

This is a courtesy copy of the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq. The official version is published in the New Jersey Statutes. If there are any discrepancies between this text and the official version of the statute, the official version will govern.

TITLE 58. WATERS AND WATER SUPPLY
CHAPTER 10C. SITE REMEDIATION PROFESSIONAL LICENSING AND REGULATION

*** THIS SECTION IS CURRENT THROUGH NEW JERSEY 215th LEGISLATURE ***
SECOND ANNUAL SESSION (P.L. 2013 CH. 268 AND J.R. 14)
STATE CONSTITUTION CURRENT THROUGH NOV. 2013 ELECTION

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58:10C-1. Short title [Site Remediation Reform Act]

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

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

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

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

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

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

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

"Department" means the Department of Environmental Protection.

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

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

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

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

"Hazardous substance" means the "environmental hazardous substances" on the environmental hazardous substance list adopted by the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4); such elements and compounds, including petroleum products, which are defined as such by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 311 [33 U.S.C. 1321] of the Federal Water Pollution Control Act Amendments of 1972, Pub.L.92-500, as amended by the Clean Water Act of 1977, Pub.L.95-217 (33 U.S.C. § 1251 et seq.); the list of toxic pollutants designated by Congress or the federal Environmental Protection Agency pursuant to section 307 [33 U.S.C. 1317] of that act; and the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 101 of the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L.96-510 (42 U.S.C. § 9601 et seq.); provided, however, that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.).

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

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result in an acute human health exposure; or (4) any other condition that poses an immediate threat to the environment or to the public health and safety.

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

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

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

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

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

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

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

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

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at the site or that has migrated or is migrating from the site, is remediated in compliance with the applicable health risk or environmental standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The board shall have the following powers and duties:

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

58:10C-6. Rules, regulations

a. No later than 18 months after the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), the board shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations necessary for the implementation, administration, and enforcement of P.L.2009, c.60 (C.58:10C-1 et al.). The rules and regulations shall: (1) establish requirements for the education, continuing education, training, experience, examination and testing, and references for the licensing of site remediation professionals; (2) establish standards for professional conduct of, and the payment of fees by, licensed site remediation professionals;

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(3) establish procedures for the investigation of complaints concerning licensed site remediation professionals initiated by any person; (4) establish other forms of nonmonetary penalties that the board may impose on a licensed site remediation professional pursuant to section 17 of P.L.2009, c.60 (C.58:10C-17); and (5) provide for enforcement of the provisions of P.L.2009, c.60 (C.58:10C-1 et al.). The rules and regulations shall establish an expiration date for temporary site remediation professional licenses issued by the department pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12).

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

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

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

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

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

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

(1) holds a bachelor's degree or higher in natural, chemical or physical science, or an engineering degree in a discipline related to site remediation, from an accredited institution of higher education, or has been issued a temporary license to remediate discharges from underground storage tanks only pursuant to subsection d. of section 13 of P.L.2009, c.60

(C.58:10C-13) and meets the other requirements established in this subsection and in subsection f. of this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) has 10 years of full-time professional experience, as described in subsection c. of this section, in the field of site remediation, of which five years shall have occurred in New

Jersey and at least three years shall have occurred in New Jersey immediately prior to submission of the application;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

t. A licensed site remediation professional shall inform a client or prospective client of any relevant and material assumptions, limitations, or qualifications underlying their communication. Evidence that a licensed site remediation professional has provided the client or prospective

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client with timely written documentation of these assumptions, limitations, or qualifications shall be deemed by the board or the department to have satisfied the requirements of this subsection.

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

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

(1) make a material misrepresentation of fact;

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

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

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

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

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

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

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

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

- (a) Suspend or revoke the license of a licensed site remediation professional or impose another penalty on the licensed site remediation professional as determined by the board in accordance with subsection b. of this section;
- (b) Bring a civil action in accordance with subsection c. of this section;
- (c) Issue an administrative order in accordance with subsection d. of this section;
- (d) Bring an action for a civil penalty in accordance with subsection e. of this section;
- (e) Assess a civil administrative penalty in accordance with subsection f. of this section; or
- (f) Petition the Attorney General to bring a criminal action in accordance with paragraph (2) of this subsection.

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

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

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

(2) A violator shall have 35 days from receipt of the notice within which to request a hearing on any matter contained in the notice, and shall comply with all procedures for requesting a hearing. Failure to submit a timely request or to comply with all procedures set forth by the board shall constitute grounds for denial of a hearing request. After a hearing and upon a finding that a violation has occurred, the board shall issue a final order suspending or revoking the license, or imposing the penalty specified in the notice. If a violator does not request a hearing or fails to satisfy the statutory and administrative requirements for requesting a hearing, the notice of intent to suspend or revoke the license or to impose the

penalty shall become final after the expiration of the 35-day period. If the board denies a hearing request, the notice of denial shall become a final order, suspending or revoking the license, or imposing the penalty, upon receipt of the notice by the violator. Upon a determination of the board that the conduct of the licensed site remediation professional is so egregious as to pose an imminent threat to public health, safety, or the environment if the licensed site remediation professional is allowed to conduct remediation of sites or areas of concern pending a hearing on a revocation of the license, the board may suspend the license prior to the outcome of the hearing. Any order issued by the board suspending or revoking a license shall provide for the licensee's obligations regarding the maintenance and preservation of records regarding the licensee's remediation activities at contaminated sites.

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

(1) A temporary or permanent injunction; or

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

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

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

e. Any person who violates P.L.2009, c.60 (C.58:10C-1 et al.), or any rule, regulation, code of conduct, or order adopted or issued pursuant thereto, or who fails to pay a civil penalty or civil administrative penalty in full or to agree to a schedule of payments therefore, shall be subject, upon order of a court, to a civil penalty not to exceed \$ 10,000 for a first violation and not more than \$ 20,000 for every subsequent violation. Any civil penalty imposed pursuant to this

subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

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

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

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

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

(3) The board may assess and recover, by civil administrative order, the costs of any investigation incurred by the board, and any other State agency, and the reasonable costs of preparing and successfully enforcing a civil administrative penalty pursuant to this

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subsection. The assessment may be recovered at the same time as a civil administrative penalty, and shall be in addition to the penalty assessment.

g. A licensed site remediation professional may not apply for a new license for three years following the date of revocation of the license by the board or for the term established by the board pursuant to subsection b. of section 8 of P.L.2009, c.60 (C.58:10C-8). At the conclusion of the license revocation, the licensed site remediation professional shall follow the application procedures for licensure in accordance with section 7 of P.L.2009, c.60 (C.58:10C-7).

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

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

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

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

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

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

any action to suspend or revoke a license, recover damages, or seek injunctive relief, civil or criminal penalties, or any other remedy.

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

58:10C-19. Establishment of permit program

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

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

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

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

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

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

A licensed site remediation professional shall maintain and preserve all data, documents and information concerning remediation activities at each contaminated site the licensed site remediation professional has worked on, including but not limited to, technical records and contractual documents, raw sampling and monitoring data, whether or not the data and information, including technical records and contractual documents, were developed by the licensed site remediation professional or the licensee's divisions, employees, agents, accountants, contractors, or attorneys, that relate in any way to the contamination at the site. Three electronic copies of the records shall be submitted to the department at the time the response action outcome is filed with the department.

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

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

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

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

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

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

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

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

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

(2) the remediation is subject to federal oversight;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58:10C-24. Annual audit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58:10C-27.1. Extensions permitted; application.

1. a. Except as provided in subsection b. or c. of this section, for any site subject to the provisions of paragraph (3) of subsection a. of section 27 of P.L.2009, c.60 (C.58:10C-27), upon application by a person responsible for conducting the remediation, an extension of time until May 7, 2016 shall be provided to allow for the completion of the remedial investigation prior to the department taking direct oversight provided that the applicant continues to comply with the conditions imposed pursuant to this subsection. The applicant shall certify, in a document submitted electronically by the licensed site remediation professional retained by the applicant, that the following conditions have been met:

(1) a licensed site remediation professional has been retained to conduct a remediation of the site;

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(2) any remediation requirements included in mandatory remediation timeframes adopted pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28), for the site have been met at the time of the certification;

(3) technically complete submissions have been made in compliance with all rules and regulations for site remediation, as applicable, for the (a) initial receptor evaluation, (b) immediate environmental concern source control report, (c) light non-aqueous phase liquid interim remedial measure report, (d) preliminary assessment report, and (e) site investigation report;

(4) a remediation funding source has been established, if required of the applicant by section 25 of P.L.1993, c.139 (C.58:10B-3);

(5) if a remediation funding source is not required to be established by the applicant pursuant to law, then a remediation trust fund for the estimated cost of the remedial investigation has been established pursuant to the standards established in section 25 of P.L.1993, c.139 (C.58:10B-3);

(6) any oversight costs imposed by the department, known at the time of the application, and not in dispute on the date of enactment of P.L.2013, c.283 (C. 58:10C-27.1 et al.), have been paid to the department; and

(7) the annual fees imposed by the department for the remediation and remediation funding source surcharges imposed pursuant to section 33 of P.L.1993, c.39 (C.58:10B-11) have been paid to the department, as applicable.

An application pursuant to this subsection shall be submitted to the department by March 7, 2014 or 30 days after the date of enactment of P.L.2013, c.283 (C. 58:10C-27.1 et al.), whichever is later.

b. For any site subject to the provisions of paragraph (3) of subsection a. of section 27 of P.L.2009, c.60 (C.58:10C-27), if the failure to complete the remedial investigation of the contaminated site is due to a delay in the provision of State financial assistance for the remediation from the Hazardous Discharge Site Remediation Fund, upon application by a person responsible for conducting the remediation, an extension of time shall be provided to allow for the completion of the remedial investigation prior to the department taking direct oversight, except as provided in subsection c. of this section. The applicant shall submit to the department a certification that the person responsible for conducting the remediation filed a technically and administratively complete application for funding prior to March 7, 2014 or 30 days after the date of enactment of P.L.2013, c.283 (C. 58:10C-27.1 et al.), whichever is later, qualifies for funding, and remains eligible for funding. Every six months after the submission of the application for the extension of time pursuant to this subsection, the applicant shall submit to the department a certification with an update on the status of the funding application.

The extension of time for the completion of a remedial investigation of a contaminated site prior to the department taking direct oversight of the remediation pursuant to this subsection

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shall be no more than two years after receipt of funding, or no more than two years after the applicant is no longer eligible for funding.

An application for an extension of time pursuant to this subsection shall be submitted to the department by March 7, 2014 or 30 days after the date of enactment of P.L.2013, c.283 (C. 58:10C-27.1 et al.), whichever is later.

c. An application submitted pursuant to subsection a. or b. of this section shall be deemed approved upon receipt by the department. The department may undertake direct oversight of a remediation if, at any time during the extension of time: (1) the conditions imposed pursuant to subsection a. or b. of this section, as the case may be, are no longer met; or (2) the person responsible for conducting the remediation fails to meet a mandatory remediation timeframe after submission of the certification submitted pursuant to this section. The department shall so notify the person responsible for conducting the remediation, in writing, that the extension of time for completion of the remedial investigation is revoked because of the applicant's failure to continue to comply with the conditions required, or the applicant's failure to submit one or more of the certifications required pursuant to subsection a. or b. of this section, or that the information included in a certification is incomplete, incorrect, false, or otherwise deficient.

d. The department shall provide notice on its internet website of any extensions provided pursuant to this section. In the notice, the department shall provide the name and location of the site for which the extension is provided and the length of the extension of time.

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

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

(1) a receptor evaluation;

(2) control of ongoing sources of contamination;

(3) establishment of interim remedial measures;

(4) addressing immediate environmental concern conditions;

(5) the performance of each phase of the remediation including preliminary assessment, site investigation, remedial investigation and remedial action;

(6) completion of remediation; and

(7) any other activities deemed necessary by the department to effectuate timely remediation.

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

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

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

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

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

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

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

Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the department shall adopt, after notice, interim rules and regulations establishing a program that provides for the responsibilities of persons responsible for conducting a remediation and licensed site remediation professionals in the remediation of contaminated sites pursuant to the provisions of P.L.2009, c.60 (C.58:10C-1 et al.), no later than 180 days after the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.). The interim rules and regulations may include amendments to rules and regulations adopted pursuant to other laws, in order to make them consistent with the provisions of P.L.2009, c.60 (C.58:10C-1 et al.). The interim rules and regulations shall be effective immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the department in accordance with the provisions of the "Administrative Procedure Act."