

11/5/2008

DRAFT SITE REMEDIATION REFORM AND LICENSED SITE PROFESSIONAL
ACT

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

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

1. (New section) This act shall be known and may be cited as the “Site Remediation
Reform and Licensed Site Professional Act”

2. (New section) As used in sections 1 through 51 of this act:

“Act” means the Site Remediation Reform and Licensed Site Professional Act;

"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 licensed site professional board, established pursuant to the
act;

"Business firm" means any corporation, association, firm, partnership, sole
proprietorship, trust or other form of commercial organization;

"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 et
seq.) as a subsurface evaluator;

"Contamination" or "contaminant" means any discharged hazardous substances as
defined pursuant to section 3 of P.L. 1976, c. 141 (C. 58:10-23.11b), hazardous waste as

11/5/2008

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;

“Educational facility” means any public or private school for students in grades K through 12;

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

"Environmental crime" means any criminal violation of one of the following State laws: R.S.12:5-1 et seq.; P.L.1975, c.232 (C.13:1D-29 et al.); the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.); section 17 of P.L.1975, c.326 (C.13:1E-26); the "Comprehensive Regulated Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et al.); 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 "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 the mechanism for the development, screening, and detailed evaluation of alternative remedial actions. The feasibility study emphasizes data analysis and is generally performed concurrently and in an interactive fashion with the remedial investigation, using data gathered during the remedial investigation. The remedial investigation data are used to define the objectives of the response action, to develop remedial action alternatives, and to undertake an initial screening and detailed analysis of the alternatives. The term also refers to a report that describes the results of the study;

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

11/5/2008

"Immediate environmental concern" means a condition at a contaminated site where there is: (i) confirmed contamination in wells used for potable purposes at concentrations at or above the ground water remediation standards; (ii) confirmed subsurface contamination from a discharge of a hazardous substance 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; (iii) confirmed contamination documenting that either dermal contact, inhalation or ingestion of a contaminant could result in an acute human health exposure or (iv) any other condition that poses an immediate threat to the environment or to the public health and safety of the citizens of the State;

"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 professional" means an individual who, by reason of appropriate education, training, and experience, is qualified, as attested by being licensed by the board or the department, to issue a response action outcome that can be relied on as sufficient to protect public health, safety, and the environment;

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

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

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

"Receptor evaluation" means an evaluation of any and all of the potential impact of contamination on humans and the environmentally sensitive natural resources by the contamination;

"Relevant professional experience" means experience that the board (permanent licenses) or the department (temporary licenses) determines, separately for each position held by an applicant, is a concurrent combination of contaminated site cleanup decision making experience and project experience, both performed with proficiency. The board and the department will consider the following criteria in evaluating whether an

applicant's contaminated site cleanup decision making experience and practical experience constitute relevant professional experience: the number of individuals and other disciplines of other professionals supervised or coordinated; the nature of conclusions reached and recommendations and opinions presented; the extent of review of conclusions, the nature of the applicant's relationship with remediation consultants and the manner in which the applicant's decision making responsibilities were differentiated from those of others; the duration of employment; the nature of work performed (including, but not limited to, whether such experience includes work at sites where subsurface investigations have occurred); the extent to which assessment, containment or removal responsibilities were exercised throughout each position; the nature of the employer's primary business interests and the relation of those interests to hazardous waste work; the relevance of the prior experience to the technical and regulatory knowledge, skills and abilities ordinarily required of environmental professionals at the time of application; and any other factors the department deems relevant. Relevant professional experience does not include experience involving only or primarily non-scientific or non-technical activities such as contract management, budget control, legal analysis, and other similar management activities;

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

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

11/5/2008

"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 professional, based upon an evaluation of the historical use of a site, or of an area of concern or areas of concern at that site, as applicable, and any other investigation or action the department deems necessary, there are no discharged contaminants present at the site, at the area of concern or areas of concern, at any other site to which a discharge originating at the site has migrated, or that any discharged contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation regulations and is protective of public health, safety and the environment, and all applicable permits and authorizations have been obtained. Nothing in a response action outcome shall impact in any manner the department's rights to pursue

restoration of injured natural resources, or pursue any cleanup and removal costs or other damages related to a discharge;

"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;

"Temporary License" means a license issued by the department to conduct business as a licensed site professional in New Jersey during the period between enactment of the act and the date the board issues its first set of licenses pursuant to the act

"Total professional experience" means all of an applicant's professional experience that is determined by the board (permanent license) or the department (temporary license) to be experience applying scientific or engineering principles in the environmental field where the resultant conclusions form the basis for reports, studies and other similar documents. The board and the department will consider the following criteria in evaluating an applicant's total professional experience: the description of work activities, the field or fields of activities, the duration of employment, the types of reports, studies and documents prepared and any other factors the department deems relevant;

"Unregulated heating oil tank system" 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 this State.

3. (New section) a. There is hereby established the board of licensed site professionals. The board shall consist of eleven members to be appointed and qualified as follows:

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

(2) Ten public members, residents of the State, who shall be appointed by the Governor, with the advice and consent of the Senate, among whom shall be: four licensed site professionals licensed by the board, or, until such time that the board issues its first set of license, by the department, provided that they have their licenses at all times while they are members of the board; two members of statewide organizations that promote the protection of the environment at the time of appointments, provided none are licensed site professionals; one representative of the New Jersey Business and Industry Association, provided he or she is not a licensed site professional; one representative of the New Jersey State Chamber of Commerce provided he or she is not a licensed site professional; the state geologist or his or her designee; and one member of the academic community who is knowledgeable with respect to issues concerning the protection of the environment, provided he or she is not a licensed site professional.

b. The governor shall appoint one licensed site professional to a one year term, one licensed site professional to a two-year term, one licensed site professional to a three-year term; and one licensed site professional to a four-year term; one member from a statewide organization that promotes the protection of the environment to a two-year term, and one member from a statewide organization that promotes the protection of the

environment to a three-year term; the representative of the New Jersey Business and Industry Association to a three year term; the representative of the Chamber of Commerce to a two year term; the state geologist or his or her designee to a four year term; and the member of the academic community who is knowledgeable with respect to issues concerning the protection of the environment to a two year term.

Thereafter, the term of the ten members of the board appointed by the governor shall be four years. Each of the ten members of the board appointed by the governor whose term has expired shall continue to be members of the board until his successor is appointed and qualified, at which time the successor shall complete the unexpired portion of the term. The ten members of the board appointed by the governor shall serve without compensation.

c. The commissioner of the department shall provide such staff and other persons as are required to assist him or her or the board, or both in the performance of their functions and duties pursuant to the act, including, without limitation, administrative law judges who may conduct adjudicatory proceedings held pursuant to the act; provided, that the board shall make all final decisions in such adjudicatory proceedings.

4. (New section) The board shall have the following powers and duties:

a. Reviews and approves or denies applications to become a licensed site professional;

b. Administers and evaluates examinations on the technical requirements for site remediation and other relevant environmental statutes and regulations for the licensing of licensed site professionals;

c. Issues licenses and license renewals to qualifying applicants;

d. Establishes standards and requirements for continuing education of licensed site professionals;

- e. Approves and/or offers courses for continuing education;
 - f. Tracks fulfillment of continuing education requirements by Licensed Site Professionals;
 - g. Prescribes or changes the fees for examinations, licenses, renewals, or any other services performed by the board, and to administer the licensed site professional program established pursuant to this act;
 - h. Oversees and enforces the Code of Professional Conduct, Ethics and Conflict of Interest, as set forth in section 12 of this act;
 - i. Investigates complaints, disciplines, revokes licenses and suspends licensed site professionals who do not uphold the Code of Professional Conduct, Ethics and Conflict of Interest or who are in violation of this act;
 - j. Publishes and maintains the names and contact information of all persons who are licensed under this act, and make the list publicly available on the board's website;
 - k. Publishes and maintains a list of all licensed site professionals who have had their licenses revoked or suspended, or have had an actions taken against them by the board;
 - l. Acts as clearinghouse for public information on the licensed site professionals program; and
 - m. Maintains records of filed complaints against licensed site professionals and provides public with information upon request.
5. (New section) a. The board shall adopt, and may from time to time amend and repeal, regulations as it deems necessary for the implementation, administration, and

enforcement of the act. The regulations shall be adopted, amended, or repealed pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The regulations shall include, requirements for education, continuing education, training, experience, references and standards for professional conduct, ethics and conflict of interest, enforcement and fees, and to otherwise implement the act.

b. The board shall promulgate rules and regulations establishing a program for the licensing of site remediation professionals pursuant to the provisions of P.L. , c. (C.) (pending before the Legislature as this bill), no more than 18 months after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill). The department shall develop and offer the first exam within 90 days of the effective date of the rules and regulations. Thereafter, the board shall be responsible for developing and offering the licensing exams.

6. (New section) The board may deny an application for an initial license or for a license renewal, or suspend or revoke a license, at any time for cause. The board may bar any individual 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 barred shall be established as part of the determination or decision of the board in the proceedings concerning the denial or revocation. The board may grant an application for an initial license or for a license renewal, and may allow a license to remain in effect, only if and while the board is persuaded that the applicant for or holder of the license is in compliance, and will be in compliance routinely and on a continuing basis, with all standards and requirements applicable to licensed site professionals. The board shall issue each license pursuant to the act only to an individual, and the license shall be valid only for the individual to whom it is issued, and may not be transferred. The board shall issue each license pursuant to the act for a period not to exceed three years.

7. (New section) No person shall be, or act as, or advertise as, or hold himself out to be, or represent himself as being, a licensed site professional unless that person is in possession of a valid license issued pursuant to this act.

8. (New section) a. 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, developing and conducting the license examinations and all costs of administering and enforcing the act.

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

(1) holds a bachelor's degree or higher in natural, chemical or physical science, or a related engineering discipline, from an accredited institution of higher learning;

(2) has eight years of full-time total professional experience, five years of which are relevant professional experience on contaminated sites in New Jersey, and at least three years of the relevant professional experience must have occurred within five years prior to submission of application for licensure. A relevant master's degree can substitute for up to one year of total professional experience, or a relevant doctorate can substitute for up to two years of total professional experience with a maximum of two years of educational credit. The board has the discretion to factor in breaks in service due to such thing as maternity leave and approved long term disability when determining whether a person meets the experience requirements;

(3) has attended and completed the minimum environmental health and safety education and training in accordance with 29 C.F.R. 1910.120 no more than twelve months prior to the submission of an application for a license;

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

(5) has not been convicted of or plead guilty to, an environmental crime or any similar or related criminal offense under federal or state law; and

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

c.. In order to maintain a license issued pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), every licensed site professional shall meet the continuing education requirements as established by the board and comply routinely and on a continuing basis with all standards and requirements applicable to licensed site professionals.

d. A licensed site professional shall submit an application for a license renewal no fewer than 90 days prior to the expiration of the license. The board shall establish standards for the renewal of the licensed site professional license and may require training or continuing education, experience or other requirements as a condition for the renewal of a license. The board shall also establish standards and requirements for the renewal of a licensed site professional license after a licensed site professional's license has been suspended or revoked. The filing of an application for a license renewal shall be accompanied by a non refundable application fee.

9. (New section) Until the board issues its first set of licenses, the department may issue temporary licenses to individuals to be licensed site professionals. Each application for a temporary license shall be accompanied by an application fee established by the department that shall be set to cover all costs of processing the application, and developing the first exam, and each licensee shall pay an annual fee that shall be set to

cover all costs of administering and enforcing the act. The department may deny an application for an initial license, or suspend or revoke a license, at any time for cause. The department may grant an application for an initial license, and may allow a license to remain in effect, only if and while the department is persuaded that the applicant for or holder of the license is in compliance, and will be in compliance routinely and on a continuing basis, with all standards and requirements applicable to licensed site professionals. The department shall issue each license pursuant to the act only to an individual, and the license shall be valid only for the individual to whom it is issued, and may not be transferred. The temporary licenses issued by the department shall be valid until the board issues its first set of licenses. The department may bar any individual whose license is revoked from applying for a license for a period of not more than three years. The term during which reapplication is barred shall be established as part of the determination or decision of the board in the proceedings concerning the revocation.

10. (New section) a. Within one month after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the department will post a notice in the New Jersey Register of how to obtain a temporary license, including requirements for temporary licensing fees. Application for a temporary license shall be made in a manner and on such forms as may be prescribed by the department. The department may determine which applicants for a temporary licensed site professional license shall be approved to work as licensed site professionals based upon the requirements set forth in this section. The department may also charge an annual license fee that shall cover the costs of the licensing program. In lieu of issuing individual temporary licenses to licensed site professionals, the department shall publish on its Internet site a list of licensed site professionals with a temporary license. The temporary licensed site professional shall adhere to the Code of Professional Conduct, Ethics and Conflict of Interest in section 12 this act.

b. No person may obtain a temporary license unless that person meets the following standards for training, experience, and education, and satisfies any other

requirements established by the department to ensure that licensed site remediation professionals meet the requirements established pursuant to this section:

(1) holds a bachelor's degree or higher in natural, chemical or physical science, or a related engineering discipline, from an accredited institution of higher learning;

(2) has ten years of full-time total professional experience, five years of which are relevant professional experience with remediating contaminated sites in New Jersey and at least three years of the relevant professional experience must have occurred within five years prior to submission of application for temporary licensure. A relevant master's degree can substitute for up to one year of experience, or a relevant doctorate can substitute for up to two years of experience with a maximum of two years of educational credit. The department has the discretion to factor in breaks in service due to such thing as maternity leave and approved long term disability when determining whether a person meets the experience requirements;

(3) has attended and completed the minimum environmental health and safety education and training in accordance with 29 C.F.R. 1910.120 no more than twelve months prior to the submission of an application for a temporary license;

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

(5) has not been convicted of, or plead guilty to, an environmental crime or any similar or related criminal offense under federal or state law; and

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

11. (New section) a. The licensed site professional shall adhere to the Code of Professional Conduct, Ethics and Conflict of Interest in section 12 of this act.

b. A licensed site professional must certify all documents required to be submitted to the department.

c. A licensed site professional shall certify submissions to the department concerning the remediation of a contaminated site that the work was performed, that the licensed site professional managed, supervised, or performed the work that is the basis of the submission, and that the work and the submission conform to all applicable laws and regulations.

d. Within six months of the department's development of any information technology system that allows for submission of electronic information, the licensed site professional or certified subsurface evaluator shall employ the use of these systems.

e. Upon completion of the remediation, the licensed site professional shall issue a response action outcome to the client when, in the opinion of the licensed site professional, the site has been remediated so that it is in compliance with all applicable statutes and regulations protective of public health and safety, and the environment. The licensed site professional shall file the response action outcome with the department when it is issued to its client except if the response action outcome results from a preliminary assessment or site investigation which determines that no contamination exists at the site or area of concern.

f. Notwithstanding any other general or special law to the contrary, no licensed site professional shall be liable to any other person for making any disclosure in good faith if such disclosure is required pursuant to any law or to any regulation or order of the board or of the department or of any agency of the United States, or of the State, or of any city or town or other body politic, or pursuant to any court order or judicial process.

12. (New section) a. The Code of Professional Conduct, Ethics and Conflict of Interest in subsections b through cc, of this section, shall be binding on each licensed site professional.

b. A licensed site professional shall hold paramount the protection of the public health and safety, and the environment in the performance of professional services.

c. Each licensed site professional is required to have knowledge of and familiarity with the provisions of the Code of Professional Conduct, Ethics and Conflict of Interest, and shall have an understanding of its provisions.

d. Each licensed site professional shall act with reasonable care and diligence, and shall apply the knowledge and skill ordinarily exercised by licensed site professionals in good standing practicing in the State at the time the services are performed.

e. A licensed site professional shall not provide professional services outside the areas of professional competency, when this competency is based on education, training, or experience, unless the licensed site professional has relied upon the technical assistance of one or more professionals whom the licensed site professional has reasonably determined are qualified in these areas by education, training or experience.

f. A licensed site professional shall notify the department that he or she is the licensed site professional of record for a site or area of concern within 15 calendar days after being engaged as a licensed site professional by a person responsible for conducting the remediation. In addition, the licensed site professional shall notify the department within 15 calendar days of being released as the licensed site professional of record by the person responsible for conducting the remediation that obtained the licensed site professional's services if the release occurs prior to the licensed site professional having issued the response action outcome for the site.

11/5/2008

g. A licensed site professional shall correct all deficiencies the department identifies in either a notice of deficiency or a notice of violation according to the department's timeframes established for resubmittal.

h. A licensed site professional may complete any phase of remediation based on remediation work performed under a previous licensed site professional, and the workplan or report generated by the previous licensed site professional may be relied upon as sufficient to protect public health, safety and the environment, only if the successor licensed site professional has: (1) reviewed all available documentation known to the successor licensed site professional that describes previous contamination and remediation; (2) conducted a site visit to observe current conditions and to verify the status of as much of the work as is reasonably observable; and (3) concluded, in the exercise of independent professional judgment, that the successor licensed site professional has sufficient information upon which to complete any additional phase of remediation and prepare workplans and reports related thereto.

i. A licensed site professional who has taken over the responsibility for the remediation of a contaminated site from another licensed site professional pursuant to subsection h. of this section shall correct all deficiencies in a document submitted by the previous licensed site professional identified by a notice of deficiency or a notice of violation according to the timeframes the department establishes.

j. A licensed site professional shall sign a workplan, report or any other required submittal only when the licensed site professional has managed, supervised or actually performed the work that is the basis of the submittal, or has periodically reviewed and evaluated the performance by others of the assessment, or has completed the work of a prior licensed site professional pursuant to subsection h. of this section.

k. In providing professional services, a licensed site professional shall: (1) exercise independent professional judgment; (2) adhere to the requirements and procedures set forth in the applicable provisions of P.L. , c. (C.) (pending before the

Legislature as this bill); (3) 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 site that the client of the licensed site professional possesses or that is otherwise readily available, and identify and obtain whatever additional data and other information as the licensed site professional deems necessary; and (4) disclose and explain in any workplan, report or other required document the material facts, data, other information, and qualifications and limitations known by the licensed site professional which may tend to support or lead to a workplan, report or required document contrary to, or significantly different from, the workplan, report or required document completed by the licensed site professional.

l. If a licensed site professional identifies a discharge that in the independent professional judgment of that person meets the definition of an immediate environmental concern at a particular site at which the person is working as a licensed site professional, then the licensed site professional shall: (1) immediately verbally advise the client of the client's need to notify the department of the discharge or potential discharge; and (2) immediately notify the department of the discharge by immediately calling the department's telephone hotline.

m. If a licensed site professional obtains site specific knowledge that a discharge, excluding historic fill, has occurred at a site, the licensed site professional shall within 24 hours (1) notify the client of the existence of the condition; and (2) then notify the department by calling the department's telephone hotline.

n. If a licensed site professional has knowledge of an action taken or a decision made by that person's client with respect to a particular aspect of the work of the licensed site professional that significantly deviates from any scope of workplan or report the licensed site professional has developed, the licensed site professional shall promptly notify the client and the department in writing of the deviation.

o. A licensed site professional shall not reveal facts, data or information obtained in a professional capacity without the prior consent of the client, except as may be authorized or required by law, if the facts, data or information are claimed to be confidential by the client in a written communication to the licensed site professional, and these facts, data or information are not already in the public domain.

p. If subsequent to the date a licensed site professional completes a report concerning a phase of remediation, that person learns that material facts, data or other information existed at the time the phase of remediation was conducted that may tend to support or lead to a workplan or report contrary to, or significantly different from, the one completed, the licensed site professional shall promptly notify the client and the department in writing of these circumstances.

q. If subsequent to the date a successor licensed site professional is engaged, that person learns of material facts, data or other information which existed at the date of completion of a phase of remediation by a predecessor licensed site professional that was not disclosed in that phase of remediation workplan or report, the successor licensed site professional shall promptly notify the client and the department in writing of these circumstances.

r. A licensed site professional shall not allow the use of that person's name by, or associate in a business venture with, any person that the licensed site professional knows or should know is engaging in fraudulent or dishonest business or professional practices relating to the professional responsibilities of a licensed site professional.

s. Every licensed site professional shall cooperate fully in the conduct of investigations by the board or the department by promptly furnishing, in response to formal requests, orders or subpoenas, whatever information the board or the department, or persons duly authorized by the board or the department, deems necessary to perform its duties. In any investigation by the board of applications or disciplinary complaints, a licensed site 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 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 employees, agents, or contractors of the licensed site professional to engage in any of the foregoing activities.

t. A licensed site professional who is involved in a management or review capacity of the remediation of a contaminated site shall be considered jointly responsible with a second licensed site professional for a violation of this Code of Professional Conduct, Ethics and Conflict of Interest committed by the second licensed site professional if the licensed site professional: (1) orders, directs, or formally ratifies professional services or an opinion being conducted or prepared by the second licensed site professional; (2) recognizes that the professional services or opinion violate an obligation or prohibition contained in this Code of Professional Conduct, Ethics and Conflict of Interest; and (3) fails to take reasonable steps to attempt to avoid or mitigate the violation.

u. A licensed site professional shall comply with all conditions the board imposes on that person's license or certification as a result of a disciplinary proceeding.

v. In any communication with a client or prospective client, including but not limited to communications with respect to a proposed scope of services or proposed contract, it is the responsibility of the licensed site professional to inform the client or prospective client of the relevant and material assumptions, limitations, or qualifications underlying the communication. Evidence that a licensed site professional has provided the client or prospective client with timely written documentation of these assumptions, limitations, or qualifications shall be deemed by the board.

w. In any communication with a client or prospective client, a licensed site professional shall not state or imply, as an inducement or a threat, an ability to improperly influence a government agency or official.

x. In any description of qualifications, experience, or ability to provide services, a licensed site professional shall not knowingly: (1) make a material misrepresentation of fact; (2) omit a fact necessary to make the description, when considered as a whole, not materially misleading; or (3) make a statement that, in the opinion of the board, is likely to create an unjustified expectation about results the licensed site professional may achieve, or state or imply that the licensed site professional may achieve results by means that violate the provisions of applicable environmental statutes, rules or regulations, including the provisions of P.L. , c. (C.) (pending before the Legislature as this bill).

y. A licensed site professional who becomes obligated to make any of the notifications required under the provisions of this act shall make the required notification even if that licensed site professional is discharged by the client prior to doing so.

z. A licensed site professional shall not accept compensation, financial or otherwise, for professional services pertaining to a contaminated site from more than one person having significant conflicting or adverse interests unless the circumstances are fully disclosed and agreed to by all clients engaging that person with regard to that site.

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

bb. A licensed site professional shall not allow any ownership interest, compensation, or continued employment to the benefit of either the licensed site professional or any direct family member to affect the professional services of that person to the extent that the professional services fail to meet the standards set forth in this act.

cc. The LSP shall certify all electronic submissions and attest that no entity other than the licensed site professional has the ability to use passwords, encryptions, electronic signatures, or other means of certifying the submittals as assigned to the licensed site professional by the board or department

13. (New section) a. (1) Whenever, on the basis of available information, the board finds that a person is in violation of a provision of the act, 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) Revoke or suspend the license of a licensed site professional in accordance with subsection b. of this section; or

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

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

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

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

Each day that a violation continues shall constitute an additional separate offense.

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 professional who purposely, knowingly, or recklessly violates a provision of this act, including making a false statement, representation, or certification

in any application, record, or other document filed or required to be maintained under this act, 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 e. of this section, 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 revoke or suspend a license issued to a licensed site professional pursuant to this act or N.J.S.A. 58:10A-24. The board may not revoke or suspend a license 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 citation of the act or omission constituting the violation; (c) identify the license to be revoked or suspended; 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 20 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 revoking or suspending the license 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 revoke or suspend the license shall become final after the expiration of the 20-day period. If the board denies a hearing request, the notice of denial shall become a final order, revoking or suspending the license, upon receipt of the notice by the violator. Upon a determination of the board that the conduct of the licensed site professional is so egregious as to pose an imminent threat to public health and safety, or the environment if the licensed site professional is allowed to conduct remediation of sites or areas of concern pending a hearing on a revocation of his or her license, the board may suspend the license prior to the outcome of the hearing.

c. If a person violates any of the provisions of this act, or any rule, regulation, Code of Professional Conduct, Ethics and Conflict of Interest, or order adopted or issued pursuant thereto, the board may institute a civil action in Superior Court for appropriate relief for any violation of the act, 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;

(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 the act, or any rule, regulation, Code of Professional Conduct, Ethics and Conflict of Interest, or order adopted or issued pursuant thereto, the board may issue an order (i) specifying the provision or provisions of this act, or the rule, regulation, or Code of Professional Conduct, Ethics and Conflict of Interest or order adopted or issued pursuant thereto of which the person is in violation; (ii) citing the action which caused the violation; (iii) requiring compliance with the provision or provisions; and (iv) giving notice to the person of the person's right to a hearing on the matters contained in the order and the board may issue a public censure or a private censure to a licensee at any time for cause.

(2) A violator shall have 20 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 revoking or suspending the license 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 revoke or suspend the license shall become final after the expiration of the 20-day period. If the board denies a hearing

request, the notice of denial shall become a final order, revoking or suspending the license, upon receipt of the notice by the violator. Upon a determination of the board that the conduct of the licensed site professional is so egregious as to pose an imminent threat to public health and safety, or the environment if the licensed site professional is allowed to conduct remediation of sites or areas of concern pending a hearing on a revocation of his or her license, the board may suspend the license prior to the outcome of the hearing.

e. Any person who violates the act, or any rule, regulation, Code of Professional Conduct, Ethics and Conflict of Interest, or order adopted or issued pursuant thereto, or who fails to pay a civil or civil administrative penalty in full or to agree to a schedule of payments therefor, shall be subject, upon order of a court, to a civil penalty not to exceed \$50,000 per day of the violation, and each day during which the violation continues shall constitute an additional, separate, and distinct offense. 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 \$50,000 for each violation of the provisions of this act, or any rule, regulation, Code of Professional Conduct, Ethics and Conflict of Interest, or order adopted or issued pursuant thereto, and each day during which each violation continues shall constitute an additional, separate and distinct offense.

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

(3) The board may assess and recover, by civil administrative order, the costs of any investigation incurred by the board, and any other state agency, and the reasonable

costs of preparing and successfully enforcing a civil administrative penalty pursuant to this subsection. The assessment may be recovered at the same time as a civil administrative penalty, and shall be in addition to the penalty assessment.

g. A licensed site professional may not apply for a new license for three years following the date of revocation of the license by the board. At the conclusion of the license revocation, the licensed site professional shall follow the application procedures for licensure in accordance with section 8f P.L. , c. (C.) (pending before the Legislature as this bill).

h. Upon the second revocation of license, a licensed site professional shall be disqualified from making an application for a license in this State.

i. Whenever it appears that there is a violation of any provision of the act, or of any regulation, license, or order issued or adopted thereunder, the board may issue to a person causing or contributing, or likely to cause or contribute, to such violation an order 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, to recover damages, or to 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 thereon, to be given to the department as promptly as necessary and in whatever ways are necessary in order to enable the department to promptly and properly exercise its powers and perform its duties pursuant to the provisions of this act, and all other applicable laws.

14. (new section) a. The department shall screen all submittals upon receipt of the submittal.

b. The department may audit documents for which the submittal indicates that any one or more of the following criteria apply at the site or area of concern:

(1) the site or an area within the site poses a significant detrimental impact on public health, safety and the environment as determined by a receptor evaluation;

(2) the site or an area within the site is within a brownfield development area or other economic development priority area;

(3) the site or area within the site affects an educational or licensed childcare facility, or other sensitive population;

(4) the remediation of the site or an area within the site is subject to federal oversight;

(5) the compliance history of the person responsible for conducting the discharge or licensed site professional;

(6) the site is in an environmentally or ecologically sensitive area, or is a high priority for economic development purposes;

(7) the site has an environmental justice petition approved by the environmental justice task force;

(8) the site has an oversight document and administrative order or remediation agreement which specify department review and approvals;

(9) the site is the subject of substantial public interest;

(10) the site or area of concern is being remediated with public funds in the form of grants or loans;

(11) the site that is the subject of proposed alternative or site specific remediation standards for a final remedy;

(12) the site that requires a permit (excluding permits-by-rule) from the department;

(13) the site is one where the land use is changing from industrial to residential or mixed use;

(14) the site is one where the licensed site professional has changed;

(15) a landfill that is being considered for redevelopment to recreational, residential or mixed use;

(16) the site or area of concern may impact environmentally sensitive natural resources; or

(17) the submittal appears to be not in compliance with applicable rules or regulations.

The department may adopt regulations pursuant to the “Administrative Procedure Act” P.L. 1968, c.410 (C. 42:14B-1 et seq.), establishing additional factors.

c. In conducting the audit the department’s review shall focus on whether any deficiencies, errors or omissions found as a result of the audit resulted in a failure to confirm that the remediation is protective of public health, safety and the environment.

d. The licensed site professional and the person responsible for conducting the remediation shall provide any data, documents or other information as requested by the department to conduct an audit.

e. The department shall notify the licensed site professional within six months after submittal of a response action outcome as to whether the department will audit the response action outcome and the timeframe within which the audit will be completed.

f. At any time the department determines that the remedial action outcome is not protective of public health, safety and the environment, or the licensed site professional failed to use a presumptive remedy as required pursuant to N.J.S.A. 58:10B-12g it shall invalidate a response action outcome issued by a licensed site professional.

15. (New section) a. The department shall audit the conduct and submissions of a minimum of 10% of licensed site professionals every year.

b. Every licensed site professional shall cooperate with the department in the audit and provide any information requested by the department or the board.

16. (New section) The department may recommend to the Licensed Site Professional Board that it revoke, suspend or take any other action as necessary the license of a licensed site professional as a result of the audit pursuant to the provisions of sections 14 and 16 of P.L. , c. (C.) (pending before the Legislature as this bill).

17. (New Section). a. Personnel or authorized agents of the board or of the department may at all reasonable times enter 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 the act. Personnel or authorized agents of the board or the department may and shall seek a warrant authorizing such entry whenever they wish to enter any location and either they do not wish to ask permission for such entry first or permission for such entry has been sought and refused. Any court authorized to issue search warrants may issue such warrants authorizing such entry by personnel or authorized agents of the board or of the department upon a showing that such entry is necessary to allow the board or the

department to carry out its regular procedures for verifying compliance with the act or any rule, regulation, Code of Professional Conduct, Ethics and Conflict of Interest, 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 of the department, furnish information relating to activities subject to the act, and shall permit the officers, employees, or authorized representatives to have access to, and to copy, all records relating to the activities.

c. In the event that 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 act, the board or the department may obtain any records, equipment, property, or other evidence it deems necessary.

18. (New section) a. Every licensed site professional shall maintain and preserve all data, documents and information concerning remediation activities at each contaminated site the licensed site 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 professional or his or her divisions, employees, agents, accountants, contractors, or attorneys that relate in any way to the contamination at the site for a minimum of five years from the filing of the response action outcome with the department.

b. The licensed site professional shall electronically preserve for a minimum of five years after the issuance of a response action outcome all data and information required to be maintained pursuant to this section in his or her possession or in the possession of the licensed site professional's divisions, employees, agents, accountants, contractors, or attorneys that relate in any way to the contamination at the area of concern

or site. After the expiration of the five year period, the licensed site professional shall advise the department of the expiration period, identifying the area of concern or site by address, case number, if applicable and listing the documents involved, including the name of each document, date, name and title of the sender and receiver and a brief summary of the contents. The department may request that an electronic copy of the documents be provided. If no such request is made within 30 days, the licensed site professional may cease to preserve the records.

19. (New section) 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 for the role of the licensed site professionals in the remediation of sites pursuant to the provisions of P.L. , c. (C.) (pending before the Legislature as this bill of P.L. , c. (C.) (pending before the Legislature as this bill), a no more than 180 days after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill). The interim rules may include amendments to other environmental rules and regulations in order to make them consistent with the provisions of the act. The rules and regulations shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed two years, and may, thereafter, be amended, adopted or readopted by the department in accordance with the provisions of the "Administrative Procedure Act."

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

a. discloses, or threatens to disclose to the department an activity, policy or practice of the licensed site professional that the licensed site professional reasonably believes; (1) is in violation of a 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; or (2) is fraudulent or criminal, including any activity, policy or practice of deception or misrepresentation that the

licensed site professional reasonably believes may defraud any client, customer, the department, or any 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 the 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 governmental entity, or, in the case of a licensed site 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 professional reasonably believes; (1) is in violation of a 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 professional reasonably believes may defraud any client, customer, the department, or any governmental entity, or (3) is incompatible with a clear mandate of public policy concerning the public health, safety or protection of the environment.

21. (New section). a. Notwithstanding Section 14 above, the department shall provide direct oversight of a licensed site professional's submissions and of the remediation of a site pursuant to b below, when any of the following conditions apply:

(1) The person responsible for conducting the remediation has a history of non-compliance with remediation statutes and regulations as evidenced by the receipt of more than two enforcement actions issued by the Department over a five year period relating to a contaminated site;

(2) The person responsible for conducting the remediation has failed to meet the remediation timeframes established by the Department by rule or regulation or pursuant to an administrative or court order;

(3) The person responsible for conducting the remediation has failed to complete a remedial investigation of the entire site 10 years or more after discovery of the discharge and has failed to complete a remedial investigation for the entire site within two years after the effective date of the Act;

(4) The site contains chromate chemical production waste;

(5) The department determines that multiple ecologically sensitive receptors including but not limited to aquifer(s), wetlands, surface water bodies, or threatened and endangered habitats have been negatively damaged; or

(6) The site contributes polychlorinated biphenyl (PCB), mercury, arsenic or dioxin contamination to a surface water body.

b. For all the sites subject to department oversight pursuant to a, above, the following shall apply:

(1) the department shall review and issue an approval or a denial of all documents submitted by the licensed site professional concerning the site;

(2) the person responsible for conducting the remediation shall conduct a feasibility study to determine all the remedial actions that could be implemented at the site or area of concern that would ensure that the site or area of concern does not pose an unacceptable threat to public health and the environment and submit a report of the options. The person shall submit a report evaluating these remedial actions including the evaluation of an unrestricted remedial action or presumptive remedy; which the person recommends be implemented.

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

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

(5) the department shall approve all disbursements of funds from the remediation trust fund;

(6) the licensed site professional shall provide all submissions required by the department, to the department and the person responsible for conducting the remediation simultaneously; and

(7) the person responsible for conducting the remediation shall implement a public participation plan, as required by the department, to receive public comment from the residents of the surrounding community concerning the remediation of the site.

22. (New section) 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 submittals or actions:

(1) a receptor evaluation;

(2) control of ongoing sources;

(3) establishment of interim remedial measures;

(4) addressing immediate environmental concern conditions;

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

(6) completion of remediation; and

(7) all other activities deemed necessary by the department to effectuate timely remediation;

b. In establishing the timeframes, the department shall take the following into account:

(1) the potential risk to the public health and safety and to the environment;

(2) proximity to receptors; and

(3) the complexity of the contaminated site;

c. The department may grant extensions to the mandatory remediation timeframes as necessary as a result of:

(1) a delay in receiving department review or a permit, or state funding for remediation, provided that there was a timely filing of the remediation document or an application for such permit or funding;

(2) a delay in obtaining access to property, provided the person responsible for conducting the remediation demonstrates that access was denied, and a complaint was filed with Superior Court, in accordance with department rules;

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

(4) a department approval/permit is required for long term operation, maintenance and monitoring; or

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

23. (New section) (a) The department shall have the power to:

(1) issue, renew, reopen, and revise permits necessary for the operation and maintenance of remedial actions, and for the biennial certifications of remedial actions, and require any person who is responsible for the operation and maintenance of remedial action or for the submission of biennial certifications to obtain a permit; and

(2) charge, in accordance with a fee schedule that shall be adopted by the department pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), (a) reasonable application fees to cover all costs of processing the application, and (b) reasonable annual fees to cover all costs of administering and enforcing these permits.

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

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

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

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

11/5/2008

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

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

"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 et seq.) as a subsurface evaluator;

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

"Commissioner" means the Commissioner of Environmental Protection;

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

"Department" means the Department of Environmental Protection;

11/5/2008

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

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

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

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

"Feasibility study" means the mechanism for the development, screening, and detailed evaluation of alternative remedial actions. The feasibility study emphasizes data analysis and is generally performed concurrently and in an interactive fashion with the remedial investigation (RI), using data gathered during the RI. The RI data are used to define the objectives of the response action, to develop remedial action alternatives, and to undertake an initial screening and detailed analysis of the alternatives. The term also refers to a report that describes the results of the study;

"Fund" means the New Jersey Spill Compensation Fund;

"Hazardous substances" means the "environmental hazardous substances" on the environmental hazardous substance list adopted by the department pursuant to section 4

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

“Licensed site professional” means an individual who, by reason of appropriate education, training, and experience, is qualified, as attested by being licensed by the board or the department, to issue a remedial action outcome that can be relied on as sufficient to protect public health, safety and the environment and licensed pursuant to P.L. c. (C) (pending before the legislature as this bill);

“Licensed site professional board means the licensed site professional board established pursuant to P.L. c. (C) (pending before the legislature as this bill).

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

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

only when that vessel is engaged in a transfer of hazardous substances between it and another vessel, and in any event shall not include a vessel used solely for activities directly related to recovering, containing, cleaning up or removing discharges of petroleum in the surface waters of the State, including training, research, and other activities directly related to spill response.

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

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

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

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

"Mandatory remediation time frames" means the maximum amount of time a person responsible for conducting the remediation may take in order to remediate a contaminated area of concern or site.

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

11/5/2008

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

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

"Person responsible for conducting the remediation" includes (i) any person who executes or is otherwise subject to an oversight document to remediate a contaminated site or area of concern, (ii) each owner and operator of an industrial establishment who is subject to P.L. 1983, c.330 (C. 13:1K-6 et seq.), for the remediation of a discharge (iii) each owner and operator of an underground storage tank facility who is subject P.L. 1986, c. 102 (C. 58:10A-21 et seq.) for the remediation of a discharge, (iv) any other person in any way responsible, pursuant to section 8 of P.L. 1976, c. 141 (C. 58:10-23.11g), for any hazardous substance that was discharged at a contaminated site or area of concern, and (v) any other person who is remediating a site other than the department;

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

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether contaminants are or were present at a site or have migrated or are migrating from a site, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or latent discharge of any contaminant is required. The evaluation of historic information shall be conducted from 1932 to the present, except that the department may require the search for and evaluation of additional information relating to ownership and use of the site prior to 1932 if such information is available through diligent inquiry of the public records; "Remedial action" means those actions taken at a site or offsite if a contaminant has migrated or is migrating therefrom, as may be required by the department, including the removal, treatment, containment, transportation, securing, or other engineering or treatment measures, whether to an unrestricted use or otherwise, designed to ensure that any discharged contaminant at the site or that has migrated or is migrating from the site, is remediated in compliance with the applicable health risk or environmental standards;

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

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

“Response action outcome” means a written determination by a licensed site professional, based upon an evaluation of the historical use of a site, or of an area of concern or areas of concern at that site, as applicable, and any other investigation or action the department deems necessary, there are no discharged contaminants present at the site, at the area of concern or areas of concern, at any other site to which a discharge originating at the site has migrated, or that any discharged contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation regulations and is protective of public health, safety and the environment, and all applicable permits and authorizations have been obtained. Nothing in a response action outcome shall impact in any manner the department's rights to pursue restoration of injured natural resources, or pursue any cleanup and removal costs or other damages related to a discharge;

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

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

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

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

11/5/2008

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

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

25. Section 6 of P.L.1976, c.141 (C.58:10-23.11e) is amended to read as follows:

6. a. Any person who may be subject to liability for a discharge which occurred prior to or after the effective date of the act of which this act is amendatory P.L.1976, c. 141 (C.58:10-23.11 et seq.) shall immediately notify the department. Failure to so notify shall make persons liable to the penalty provisions of section 22 of this act.

b. Any person who may be subject to liability for a discharge that occurred prior to or after the effective date of P.L.1976, c. 141 (C.58:10-23.11 et seq.), including the owner and operator of an industrial establishment required to remediate an industrial establishment pursuant to P.L.1983, c.330 (C.13:1K-6 et seq.), and the owner and operator of an underground storage tank facility required to remediate a discharge pursuant to P.L.1986, c.102 (C. 58:10A-21 et al.), shall clean up and remove the discharge pursuant to this section.

c. The person responsible for conducting the remediation of a discharge shall clean up and remove the discharge by:

(1) hiring a licensed site professional or certified subsurface evaluator, as applicable, pursuant to P.L. , c. (pending before the legislature as this bill);

11/5/2008

(2) submitting documents certified by a licensed site professional for all new cases upon issuance of temporary licenses by the department and for all other submittals one year after the licensed site professional board issues its first set of licenses;

(3) except for remediation of an area of concern that consists of an underground storage tank storing heating oil for on-site consumption in a one to four family residential building, notifying the department within 15 days after the obligation to hire an licensed site professional pursuant to section (b)(1) of this section in writing of the name and license number of the licensed site professional hired to conduct the remediation;

(4) conducting all remediation and documenting that remediation pursuant to all applicable laws and regulations;

(5) except for remediation of an area of concern that consists of an underground storage tank storing heating oil for on-site consumption in a one to four family residential building, conducting all remediation pursuant to the mandatory remediation timeframes established by the department pursuant to section _____ of P.L. _____, c. _____ (C. _____) (pending in the Legislature as this bill);

(6) conducting the remediation without the prior approval of the department, unless the department instructs otherwise in writing;

(7) establishing a remediation funding source pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3);

(8) paying all applicable fees and oversight costs as required by the department;

(9) providing access to the department to all areas of the contaminated site;

(10) providing access to the department to all documents associated with the remediation of the contaminated site;

(11) obtaining all necessary permits; and

(12) complying with all applicable state, local or federal laws.

d. No person shall use a subsurface evaluator for the remediation of a discharge from an underground storage tank regulated pursuant to P.L. 1986, c.102 (c. 58:10A-24 et seq.) except as provided in P.L. 1986, c.102 (c. 58:10A-24.2f et seq.)

e. Any person responsible for conducting remediation concerning an unregulated heating oil tank system, may obtain the services of a licensed site professional or a certified subsurface evaluator to perform the remediation activities.

f. Failure to comply with this section shall make persons liable to the penalty provisions of section 22 of this act.

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

At least 30 days prior to its agreement to any administrative or judicially approved settlement entered into pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), [or at least 30 days prior to the issuance of any no further action letter issued pursuant to P.L.1993, c.139 (C.58:10B-1 et seq.), on or after the effective date of P.L.2005, c.348 (C.58:10-23.11e2 et al.),] the Department of Environmental Protection shall publish in the New Jersey Register and on the New Jersey Department of Environmental Protection's website the name of the case, the names of the parties to the settlement [or the no further action letter, as the case may be], the location of the property on which the discharge occurred, and a summary of the terms of the settlement [or the no further action letter], including the amount of any monetary payments made or to be made. The [Department of Environmental Protection] party settling with the Department shall provide written notice of the settlement [or of the no further action letter], which shall include the information listed above, to all other parties in the case and to any other

potentially responsible parties of whom the [department] party has notice at the time of the publication. The party settling with the department shall publish notice of the settlement in three newspapers of general circulation in the area of the site.

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

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

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

(b) A person who has discharged a hazardous substance or is in any way responsible for the discharge of a hazardous substance who has resolved his liability to the State for cleanup and removal costs, including the payment of compensation for damage to, or the loss of, natural resources, or for the restoration of natural resources, and (i) has received a no further action letter from the State or a response action outcome from a licensed site professional, or (ii) has entered into an administrative or judicially approved settlement with the State, shall not be liable for claims for contribution regarding matters addressed in the settlement, or the no further action letter or a response action outcome from a licensed site professional, as the case may be. The settlement shall not release any other person from liability for cleanup and removal costs who is not a party to the settlement, but shall reduce the potential liability of any other discharger or person in any way responsible for a discharged hazardous substance at the site that is the subject of the no further action letter, response action outcome from a licensed site professional, or the settlement by the amount of the no further action letter, response action outcome from a licensed site professional, or the settlement.

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

11/5/2008

or the contribution plaintiff gave notice to the contribution defendant of the plaintiff's request to the department for authorization to seek treble damages.

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

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

Whenever the department acts to clean up and remove a discharge or contracts to secure prospective cleanup and removal services, it is authorized to draw upon the money available in the fund. Such money shall be used to pay promptly for all cleanup and removal costs incurred by the department in cleaning up, in removing or in minimizing damage caused by such discharge. Nothing in this section is intended to preclude removal and cleanup operations by any person threatened by such discharges, provided such persons coordinate and obtain approval for such actions with ongoing State or federal operations. No action taken by any person to contain or clean up and remove a discharge shall be construed as an admission of liability for said discharge. No person who renders assistance in containing or cleaning up and removing a discharge shall be liable for any civil damages to third parties resulting solely from acts or omissions of such person in

rendering such assistance, except for acts or omissions of gross negligence or willful misconduct. In the course of cleanup or removal operations, no person shall discharge any detergent into the waters of this State without prior authorization of the commissioner.

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

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

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

(a) Explosiveness;

(b) High flammability;

(c) Radioactivity;

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

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

additional discharge would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment; or

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

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

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

d. The administrator may only approve and make payments for any cleanup and removal costs incurred by the department for the cleanup and removal of a hazardous substance discharged prior to the effective date of P.L.1976, c.141, pursuant to subsection b. of this section, if, and to the extent that, he determines that adequate funds from another source are not or will not be available; and provided further, with regard to the cleanup and removal costs incurred for discharges which occurred prior to the effective

11/5/2008

date of P.L.1976, c.141, the administrator may not during any one-year period pay more than \$ 18,000,000 in total or more than \$ 3,000,000 for any discharge or related set or series of discharges.

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

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

The notice of lien filed pursuant to this subsection which affects the property of a discharger subject to the cleanup and removal of a discharge shall create a lien with priority over all other claims or liens [which] that are or have been filed against the discharger or the property, except if the property comprises six dwelling units or less and

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

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

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

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

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

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

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

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

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

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

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

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

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

b. The damages which may be recovered by the fund, without regard to fault,

subject to the defenses enumerated in subsection d. of this section against the owner or operator of a major facility or vessel, shall not exceed \$ 50,000,000.00 for each major facility or \$ 1,200 per gross ton for each vessel, except that such maximum limitation shall not apply and the owner or operator shall be liable, jointly and severally, for the full amount of such damages if it can be shown that such discharge was the result of (1) gross negligence or willful misconduct, within the knowledge and privity of the owner, operator or person in charge, or (2) a gross or willful violation of applicable safety, construction or operating standards or regulations. Damages which may be recovered from, or by, any other person shall be limited to those authorized by common or statutory law.

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

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

Where a person is liable for cleanup and removal costs as provided in this

11/5/2008

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

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

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

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

other act or under common law.

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

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

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

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

(b) (i) at the time the person acquired the real property, the person did not know and had no reason to know that any hazardous substance had been discharged at the real

property, or (ii) the person acquired the real property by devise or succession, except that any other funds or property received by that person from the deceased real property owner who discharged a hazardous substance or was in any way responsible for a hazardous substance, shall be made available to satisfy the requirements of P.L. 1976, c. 141, or (iii) the person complies with the provisions of subparagraph (e) of paragraph (2) of this subsection;

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

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

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

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

(e) For the purposes of this subparagraph the person must have (i) acquired the property subsequent to a hazardous substance being discharged on the site and which discharge was discovered at the time of acquisition as a result of the appropriate inquiry, as defined in this paragraph (2), (ii) performed, following the effective date of P.L. 1997,

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

outcome.

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

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

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

11/5/2008

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

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

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

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

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

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

e. Neither the fund nor the Sanitary Landfill Contingency Fund established pursuant to P.L. 1981, c. 306 (C. 13:1E-100 et seq.) shall be liable for any damages incurred by any person who is relieved from liability pursuant to subsection d. or f. of this section for a remediation that involves the use of engineering controls but the fund and

the Sanitary Landfill Contingency Fund shall be liable for any remediation that involves only the use of institutional controls if after a valid no further action letter or response action outcome has been issued the department orders additional remediation except that the fund and the Sanitary Landfill Contingency Fund shall not be liable for any additional remediation that is required to remove an institutional control.

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

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

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

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

(4) within 30 days after acquisition of the property, the person commenced a remediation of the discharge, including any migration, pursuant to a department oversight document executed prior to acquisition, and the department is satisfied that remediation was completed in a timely and appropriate fashion; and

(5) Within ten days after acquisition of the property, or within 30 days after the

expiration of the period or periods allowed for the right of redemption pursuant to tax foreclosure law, the person agrees in writing to provide access to the State for remediation and related activities, as determined by the State.

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

- (1) for a discharge that occurs at that property after the person acquired the property;
- (2) for any actions that person negligently takes that aggravates or contributes to the harm inflicted upon any person;
- (3) if that person fails to maintain the institutional or engineering controls on the property or to otherwise comply with the provisions of a no further action letter or a remedial action workplan and a person is harmed thereby;
- (4) for any liability to clean up and remove, pursuant to the department's regulations and directions, any hazardous substances that may have been discharged on the property or that may have migrated therefrom; and
- (5) for that person's failure to comply in the future with laws and regulations.

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

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

29. Section 23 of P.L.1993, c.139 (C. 58:10-23.16) is amended to read as follows:

[The department shall prepare and adopt a master list for the cleanup of hazardous discharge sites. The master list shall comprise an inventory of all the known hazardous discharge sites in the State which have been cleaned up prior to the effective date of this act, which have been identified as in need of cleanup, or which will be cleaned up subsequent to the effective date of this act, and a ranking, based on criteria established by the department pursuant to P.L. 198 (3), c. (222) (C. (58:10-23.20)) (now pending before the Legislature as Assembly Bill No. 1255 of 1982), of the sites in the order in which the department intends to clean up the site. The department shall review the master list at least once every six months and modify it as necessary.] The department shall maintain a database of all sites, cases and areas of concern of which the department has knowledge and shall provide public access to this information over the internet. In providing access to this information, the department shall include reports that identify location information, remedial status, contaminants of concern, and the use of institutional and engineering controls. The department shall expand the types and amounts of information contained in reports upon completion of any new information systems that improve access to data and of a GIS based ranking system.

30. Section of P.L.1986, c.102 (C.58:10A-21 et seq.) is amended to read as follows:

As used in this act:

- a. "Commissioner" means the Commissioner of the Department of Environmental Protection;
- b. "Department" means the Department of Environmental Protection;
- c. "Discharge" means the intentional or unintentional release by any means of hazardous substances from an underground storage tank into the environment;
- d. "Facility" means one or more underground storage tanks;
- e. "Hazardous substances" means motor fuels and those elements and compounds, including petroleum products which are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), which are defined as hazardous substances 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 wastes adopted by the United States Environmental Protection Agency pursuant to section 3001 of the "Resource Conservation and Recovery Act of 1976." Pub. L. 94-580 (42 U.S.C. s.6921), the list of hazardous substances adopted by the United States Environmental Protection Agency pursuant to section 311 of the "Federal Water Pollution Control Act Amendments of 1972," Pub. L. 92-500 (33 U.S.C. s.1321), the list of toxic pollutants designated by Congress or the Environmental Protection Agency pursuant to section 307 of that act (33 U.S.C. s.1317), and any substance defined as a hazardous substance pursuant to section 101(14) of the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980." Pub. L. 96-510 (42 U.S.C. s.9601);

f. "Leak" means the release of a hazardous substance from an underground storage tank into a space created by a method of secondary containment wherein it can be detected by visual inspection or a monitoring system before it enters the environment;

g. "Licensed site professional" means an individual who, by reason of appropriate education, training, and experience, is qualified, as attested by being licensed by the board or the department, to issue a remedial action outcome that can be relied on as sufficient to protect public health, safety and the environment;

h. "Monitoring system" means a system capable of detecting leaks or discharges, or both, other than an inventory control system, used in conjunction with an underground storage tank, or a facility, conforming to criteria established pursuant to section 5 of this act;

i. "Nonoperational storage tank" means any underground storage tank in which hazardous substances are not contained, or from which hazardous substances are not dispensed;

j. "Operator" means any person in control of, or having responsibility for, the daily operation of a facility;

k. "Owner" means any person who owns a facility, or in the case of a nonoperational storage tank, the person who owned the nonoperational storage tank immediately prior to the discontinuation of its use;

l. "Person" means any individual, partnership, company, corporation, consortium, joint venture, commercial or any other legal entity, the State of New Jersey, or the United States Government;

m. "Residential building" means a single and multi-family dwelling, nursing home, trailer, condominium, boarding house, apartment house, or other structure designed primarily for use as a dwelling;

n. "Secondary containment" means an additional layer of impervious material creating a space wherein a leak of hazardous substances from an underground storage tank may be detected before it enters the environment;

o. "Substantially modify" means construction at, or restoration, refurbishment or renovation of, an existing facility which increases or decreases the in-place storage capacity of the facility or alters the physical configuration or impairs or affects the physical integrity of the facility or its monitoring systems;

p. "Test" or "testing" means the testing of underground storage tanks in accordance with standards adopted by the department;

q. "Underground storage tank" means any one or combination of tanks, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of hazardous substances, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10% or more below the ground. "Underground storage tank" shall not include:

(1) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) Tanks used to store heating oil for on-site consumption in a nonresidential building with a capacity of 2,000 gallons or less;

(3) Tanks used to store heating oil for on-site consumption in a residential building;

(4) Septic tanks installed in compliance with regulations adopted by the department pursuant to "The Realty Improvement Sewerage and Facilities Act (1954)," P.L. 1954,

(5) Pipelines, including gathering lines, regulated under the "Natural Gas Pipeline Safety Act of 1968," Pub. L. 90-481 (49 U.S.C. s.1671 et seq.), the "Hazardous Liquid Pipeline Safety Act of 1979," Pub. L. 96-129 (49 U.S.C. s.2001 et seq.), or intrastate pipelines regulated under State law;

(6) Surface impoundments, pits, ponds, or lagoons, operated in compliance with regulations adopted by the department pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.);

(7) Storm water or wastewater collection systems operated in compliance with regulations adopted by the department pursuant to the "Water Pollution Control Act";

(8) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

(9) Tanks situated in an underground area, including, but not limited to, basements, cellars, mines, drift shafts, or tunnels, if the storage tank is situated upon or above the surface of the floor, or storage tanks located below the surface of the ground which are equipped with secondary containment and are uncovered so as to allow visual inspection of the exterior of the tank; and

(10) Any pipes, lines, fixtures, or other equipment connected to any tank exempted from the provisions of this act pursuant to paragraphs (1) through (9) of this subsection.

q. "Wellhead protection area" means an aquifer area described in a plan view around a well, from within which groundwater flows to the well and through which groundwater pollution, if it occurs, may pose a significant threat to the water quality of the well. The wellhead protection area is delimited by the use of time-of-travel and hydrologic boundaries.

r. "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 [or nonresidential] 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.

31. 58:10A-24.1. Persons performing tank services on underground storage tanks to comply with §58:10A-21 et seq.

a. Except as provided in subsection b. of this section, a person shall not perform, except in accordance with the provisions of this act, tank services on an underground storage tank at an underground storage tank site required for purposes of complying with the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), including, but not limited to, tank testing, tank installation, tank removal, tank repair, installation of monitoring systems, and [subsurface evaluations for corrective action,] closure, and corrosivity. Except as provided in subsection b. of this section, a person shall not perform, except in compliance with the provisions of this act, tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on an unregulated heating oil tank. Routine maintenance performed on appurtenant pipes, lines, fixtures, and other related equipment on an unregulated heating oil tank may be performed by a person who is not certified pursuant to section 3 of P.L.1991, c.123 (C.58:10A-24.3).

b. Subsection a. of this section shall not apply to a person performing tank closure on an underground storage tank located on a farm or an unregulated heating oil tank located on a farm. A person performing tank closure on an underground storage tank located on a farm or an unregulated heating oil tank located on a farm shall comply with the guidelines and the criteria established pursuant to subsection c. of this section. For the purposes of this section. "farm" shall mean land that qualifies for a special tax assessment pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), or any land less than five acres in area that would otherwise qualify for that farmland assessment and that has produced agricultural or horticultural products with a wholesale value of \$10,000 or more annually for at least the two successive years immediately preceding the year in which the tank removal is performed.

c. Within 90 days of the effective date of P.L.1997, c.430, the department shall

implement guidelines establishing a protocol for the performance of tank closures on a farm. Within 18 months of the effective date of P.L.1997, c.430, the Department of Environmental Protection, in consultation with the Department of Agriculture and the State Soil Conservation Committee, shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt criteria for the performance of tank closures on farms. Both the guidelines and the criteria shall be developed with the objectives of reducing the cost and increasing the efficiency of the process of tank closure while also ensuring environmental protection and public safety.

32. 58:10A-24.2. Certification of businesses or persons qualified to perform services on underground storage tanks required; exemptions

a. A business firm shall not engage in the business of performing services on underground storage tanks at underground storage tank sites for purposes of complying with the requirements of P.L.1986, c.102 (C.58:10A-21 et seq.), or tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on an unregulated heating oil tank, unless the business firm has been certified in accordance with section 3 of P.L.1991, c.123 (C.58:10A-24.3), by certification of the owner, or, in the case of partnership, a partner in the firm, or, in the case of a corporation, an executive officer of the corporation.

b. Except as provided pursuant to subsection b. of section 1 of P.L.1991, c.123 (C.58:10A-24.1) and as provided pursuant to subsection f. of section 2 of P.L. 1991,c.123 (C.58:10A-24.2f.), any service performed on an underground storage tank at an underground storage tank site for the purpose of complying with the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), or tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on an unregulated heating oil tank, shall be performed by, or under the immediate on-site supervision of, a person certified by the department in accordance with section 3 of P.L.1991, c.123 (C.58:10A-24.3).

c. A business firm or other person performing well drilling or pump installation services

at the site of an underground storage tank or an unregulated heating oil tank who is licensed to perform such services pursuant to section 7 of P.L.1947, c.377 (C.58:4A-11), shall not be required to be certified pursuant to section 3 of P.L.1991, c.123 (C.58:10A-24.3), or to perform those services under the supervision of a person certified thereunder.

d. Professional engineers licensed pursuant to P.L.1938, c.342 (C.45:8-27 et seq.) shall be exempt from the certification requirements of section 3 of P.L.1991, c.123 (C.58:10A-24.3) and from the payment of a recertification or renewal fee required pursuant to section 4 of that act (C.58:10A-24.4), but shall be required to obtain a certification card issued by the department and to make the card available for inspection by a State or local official when performing tank services excluding corrective action on an underground storage tank at an underground storage tank site. Professional engineers licensed pursuant to P.L. 1938, c. 342 (C.45:8-27 et seq.) may perform corrective action as a subsurface evaluator on an unregulated heating oil tank. Professional engineers exempt pursuant to this subsection shall be required to attend a department approved training course on the department's rules and regulations concerning underground storage tanks within one year of certification or recertification.

e. A plumbing contractor, as defined pursuant to section 2 of P.L.1968, c.362 (C.45:14C-2), engaged in the installation, repair, testing, or closure of a waste oil underground storage tank shall be exempt from the certification requirements of section 3 of P.L.1991, c.123 (C.58:10A-24.3) and from payment of a recertification or renewal fee required pursuant to section 4 of that act (C.58:10A-24.4), but shall be required to obtain a certification card issued by the department at no charge and to make the card available for inspection by a State or local official when performing tank services on an underground storage tank. Plumbing contractors exempt pursuant to this subsection shall be required to attend a department approved training course on the department's rules and regulations concerning underground storage tanks within one year of certification or recertification. A plumbing contractor engaged in the installation, repair, testing, or closure of an unregulated heating oil tank or an underground storage tank that is not a waste oil tank shall be required to comply with section 3 of P.L.1991, c.123 (C.58:10A-24.3).

f. Subsurface evaluation for corrective action performed on an underground storage tank at an underground storage tank site shall be under the supervision of a licensed site professional. Subsurface evaluation for corrective action at an unregulated heating oil tank, if conducted under the supervision of a licensed site professional, do not require the immediate on-site supervision of a person certified by the department in accordance with section 3 of P.L. 1991, c.123 (C. 58:10A-24.3). Licensed site professionals are not required to certify their firms in accordance with this section 2 of P.L. 1991, c.123 (C. 58:10A-24.2a).

33. 58:10A-24.3. Examinations for certification to perform services on underground storage tanks.

a. The department shall establish and conduct examinations for certifying that a person is qualified to perform services on underground storage tanks at underground storage tank sites for purposes of complying with the provisions of P.L. 1986, c. 102 (C.58:10A-21 et seq.), except for subsurface evaluation for corrective action, and for tank testing, tank installation, tank removal, tank closure, or subsurface evaluations, for corrective action closure or corrosivity on unregulated heating oil tanks. Application to the department for examination for certification shall be made in a manner and on such forms as may be prescribed by the department. The department may prescribe training or continuing education, experience or other requirements as a condition for taking a certification examination, or for recertification. The filing of an application shall be accompanied by a nonrecoverable application fee [of \$35.00] established by the department to cover the costs of processing the application and conducting examinations. No person shall be certified by the department unless he or she satisfactorily completes the examination and satisfies any other requirements of this act, or of the department adopted pursuant thereto.

b. [Notwithstanding the provisions of subsection a. of this section, any person who files, within 300 days of the effective date of this act, an application for certification under this subsection, and demonstrates to the department that he or she has adequately performed services on underground storage tanks at underground storage tank sites for at least five consecutive years immediately preceding the filing of the application, shall be certified without examination upon payment of an application and certification fee. Within one

year of certification, a person certified pursuant to this subsection shall submit to the department evidence of attendance at a department approved training course on the department's rules and regulations concerning underground storage tanks. One year from the effective date of this act, no person applying for certification pursuant to this subsection shall perform services requiring certification until certified by the department.]

c. [A person certified pursuant to subsection b. of this section shall comply with the examination and other requirements adopted by the department pursuant to subsection a. of this section as a precondition for filing for a renewal of a certification issued pursuant to subsection b. of this section.]

d. The department may establish a general certification for tank services and on-site supervisory responsibilities, and such other classes of certification for particular tank services or for on-site supervisory responsibilities as it deems appropriate, and may establish separate training, examination and working experience requirements therefor. The department shall establish a separate certification for tank testing, tank installation, tank removal, tank closure, and subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks with separate training and examination requirements therefor. The certification program for persons who perform services on underground storage tanks or on unregulated heating oil tanks shall include standards for pricing, customer service, compliance with applicable rules and regulations, adequate submissions to the department, and any other standards relevant to the performance, qualifications, and business practices of persons or business firms seeking certification. Any person certified to perform services on underground storage tanks at underground storage tank sites for purposes of complying with the provisions of P.L. 1986, c. 102 (C.58:10A-21 et seq.) shall not be required to obtain a separate certification to perform work on unregulated heating oil tanks.

34. 58:10A-24.4. Duration of certification; renewal; attendance at approved training course; fees; evidence of financial responsibility; display of certification

a. Certification shall be for a three-year period. Renewal of a certification, or recertification, shall be made to the department at least 60 days prior to the expiration date of the certification, and shall be accompanied by evidence of attendance at a department approved training course, within the preceding 12 months, on the department's rules and regulations concerning underground storage tanks or on tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks. Certification shall not be transferable. No certification or recertification shall be issued until a certification fee established by the department [of \$250.00 determined by the department] has been paid in full to the department. Application and certification fees shall be in an amount sufficient to cover the costs to the department of administering and enforcing the provisions of this act and may be adjusted by the department through the adoption of rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). A person shall have 90 days from the expiration date of a certification to renew an expired certification, after which date the person shall be required to apply for a new certification. The 90-day grace period shall not entitle a person to perform any services for which certification is required.

b. As a condition of certification or recertification, a business firm shall be required to provide the department with evidence of financial responsibility for the performance of services, except for subsurface evaluation for corrective action, provided pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.) , for the performance of tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks, and for the cleanup or mitigation of a hazardous substance discharge resulting from the performance of such services. Financial responsibility shall be in an amount to be determined by the department but in no case less than \$250,000. Financial responsibility may be in the form of insurance, a surety bond, letter of credit, or other security posted with the department, or self-insurance, as may be prescribed by the department. If the financial responsibility is in the form of insurance, a surety bond, or similar device, the business firm shall promptly notify the department of any cancellation or change in coverage. Financial responsibility in the amount and form required by the department shall be maintained for the term of

certification by the business firm.

A copy of the certification shall be conspicuously displayed for public review in the business office of a firm engaged in tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks or engaged in providing services for underground storage tanks at underground storage tank sites. If a firm maintains a business office at more than one location, the certification shall be conspicuously displayed at each location.

35. 58:10A-25. Rules and regulations; adoption; contents; considerations; use of recommendations and standard procedures; adoption in the State Uniform Construction Code

a. The commissioner shall, within one year of the effective date of P.L.1986, c. 102 (C.58:10A-21 et seq.), adopt pursuant to the "Administrative Procedure Act," rules and regulations which:

(1) Establish a schedule for the testing of all facilities, taking into account the age of the underground storage tank, the hazardous substance stored therein, the proximity of the underground storage tank to potable water supplies, and the soil resistivity and other corrosive conditions which may precipitate a discharge, and for the periodic testing for structural integrity of facilities utilizing secondary containment which do not incorporate a monitoring system, and the reporting of results thereof to the department;

(2) Establish standards for the construction, installation, and operation of new and existing underground storage tanks, including standards for secondary containment, monitoring systems, release detection systems, corrosion protection, spill prevention, and overfill prevention, and other underground storage tank equipment. The standards adopted pursuant to this paragraph shall be substantially identical to the relevant standards adopted by the United States Environmental Protection Agency pursuant to 42 U.S.C. §6991 et seq. or provisions of the Federal Underground Storage Tank Compliance Act for the regulation of underground storage tanks. The standards adopted by the department for any underground storage tank not regulated pursuant to 42 U.S.C. §6991

et seq. shall not be more stringent than the standards adopted by the United States Environmental Protection Agency for underground storage tanks regulated pursuant to 42 U.S.C. §6991 et seq. Notwithstanding any other provision in this paragraph to the contrary, standards adopted by the department for any underground storage tank located in a wellhead protection area and financial responsibility may be more stringent than the standards adopted by the United States Environmental Protection Agency for underground storage tanks pursuant to 42 U.S.C. §6991 et seq.;

(3) (Deleted by amendment, P.L.1994, c. 14.)

(4) Require the maintaining of records of any monitoring or leak detection system, inventory control system or underground storage tank testing system;

(5) Require the reporting of any discharges and the corrective action taken in response to a discharge from an underground storage tank;

(6) Require the taking of corrective action in response to a discharge from an underground storage tank by the owner or operator of the underground storage tank;

(7) Require the owner or operator of an underground storage tank to prepare plans for the closure of an underground storage tank to prevent the future discharge of hazardous substances into the environment;

(8) Require the maintaining of evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a discharge, following a discharge, require that the institution supplying the financial responsibility provides proof that the required corrective action will be funded and for increasing the levels of financial assurance if the cost of the remedial action exceeds covered limits. Should the amount of financial responsibility be insufficient to cover the required corrective action, the owner or operator will be required to establish a remediation funding source in accordance with section 25 of P.L.1993, c.139 (C.58:10B-3) for additional cleanup and removal costs not covered by the financial responsibility; and

(9) (Deleted by amendment, P.L.1994, c. 14).

(10) Require the notification of the department and local agencies of the existence of any operational or nonoperational underground storage tanks.

b. In developing the regulations required pursuant to this section the department shall consider the regulations concerning underground storage tanks adopted by the United States Environmental Protection Agency pursuant to the "Hazardous and Solid Waste Amendments of 1984," Pub.L. 98—616 (42 U.S.C. §6991 et al.) and shall use the recommendations and standard procedures of the following organizations:

- (1) American Petroleum Institute (API), 1220 L Street, N.W., Washington, D.C. 20005;
- (2) American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103;
- (3) NACE International, P.O. Box 218340, Houston, Texas 77218;
- (4) National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269; and
- (5) Underwriters Laboratories (UL), 333 Pfingston Road, Northbrook, Illinois 60062.

(c) The Department of Community Affairs shall adopt in the State Uniform Construction Code the rules and regulations adopted by the department pursuant to this section within 60 days.

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

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

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

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

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

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

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

"Department" means the Department of Environmental Protection;

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

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

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

"Feasibility study" means the mechanism for the development, screening, and detailed evaluation of alternative remedial actions. The feasibility study emphasizes data analysis and is generally performed concurrently and in an interactive fashion with the

remedial investigation (RI), using data gathered during the RI. The RI data are used to define the objectives of the response action, to develop remedial action alternatives, and to undertake an initial screening and detailed analysis of the alternatives. The term also refers to a report that describes the results of the study

"Financial assistance" means loans or loan guarantees;

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

"Licensed site professional" means an individual who, by reason of appropriate education, training, and experience, is qualified, as attested by being licensed by the board or the department, to issue a remedial action outcome that can be relied on as sufficient to protect public health, safety and the environment and licensed pursuant to P.L. c. (C.) (pending before the legislature as this bill);

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

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

11/5/2008

have migrated from the site have been remediated in accordance with applicable remediation regulations;

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

"Person responsible for conducting the remediation" includes (i) any person who executes or is otherwise subject to an oversight document to remediate a contaminated site or area of concern, (ii) each owner and operator of an industrial establishment who is subject to P.L. 1983, c.330 (C. 13:1K-6 et seq.), for the remediation of a discharge (iii) each owner and operator of an underground storage tank facility who is subject P.L. 1986, c. 102 (C. 58:10A-21 et seq.) for the remediation of a discharge, (iv) any other person in any way responsible, pursuant to section 8 of P.L. 1976, c. 141 (C. 58:10-23.11g), for any hazardous substance that was discharged at a contaminated site or area of concern, and (v) any other person who is remediating a site other than the department;

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

"Presumptive remedy" means a remedy that the department presumes to be the appropriate protective remedy for certain categorical uses of a property.

11/5/2008

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

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

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

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

"Remediation" or "remediate" means all necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, feasibility study and remedial action, provided, however, that

11/5/2008

"remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources;

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

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

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

"Response action outcome" means a written determination by a licensed site professional, based upon an evaluation of the historical use of a site, or of an area of concern or areas of concern at that site, as applicable, and any other investigation or action the department deems necessary, there are no discharged contaminants present at the site, at the area of concern or areas of concern, at any other site to which a discharge originating at the site has migrated, or that any discharged contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation regulations and is protective of public health, safety and the environment, and all applicable permits and authorizations have been obtained. Nothing in a response action outcome shall impact in any manner the department's rights to pursue restoration of injured natural resources, or pursue any cleanup and removal costs or other damages related to a discharge.

11/5/2008

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

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

"Small businesses" means any business that:

1. Is incorporated or registered to do business in New Jersey;
2. Is independently owned and operated, as evidenced by its management being responsible for both its daily and long term operation, and its management owning at least 51 percent interest in the business;
3. Employs 100 or fewer employees in full-time positions, not including:
 - i. Seasonal and part-time employees employed for less than 90 days, if seasonal and casual part-time employment are common to that industry; and
 - ii. Consultants employed under other contracts not related to the goods and services which are the subject of the specific contract for which the business wants to be eligible as a small business; and
4. Has gross total annual sales averaging less than \$500,000 per year over the last three calendar years for which the business has filed a Federal tax return.

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

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

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

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

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

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

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

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

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

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

c. To the extent practicable and in conformance with the standards for remediations as provided in section 35 of P.L. 1993, c. 139 (C. 58:10-12), the department shall adopt rules and regulations that allow for certain remedial actions to be undertaken in a manner prescribed by the department without having to obtain prior approval from or submit detailed documentation to the department. A person who performs a remedial action in the manner prescribed in the rules and regulations of the department, and who certifies this fact to the department, shall obtain a no further action letter from the department or a response action outcome from a licensed site professional for that particular remedial action.

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

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

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

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

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

[b. In the case of the remediation of a contaminated site performed by any person not subject to the provisions of subsection a. of this section, the fees for department oversight of the remediation performed after the effective date of [P.L.2002, c.37 shall not include any indirect costs, but may include only those program costs directly related to the oversight of the remediation.]

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

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

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

25. a. [The] Except as provided below, the owner or operator of an industrial establishment or any other person required to perform remediation [activities] pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), the owner or operator of a regulated underground storage tank system pursuant to N.J.S.A. 58:10B-21, or a discharger, a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) [who has been issued a directive or an order by a State agency, who has entered into an administrative consent order with a State agency, or who has been ordered by a court to clean up and remove a hazardous substance or hazardous waste discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.)], shall establish and maintain a remediation funding source in the amount necessary to pay or guarantee the estimated cost [of the required remediation] of constructing the remedial action. [A person who voluntarily undertakes a remediation pursuant to a memorandum of agreement with the department, or without the department's oversight, or who performs a remediation in an environmental opportunity zone is not required to establish or maintain a remediation funding source. A person who uses an innovative technology or who, in a timely fashion, implements an unrestricted use remedial action or a limited restricted use remedial action for all or part of a remedial action is not required to

establish a remediation funding source for the cost of the remediation involving the innovative technology or permanent remedy.] The following entities are excluded from establishing a remediation funding source: a government entity, persons who are not otherwise liable for cleanup and removal costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) who purchase a known contaminated site after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), homeowners, licensed childcare facility owners, an educational facility owners, or small businesses. A person required to establish a remediation funding source pursuant to this section shall provide to the department satisfactory documentation that the requirement has been met.

The remediation funding source shall be established in an amount equal to [or greater than] the cost estimate of [the implementation of the remediation] constructing the remedial action (1) as [approved by the department] determined by the licensed site professional in accordance with department guidance, (2) as provided in an administrative consent order or remediation agreement as required pursuant to subsection e. of section 4 of P.L.1983, c.330, (3) as stated in a departmental order or directive, or (4) as agreed to by a court, and shall be in effect [for a term not less than the actual time necessary to perform the remediation at the site] until the licensed site professional files a response action outcome or the department issues a no further action letter, as applicable. The person required to establish a remediation funding source shall estimate the cost of constructing the remedial action on an annual basis. Whenever the remediation cost estimate increases, the person required to establish the remediation funding source shall cause the amount of the remediation funding source to be increased to an amount at least equal to the new estimate. Whenever the remediation cost estimate decreases, the person required to obtain the remediation funding source shall file a written justification to the department of the decrease in the remediation funding source. The remediation funding source may be decreased to the amount of the new estimate upon certification of a licensed site professional, [written approval by the department delivered to the person who established the remediation funding source and to the trustee or the person or institution providing the

remediation trust, the environmental insurance policy, or the line of credit, as applicable. The department shall approve the request upon a finding that the remediation cost estimate decreased by the requested amount. The department shall review and respond to the request to decrease the remediation funding source within 45 days of receipt of the request.]

b. The person [responsible for performing the remediation and] who established the remediation funding source may use the remediation funding source to pay for the actual cost of the remediation. The department may not require any other financial assurance by the person responsible for performing the remediation other than that required in this section. [In the case of a remediation performed pursuant to P.L.1983, c.330, the remediation funding source shall be established no more than 14 days after the approval by the department of a remedial action workplan or upon approval of a remediation agreement pursuant to subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), unless the department approves an extension. In the case of a remediation performed pursuant to P.L.1976, c.141, the remediation funding source shall be established as provided in an administrative consent order signed by the parties, as provided by a court, or as directed or ordered by the department.] The remediation funding source shall be established as follows: (1) except as required by (2), at the time the cost of constructing the remedial action is finalized in a remedial action workplan; (2) for any party subject to the requirements of P.L. , c. (C.) (pending before the legislature as this bill) under direct department oversight, at the time the department determines that the party is to be under such direct oversight. The establishment of a remediation funding source for that part of the remediation funding source to be established by a grant or financial assistance from the remediation fund may be established for the purposes of this subsection by the application for a grant or financial assistance from the remediation fund and satisfactory evidence submitted to the department that the grant or financial assistance will be awarded. However, if the financial assistance or grant is denied or the department finds that the person responsible for establishing the remediation funding source did not take reasonable action to obtain the grant or financial assistance, the

department shall require that the full amount of the remediation funding source be established within 14 days of the denial or finding. Except as provided in Section 21 of P.L. c. (C.) (pending before the Legislature as this Act.), [T]the remediation funding source shall be evidenced by the establishment and maintenance of (1) a remediation trust fund, (2) an environmental insurance policy, issued by an entity licensed by the Department of Banking and Insurance to transact business in the State of New Jersey, to fund the remediation, (3) a line of credit from a [person or] financial institution regulated pursuant to State or federal law and satisfactory to the department authorizing the person responsible for performing the remediation to borrow money, [or] (4) a self-guarantee, (5) a letter of credit from a financial institution regulated pursuant to State or federal law and satisfactory to the department guaranteeing the performance of the remediation by the person responsible, or by any combination thereof. Where it can be demonstrated that a person cannot establish and maintain a remediation funding source for the full cost of [the remediation] constructing the remedial action by a method specified in this subsection, that person may establish the remediation funding source for all or a portion of [the remediation] construction of the remedial action, by securing financial assistance from the Hazardous Discharge Site Remediation Fund as provided in section 29 of P.L.1993, c.139 (C.58:10B-7). If the person has established financial assurance responsibility pursuant to N.J.S.A. 58:10B-21 that covers the cost of constructing the remedial action, the person may use that assurance as a remediation funding source if the amount of the assurance coverage is equal to or greater than the required amount of the remediation funding source. If the financial responsibility assurance coverage is for an amount less than the required remediation funding source, the person shall also establish a remediation funding source using one of the mechanisms described in this section to meet the difference between the financial responsibility assurance coverage and the cost of constructing the remedial action. In order for the person to use the financial responsibility assurance coverage as part of or all of the remediation funding source, the person must submit written documentation to the department that the provider of the financial responsibility assurance coverage agrees that

the financial responsibility assurance coverage will be used for constructing the remedial action.

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

[The trust fund agreement shall provide that the remediation trust fund may not be revoked or terminated by the person required to establish the remediation funding source or by the trustee without the written consent of the department.] Except in cases with direct department oversight pursuant to section 21 of c. (C.) (pending before the legislature as this act. [T]the trustee shall release to the person required to establish the remediation funding source, [or to the department or transferee of the property, as appropriate,] only those moneys as the [department] licensed site professional authorizes, in writing, to be released. In cases in which the department has direct oversight, [T]the person entitled to receive money from the remediation trust fund shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation. Upon a determination by the department that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement of moneys from the remediation trust fund in the amount of the documented costs.

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

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

e. A line of credit shall be established pursuant to the provisions of this subsection. A line of credit shall allow the person establishing it to borrow money up to a limit established in a written agreement in order to pay for the cost of the remediation for which the line of credit was established. An originally signed duplicate of the line of credit agreement shall be delivered to the department by certified mail, overnight delivery, or personal service within [14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection e. of section 4 of P.L.1983, c.330 is approved,] the time as required pursuant to subsection b. of this section, or as specified in [an

administrative consent order,] a civil order, or order of the department, as applicable. The line of credit agreement shall conform to a model agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department.

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

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

f. A person may self-guarantee a remediation funding source [upon the submittal of documentation to the department demonstrating that the cost of the remediation as estimated in the remedial action workplan, in the remediation agreement as provided in subsection e. of section 4 of P.L.1983, c.330, in an administrative consent order, or as provided in a departmental or court order, would not exceed one-third of the tangible net worth] for up to 50% of the cost of

constructing the remedial action. The person responsible for establishing the self-guarantee shall certify to their licensed site professional that the amount of the self-guarantee does not exceed one-tenth of the equity of the person required to establish the remediation funding source, and that the person has a cash flow sufficient to assure the availability of sufficient moneys for the remediation during the time necessary for the remediation. Satisfactory documentation of a person's capacity to self-guarantee a remediation funding source shall consist of audited financial statements, in which the auditor expresses an unqualified opinion, including a statement of income and expenses or similar statement of that person and the balance sheet or similar statement of assets and liabilities including statements of income and expenses, or similar statements, and the balance sheet, or similar statement of assets and liabilities showing the person's equity, for the fiscal year that ended closest in time to the date of the self-guarantee application. In the case of a special purpose entity established specifically for the purpose of acquiring and redeveloping a contaminated site, and for which a statement of income and expenses is not available, documentation shall include a statement of assets and liabilities certified by a certified public accountant. The self-guarantee application shall be certified as true to the best of the applicant's information, knowledge, and belief, by the chief financial, or similar officer or employee, or general partner, or principal of the person making the self-guarantee application.

g. (1) If the person required to establish the [remediation funding source] person responsible for conducting the remediation fails to [perform the remediation as required] construct the remedial action within the mandatory timeframes established pursuant to section 22. of P.L. , c. (C.) (pending before the Legislature as this bill), the department shall make a written determination of this fact. A copy of the determination by the department shall be delivered to the person required to establish the remediation funding source and, in the case of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), to any transferee of the property. Following this written determination, the department may perform the remediation in place of the person required to establish the remediation funding

source. In order to finance the cost of the remediation the department may make disbursements from the [remediation trust fund or the line of credit or claims upon the environmental insurance policy,] remediation funding source, as appropriate, or, if sufficient moneys are not available from those funds, from the remediation guarantee fund created pursuant to section 45 of P.L.1993, c.139 (C.58:10B-20).

(2) [The transferee of property subject to a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), may, at any] Any time after the department's determination of nonperformance by the [owner or operator] person required to establish the remediation funding source, any other person may petition the department, in writing, with a copy being sent to the owner [and operator] of the property and the person required to establish the remediation funding source, for [authority] approval to [perform the remediation] construct the remedial action at the [industrial establishment] site. The department, upon a determination that the [transferee] person who filed the petition is competent to do so, may grant that petition which shall authorize the [transferee] person to [perform the remediation] construct the remedial action [as specified in an approved remedial action workplan, or to perform the activities as required in a remediation agreement,] and to avail itself of the moneys [in the remediation trust fund or line of credit or to make claims upon the environmental insurance policy for these purposes.] available in the remediation funding source established by the person who failed to construct the remedial action. Upon the completion of the construction of the remedial action as determined by the department, in its discretion, the department may then approve dispersal of some or all of the available moneys. The petition [of the transferee] shall not be granted by the department if the [owner or operator] person responsible for establishing the remediation funding source continues or begins to perform its obligations within 14 days of the petition being filed with the department.

3. After the department has begun to perform the remediation in the place of the person required to establish the remediation funding source or has granted the petition of [the transferee] another person to [perform the remediation] construct the

remedial action, the person required to establish the remediation funding source shall not be permitted by the department to continue its performance obligations except upon the agreement of the department or the [transferee] other person, as applicable, or except upon a determination by the department that the [transferee] other person is not adequately [performing the remediation] constructing the remedial action.

(h) A letter of credit shall be established pursuant to the provisions of this subsection. A letter of credit shall allow the person establishing it to guarantee money up to a limit established in a written agreement in order to guarantee the cost of the remediation for which the letter of credit was established. An originally signed duplicate of the letter of credit shall be delivered to the department by certified mail, overnight delivery, or personal service within the time as required pursuant to subsection b. of this section, or as specified in a civil order, or order of the department, as applicable. The letter of credit shall conform to a model document as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department.

The financial institution providing the letter of credit shall release to the department or a person who petitions the department pursuant to (g)2 above, only those moneys as the department authorizes, in writing, to be released.

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

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

26. a. There is established in the New Jersey Economic Development Authority a special, revolving fund to be known as the Hazardous Discharge Site

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

- b. The remediation fund shall be credited with:
- (1) moneys as are appropriated by the Legislature;
 - (2) moneys deposited into the fund as repayment of principal and interest on outstanding loans made from the fund;
 - (3) any return on investment of moneys deposited in the fund;
 - (4) [remediation funding source surcharges imposed pursuant to section 33 of P.L.1993, c.139 (C.58:10B-11)] Deleted by amendment, P.L. , c. (pending before the Legislature as this bill);
 - (5) moneys deposited in the fund as repayment of recoverable grants made by the New Jersey Redevelopment Authority for brownfield redevelopment;
 - (6) moneys deposited into the fund from cost recovery subrogation actions;
and
 - (7) moneys made available to the authority for the purposes of the fund.
- (cf: 2007, c.135, s.1)

41. N.J.S.A. 58:10B-8. is amended as follows:

a. The authority shall, by rule or regulation:

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

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

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

(4) provide that payment of a grant shall be conditioned upon the subrogation to the department of all rights of the recipient to recover remediation costs from an insurance carrier or the discharger or other person liable for the discharge pursuant to subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g) or the common law [the discharger or other liable parties] . All moneys collected in a cost recovery subrogation action shall be deposited into the remediation fund;

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

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

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

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

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

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

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

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

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

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

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

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

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

42. a. There is imposed upon every person who is required to establish a remediation funding source pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3) a remediation funding source surcharge. The remediation funding source surcharge shall be in an amount equal to 1% of the required amount of the remediation funding source required by the department to be maintained. The Remediation Guarantee Fund shall be credited with all surcharge monies collected. No surcharge, however, may be imposed upon (1) that amount of the remediation funding source that is met by a self-guarantee as provided in subsection f. of section 25 of P.L.1993, c.139 (C.58:10B-3) or (2) that amount of the remediation funding source that is met by financial assistance or a grant from the remediation fund [, (3) any person who voluntarily

performs a remediation pursuant to an administrative consent order, (4) any person who entered voluntarily into a memorandum of understanding with the department to remediate real property, as long as that person continues the remediation in a reasonable manner, or as required by law, even if subsequent to initiation of the memorandum of understanding, the person received an order by the department or entered into an administrative consent order to perform the remediation, (5) any person performing a remediation in an environmental opportunity zone, or (6) that portion of the cost of the remediation that is specifically for the use of an innovative technology or to implement a limited restricted use remedial action or an unrestricted use remedial action]. The surcharge shall be [based on the cost of remediation work remaining to be completed and shall be] paid on an annual basis [as long as the remediation continues] until the construction of the remedial action is complete. [and until the Department of Environmental Protection issues a no further action letter for the property subject to the remediation.] The remediation funding source surcharge shall be due and payable [within 14 days of the time of the department's approval of a remedial action workplan or signing an administrative consent order or as otherwise provided by law] upon the establishment of the remediation funding source and annually thereafter, on the date on which the remediation funding source was established . The department shall collect the surcharge and shall remit all moneys collected [to the Economic Development Authority] for deposit into the [Hazardous Discharge Site Remediation] Remediation Guarantee Fund.

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

43. (New section) Any person responsible for conducting the remediation , but for a government entity, persons who are not otherwise liable for cleanup and removal costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) who purchase a known

contaminated site after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), homeowners, licensed childcare facility owners, an educational facility owners, or small businesses shall upon completion of construction a restricted use remedial action pay a surcharge equal to 5% of the actual cost of the construction of the remedial action. The 5% surcharge shall be deposited into the Remediation Guarantee Fund.

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

44. (New section) a. Payment of any grant from the remediation fund, or financial assistance from the remediation fund where financial assistance is in default and is uncollectible, shall be conditioned upon the department being subrogated to all of the rights of an owner or operator of an industrial establishment, person, municipality, county, or redevelopment agency authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c. 79 (C.40A:12A-4), as the case may be, to recover remediation costs against an insurance carrier, and against the discharger or other person liable for the discharge pursuant to subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g) or the common law, for the costs of the remediation necessitated by the discharge. Nothing in this subsection shall be construed to affect or limit any independent right the department or any other agency of the State may have under statutory law, including but not limited to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23-11 to 23.24, and common law against a discharger any other person concerning a discharge of a hazardous substance.

b. No grant or financial assistance from the remediation fund may be awarded to an owner or operator of an industrial establishment, person, municipality, county, or redevelopment agency authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c. 79 (C.40A:12A-4) that relinquishes or waives any right against any insurance carrier or discharger or other person liable for the discharge pursuant to subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g) or the common law.

c. In an action by the department to enforce a right of subrogation, the department shall be entitled to invoke all the rights and defenses available to the grant or financial assistance recipient as if the action had been brought by the grant or financial assistance recipient against such other person.

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

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

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

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

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

b. In developing minimum remediation standards the department shall:

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

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

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

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

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

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

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

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

in humans. The department shall set minimum soil remediation health risk standards for both residential and nonresidential uses that:

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

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

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

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

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

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

the person requesting the alternative standard and the department may require the submission of any documentation as the department determines to be necessary in order for the person to meet that burden.

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

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

(1) Unrestricted use remedial actions, limited restricted use remedial actions and restricted use remedial actions shall be allowed except that unrestricted use remedial actions and limited restricted use remedial actions shall be preferred over restricted use remedial actions. The department shall require the use of an unrestricted use remedial action, or a presumptive remedy, at a site where there is new residential construction, new construction that includes a sensitive population such as an educational or childcare facility, or where there is a change in use of the site to residential, educational facility purposes, or childcare purposes. Except as noted above, the department, however, may not disapprove the use of a restricted use remedial action or a limited restricted use

remedial action so long as the selected remedial action meets the health risk standard established in subsection d. of this section, and where, as applicable, is protective of the environment. The choice of the remedial action to be implemented shall be made by the person [performing] responsible for conducting the remediation in accordance with regulations adopted by the department, except for any remediation being performed pursuant to P.L. , c. (C.) (pending before the legislature as this bill) and that choice of the remedial action shall be approved by the department if all the criteria for remedial action selection enumerated in this section, as applicable, are met. The department may [not] require a person that is under the department's oversight pursuant to section 21 of P.L. , c. (C.) (pending before the legislature as this bill) to compare or investigate any alternative remedial action as part of its review of the selected remedial action. The department shall have the authority to disapprove the selection of a remedial action for a site on which the proposed remedial action will render the real property inappropriate for future use.

(2) Contamination may be left onsite at levels or concentrations that exceed the minimum soil remediation standards for residential use if the implementation of institutional or engineering controls at that site will result in the protection of public health, safety and the environment at the health risk standard established in subsection d. of this section and if the requirements established in subsections a., b., c. and d. of section 36 of P.L. 1993, c. 139 (C. 58:10B-13), and the requirements in paragraph (1) or (10) are met. The department may require the removal or treatment of contaminated material that poses an acute hazard in the event of failure of an engineering control;

(3) Real property on which there is soil that has not been remediated to the residential soil remediation standards, or real property on which the soil, groundwater, or surface water has been remediated to meet the required health risk standard by the use of engineering or institutional controls, may be developed or used for residential purposes, or for any other similar purpose, if (a) all areas of that real property at which a person may come into contact with soil are remediated to meet the residential soil remediation standards, [and] (b) it is clearly demonstrated that for all areas of the real property, other

than those described in subparagraph (a) above, engineering and institutional controls can be implemented and maintained on the real property sufficient to meet the health risk standard as established in subsection d. of this section, and (c) a presumptive remedy as established by the department has been approved as required in paragraph (1) or (10) of this subsection;

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

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

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

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

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

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

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

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

(10) The department shall establish presumptive remedies for residential, and educational or childcare facilities based on the historic use of the property, the nature and extent of the contamination at the site, and the intended future use of the property, and other relevant factors. If the person responsible for conducting the remediation can demonstrate to the satisfaction of the department that an unrestricted use remedy or a presumptive remedy at a site is technically or physically impracticable due to site conditions, then that person may propose an alternative remedy that is protective of public health and safety and the environment for review and approval by the department.

(11) Construction of single family homes, educational and childcare facilities shall be prohibited on landfills if engineering controls are required for management of landfill gas or leachate.

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

(2) The department shall develop recommendations for remedial actions in large areas of historic industrial contamination. These recommendations shall be designed to meet the health risk standards established in subsection d. of this section, and to be protective of the environment and shall take into account the industrial history of these sites, the extent of the contamination that may exist, the costs of remedial actions, the

economic impacts of these policies, and the anticipated uses of these properties. The department shall issue a report to the Senate Environment Committee and to the Assembly Agriculture and Waste Management Committee, or their successors, explaining these recommendations and making any recommendations for legislative or regulatory action.

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

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

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

k. Notwithstanding any other provisions of this section, all remediation standards and remedial actions that involve real property located in the Pinelands area shall be

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

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

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

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

o. A person who has remediated a site pursuant to the provisions of this section, who was liable for the cleanup and removal costs of that discharge pursuant to the provisions of paragraph (1) of subsection c. of section 8 of P.L. 1976, c. 141 (C. 58:10-23.11g), and who remains liable for the discharge on that site due to a possibility that a

remediation standard may change, undiscovered contamination may be found, or because an engineering control was used to remediate the discharge, shall maintain with the department a current address at which that person may be contacted in the event additional remediation needs to be performed at the site. The requirement to maintain the current address shall be made part of the conditions of the no further action letter issued by the department or a response action outcome issued by a licensed site professional.

46. Section 36 of P.L.1993, c.139 (C.58:10B-13) is amended to read as follows:

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

exposure to the contamination and that the site remains protective of public health , safety and the environment pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12). The burden to prove that a site remains protective is on the person liable for the additional remediation costs. A person liable for the additional remediation costs who is relying on engineering or institutional controls to make a site protective, shall comply with the provisions of subsections a., b., c. and d. of this section.

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

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

47. Section 38 of P.L.1993, c.139 (C. 58:10B-13.1.) is amended to read as follows:

[a. Whenever after the effective date of P.L. 1997, c. 278 (C. 58:10B-1.1 et al.) the Department of Environmental Protection issues a no further action letter pursuant to a remediation, it shall also issue to the person performing the remediation a covenant not to sue with respect to the real property upon which the remediation has been conducted. A covenant not to sue shall be executed by the person performing the remediation and by the department in order to become effective. The covenant not to sue shall be consistent with any conditions and limitations contained in the no further action letter. The covenant not to sue shall be for any area of concern remediated and may apply to the entire real property if the remediation included a preliminary assessment and, if necessary, a site investigation of the entire real property, and any other necessary remedial actions. The covenant remains effective only for as long as the real property for which the covenant was issued continues to meet the conditions of the no further action letter. Upon a finding by the department that real property or a portion thereof to which a covenant not to sue

pertains, no longer meets with the conditions of the no further action letter, the department shall provide notice of that fact to the person responsible for maintaining compliance with the no further action letter. The department may allow the person a reasonable time to come into compliance with the terms of the original no further action letter. If the property does not meet the conditions of the no further action letter and if the department does not allow for a period of time to come into compliance or if the person fails to come into compliance within the time period, the department may invoke the provisions of the covenant not to sue permitting revocation of the covenant not to sue.

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

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

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

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

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

(3) for a remediation that involves the use of engineering controls but not for any

11/5/2008

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

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

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

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

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

subsection d. of that section.]

48. Section 42 of P.L.1993, c.139 (C. 58:10B-17.1.) is amended to read as follows:

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

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

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

(2) For purposes of determining whether a civil action subject to the limitations periods specified in paragraph (1) of this subsection has been commenced within time, no cause of action shall be deemed to have accrued prior to January 1, 2002 or until the completion of the remedial [investigation] action for all media protective of human health and the environment of the entire contaminated site or the entire sanitary landfill facility, whichever is later. This amended statute of limitations for the payment of compensation

for damage to, or loss of, natural resources due to the discharge of a hazardous substance is not intended to impact any cause of action that had already run pursuant to the prior version of this statute of limitations.

c. As used in this section:

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

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

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

45. a. There is created in the Department of Environmental Protection [and Energy] a special, revolving fund to be known as the Remediation Guarantee Fund. The fund shall be credited with the 5% surcharge imposed pursuant to section 25 of

P.L.1993, c.139 (C.58:10B-3), the remediation funding source surcharge imposed pursuant to section 33 of P.L.1993, c.139 (C.58:10B-11), all moneys appropriated to it by law, all moneys collected in subrogation actions to recover moneys expended from the fund, and all moneys earned from the investment of the moneys in the fund.

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

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

(2) Moneys in the fund may be disbursed by the department as grants to persons, homeowner associations, or government entities:

(a) who own property for which the department has issued a no further action letter or a licensed site professional has issued a response action outcome for a restricted use remedial action and (i) there is a failure of the remedy, (ii) the person, homeowner association or government entity did not cause the discharge of the hazardous substance that is the subject of the no further action letter or response action outcome, (iii) the person, homeowner association or government entity maintained the engineering control that was implemented as part of the remedial action at the site if the person, homeowner association or government entity had the obligation to do so pursuant to a permit, and (iv) there is no financially viable or existing responsible party, provided that the person, homeowner association or government entity was not the party responsible to implement the remedy. The

person, homeowner association, or government entity may only use the grant money to evaluate and repair the failed remedy;

(b) who own property for which the department has issued a no further action letter or a licensed site professional has issued a response action outcome for an unrestricted use or limited restricted use remedial action and a remediation standard upon which the no further action letter or response action outcome was based has decreased by an order of magnitude or more, to conduct remediation activities to determine if the remedial action is no longer protective of public health, safety and the environment due to the change in the remediation standard provided that the person, homeowners association or government entity did not cause the discharge of the hazardous substance that is the subject of the no further action letter or response action outcome. Persons, homeowner associations, or government entities may obtain grants from the fund to implement another remedial action at the property pursuant to this paragraph, provided that the remediation activities reveal that the remedial action is no longer protective of public health, safety and the environment due to the change in the remediation standard;

(c) who own property for which the department has issued a no further action or a licensed site professional has issued a response action outcome letter for a restricted use remedial action where a remediation standard upon which the no further action letter or response action outcome was based has decreased by an order of magnitude or more, to conduct remediation activities to determine if the remedial action is no longer protective of public health, safety and the environment due to the change in the remediation standard provided that the person, homeowners association or government entity did not cause the discharge of the hazardous substance that is the subject of the no further action letter or response action outcome and there is no financially viable or existing responsible party. Persons, homeowner associations, or government entities may use money from the fund to implement another remedial action at the property provided that the remediation activities reveal that the remedial

action is no longer protective of public health, safety and the environment due to the change in the remediation standard.

d. Any moneys expended by the department from the fund pursuant to this section shall constitute a debt of (1) the person required to establish the remediation funding source if the person fails to perform the remediation and the person bars the department from gaining access to the moneys in the remediation funding source to conduct the remediation, and (2) against the discharger if the discharger implemented a restricted use remedial action at the site. The debt shall constitute a lien on all property owned by the person required to establish the remediation funding source and against the discharger to the same extent and in the same manner as provided for liens in subsection f. of section 7 of P.L.1976, c.141 (C.58:10-23.11f).

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

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

g. The balance of the fund shall not exceed \$100,000,000. When the balance of the fund equals \$100,000,000, all surcharges collected pursuant to subsection k. of section 25 of P.L.1993, c.139 (C.58:10B-3) and the remediation funding source surcharge imposed pursuant to 33 of P.L.1993, c.139 (C.58:10B-11) shall be deposited into the Hazardous Discharge Site Remediation Fund and shall be used for the purposes of that fund. When the balance of the Remediation Guarantee Fund is reduced to \$20,000,000 all surcharges shall be deposited in the Remediation Guarantee Fund.

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

50. Section 35 of P.L.1997, c.278 (C.58:10B-27) is amended to read as follows:

a. The provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary notwithstanding, any developer may enter into a redevelopment agreement with the State pursuant to the provisions of this section. The State may not enter into a redevelopment agreement with a developer who is liable, pursuant to paragraph (1) of subsection c. of section 8 of P.L. 1976, c. 141 (C. 58:10-23.11g), for the contamination at the site proposed to be in the redevelopment agreement.

The decision whether or not to enter into a redevelopment agreement is solely within the discretion of the Chief Executive Officer and Secretary of the Commerce and Economic Growth Commission and the State Treasurer and both must agree to enter into the redevelopment agreement. Nothing in P.L. 1997, c. 278 (C. 58:10B-1.1 et al.) may be construed to compel the Secretary and the State Treasurer to enter into any redevelopment agreement.

The Chief Executive Officer and Secretary of the Commerce and Economic Growth Commission, in consultation with the State Treasurer shall negotiate the terms and conditions of any redevelopment agreement on behalf of the State. The redevelopment agreement shall specify the amount of the reimbursement to be awarded the developer, the frequency of payments and the length of time in which that reimbursement shall be granted. In no event shall the amount of the reimbursement, when taken together with the property tax exemption received pursuant to the "Environmental Opportunity Zone Act," P.L. 1995, c. 413 (C. 54:4-3.151), less any in lieu of tax payments made pursuant to that act, or any other State, local, or federal tax incentive or grant to remediate a site, exceed 75% of the total cost of the remediation.

The Secretary and the State Treasurer may only enter into a redevelopment agreement if they make a finding that the State tax revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the

developer. This finding may be made by an estimation based upon the professional judgment of the Secretary and the State Treasurer.

The percentage of each payment to be made to the developer pursuant to the redevelopment agreement shall be conditioned on the occupancy rate of the residential dwelling units, buildings, or other work areas located on the property. The redevelopment agreement shall provide for the payments made in order to reimburse the developer to be in the same percentages as the occupancy rate at the site except that upon the attainment of a 90% occupancy rate, the developer shall be entitled to the entire amount of each payment toward the reimbursement as set forth in the redevelopment agreement. If the redevelopment of the property is performed in phases, then the redevelopment agreement shall provide for the payments to reimburse the developer to commence prior to the completion of the redevelopment at the entire site. The redevelopment agreement shall provide that payments to reimburse the developer be in the same percentages as the occupancy rate of that portion of the site for which the developer has received a no further action letter or a response action outcome, and on which new residential construction is completed or a place of business is located, that has generated new tax revenues. The redevelopment agreement shall provide for the frequency of the director's finding of the occupancy rate during the payment schedule. If a redevelopment project is completed in phases, where a portion of the property subject to the redevelopment agreement is generating new tax revenues, then the redevelopment agreement shall provide for the frequency of the director's finding of the occupancy rate for each phase of the redevelopment.

b. In deciding whether or not to enter into a redevelopment agreement and in negotiating a redevelopment agreement with a developer, the Secretary shall consider the following factors:

- (1) the economic feasibility of the redevelopment project;
- (2) the extent of economic and related social distress in the municipality and the

area to be affected by the redevelopment project;

(3) the degree to which the redevelopment project will advance State, regional and local development and planning strategies;

(4) the likelihood that the redevelopment project shall, upon completion, be capable of generating new tax revenue in an amount in excess of the amount necessary to reimburse the developer for the remediation costs incurred as provided in the redevelopment agreement;

(5) the relationship of the redevelopment project to a comprehensive local development strategy, including other major projects undertaken within the municipality;

(6) the need of the redevelopment agreement to the viability of the redevelopment project; and

(7) the degree to which the redevelopment project enhances and promotes job creation and economic development.

51. Section 35 of P.L.205, c.360 (C.58:10B-27.2) is amended to read as follows:

a. The provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary notwithstanding, the State may enter into a redevelopment agreement pursuant to sections 35 and 36 of P.L.1997, c. 278 (C.58:10B-27 and 58:10B-28) for a redevelopment project that was commenced prior to the effective date of sections 34 through 39 of P.L.1997, c.278 (C.58:10B-26 through 58:10B-31) in which the State may agree to reimburse a developer for 75% of remediation costs incurred subsequent to entering into the redevelopment agreement, provided that the Chief Executive Officer and Secretary of the Commerce and Economic Growth Commission, in consultation with the State Treasurer, finds that:

(1) the remediation that has not yet been performed on the subject real property is

necessary to ensure that the public health and safety and the environment are protected;
and

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

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

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

(2) a developer has entered into a memorandum of agreement or other oversight document with the Commissioner of Environmental Protection for the remediation of a contaminated site located on the site of the redevelopment project and the developer is in compliance with the memorandum of agreement or oversight document.

c. Nothing in this section shall require that a no further action letter or a response action outcome be obtained by a developer for remediation of groundwater beneath the

11/5/2008

subject real property prior to reimbursement of the remediation costs, provided that the developer has completed any capital construction or infrastructure required for the remediation of groundwater on the site.

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