this bill).

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

44

45 13. (New section) a. No more than 90 days after the date of  
46 enactment of P.L. , c. (C. ) (pending before the Legislature as  
47 this bill), the department shall issue guidelines which shall be

1 published in the New Jersey Register that set forth the procedures  
2 for the issuance of temporary site remediation professional licenses.  
3 Application for a temporary license shall be made in a manner and  
4 on such forms as may be prescribed by the department.

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

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

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

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

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

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

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

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

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

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

16

17 14. (New section) a. For any site for which a licensed site  
18 remediation professional is required to be hired pursuant to the  
19 provisions of section 30 of P.L. , c. (C. ) (pending before the  
20 Legislature as this bill), the person responsible for conducting the  
21 remediation shall certify all documents submitted to the department  
22 concerning the remediation of the contaminated site. The licensed  
23 site remediation professional shall certify that the work was  
24 performed, the licensed site remediation professional managed,  
25 supervised, or performed the work that is the basis of the  
26 submission, and that the work and the submitted documents are  
27 consistent with all applicable remediation requirements adopted by  
28 the department.

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

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

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

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

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

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

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

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

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

9 (b) mandatory remediation timeframes and expedited site  
10 specific timeframes adopted by the department pursuant to section  
11 28 of P.L. , c. (C ) (pending before the Legislature as this  
12 bill); and

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

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

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

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

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

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

44  
45 15. (New section) a. No person shall use a certified subsurface  
46 evaluator for the remediation of a discharge from an underground

1 storage tank regulated pursuant to P.L.1986, c.102 (C.58:10A-21 et  
2 seq.).

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

6  
7 16. (New section) a. A licensed site remediation professional's  
8 highest priority in the performance of professional services shall be  
9 the protection of public health and safety and the environment.

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

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

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

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

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



- 1 g. A licensed site remediation professional who has taken over  
2 the responsibility for the remediation of a contaminated site from  
3 another licensed site remediation professional shall correct all  
4 deficiencies in a document submitted by the previous licensed site  
5 remediation professional identified by the department in accordance  
6 with timeframes established by the department.
- 7 h. A licensed site remediation professional shall not certify any  
8 document submitted to the department unless the licensed site  
9 remediation professional has managed, supervised or performed the  
10 work that is the basis of the submission, or has periodically  
11 reviewed and evaluated the work performed by other persons that  
12 forms the basis for the information in the submission, or has  
13 completed the work of another licensed site remediation  
14 professional and has concluded such work is reliable pursuant to  
15 subsection f. of this section.
- 16 i. A licensed site remediation professional shall exercise  
17 independent professional judgment, comply with the requirements  
18 and procedures set forth in the provisions of P.L. , c. (C. )  
19 (pending before the Legislature as this bill), make a good faith and  
20 reasonable effort to identify and obtain the relevant and material  
21 facts, data, reports and other information evidencing conditions at a  
22 contaminated site for which he is responsible that is in possession  
23 of the owner of the property, or that is otherwise available, and  
24 identify and obtain whatever additional data and other information  
25 as the licensed site remediation professional deems necessary. The  
26 licensed site remediation professional shall disclose and explain in  
27 any document submitted to the department any facts, data,  
28 information, qualifications, or limitations known by the licensed  
29 site remediation professional that are not supportive of the  
30 conclusions reached in the document.
- 31 j. If a licensed site remediation professional identifies a  
32 condition at a contaminated site that in his independent professional  
33 judgment is an immediate environmental concern, then the licensed  
34 site remediation professional shall: (1) immediately verbally advise  
35 the person responsible for conducting the remediation of that  
36 person's duty to notify the department of the condition; and (2)  
37 immediately notify the department of the condition by calling the  
38 department's telephone hotline.
- 39 k. If a licensed site remediation professional obtains specific  
40 knowledge that a discharge has occurred on a contaminated site for  
41 which he is responsible, the licensed site remediation professional  
42 shall: (1) notify the person responsible for conducting the  
43 remediation of the existence of the discharge; and (2) notify the  
44 department of the discharge by calling the department's telephone  
45 hotline. The person responsible for conducting the remediation  
46 shall also be responsible for notifying the department of the  
47 existence of the discharge. The provisions of this subsection shall

1 not apply to a discharge that may be a result of the existence of  
2 historic fill material.

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

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

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

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

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

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

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

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

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

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

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

15 (1) the licensed site remediation professional orders, directs, or  
16 agrees to the provision of professional services conducted or  
17 prepared by another licensed site remediation professional under his  
18 supervision;

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

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

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

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

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

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

40 (1) make a material misrepresentation of fact;

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

43 (3) make a statement that, in the opinion of the board, is likely to  
44 create an unjustified expectation about results the licensed site  
45 remediation professional may achieve, or state or imply that the  
46 licensed site remediation professional may achieve results by means  
47 that violate the provisions of applicable environmental statutes,

1 rules or regulations, including the provisions of P.L. , c. (C. )  
2 (pending before the Legislature as this bill).

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

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

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

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

22

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

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

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

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

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

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

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

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

46 (2) A licensed site remediation professional who purposely,  
47 knowingly, or recklessly violates a provision of P.L. , c. (C. )

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

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

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

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

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

10 (1) A temporary or permanent injunction; or

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

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

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

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

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

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

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

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

1 and collectible pursuant to this subsection shall be based on the rate  
2 of interest on judgments provided in the New Jersey Rules of Court.

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

10 g. A licensed site remediation professional may not apply for a  
11 new license for three years following the date of revocation of the  
12 license by the board or for the term established by the board  
13 pursuant to subsection b. of section 8 of P.L. , c. (C. ) (pending  
14 before the Legislature as this bill). At the conclusion of the license  
15 revocation, the licensed site remediation professional shall follow  
16 the application procedures for licensure in accordance with section  
17 7 of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

21

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

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

46 c. If the board or the department has reason to believe that any  
47 person has made fraudulent representations to the board or the



1 department or has destroyed or concealed evidence relating to any  
2 activity subject to the provisions of P.L. , c. (C. ) (pending  
3 before the Legislature as this bill), or any rule, regulation, license,  
4 or order issued pursuant thereto, the board or the department may  
5 seize any records, equipment, property, or other evidence it deems  
6 necessary.

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

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

27

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

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

46 c. (1) Except as provided in paragraph (2) of this subsection,  
47 the department may require that a person issued a permit pursuant

1 to this section maintain insurance, financial assurance or another  
2 financial instrument to guarantee that funding is available to  
3 operate, maintain, and inspect the engineering controls installed as  
4 part of a remedial action of a contaminated site for the period that  
5 such controls are required. The person required to maintain the  
6 funding source pursuant to this section may petition the department  
7 on an annual basis to decrease the amount of funding required to be  
8 maintained.

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

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

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

1       21. (New section) a. The department shall inspect all documents  
2 and information submitted by a licensed site remediation  
3 professional concerning a remediation upon receipt. The  
4 department may provide additional review of any document  
5 submitted for the remediation of a contaminated site upon a  
6 determination that: (1) the licensed site remediation professional  
7 did not comply with the provisions of section 16 of P.L. , c.  
8 (C. ) (pending before the Legislature as this bill); (2) any  
9 deficiencies, errors or omissions will result in an inability to  
10 determine if the remediation is protective of the public health,  
11 safety, or the environment; or (3) the remediation will not be  
12 protective, of the public health, safety, or the environment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1       24. (New section) The board shall audit annually the  
2 submissions and conduct of at least 10 percent of the total number  
3 of licensed site remediation professionals. A licensed site  
4 remediation professional and the person responsible for conducting  
5 the remediation shall cooperate with the board in the conduct of the  
6 audit and shall provide any information requested by the board as  
7 part of the audit.

8  
9       25. (New section) The department shall not audit a response  
10 action outcome more than three years after the date the licensed site  
11 remediation professional filed the response action outcome with the  
12 department, unless:

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

15       b. the board conducts an investigation of the licensed site  
16 remediation professional; or

17       c. the licensed site remediation professional who issued the  
18 response action outcome has had his license suspended or revoked  
19 by the board.

20  
21       26. (New section) No person shall take retaliatory action if a  
22 licensed site remediation professional:

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

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

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

46       (1) is in violation of law, or a rule or regulation adopted pursuant  
47 to law, including any violation involving deception of, or

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

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

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

11

12 27. (New section) a. The department shall undertake direct  
13 oversight of a remediation of a contaminated site under the  
14 following conditions:

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

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

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

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

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

42 (1) the contamination at the site includes chromate chemical  
43 production waste;

44 (2) the department determines that more than one  
45 environmentally sensitive natural resource has been injured by  
46 contamination from the site;

1 (3) the site has contributed to sediments contaminated by  
2 polychlorinated biphenyl, mercury, arsenic, or dioxin in a surface  
3 water body; or  
4 (4) the site is ranked by the department in the category requiring  
5 the highest priority pursuant to the ranking system developed  
6 pursuant to section 2 of P.L.1982, c.202 (C.58:10-23.16).  
7 c. For any site subject to direct oversight by the department  
8 pursuant to this section:  
9 (1) the department shall review each document submitted by a  
10 licensed site remediation professional and shall approve or deny the  
11 submission;  
12 (2) a feasibility study shall be performed and submitted to the  
13 department for approval;  
14 (3) the department shall select the remedial action for the site;  
15 (4) the person responsible for conducting the remediation shall  
16 establish a remediation trust fund pursuant to section 25 of  
17 P.L.1993, c.139 (C.58:10B-3) in the amount of the estimated cost of  
18 the remediation;  
19 (5) all disbursements of funds from the remediation trust fund  
20 shall require prior approval by the department;  
21 (6) all submissions prepared by the licensed site remediation  
22 professional concerning the remediation required by the department  
23 shall be provided simultaneously to the department and the person  
24 responsible for conducting the remediation; and  
25 (7) the person responsible for conducting the remediation shall  
26 implement a public participation plan approved by the department  
27 to solicit public comment from the members of the surrounding  
28 community concerning the remediation of the site.  
29 d. The department shall issue guidelines establishing specific  
30 criteria for the conditions under which a site may be subject to  
31 direct oversight pursuant to subsection b. of this section.  
32 e. (1) Any oversight procedure, remedy, or other obligation in  
33 P.L. , c. (C. ) (pending in the Legislature as this bill) shall not  
34 affect a remediation conducted pursuant to and in compliance with a  
35 settlement of litigation to which the department is a party if the  
36 settlement (a) occurred prior to the date of enactment of P.L. , c.  
37 (C. ) (pending before the Legislature as this bill), or (b) is a  
38 settlement of litigation pending on the date of enactment of P.L. ,  
39 c. (C. ) (pending before the Legislature as this bill).  
40 (2) For any litigation pending or settled on the date of enactment  
41 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
42 concerning a remediation performed pursuant to the "Resource  
43 Conservation and Recovery Act," 42 U.S.C. s.6921 et seq., nothing  
44 in P.L. , c. (C. ) (pending before the Legislature as this bill)  
45 shall affect an oversight procedure, remedy, or other obligation  
46 imposed by a federal administrative order or federal court order.

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

- 5       (1) a receptor evaluation;
- 6       (2) control of ongoing sources of contamination;
- 7       (3) establishment of interim remedial measures;
- 8       (4) addressing immediate environmental concern conditions;
- 9       (5) the performance of each phase of the remediation including  
10 preliminary assessment, site investigation, remedial investigation  
11 and remedial action;
- 12       (6) completion of remediation; and
- 13       (7) any other activities deemed necessary by the department to  
14 effectuate timely remediation.

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

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

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

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

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

- 40       (1) a delay in obtaining access to property, provided the person  
41 responsible for conducting the remediation demonstrates that good  
42 faith efforts have been undertaken to gain access, access has not  
43 been granted by the property owner, and, after good faith efforts  
44 have been exhausted, a complaint was filed with the Superior Court  
45 to gain access, in accordance with applicable rules and regulations;



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

4 (3) other site-specific circumstances that may warrant an  
5 extension as determined by the department.  
6

7 29. (New section) Notwithstanding the provisions of the  
8 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
9 seq.) to the contrary, the department shall adopt, after notice,  
10 interim rules and regulations establishing a program that provides  
11 for the responsibilities of persons responsible for conducting a  
12 remediation and licensed site remediation professionals in the  
13 remediation of contaminated sites pursuant to the provisions of  
14 P.L. , c. (C. ) (pending before the Legislature as this bill), no  
15 later than 180 days after the date of enactment of P.L. , c. (C. )  
16 (pending before the Legislature as this bill). The interim rules and  
17 regulations may include amendments to rules and regulations  
18 adopted pursuant to other laws, in order to make them consistent  
19 with the provisions of P.L. , c. (C. ) (pending before the  
20 Legislature as this bill). The interim rules and regulations shall be  
21 effective immediately upon filing with the Office of Administrative  
22 Law and shall be effective for a period not to exceed 18 months,  
23 and may, thereafter, be amended, adopted or readopted by the  
24 department in accordance with the provisions of the  
25 "Administrative Procedure Act."  
26

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

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

39 (1) hire a licensed site remediation professional to perform the  
40 remediation;

41 (2) notify the department of the name and license information of  
42 the licensed site remediation professional who has been hired to  
43 perform the remediation;

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

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

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

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

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

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

13 (9) obtain all necessary permits.

14 c. (1) Any person who initiates a remediation prior to the date  
15 of enactment of P.L. , c. (C. ) (pending before the Legislature  
16 as this bill), or prior to the issuance of temporary licenses to site  
17 remediation professionals pursuant to section 12 of P.L. , c.  
18 (C. ) (pending before the Legislature as this bill), shall comply  
19 with the provisions of paragraphs (4) through (9) of subsection b. of  
20 this section.

21 (2) The department may require a person required to perform a  
22 remediation pursuant to subsection a. of this section, or a person  
23 who has initiated a remediation prior to the date of enactment of  
24 P.L. , c. (C. ) (pending before the Legislature as this bill), to  
25 comply with the provisions of subsection b. of this section if, after  
26 the date of enactment of P.L. , c. (C. ) (pending before the  
27 Legislature as this bill), the department (a) issues a final order or a  
28 penalty becomes due and payable, concerning the performance of  
29 the remediation, or (b) issues a demand for stipulated penalties  
30 pursuant to the provisions of an oversight document in which the  
31 person waived a right to a hearing on the penalties.

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

37 d. (1) The provisions of this section shall not apply to any  
38 person who remediates a discharge from an unregulated heating oil  
39 tank. For any person who remediates a discharge from an  
40 unregulated heating oil tank, the provisions of section 15 of P.L. ,  
41 c. (C. ) (pending before the Legislature as this bill) shall apply.

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

1 hazardous substance at the site or is not in any way responsible for  
2 a hazardous substance discharged at the site pursuant to section 8 of  
3 P.L.1976, c.141 (C.58:10-23.11g).

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

7  
8 31. (New section) a. After a licensed site remediation  
9 professional issues a response action outcome to the person  
10 responsible for conducting the remediation, the person shall be  
11 deemed, by operation of law, to have received a covenant not to sue  
12 with respect to the real property upon which the remediation has  
13 been conducted. The covenant not to sue shall be subject to any  
14 conditions and limitations contained in the response action  
15 outcome. The covenant not to sue shall be for any area of concern  
16 remediated and may apply to the entire real property if the  
17 remediation included a preliminary assessment and, if necessary, a  
18 site investigation of the entire real property, and any other  
19 necessary remedial actions. The covenant remains effective only  
20 for as long as the real property for which the covenant was deemed  
21 to have been issued continues to meet the conditions of the response  
22 action outcome. Upon a finding by the department that real  
23 property or a portion thereof to which a covenant not to sue  
24 pertains, no longer meets with the conditions of the response action  
25 outcome, the department shall provide notice of that fact to the  
26 person responsible for maintaining compliance with the response  
27 action outcome. The department may allow the person a reasonable  
28 time to come into compliance with the terms of the original  
29 response action outcome. If the property does not meet the  
30 conditions of the response action outcome and if the department  
31 does not allow for a period of time to come into compliance or if  
32 the person fails to come into compliance within the time period, the  
33 covenant not to sue shall be deemed to be revoked by operation of  
34 law.

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

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

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

46 (a) a provision requiring the person, or any subsequent owner,  
47 lessee, or operator during the person's period of ownership, tenancy,

1 or operation, to maintain those controls, conduct periodic  
2 monitoring for compliance, and submit to the department, on a  
3 biennial basis, a certification that the engineering and institutional  
4 controls are being properly maintained and continue to be protective  
5 of public health and safety and of the environment. The  
6 certification shall state the underlying facts and shall include the  
7 results of any tests or procedures performed that support the  
8 certification; and

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

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

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

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

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

39 e. The covenant not to sue shall be deemed to apply to any  
40 person who obtains a response action outcome as provided in  
41 subsection a. of this section. The covenant not to sue shall not  
42 provide relief from any liability, either under statutory or common  
43 law, to any person who is liable for cleanup and removal costs  
44 pursuant to subsection c. of section 8 of P.L.1976, c.141 (C.58:10-  
45 23.11g), and who does not have a defense to liability pursuant to  
46 subsection d. of that section.

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

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

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

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

31

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

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

41       "Closing operations" means:

42       (1) the cessation of operations resulting in at least a 90 percent  
43 reduction in the total value of the product output from the entire  
44 industrial establishment, as measured on a constant, annual date-  
45 specific basis, within any five-year period, or, for industrial  
46 establishments for which the product output is undefined, a 90  
47 percent reduction in the number of employees or a 90 percent

1 reduction in the area of operations of an industrial establishment  
2 within any five-year period; provided, however, the department may  
3 approve a waiver of the provisions of this paragraph for any owner  
4 or operator who, upon application and review, evidences a good  
5 faith effort to maintain and expand product output, the number of  
6 employees, or area of operations of the affected industrial  
7 establishment;

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

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

13 (4) the initiation of bankruptcy proceedings pursuant to Chapter  
14 7 of the federal Bankruptcy Code, 11 U.S.C. s.701 et seq. or the  
15 filing of a plan of reorganization that provides for a liquidation  
16 pursuant to Chapter 11 of the federal Bankruptcy Code, 11 U.S.C.  
17 s.1101 et seq.;

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

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

24 "Transferring ownership or operations" means:

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

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

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

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

37 "Change in ownership" means:

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

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

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

- 1 (4) the sale or transfer of title to an industrial establishment or  
2 the real property of an industrial establishment by exercising an  
3 option to purchase; or
- 4 (5) the sale or transfer of a partnership interest in a partnership  
5 that owns or operates an industrial establishment, that would  
6 reduce, by 10% or more, the assets available for remediation of the  
7 industrial establishment;
- 8 "Change in ownership" shall not include:
- 9 (1) a corporate reorganization not substantially affecting the  
10 ownership of the industrial establishment;
- 11 (2) a transaction or series of transactions involving the transfer  
12 of stock, assets or both, among corporations under common  
13 ownership, if the transaction or transactions will not result in the  
14 diminution of the net worth of the corporation that directly owns or  
15 operates the industrial establishment by more than 10%, or if an  
16 equal or greater amount in assets is available for the remediation of  
17 the industrial establishment before and after the transaction or  
18 transactions;
- 19 (3) a transaction or series of transactions involving the transfer  
20 of stock, assets or both, resulting in the merger or de facto merger  
21 or consolidation of the indirect owner with another entity, or in a  
22 change in the person holding the controlling interest of the indirect  
23 owner of an industrial establishment, when the indirect owner's  
24 assets would have been unavailable for cleanup if the transaction or  
25 transactions had not occurred;
- 26 (4) a transfer where the transferor is the sibling, spouse, child,  
27 parent, grandparent, child of a sibling, or sibling of a parent of the  
28 transferee;
- 29 (5) a transfer to confirm or correct any deficiencies in the  
30 recorded title of an industrial establishment;
- 31 (6) a transfer to release a contingent or reversionary interest  
32 except for any transfer of a lessor's reversionary interest in leased  
33 real property;
- 34 (7) a transfer of an industrial establishment by devise or  
35 intestate succession;
- 36 (8) the granting or termination of an easement or a license to  
37 any portion of an industrial establishment;
- 38 (9) the sale or transfer of real property pursuant to a  
39 condemnation proceeding initiated pursuant to the "Eminent  
40 Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);
- 41 (10) execution, delivery and filing or recording of any mortgage,  
42 security interest, collateral assignment or other lien on real or  
43 personal property; or
- 44 (11) any transfer of personal property pursuant to a valid  
45 security agreement, collateral assignment or other lien, including,  
46 but not limited to, seizure or replevin of such personal property

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

3 "Department" means the Department of Environmental  
4 Protection;

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

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

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

41 "Negative declaration" means a written declaration, submitted by  
42 the owner or operator of an industrial establishment or other person  
43 assuming responsibility for the remediation under paragraph (3) of  
44 subsection b. of section 4 of P.L.1983, c.330 to the department,  
45 certifying that there has been no discharge of hazardous substances  
46 or hazardous wastes on the site, or that any such discharge on the  
47 site or discharge that has migrated or is migrating from the site has



1 been remediated in accordance with procedures approved by the  
2 department and in accordance with any applicable remediation  
3 regulations;

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

8 "No further action letter" means a written determination by the  
9 department that, based upon an evaluation of the historical use of  
10 the industrial establishment and the property, or of an area of  
11 concern or areas of concern, as applicable, and any other  
12 investigation or action the department deems necessary, there are no  
13 discharged hazardous substances or hazardous wastes present at the  
14 site of the industrial establishment, at the area of concern or areas of  
15 concern, or at any other site to which discharged hazardous  
16 substances or hazardous wastes originating at the industrial  
17 establishment have migrated, and that any discharged hazardous  
18 substances or hazardous wastes present at the industrial  
19 establishment or that have migrated from the site have been  
20 remediated in accordance with applicable remediation regulations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42

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

45 4. a. The owner or operator of an industrial establishment  
46 planning to close operations or transfer ownership or operations  
47 shall notify the department in writing, no more than five days

1 subsequent to closing operations or of its public release of its  
2 decision to close operations, whichever occurs first, or within five  
3 days after the execution of an agreement to transfer ownership or  
4 operations, as applicable. The notice to the department shall:  
5 identify the subject industrial establishment; describe the  
6 transaction requiring compliance with P.L.1983, c.330 (C.13:1K-6  
7 et al.); state the date of the closing of operations or the date of the  
8 public release of the decision to close operations as evidenced by a  
9 copy of the appropriate public announcement, if applicable; state  
10 the date of execution of the agreement to transfer ownership or  
11 operations and the names, addresses and telephone numbers of the  
12 parties to the transfer, if applicable; state the proposed date for  
13 closing operations or transferring ownership or operations; list the  
14 name, address, and telephone number of an authorized agent for the  
15 owner or operator; and certify that the information submitted is  
16 accurate. The notice shall be transmitted to the department in the  
17 manner and form required by the department. The department may,  
18 by regulation, require the submission of any additional information  
19 in order to improve the efficient implementation of P.L.1983, c.330.  
20 The owner or operator of the industrial establishment shall also  
21 provide all information required to be submitted to the department  
22 pursuant to this subsection, to the clerk of the municipality in which  
23 the industrial establishment is located, at the same time the  
24 information is submitted to the department.

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

32 (2) The owner or operator shall attach a copy of any approved  
33 negative declaration, approved remedial action workplan, no further  
34 action letter, **[or]** remediation agreement approval, response action  
35 outcome, or remediation certification to the contract or agreement  
36 of sale or agreement to transfer or any option to purchase which  
37 may be entered into with respect to the transfer of ownership or  
38 operations. In the event that any sale or transfer agreements or  
39 options have been executed prior to the approval of a negative  
40 declaration, remedial action workplan, no further action letter, or  
41 remediation agreement, or prior to the submission of a remediation  
42 certification or the filing of a response action outcome with the  
43 department, these documents, as relevant, shall be transmitted by  
44 the owner or operator, by certified mail, overnight delivery, or  
45 personal service, prior to the transfer of ownership or operations, to  
46 all parties to any transaction concerning the transfer of ownership or

1 operations, including purchasers, bankruptcy trustees, mortgagees,  
2 sureties, and financiers.

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

8 c. The owner or operator of an industrial establishment shall,  
9 subsequent to closing operations, or of its public release of its  
10 decision to close operations, or prior to transferring ownership or  
11 operations except as otherwise provided in subsection e. of this  
12 section, as applicable, submit to the department for approval a  
13 proposed negative declaration **[or]**, proposed remedial action  
14 workplan, or a remedial action workplan certified by a licensed site  
15 remediation professional. The owner or operator shall also provide  
16 written notification to the clerk of the municipality in which the  
17 industrial site is located, that upon written request, the municipality  
18 may receive a copy of the proposed negative declaration **[or]**,  
19 proposed remedial action workplan, or a remedial action workplan  
20 certified by a licensed site remediation professional. The owner or  
21 operator of the industrial establishment shall provide the requested  
22 documents to the clerk of the municipality within five days after  
23 receipt of the written request. Except as otherwise provided in  
24 section 6 of P.L.1983, c.330 (C.13:1K-11), and sections 13, 16, 17  
25 and 18 of P.L.1993, c.139 (C.13:1K-11.2, C.13:1K-11.5, C.13:1K-  
26 11.6 and C.13:1K-11.7), the owner or operator of an industrial  
27 establishment shall not transfer ownership or operations until a  
28 negative declaration or a remedial action workplan has been  
29 approved by the department, a remedial action workplan has been  
30 prepared and certified by a licensed site remediation professional  
31 and submitted to the department, or the conditions of subsection e.  
32 of this section for remediation agreements or remediation  
33 certifications have been met and until, in cases where a remedial  
34 action workplan is required to be approved or a remediation  
35 agreement has been approved, a remediation funding source, as  
36 required pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3),  
37 has been established.

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

1 (2) After the submission and review of the information  
2 submitted pursuant to a preliminary assessment, site investigation,  
3 remedial investigation, or remedial action, as necessary, the  
4 department shall, within 45 days of submission of a complete and  
5 accurate negative declaration, approve the negative declaration, or  
6 inform the owner or operator of the industrial establishment that a  
7 remedial action workplan or additional remediation shall be  
8 required. The department shall approve a negative declaration by  
9 the issuance of a no further action letter. Upon the remediation of  
10 the industrial establishment pursuant to the requirements of section  
11 30 of P.L. , c. (C. ) (pending in the Legislature as this bill), a  
12 licensed site remediation professional may file a response action  
13 outcome with the department.

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

45 The owner or operator submitting a remediation certification  
46 shall provide the following documents to the department: (1) an  
47 estimate of the cost of the remediation prepared and certified by a

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

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

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

44 The owner or operator of the industrial establishment shall also  
45 provide written notification to the clerk of the municipality in which  
46 the industrial establishment is located, at the same time the  
47 information is submitted to the department, that upon written

1 request, the owner or operator shall provide the information  
2 required to be submitted to the department pursuant to this  
3 subsection, to the municipality. The owner or operator shall  
4 provide the information to the municipality within five days after  
5 receipt of the written request.

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

16 g. ~~【The】 Except as provided in section 27 of P.L. , c. (C. )~~  
17 ~~(pending before the Legislature as this bill), the soil, groundwater,~~  
18 ~~and surface water remediation standard and the remedial action to~~  
19 ~~be implemented on an industrial establishment shall be selected by~~  
20 ~~the owner or operator, and reviewed and approved by the~~  
21 ~~department, or prepared, certified and submitted to the department~~  
22 ~~by a licensed site remediation professional, based upon the policies~~  
23 ~~, requirements, and criteria enumerated in section 35 of P.L.1993,~~  
24 ~~c.139 (C.58:10B-12).~~

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

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

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



1 or operator shall obtain the approval of the transferee of the  
2 industrial establishment.

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

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

16 k. 【An】 Except as provided in P.L. , c. (C. ) (pending  
17 before the Legislature as this bill), an owner or operator of an  
18 industrial establishment shall not implement a remedial action  
19 involving the remediation of groundwater or surface water without  
20 the prior review and approval by the department of a remedial  
21 action workplan.

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

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

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

44 The department may review and approve or disapprove every  
45 remedial action workplan, no matter when submitted, to determine,  
46 in accordance with the criteria listed in subsection g. of section 35  
47 of P.L.1993, c.139 (C.58:10B-12) if the remedial action that has

1 occurred or that will occur is appropriate to meet the applicable  
2 health risk or environmental standards.

3 The department may order additional remediation activities at the  
4 industrial establishment, or offsite where necessary, or may require  
5 the submission of additional information, where (a) the department  
6 determines that the remediation activities undertaken were not in  
7 compliance with the applicable rules or regulations of the  
8 department; (b) all documents required to be submitted to the  
9 department were not submitted or, if submitted, were inaccurate, or  
10 deficient; or (c) discharged hazardous substances or hazardous  
11 wastes remain at the industrial establishment, or have migrated or  
12 are migrating offsite, at levels or concentrations or in a manner that  
13 is in violation of the applicable health risk or environmental  
14 standards. Upon a finding by the department that the remediation  
15 conducted at the industrial establishment was in compliance with all  
16 applicable regulations, that no hazardous substances or hazardous  
17 wastes remain at the industrial establishment in a manner that is in  
18 violation of the applicable health risk or environmental standards,  
19 and that all hazardous substances or hazardous wastes that migrated  
20 from the industrial establishment have been remediated in  
21 conformance with the applicable health risk or environmental  
22 standards, the department shall approve the remediation for that  
23 industrial establishment by the issuance of a no further action letter.  
24 The owner or operator of the industrial establishment may also  
25 perform the remediation pursuant to the provisions of P.L. , c.  
26 (C. ) (pending before the Legislature as this bill).  
27 (cf: P.L. 2007, c.1, s.4)

28  
29 35. Section 3 of P.L.1976, c.141 (C.58:10-23.11b) is amended to  
30 read as follows:

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

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

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

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

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

44 "Cleanup and removal costs" means all direct costs associated  
45 with a discharge, and those indirect costs that may be imposed by  
46 the department pursuant to section 1 of P.L.2002, c.37 associated  
47 with a discharge, incurred by the State or its political subdivisions

1 or their agents or any person with written approval from the  
2 department in the: (1) removal or attempted removal of hazardous  
3 substances, or (2) taking of reasonable measures to prevent or  
4 mitigate damage to the public health, safety, or welfare, including,  
5 but not limited to, public and private property, shorelines, beaches,  
6 surface waters, water columns and bottom sediments, soils and  
7 other affected property, including wildlife and other natural  
8 resources, and shall include costs incurred by the State for the  
9 indemnification and legal defense of contractors pursuant to  
10 sections 1 through 11 of P.L.1991, c.373 (C.58:10-23.11f8 et seq.);

11 "Commissioner" means the Commissioner of Environmental  
12 Protection;

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

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

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

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

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

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

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

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

43 "Hazardous substances" means the "environmental hazardous  
44 substances" on the environmental hazardous substance list adopted  
45 by the department pursuant to section 4 of P.L.1983, c.315  
46 (C.34:5A-4); such elements and compounds, including petroleum  
47 products, which are defined as such by the department, after public

1 hearing, and which shall be consistent to the maximum extent  
2 possible with, and which shall include, the list of hazardous  
3 substances adopted by the federal Environmental Protection Agency  
4 pursuant to section 311 of the federal Water Pollution Control Act  
5 Amendments of 1972, Pub.L.92-500, as amended by the Clean  
6 Water Act of 1977, Pub.L.95-217 (33 U.S.C.s.1251 et seq.); the list  
7 of toxic pollutants designated by Congress or the EPA pursuant to  
8 section 307 of that act; and the list of hazardous substances adopted  
9 by the federal Environmental Protection Agency pursuant to section  
10 101 of the "Comprehensive Environmental Response,  
11 Compensation and Liability Act of 1980," Pub.L.96-510 (42  
12 U.S.C.s.9601 et seq.); provided, however, that sewage and sewage  
13 sludge shall not be considered as hazardous substances for the  
14 purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.);

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

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

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

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

38 (1) 20,000 gallons or more for hazardous substances which are  
39 other than petroleum or petroleum products, or

40 (2) 200,000 gallons or more for hazardous substances of all  
41 kinds. In determining whether a facility is a major facility for the  
42 purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.), any  
43 underground storage tank at the facility used solely to store heating  
44 oil for on-site consumption shall not be considered when  
45 determining the combined storage capacity of the facility.

46 For the purposes of this definition, "storage capacity" shall mean  
47 only that total combined capacity which is dedicated to, used for or

1 intended to be used for storage of hazardous substances of all kinds.  
2 Where appropriate to the nature of the facility, storage capacity may  
3 be determined by the intended or actual use of open land or  
4 unenclosed space as well as by the capacities of tanks or other  
5 enclosed storage spaces;

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

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

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

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

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

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

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

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

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

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

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

46 "Site investigation" means the collection and evaluation of data  
47 adequate to determine whether or not discharged contaminants exist

1 at a site or have migrated or are migrating from the site at levels in  
2 excess of the applicable remediation standards. A site investigation  
3 shall be developed based upon the information collected pursuant to  
4 the preliminary assessment;

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

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

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

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

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

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

24

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

27 2. At least 30 days prior to its agreement to any administrative  
28 or judicially approved settlement entered into pursuant to P.L.1976,  
29 c.141 (C.58:10-23.11 et seq.), [or at least 30 days prior to the  
30 issuance of any no further action letter issued pursuant to P.L.1993,  
31 c.139 (C.58:10B-1 et seq.), on or after the effective date of  
32 P.L.2005, c.348 (C.58:10-23.11e2 et al.),] the Department of  
33 Environmental Protection shall publish in the New Jersey Register  
34 and on the New Jersey Department of Environmental Protection's  
35 website the name of the case, the names of the parties to the  
36 settlement [or the no further action letter, as the case may be], the  
37 location of the property on which the discharge occurred, and a  
38 summary of the terms of the settlement [or the no further action  
39 letter], including the amount of any monetary payments made or to  
40 be made. The Department of Environmental Protection shall  
41 provide written notice of the settlement [or of the no further action  
42 letter], which shall include the information listed above, to all other  
43 parties in the case and to any other potentially responsible parties of  
44 whom the department has notice at the time of the publication.

45 (cf: P.L.2005, c.348, s.2)

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

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

17       (2) (a) Whenever one or more dischargers or persons cleans up  
18 and removes a discharge of a hazardous substance, those  
19 dischargers and persons shall have a right of contribution against all  
20 other dischargers and persons in any way responsible for a  
21 discharged hazardous substance or other persons who are liable for  
22 the cost of the cleanup and removal of that discharge of a hazardous  
23 substance. In an action for contribution, the contribution plaintiffs  
24 need prove only that a discharge occurred for which the  
25 contribution defendant or defendants are liable pursuant to the  
26 provisions of subsection c. of section 8 of P.L.1976, c.141  
27 (C.58:10-23.11g), and the contribution defendant shall have only  
28 the defenses to liability available to parties pursuant to subsection d.  
29 of section 8 of P.L.1976, c.141 (C.58:10-23.11g). In resolving  
30 contribution claims, a court may allocate the costs of cleanup and  
31 removal among liable parties using such equitable factors as the  
32 court determines are appropriate. Nothing in this subsection shall  
33 affect the right of any party to seek contribution pursuant to any  
34 other statute or under common law.

35       (b) A person who has discharged a hazardous substance or is in  
36 any way responsible for the discharge of a hazardous substance who  
37 has resolved his liability to the State for cleanup and removal costs,  
38 including the payment of compensation for damage to, or the loss  
39 of, natural resources, or for the restoration of natural resources, and  
40 (i) has received a **【no further action letter from the State】** final  
41 remediation document, or (ii) has entered into an administrative or  
42 judicially approved settlement with the State, shall not be liable for  
43 claims for contribution regarding matters addressed in the  
44 settlement or the **【no further action letter】** final remediation  
45 document, as the case may be. The settlement shall not release any  
46 other person from liability for cleanup and removal costs who is not  
47 a party to the settlement, but shall reduce the potential liability of



1 any other discharger or person in any way responsible for a  
2 discharged hazardous substance at the site that is the subject of the  
3 **[no further action letter]** final remediation document or the  
4 settlement by the amount of the **[no further action letter]** final  
5 remediation document or the settlement.

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

33 A contribution defendant from whom treble damages is sought in  
34 a contribution action shall not be assessed treble damages by any  
35 court where the contribution defendant, for good cause shown,  
36 failed or refused to enter the settlement agreement with the  
37 contribution plaintiff or where principles of fundamental fairness  
38 will be violated. One third of an award of treble damages in a  
39 contribution action pursuant to this paragraph shall be paid to the  
40 department, which sum shall be deposited in the New Jersey Spill  
41 Compensation Fund. The other two thirds of the treble damages  
42 award shall be shared by the contribution plaintiffs in the proportion  
43 of the responsibility for the cost of the cleanup and removal that the  
44 contribution plaintiffs have agreed to with the department or in an  
45 amount as has been agreed to by those parties.

46 Cleanup and removal of hazardous substances and actions to  
47 minimize damage from discharges shall, to the greatest extent

1 possible, be in accordance with the National Contingency Plan for  
2 cleanup and removal of oil and hazardous substances established  
3 pursuant to section 311(c)(2) of the federal Water Pollution Control  
4 Act Amendments of 1972 (Pub.L.92-500, 33U.S.C. s.1251 et seq.).

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

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

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

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

38 (a) Explosiveness;

39 (b) High flammability;

40 (c) Radioactivity;

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

45 (e) Is stored in a container from which its discharge is imminent  
46 as a result of contact with a hazardous substance which has already  
47 been discharged and such additional discharge would create a

1 substantial risk of imminent damage to public health or safety or  
2 imminent and severe damage to the environment; or

3 (f) High toxicity and is stored or being transported in a  
4 container or motor vehicle, truck, rail car or other mechanized  
5 conveyance from which its discharge is imminent as a result of the  
6 significant deterioration or the precarious location of the container,  
7 motor vehicle, truck, rail car or other mechanized conveyance, and  
8 such discharge would create a substantial risk of imminent damage  
9 to public health or safety or imminent and severe damage to the  
10 environment; or

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

13 c. If and to the extent that he determines that funds are  
14 available, the administrator shall approve and make payments for  
15 any cleanup and removal costs incurred by the department for the  
16 cleanup and removal of a hazardous substance other than petroleum  
17 as authorized by subsection b. of this section; provided that in  
18 determining the availability of funds, the administrator shall not  
19 include as available funds revenues realized or to be realized from  
20 the tax on the transfer of petroleum, to the extent that such revenues  
21 result from a tax levied at a rate in excess of \$0.01 per barrel,  
22 pursuant to subsection b. of section 9 of P.L.1976, c.141 (C.58:10-  
23 23.11h), unless the administrator determines that the sum of claims  
24 paid by the fund on behalf of petroleum discharges or cleanup and  
25 removals plus pending reasonable claims against the fund on behalf  
26 of petroleum discharges or cleanup and removals is greater than  
27 30% of the sum of all claims paid by the fund plus all pending  
28 reasonable claims against the fund.

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

40 e. Notwithstanding any other provisions of P.L.1976, c.141, the  
41 administrator, after considering, among any other relevant factors,  
42 the department's priorities for spending funds pursuant to P.L.1976,  
43 c.141, and within the limits of available funds, shall make payments  
44 for the restoration or replacement of, or connection to an alternative  
45 water supply for, any private residential well destroyed,  
46 contaminated, or impaired as a result of a discharge prior to the  
47 effective date of P.L.1976, c.141; provided, however, total

1 payments for said purpose shall not exceed \$500,000 for the period  
2 between the effective date of this subsection e. and January 1, 1983,  
3 and in any calendar year thereafter.

4 f. Any expenditures of cleanup and removal costs and related  
5 costs made by the [administrator] State pursuant to this act shall  
6 constitute, in each instance, a debt of the discharger to the fund.  
7 The debt shall constitute a lien on all property owned by the  
8 discharger when a notice of lien, incorporating a description of the  
9 property of the discharger subject to the cleanup and removal and  
10 an identification of the amount of cleanup, removal and related  
11 costs expended [from the fund] by the State, is duly filed with the  
12 clerk of the Superior Court. The clerk shall promptly enter upon  
13 the civil judgment or order docket the name and address of the  
14 discharger and the amount of the lien as set forth in the notice of  
15 lien. Upon entry by the clerk, the lien, to the amount committed by  
16 the [administrator] State for cleanup and removal, shall attach to  
17 the revenues and all real and personal property of the discharger,  
18 whether or not the discharger is insolvent.

19 The notice of lien filed pursuant to this subsection which affects  
20 the property of a discharger subject to the cleanup and removal of a  
21 discharge shall create a lien with priority over all other claims or  
22 liens which are or have been filed against the property, except if the  
23 property comprises six dwelling units or less and is used  
24 exclusively for residential purposes, this notice of lien shall not  
25 affect any valid lien, right or interest in the property filed in  
26 accordance with established procedure prior to the filing of this  
27 notice of lien. The notice of lien filed pursuant to this subsection  
28 which affects any property of a discharger, other than the property  
29 subject to the cleanup and removal, shall have priority from the day  
30 of the filing of the notice of the lien over all other claims and liens  
31 filed against the property, but shall not affect any valid lien, right,  
32 or interest in the property filed in accordance with established  
33 procedure prior to the filing of a notice of lien pursuant to this  
34 subsection.

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

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

45 (2) the owner or operator of the vessel, or a representative of the  
46 owner or operator, provides evidence of financial responsibility as

1 provided in section 2 of P.L.1991, c.58 (C.58:10-23.11g2) and  
2 satisfactorily guarantees that these costs will be paid; or

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

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

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

12

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

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

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

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

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

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

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

42 b. The damages which may be recovered by the fund, without  
43 regard to fault, subject to the defenses enumerated in subsection d.  
44 of this section against the owner or operator of a major facility or  
45 vessel, shall not exceed \$50,000,000.00 for each major facility or  
46 \$1,200 per gross ton for each vessel, except that such maximum  
47 limitation shall not apply and the owner or operator shall be liable,

1 jointly and severally, for the full amount of such damages if it can  
2 be shown that such discharge was the result of (1) gross negligence  
3 or willful misconduct, within the knowledge and privity of the  
4 owner, operator or person in charge, or (2) a gross or willful  
5 violation of applicable safety, construction or operating standards or  
6 regulations. Damages which may be recovered from, or by, any  
7 other person shall be limited to those authorized by common or  
8 statutory law.

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

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

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

45 For the purpose of determining priority of this lien over all other  
46 claims or liens which are or have been filed against the property of  
47 an owner or operator of a refinery, storage, transfer, or pipeline

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

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

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

22 (3) In addition to the persons liable pursuant to this subsection,  
23 any person who owns real property acquired on or after September  
24 14, 1993 on which there has been a discharge prior to the person's  
25 acquisition of that property and who knew or should have known  
26 that a hazardous substance had been discharged at the real property,  
27 shall be strictly liable, jointly and severally, without regard to fault,  
28 for all cleanup and removal costs no matter by whom incurred.  
29 Such person shall also be strictly liable, jointly and severally,  
30 without regard to fault, for all cleanup and removal costs incurred  
31 by the department or a local unit pursuant to subsection b. of  
32 section 7 of P.L.1976, c.141 (C.58:10-23.11f). Nothing in this  
33 paragraph shall be construed to alter liability of any person who  
34 acquired real property prior to September 14, 1993.

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

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

1 subparagraphs (a) through (d) apply, or if applicable, subparagraphs  
2 (a) through (e) apply:

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

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

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

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

22 To establish that a person had no reason to know that any  
23 hazardous substance had been discharged for the purposes of this  
24 paragraph (2), the person must have undertaken, at the time of  
25 acquisition, all appropriate inquiry into the previous ownership and  
26 uses of the property. For the purposes of this paragraph (2), all  
27 appropriate inquiry shall mean the performance of a preliminary  
28 assessment, and site investigation, if the preliminary assessment  
29 indicates that a site investigation is necessary, as defined in section  
30 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance  
31 with rules and regulations promulgated by the department defining  
32 these terms.

33 Nothing in this paragraph (2) shall be construed to alter liability  
34 of any person who acquired real property prior to September 14,  
35 1993; and

36 (e) For the purposes of this subparagraph the person must have  
37 (i) acquired the property subsequent to a hazardous substance being  
38 discharged on the site and which discharge was discovered at the  
39 time of acquisition as a result of the appropriate inquiry, as defined  
40 in this paragraph (2), (ii) performed, following the effective date of  
41 P.L.1997, c.278, a remediation of the site or discharge consistent  
42 with the provisions of section 35 of P.L.1993, c.139 (C.58:10B-12),  
43 or, relied upon a valid **no further action** letter from the  
44 department final remediation document for a remediation  
45 performed prior to acquisition, or obtained approval of a remedial  
46 action workplan by the department after the effective date of  
47 P.L.1997, c.278 and continued to comply with the conditions of that



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (4) (a) within 30 days after acquisition of the property, the  
35 person commenced a remediation of the discharge, including any  
36 migration, pursuant to a department oversight document executed  
37 prior to acquisition, or (b) for property acquired after the date of  
38 enactment of P.L. , c. (C. ) (pending before the Legislature as  
39 this bill), the person provides written notice of the acquisition to the  
40 department prior to or on the date of acquisition and the person  
41 remediates the property pursuant to the provisions of section 30 of  
42 P.L. , c. (C. ) (pending before the Legislature as this bill), and  
43 (c) the department is satisfied that remediation was completed in a  
44 timely and appropriate fashion; and

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

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

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

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

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

9 (3) if that person fails to maintain the institutional or  
10 engineering controls on the property or to otherwise comply with  
11 the provisions of a **[no further action letter]** final remediation  
12 document or a remedial action workplan and a person is harmed  
13 thereby;

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

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

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

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

28

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

31 2. The department shall prepare and **[adopt a master list for the**  
32 **cleanup of]** maintain a database that lists all known hazardous  
33 discharge sites , cases, and areas of concern. The **[master list]**  
34 database shall comprise an inventory of all the known hazardous  
35 discharge sites , cases, and areas of concern in the State **[which**  
36 **have been cleaned up prior to the effective date of this act, which**  
37 **have been identified as in need of cleanup, or which will be cleaned**  
38 **up subsequent to the effective date of this act, and a ranking, based**  
39 **on criteria established by the department pursuant to P.L. 198(3),**  
40 **c.(222) (C.(58:10-23.20)), of the sites in the order in which the**  
41 **department intends to clean up the sites]** . No later than one year  
42 after the date of enactment of P.L. , c. (C. ) (pending before the  
43 Legislature as this bill) the department shall establish a ranking  
44 system that establishes categories in which to rank sites based upon  
45 the level of risk to the public health, safety, or the environment, the  
46 length of time the site has been undergoing remediation, the  
47 economic impact of the contaminated site on the municipality and

1 on surrounding property, and any other factors deemed relevant by  
2 the department. The database shall include information concerning  
3 each site that identifies the location of the known or suspected  
4 contaminated site, the status of the remediation, the contaminants of  
5 concern, and whether institutional or engineering controls are in use  
6 at the site . The department shall [review the master list at least  
7 once every six months and modify it as necessary] provide public  
8 access to reports from the database on its internet website.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 "Financial assistance" means loans or loan guarantees;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

45 **【The department shall make available to the public, and shall**  
46 **periodically update, a list of alternative remediation methods used**

1 successfully or approved by the department as provided in  
2 paragraph (1) of this subsection.】

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

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

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

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

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

32

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

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

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

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

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

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

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

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

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

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

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

1 satisfaction of the department, or by any combination thereof.  
2 Where it can be demonstrated that a person cannot establish and  
3 maintain a remediation funding source for the full cost of the  
4 remediation by a method specified in this subsection, that person  
5 may establish the remediation funding source for all or a portion of  
6 the remediation, by securing financial assistance from the  
7 Hazardous Discharge Site Remediation Fund as provided in section  
8 29 of P.L.1993, c.139 (C.58:10B-7).

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

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

42 The department shall return the original remediation trust fund  
43 agreement to the trustee for termination after the person required to  
44 establish the remediation funding source substitutes an alternative  
45 remediation funding source as specified in this section or the  
46 department notifies the person that that person is no longer required

1 to maintain a remediation funding source for remediation of the  
2 contaminated site.

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

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

40 **【**A line of credit agreement shall provide that the line of credit  
41 may not be revoked or terminated by the person required to obtain  
42 the remediation funding source or the person or institution  
43 providing the line of credit without the written consent of the  
44 department.**】** The person or institution providing the line of credit  
45 shall release to the person required to establish the remediation  
46 funding source, or to the department or transferee of the property as  
47 appropriate, only those moneys as the department or the licensed

1 site remediation professional authorizes, in writing, to be released.  
2 The person entitled to draw upon the line of credit shall submit  
3 documentation to the department detailing the costs incurred or to  
4 be incurred as part of the remediation. Upon a determination that  
5 the costs are consistent with the remediation of the site, the  
6 department shall, in writing, authorize a disbursement from the line  
7 of credit in the amount of the documented costs.

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

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



1 action workplan schedule to be performed in the 12-month period  
2 following the date on which the application for self-guarantee is  
3 made. In the event that a self-guarantee is required for a period of  
4 more than one year, applications for a self-guarantee shall be  
5 renewed annually pursuant to this subsection for each successive  
6 year. The department may establish requirements and reporting  
7 obligations to ensure that the person proposing to self-guarantee a  
8 remediation funding source meets the criteria for self-guaranteeing  
9 prior to the initiation of remedial action and until completion of the  
10 remediation.

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

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

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

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

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

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

40  
41 44. Section 26 of P.L.1993, c.139 (C.58:10B-4) is amended to  
42 read as follows:

43 26. a. There is established in the New Jersey Economic  
44 Development Authority a special, revolving fund to be known as  
45 the Hazardous Discharge Site Remediation Fund. Except as  
46 provided in section 4 of P.L.2007, c.135 (C.52:27D-130.7), moneys  
47 in the remediation fund shall be dedicated for the provision of

1 financial assistance or grants to municipalities, counties,  
2 redevelopment entities authorized to exercise redevelopment  
3 powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), and  
4 persons, for the purpose of financing remediation activities at sites  
5 at which there is, or is suspected of being, a discharge of hazardous  
6 substances or hazardous wastes.

7 b. The remediation fund shall be credited with:

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

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

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

12 (4) **【remediation funding source surcharges imposed pursuant to**  
13 **section 33 of P.L.1993, c.139 (C.58:10B-11)】** (Deleted by  
14 amendment, P.L. , c. )(pending before the Legislature as this bill);

15 (5) moneys deposited in the fund as repayment of recoverable  
16 grants made by the New Jersey Redevelopment Authority for  
17 brownfield redevelopment;

18 (6) moneys deposited into the fund from cost recovery  
19 subrogation actions; and

20 (7) moneys made available to the authority for the purposes of  
21 the fund.

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

23

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

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

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

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

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

42 (4) **【provide that payment of a grant shall be conditioned upon**  
43 **the subrogation to the department of all rights of the recipient to**  
44 **recover remediation costs from the discharger or other liable**  
45 **parties. All moneys collected in a cost recovery subrogation action**  
46 **shall be deposited into the remediation fund】** (Deleted by

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

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

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

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

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

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

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

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

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

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

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

45 (2) may not require financial assistance or grant conditions that  
46 interfere with the everyday normal operations of the recipient's  
47 business activities, except to the extent necessary to ensure the

1 recipient's ability to repay the financial assistance and to preserve  
2 the value of the loan collateral; and

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

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

9

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

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

1 department shall collect the surcharge and shall remit all moneys  
2 collected to the **[Economic Development Authority for deposit into**  
3 **the Hazardous Discharge Site Remediation Fund]** Remediation  
4 Guarantee Fund established pursuant to section 45 of P.L.1993,  
5 c.139 (C.58:10B-20).

6 b. By February 1 of each year, the department shall issue a  
7 report to the Senate Environment Committee and to the Assembly  
8 **[Agriculture and Waste Management]** Environment and Solid  
9 Waste Committee, or their successors, listing, for the prior calendar  
10 year, each person who owed the remediation funding source  
11 surcharge, the amount of the surcharge paid, and the total amount  
12 collected.

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

14  
15 47. Section 35 of P.L.1993, c.139 (C.58:10B-12) is amended to  
16 read as follows:

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

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

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

46 The department may not require any person to perform an  
47 ecological evaluation of any area of concern that consists of an

1 underground storage tank storing heating oil for on-site  
2 consumption in a one to four family residential building.

3 b. In developing minimum remediation standards the  
4 department shall:

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

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

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

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

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

30 c. (1) The department shall develop residential and  
31 nonresidential soil remediation standards that are protective of  
32 public health and safety. For contaminants that are mobile and  
33 transportable to groundwater or surface water, the residential and  
34 nonresidential soil remediation standards shall be protective of  
35 groundwater and surface water. Residential soil remediation  
36 standards shall be set at levels or concentrations of contamination  
37 for real property based upon the use of that property for residential  
38 or similar uses and which will allow the unrestricted use of that  
39 property without the need of engineering devices or any  
40 institutional controls and without exceeding a health risk standard  
41 greater than that provided in subsection d. of this section.  
42 Nonresidential soil remediation standards shall be set at levels or  
43 concentrations of contaminants that recognize the lower likelihood  
44 of exposure to contamination on property that will not be used for  
45 residential or similar uses, which will allow for the unrestricted use  
46 of that property for nonresidential purposes, and that can be met  
47 without the need of engineering controls. Whenever real property is

1 remediated to a nonresidential soil remediation standard, except as  
2 otherwise provided in paragraph (3) of subsection g. of this section,  
3 the department shall require, pursuant to section 36 of P.L.1993,  
4 c.139 (C.58:10B-13), that the use of the property be restricted to  
5 nonresidential or other uses compatible with the extent of the  
6 contamination of the soil and that access to that site be restricted in  
7 a manner compatible with the allowable use of that property.

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

13 d. The department shall develop minimum remediation  
14 standards for soil, groundwater, and surface water intended to be  
15 protective of public health and safety taking into account the  
16 provisions of this section. In developing these minimum health risk  
17 remediation standards the department shall identify the hazards  
18 posed by a contaminant to determine whether exposure to that  
19 contaminant can cause an increase in the incidence of an adverse  
20 health effect and whether the adverse health effect may occur in  
21 humans. The department shall set minimum soil remediation health  
22 risk standards for both residential and nonresidential uses that:

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

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

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

31 e. Remediation standards and other remediation requirements  
32 established pursuant to this section and regulations adopted  
33 pursuant thereto shall apply to remediation activities required  
34 pursuant to the "Spill Compensation and Control Act," P.L.1976,  
35 c.141 (C.58:10-23.11 et seq.), the "Water Pollution Control Act,"  
36 P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21  
37 et seq.), the "Industrial Site Recovery Act," P.L.1983, c.330  
38 (C.13:1K-6 et al.), the "Solid Waste Management Act," P.L.1970,  
39 c.39 (C.13:1E-1 et seq.), the "Comprehensive Regulated Medical  
40 Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the  
41 "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279  
42 (C.13:1E-49 et seq.), the "Sanitary Landfill Facility Closure and  
43 Contingency Fund Act," P.L.1981, c.306 (C.13:1E-100 et seq.), the  
44 "Regional Low-Level Radioactive Waste Disposal Facility Siting  
45 Act," P.L.1987, c.333 (C.13:1E-177 et seq.), or any other law or  
46 regulation by which the State may compel a person to perform  
47 remediation activities on contaminated property. However, nothing



1 in this subsection shall be construed to limit the authority of the  
2 department to establish discharge limits for pollutants or to  
3 prescribe penalties for violations of those limits pursuant to  
4 P.L.1977, c.74 (C.58:10A-1 et seq.), or to require the complete  
5 removal of nonhazardous solid waste pursuant to law.

6 f. (1) A person performing a remediation of contaminated real  
7 property, in lieu of using the established minimum soil remediation  
8 standard for either residential use or nonresidential use adopted by  
9 the department pursuant to subsection c. of this section, may submit  
10 to the department a request to use an alternative residential use or  
11 nonresidential use soil remediation standard. The use of an  
12 alternative soil remediation standard shall be based upon site  
13 specific factors which may include (1) physical site characteristics  
14 which may vary from those used by the department in the  
15 development of the soil remediation standards adopted pursuant to  
16 this section; or (2) a site specific risk assessment. If a person  
17 performing a remediation requests to use an alternative soil  
18 remediation standard based upon a site specific risk assessment, that  
19 person shall demonstrate to the department that the requested  
20 deviation from the risk assessment protocol used by the department  
21 in the development of soil remediation standards pursuant to this  
22 section is consistent with the guidance and regulations for exposure  
23 assessment developed by the United States Environmental  
24 Protection Agency pursuant to the "Comprehensive Environmental  
25 Response, Compensation, and Liability Act of 1980," 42  
26 U.S.C.s.9601 et seq. and other statutory authorities as applicable. A  
27 site specific risk assessment may consider exposure scenarios and  
28 assumptions that take into account the form of the contaminant  
29 present, natural biodegradation, fate and transport of the  
30 contaminant, available toxicological data that are based upon  
31 generally accepted and peer reviewed scientific evidence or  
32 methodologies , and physical characteristics of the site, including,  
33 but not limited to, climatic conditions and topographic conditions.  
34 Nothing in this subsection shall be construed to authorize the use of  
35 an alternative soil remediation standard in those instances where an  
36 engineering control is the appropriate remedial action, as  
37 determined by the department, to prevent exposure to  
38 contamination.

39 Upon a determination by the department that the requested  
40 alternative remediation standard satisfies the department's  
41 regulations, is protective of public health and safety, as established  
42 in subsection d. of this section, and is protective of the environment  
43 pursuant to subsection a. of this section, the alternative residential  
44 use or nonresidential use soil remediation standard shall be  
45 approved by the department. The burden to demonstrate that the  
46 requested alternative remediation standard is protective rests with  
47 the person requesting the alternative standard and the department

1 may require the submission of any documentation as the department  
2 determines to be necessary in order for the person to meet that  
3 burden.

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

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

25 (1) Unrestricted use remedial actions, limited restricted use  
26 remedial actions and restricted use remedial actions shall be  
27 allowed except that unrestricted use remedial actions and limited  
28 restricted use remedial actions shall be preferred over restricted use  
29 remedial actions. 【The】 For any remediation initiated one year after  
30 the date of enactment of P.L. , c. (C. ) (pending before the  
31 Legislature as this bill), the department shall require the use of an  
32 unrestricted use remedial action, or a presumptive remedy or an  
33 alternative remedy as provided in paragraph (10) of this subsection,  
34 at a site or area of concern where new construction is proposed for  
35 residential purposes, for use as a child care center licensed pursuant  
36 to P.L.1983, c.492 (C.30:5B-1 et seq.), or as a public school or  
37 private school as defined in N.J.S.18A:1-1, as a charter school  
38 established pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.), or  
39 where there will be a change in the use of the site to residential,  
40 child care, or public school, private school, or charter school  
41 purposes or another purpose that involves use by a sensitive  
42 population. For any remediation initiated on or after the date of  
43 enactment of P.L. , c. (C. ) (pending before the Legislature as  
44 this bill), the department may require the use of an unrestricted use  
45 remedial action or a presumptive remedy as provided in guidelines  
46 adopted pursuant to paragraph (10) of this subsection for a site or  
47 area of concern that is to be used for residential, child care, or

1 public school, private school, or charter school purposes or another  
2 purpose that involves use by a sensitive population. Except as  
3 provided in this subsection, and section 27 of P.L. , c. (C. )  
4 (pending before the Legislature as this bill), the department,  
5 however, may not disapprove the use of a restricted use remedial  
6 action or a limited restricted use remedial action so long as the  
7 selected remedial action meets the health risk standard established  
8 in subsection d. of this section, and where, as applicable, is  
9 protective of the environment. **【The】** Except as provided in this  
10 subsection and section 27 of P.L. , c. (C. ) (pending before the  
11 Legislature as this bill), the choice of the remedial action to be  
12 implemented shall be made by the person **【performing】** responsible  
13 for conducting the remediation in accordance with regulations  
14 adopted by the department and that choice of the remedial action  
15 shall be approved by the department if all the criteria for remedial  
16 action selection enumerated in this section , as applicable, are met.  
17 **【The】** Except as provided in section 27 of P.L. , c. (C. )  
18 (pending before the Legislature as this bill), the department may not  
19 require a person to compare or investigate any alternative remedial  
20 action as part of its review of the selected remedial action . The  
21 department may disapprove the selection of a remedial action for a  
22 site on which the proposed remedial action will render the property  
23 unusable for future redevelopment or for recreational use ;

24 (2) Contamination may, upon the department's approval, be left  
25 onsite at levels or concentrations that exceed the minimum soil  
26 remediation standards for residential use if the implementation of  
27 institutional or engineering controls at that site will result in the  
28 protection of public health, safety and the environment at the health  
29 risk standard established in subsection d. of this section **【and】** , if  
30 the requirements established in subsections a., b., c. and d. of  
31 section 36 of P.L.1993, c.139 (C.58:10B-13) , and paragraphs (1)  
32 and (10) of this subsection, are met. The department may also  
33 require the treatment or removal of contaminated material that  
34 would pose an acute health or safety hazard in the event of failure  
35 of an engineering control ;

36 (3) Real property on which there is soil that has not been  
37 remediated to the residential soil remediation standards, or real  
38 property on which the soil, groundwater, or surface water has been  
39 remediated to meet the required health risk standard by the use of  
40 engineering or institutional controls, may be developed or used for  
41 residential purposes, or for any other similar purpose, if (a) all areas  
42 of that real property at which a person may come into contact with  
43 soil are remediated to meet the residential soil remediation  
44 standards **【and】** , (b) it is clearly demonstrated that for all areas of  
45 the real property, other than those described in subparagraph (a)  
46 above, engineering and institutional controls can be implemented  
47 and maintained on the real property sufficient to meet the health

1 risk standard as established in subsection d. of this section , and (c)  
2 a presumptive remedy established and approved by the department  
3 pursuant to paragraph (10) of this subsection, or an alternative  
4 remedy approved by the department pursuant to paragraph (10) of  
5 this subsection, has been approved, as provided in paragraphs (1)  
6 and (10) of this subsection ;

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

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

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

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

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

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

44 (10) The department shall, by rule or regulation, establish  
45 presumptive remedies, use of which shall be required on any site or  
46 area of concern to be used for residential purposes, as a child care  
47 center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.), as a

1 public school or private school as defined in N.J.S.18A:1-1, or as a  
2 charter school established pursuant to P.L.1995, c.426 (C.18A:36A-  
3 1 et seq.). The department may also issue guidelines that provide  
4 for presumptive remedies that may be required as provided in  
5 paragraph (1) of this subsection, on a site to be used for residential  
6 purposes, as a child care center, or as a public school, private school  
7 or charter school. The presumptive remedies shall be based on the  
8 historic use of the property, the nature and extent of the  
9 contamination at the site, the future use of the site and any other  
10 factors deemed relevant by the department. The department may  
11 include the use of engineering and institutional controls in the  
12 presumptive remedies authorized pursuant to this subsection. If the  
13 person responsible for conducting the remediation demonstrates to  
14 the department that the use of an unrestricted use remedial action or  
15 a presumptive remedy is impractical due to conditions at the site, or  
16 that an alternative remedy would be equally protective over time as  
17 a presumptive remedy, then an alternative remedy for the site that is  
18 protective of the public health and safety may be proposed for  
19 review and approval by the department;

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

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

31 The burden to demonstrate that a remedial action is protective of  
32 public health, safety and the environment, as applicable, and has  
33 been selected in conformance with the provisions of this subsection  
34 is with the person **【proposing the remedial action】** responsible for  
35 conducting the remediation.

36 The department may require the person **【performing】**  
37 responsible for conducting the remediation to supply the  
38 information required pursuant to this subsection as is necessary for  
39 the department to make a determination.

40 h. (1) The department shall adopt regulations which establish a  
41 procedure for a person to demonstrate that a particular parcel of  
42 land contains large quantities of historical fill material. Upon a  
43 determination by the department that large quantities of historic fill  
44 material exist on that parcel of land, there is a rebuttable  
45 presumption that the department shall not require any person to  
46 remove or treat the fill material in order to comply with applicable  
47 health risk or environmental standards. In these areas the

1 department shall establish by regulation the requirement for  
2 engineering or institutional controls that are designed to prevent  
3 exposure of these contaminants to humans, that allow for the  
4 continued use of the property, that are less costly than removal or  
5 treatment, which maintain the health risk standards as established in  
6 subsection d. of this section, and, as applicable, are protective of the  
7 environment. The department may rebut the presumption only upon  
8 a finding by the preponderance of the evidence that the use of  
9 engineering or institutional controls would not be effective in  
10 protecting public health, safety, and the environment. The  
11 department may not adopt any rule or regulation that has the effect  
12 of shifting the burden of rebutting the presumption. For the  
13 purposes of this paragraph "historic fill material" means generally  
14 large volumes of non-indigenous material, no matter what date they  
15 were emplaced on the site, used to raise the topographic elevation  
16 of a site, which were contaminated prior to emplacement and are in  
17 no way connected with the operations at the location of  
18 emplacement and which include, but are not limited to, construction  
19 debris, dredge spoils, incinerator residue, demolition debris, fly ash,  
20 and non-hazardous solid waste. Historic fill material shall not  
21 include any material which is substantially chromate chemical  
22 production waste or any other chemical production waste or waste  
23 from processing of metal or mineral ores, residues, slags or tailings.

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

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

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

1       j. Upon the approval by the department or by a licensed site  
2 remediation professional of a remedial action workplan, or similar  
3 plan that describes the extent of contamination at a site and the  
4 remedial action to be implemented to address that contamination,  
5 the department may not subsequently require a change to that  
6 workplan or similar plan in order to compel a different remediation  
7 standard due to the fact that the established remediation standards  
8 have changed; however, the department may compel a different  
9 remediation standard if the difference between the new remediation  
10 standard and the remediation standard approved in the workplan or  
11 other plan differs by an order of magnitude. The limitation to the  
12 department's authority to change a workplan or similar plan  
13 pursuant to this subsection shall only apply if the workplan or  
14 similar plan is being implemented in a reasonable timeframe, as  
15 may be indicated in the approved remedial action workplan or  
16 similar plan.

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

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

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

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

1 provide advance notice to a municipality prior to implementing that  
2 remedial action.

3 o. A person who has remediated a site pursuant to the  
4 provisions of this section, who was liable for the cleanup and  
5 removal costs of that discharge pursuant to the provisions of  
6 paragraph (1) of subsection c. of section 8 of P.L.1976, c.141  
7 (C.58:10-23.11g), and who remains liable for the discharge on that  
8 site due to a possibility that a remediation standard may change,  
9 undiscovered contamination may be found, or because an  
10 engineering control was used to remediate the discharge, shall  
11 maintain with the department a current address at which that person  
12 may be contacted in the event additional remediation needs to be  
13 performed at the site. The requirement to maintain the current  
14 address shall be made part of the conditions of the **[no further**  
15 **action letter issued by the department]** permit issued pursuant to  
16 section 19 of P.L. , c. (C. ) (pending before the Legislature as  
17 this bill) and the final remediation document.  
18 (cf: P.L.2004, c.120, s.81)

19

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

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

28 (1) **[require the establishment of]** implement any engineering or  
29 institutional controls the department **[determines are reasonably**  
30 **necessary]** requires to prevent exposure to the contaminants,  
31 **[require]** provide maintenance, as necessary, of those controls, and  
32 **[require]** provide for the restriction of the use of the property by  
33 the owner in a manner that prevents exposure;

34 (2) **[require,]** with the consent of the owner of the real property,  
35 provide for the recording with the office of the county recording  
36 officer, in the county in which the property is located, a notice to  
37 inform prospective holders of an interest in the property that  
38 contamination exists on the property at a level that may statutorily  
39 restrict certain uses of or access to all or part of that property, a  
40 delineation of those restrictions, a description of all specific  
41 engineering or institutional controls at the property that exist and  
42 that shall be maintained in order to prevent exposure to  
43 contaminants remaining on the property, and the written consent to  
44 the notice by the owner of the property. The notice shall be  
45 recorded in the same manner as are deeds and other interests in real  
46 property. The department shall develop a uniform deed notice that  
47 ensures the proper filing of the deed notice. The provisions of this



- 1 paragraph do not apply to restrictions on the use of surface water or  
2 groundwater;
- 3 (3) **[require a]** provide written notice to the governing body of  
4 each municipality in which the property is located that contaminants  
5 will exist at the property above residential use soil remediation  
6 standards or any other remediation standards and specifying the  
7 restrictions on the use of or access to all or part of that property and  
8 of the specific engineering or institutional controls at the property  
9 that exist and that shall be maintained;
- 10 (4) **[require, when determined necessary by the department,**  
11 **that]** post signs [be posted] , as required by the department, at any  
12 location at the site where access is restricted or in those areas that  
13 must be maintained in a prescribed manner, to inform persons on  
14 the property that there are restrictions on the use of that property or  
15 restrictions on access to any part of the site;
- 16 (5) **[require that]** maintain a list of the restrictions **[be kept]** on  
17 site for inspection by governmental enforcement officials; and
- 18 (6) **[require a person,]** prior to commencing a remedial action,  
19 **[to]** notify , in writing, the governing body of each municipality  
20 wherein the property being remediated is located. The notice shall  
21 include, but not be limited to, the commencement date for the  
22 remedial action; the name, mailing address and business telephone  
23 number of the person implementing the remedial action, or his  
24 designated representative; and a brief description of the remedial  
25 action.
- 26 b. If the owner of the real property does not consent to the  
27 recording of a notice pursuant to paragraph (2) of subsection a. of  
28 this section, the **[department]** person responsible for conducting the  
29 remediation shall **[require the use of a]** implement a remedial  
30 action that meets the residential soil remediation standard in the  
31 remediation of that real property.
- 32 c. Whenever engineering or institutional controls on property  
33 as provided in subsection a. of this section are no longer required,  
34 or whenever the engineering or institutional controls are changed  
35 because of the performance of subsequent remedial activities, a  
36 change in conditions at the site, or the adoption of revised  
37 remediation standards, the department shall require that the owner  
38 or operator of that property record with the office of the county  
39 recording officer a notice that the use of the property is no longer  
40 restricted or delineating the new restrictions. The **[department shall**  
41 **also require that the owner or operator]** person responsible for  
42 conducting the remediation shall notify, in writing, the municipality  
43 in which the property is located of the removal or change of the  
44 restrictive use conditions.
- 45 d. The owner or lessee of any real property, or any person  
46 operating a business on real property, which has been remediated to

1 a nonresidential use soil remediation standard or on which [the  
2 department has allowed] a remedial action that includes  
3 engineering or institutional controls for soil, groundwater, or  
4 surface water has been implemented to protect the public health,  
5 safety, or the environment, as applicable, shall maintain the  
6 engineering or institutional controls as required by the department.  
7 An owner, lessee, or operator who takes any action that results in  
8 the improper alteration or removal of engineering or institutional  
9 controls or who fails to maintain the engineering or institutional  
10 controls as required by the department, shall be subject to the  
11 penalties and actions set forth in section 22 of P.L.1976, c.141  
12 (C.58:10-23.11u) and, where applicable, shall be liable for any  
13 additional remediation and damages pursuant to the provisions of  
14 section 8 of P.L.1976, c.141 (C.58:10-23.11g). The provisions of  
15 this subsection shall not apply if a notification received pursuant to  
16 subsection b. of this section authorizes all restrictions or controls to  
17 be removed from the subject property.

18 e. Notwithstanding the provisions of any other law, or any rule,  
19 regulation, or order adopted pursuant thereto to the contrary,  
20 whenever contamination at a property is remediated in compliance  
21 with [any] all applicable soil, [or any] groundwater or surface  
22 water remediation standards that were in effect or approved by the  
23 department at the completion of the remediation, no person, except  
24 as otherwise provided in this section, shall be liable for the cost of  
25 any additional remediation that may be required by a subsequent  
26 adoption by the department of a more stringent remediation  
27 standard for a particular contaminant. Upon the adoption of a  
28 regulation that amends a remediation standard, or where the  
29 adoption of a regulation would change a remediation standard  
30 which was otherwise approved by the department, only a person  
31 who is liable to clean up and remove that contamination pursuant to  
32 section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not  
33 have a defense to liability pursuant to subsection d. of that section,  
34 shall be liable for any additional remediation costs necessary to  
35 bring the site into compliance with the new remediation standards  
36 except that no person shall be so liable unless the difference  
37 between the new remediation standard and the level or  
38 concentration of a contaminant at the property differs by an order of  
39 magnitude. The department may compel a person who is liable for  
40 the additional remediation costs to perform additional remediation  
41 activities to meet the new remediation standard except that a person  
42 may not be compelled to perform any additional remediation  
43 activities on the site if that person can demonstrate that the existing  
44 engineering or institutional controls on the site prevent exposure to  
45 the contamination and that the site remains protective of public  
46 health , safety and the environment pursuant to section 35 of  
47 P.L.1993, c.139 (C.58:10B-12). The burden to prove that a site

1 remains protective is on the person liable for the additional  
2 remediation costs. A person liable for the additional remediation  
3 costs who is relying on engineering or institutional controls to make  
4 a site protective, shall comply with the provisions of subsections a.,  
5 b., c. and d. of this section.

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

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

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

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

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

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

36

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

39 6. a. Whenever after the effective date of P.L.1997, c.278  
40 (C.58:10B-1.1 et al.) the Department of Environmental Protection  
41 issues a no further action letter pursuant to a remediation, it shall  
42 also issue to the person performing the remediation a covenant not  
43 to sue with respect to the real property upon which the remediation  
44 has been conducted. A covenant not to sue shall be executed by  
45 the person performing the remediation and by the department in  
46 order to become effective. The covenant not to sue shall be  
47 consistent with any conditions and limitations contained in the no

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

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

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

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

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

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

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

1 the New Jersey Spill Compensation Fund and the Sanitary Landfill  
2 Facility Contingency Fund for any costs or damages relating to the  
3 real property and remediation covered by the covenant not to sue.  
4 The covenant not to sue shall not bar a claim by any person against  
5 the New Jersey Spill Compensation Fund and the Sanitary Landfill  
6 Contingency Fund for any remediation that involves only the use of  
7 institutional controls if, after a valid no further action letter has  
8 been issued, the department orders additional remediation, except  
9 that the covenant shall bar such a claim if the department ordered  
10 additional remediation in order to remove the institutional control.

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

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

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

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

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

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

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

42

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

45 5. a. (1) Except where a limitations provision expressly and  
46 specifically applies to actions commenced by the State or where a  
47 longer limitations period would otherwise apply, and subject to any

1 statutory provisions or common law rules extending limitations  
2 periods, any civil action concerning the remediation of a  
3 contaminated site or the closure of a sanitary landfill facility  
4 commenced by the State pursuant to the State's environmental laws  
5 shall be commenced within three years next after the cause of action  
6 shall have accrued.

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

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

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

29 c. As used in this section:

30 "State's environmental laws" means the "Spill Compensation and  
31 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water  
32 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),  
33 P.L.1986, c.102 (C.58:10A-21 et seq.), the "Brownfield and  
34 Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-  
35 1.1 et al.), the "Industrial Site Recovery Act," P.L.1983, c.330  
36 (C.13:1K-6 et al.), the "Solid Waste Management Act," P.L.1970,  
37 c.39 (C.13:1E-1 et seq.), the "Comprehensive Regulated Medical  
38 Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the  
39 "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279  
40 (C.13:1E-49 et seq.), the "Sanitary Landfill Facility Closure and  
41 Contingency Fund Act," P.L.1981, c.306 (C.13:1E-100 et seq.), the  
42 "Regional Low-Level Radioactive Waste Disposal Facility Siting  
43 Act," P.L.1987, c.333 (C.13:1E-177 et seq.), or any other law or  
44 regulation by which the State may compel a person to perform  
45 remediation activities on contaminated property; and

46 "State" means the State, its political subdivisions, any office,  
47 department, division, bureau, board, commission or agency of the

1 State or one of its political subdivisions, and any public authority or  
2 public agency, including, but not limited to, the New Jersey Transit  
3 Corporation and the University of Medicine and Dentistry of New  
4 Jersey.

5 d. Nothing in the amendatory provisions to this section adopted  
6 pursuant to P.L. , c. (C. ) (pending before the Legislature as this  
7 bill) shall extend a limitations period that has expired prior to the  
8 date of enactment of P.L. , c. (C. ) (pending before the  
9 Legislature as this bill).

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

11

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

14 45. a. There is created in the Department of Environmental  
15 Protection **【and Energy】** a special, revolving fund to be known as  
16 the Remediation Guarantee Fund. The fund shall be credited with  
17 all remediation funding source surcharges imposed pursuant to  
18 section 33 of P.L.1993, c.139 (C.58:10B-11), all moneys  
19 appropriated to it by law, all moneys collected in subrogation  
20 actions to recover moneys expended from the fund, and all moneys  
21 earned from the investment of the moneys in the fund.

22 b. **【The Commissioner of Environmental Protection and**  
23 **Energy shall appoint and supervise an administrator of the fund.**  
24 **The administrator shall be the chief executive of the fund, shall**  
25 **approve all disbursements of moneys from the fund, and shall**  
26 **ensure the proper deposit of all moneys authorized to be deposited**  
27 **into the fund.】** (Deleted by amendment, P.L. , c. )(pending before  
28 the Legislature as this bill)

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

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

40 d. Any moneys expended by the department from the fund  
41 pursuant to this section shall constitute a debt of (1) the person  
42 required to establish the remediation funding source who fails to  
43 conduct or properly conduct a remediation and funds are expended  
44 pursuant to subsection c. of this section, and (2) against the  
45 discharger. The debt shall constitute a lien on all property owned by  
46 the person required to establish the remediation funding source and  
47 against the discharger to the same extent and in the same manner as

1 provided for liens in subsection f. of section 7 of P.L.1976, c.141  
2 (C.58:10-23.11f).

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

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

14

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

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

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

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

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

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

35 "No further action letter" means a written determination by the  
36 Department of Environmental Protection that based upon an  
37 evaluation of the historical use of a particular site, or of an area of  
38 concern or areas of concern at that site, as applicable, and any other  
39 investigation or action the department deems necessary, there are no  
40 discharged contaminants present at the site, at the area of concern or  
41 areas of concern, at any other site to which a discharge originating  
42 at the site has migrated, or that any discharged contaminants present  
43 at the site or that have migrated from the site have been remediated  
44 in accordance with applicable remediation regulations.

45 "Project" or "redevelopment project" means a specific work or  
46 improvement, including lands, buildings, improvements, real and  
47 personal property or any interest therein, including lands under



1 water, riparian rights, space rights and air rights, acquired, owned,  
2 developed or redeveloped, constructed, reconstructed, rehabilitated  
3 or improved, undertaken by a developer within an area of land  
4 whereon a contaminated site is located, under a redevelopment  
5 agreement with the State pursuant to section 35 of P.L.1997, c.278  
6 (C.58:10B-27).

7 "Redevelopment agreement" means an agreement between the  
8 State and a developer under which the developer agrees to perform  
9 any work or undertaking necessary for the remediation of the  
10 contaminated site located at the site of the redevelopment project,  
11 and for the clearance, development or redevelopment, construction  
12 or rehabilitation of any structure or improvement of commercial,  
13 industrial or public structures or improvements within an area of  
14 land whereon a contaminated site is located pursuant to section 35  
15 of P.L.1997, c.278 (C.58:10B-27), and the State agrees that the  
16 developer shall be eligible for the reimbursement of up to 75% of  
17 the costs of remediation of the contaminated site from the fund  
18 established pursuant to section 38 of P.L.1997, c.278 (C.58:10B-30)  
19 as authorized pursuant to section 36 of P.L.1997, c.278 (C.58:10B-  
20 28).

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

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

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

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

44

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

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

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

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

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

25 (2) the developer had (i) entered into a memorandum of  
26 agreement, or other oversight document, with the Commissioner of  
27 Environmental Protection, after the developer entered into the  
28 redevelopment agreement, for the remediation of contamination  
29 located on the site of the redevelopment project pursuant to section  
30 37 of P.L.1997, c.278 (C.58:10B-29) and the developer is in  
31 compliance with the memorandum of agreement, or (ii) complied  
32 with the requirements set forth in subsection b. of section 30 of  
33 P.L. , c. (C. ) (pending before the Legislature as this bill) ; and

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

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

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

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

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

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

18       c. After the developer has entered into a memorandum of  
19 agreement, or other oversight document with the Commissioner of  
20 Environmental Protection, or after the developer has notified the  
21 Department of Environmental Protection of the name and license  
22 information of the licensed site remediation professional who has  
23 been hired to perform the remediation as required pursuant to  
24 subsection b. of section 30 of P.L. , c. (C. ) (pending before the  
25 Legislature as this bill), the commissioner shall submit a copy  
26 thereof to the developer, the clerk of the municipality in which the  
27 subject property is located, the Chief Executive Officer and  
28 Secretary of the Commerce and Economic Growth Commission,  
29 and the director.

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

31

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

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

1 State in an amount sufficient to pay for the cost of the  
2 reimbursements.

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

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

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

24  
25 56. Sections 1 through 32 and section 50 of this act shall take  
26 effect immediately, and the remainder of this act shall take effect  
27 180 days after the date of enactment.

28

29

30

31

32 \_\_\_\_\_  
33 Establishes licensing program for site remediation professionals;  
changes laws concerning site remediation.