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TITLE 58. WATERS AND WATER SUPPLY
CHAPTER 10B. HAZARDOUS DISCHARGE SITE REMEDIATION

*** THIS SECTION IS CURRENT THROUGH NEW JERSEY 218th LEGISLATURE ***
*** SECOND ANNUAL SESSION, P.L. 2019 CHAPTER 266 AND JR 22 ***

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58:10B-1. Definitions

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

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

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

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

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

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

“Department” means the Department of Environmental Protection;

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

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

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

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

“Financial assistance” means loans or loan guarantees;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History

L. 1993, c. 139, § 23; amended 1997, c. 278, § 9, eff. Jan. 6, 1998; 2001, c. 154, § 3, eff. July 13, 2001; 2005, c. 223, § 1, eff. Sept. 15, 2005; 2009, c. 60, § 40, eff. Nov. 3, 2009; 2019, c. 263, § 6, eff. Aug. 23, 2019.

58:10B-1.1. Short title [Brownfield and Contaminated Site Remediation Act]

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, shall be known and may be cited as the “Brownfield and Contaminated Site Remediation Act.”

History

L. 1997, c. 278, § 1.

58:10B-1.2. Findings, declarations relative to remediation of contaminated sites

The Legislature finds and declares that due to New Jersey's industrial history, large areas in the State's urban and suburban areas formerly used for commercial and industrial purposes are underused or abandoned; that many of these properties, often referred to as brownfields, are contaminated with hazardous substances and pose a health risk to the nearby residents and a threat to the environment; and that these sites can be a blight to the neighborhood and a financial drain on a municipality because they have no productive use, and fail to generate property taxes and jobs. The Legislature further finds that often there are legal, financial, technical, and institutional impediments to the efficient and cost-effective cleanup of brownfield sites as well as all other contaminated sites wherever they may be. The Legislature finds and declares that the State needs to ensure that the public health and safety and the environment are protected from the risks posed by contaminated sites and that strict standards coupled with a risk based and flexible regulatory system will result in more cleanups and thus the elimination of the public's exposure to these hazardous substances and the environmental degradation that contamination causes.

The Legislature therefore declares that strict remediation standards are necessary to protect public health and safety and the environment; that these standards should be adopted based upon the risk posed by discharged hazardous substances; that unrestricted remedies for contaminated sites are preferable and the State must adopt policies that encourage their use; that institutional and engineering controls should be allowed only when the public health risk and environmental protection standards are met; and that in order to encourage the cleanup of contaminated sites, there must be finality in the process, the provision of financial incentives, liability protection for innocent parties who clean up, cleanup procedures that are cost effective and regulatory action that is timely and efficient.

History

L. 1997, c. 278, § 2.

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

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

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

(1) retain a licensed site remediation professional to perform the remediation;

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

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

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

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

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

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

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

(9) obtain all necessary permits.

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

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

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

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

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

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

(3) A person shall not be required to retain a licensed site remediation professional pursuant to this section to conduct sampling or investigation to confirm or evaluate a remediation performed or supervised by a retained licensed site remediation professional, provided that such sampling or investigation: (1) is not required pursuant to this section or any other law, rule, regulation, or order; (2) is not conducted in order to obtain a response action outcome; and (3) is not conducted in order to investigate, clean up, or respond to any known, suspected, or threatened discharge of a contaminant. e. Any person who fails to comply with the provisions of this section shall be liable to the enforcement provisions established pursuant to section 22 of P.L.1976, c.141 (C.58:10-23.11u).

History

L. 2009, c. 60, § 30, eff. May 7, 2009; amended 2019, c. 263, § 7, eff. Aug. 23, 2019.

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

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

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

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

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

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

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

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

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

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

History

L. 1993, c. 139, § 24; amended 1997, c. 278, § 10, eff. Jan. 6, 1998; 2004, c. 120, § 80, eff. Aug. 10, 2004; 2009, c. 60, § 41, eff. Nov. 3, 2009.

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

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

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

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

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

History

L. 2002, c. 37, § 1, eff. July 1, 2002 (eff. date amended 2004, c. 50, § 4); 2009; 2009, c. 60, § 42, eff. Nov. 3, 2009.

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

a. Except as otherwise provided in section 27 of P.L.2009, c.60 (C.58:10C-27), the owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), or a discharger, a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) who has been issued a directive or an order by a State agency, who has entered into an administrative consent order with a State agency, or who has been ordered by a court to clean up and remove a hazardous substance or hazardous waste discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall establish and maintain a remediation funding source in the amount necessary to pay the estimated cost of the required remediation. A person who performs a remediation in an environmental opportunity zone is not required to establish or maintain a remediation funding source. A person who uses an innovative technology or who, in a timely fashion, implements an unrestricted use remedial action or a limited restricted use remedial action for all or part of a remedial action is not required to establish a remediation funding source for the cost of the remediation involving the innovative technology or permanent remedy. A government entity, a person who undertakes a remediation at their primary or secondary residence, the owner or operator of a child care center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.) who performs a remediation at the licensed child care center, or the person responsible for conducting a remediation at a public school or private school as defined in N.J.S.18A:1-1, or a charter school established pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.), shall not be required to establish or maintain a remediation funding

source. A person required to establish a remediation funding source pursuant to this section shall provide to the department satisfactory documentation that the requirement has been met.

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

b. The department may not require any other financial assurance by the person responsible for conducting the remediation other than that required in this section. In the case of a remediation performed pursuant to P.L.1983, c.330, the remediation funding source shall be established no more than 14 days after the approval by the department or the certification by the licensed site remediation professional of a remedial action workplan, upon approval of a remediation agreement pursuant to subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or upon submission of a remediation certification pursuant to subsection e. of P.L.1983, c.330, unless the department approves an extension. In the case of a remediation performed pursuant to P.L.1976, c.141, the remediation funding source shall be established as provided in an administrative consent order signed by the parties, as provided by a court, or as directed or ordered by the department. In the case of a remediation performed under the department's oversight pursuant to section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation funding source shall be established at the time the person becomes subject to the department's oversight. The establishment of a remediation funding source for that part of the remediation funding source to be established by a grant or financial assistance from the remediation fund may be established for the purposes of this subsection by the application for a grant or financial assistance from the remediation fund and satisfactory evidence submitted to the department that the grant or financial assistance will be awarded. However, if the financial assistance or grant is denied or the department finds that the person responsible for establishing the remediation funding source did not take reasonable action to obtain the grant or financial assistance, the department shall require that the full amount of the remediation funding source be established within 14 days of the denial or finding. Except as provided in section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation funding source shall be evidenced by the establishment and maintenance of (1) a remediation trust fund, administered by an entity that has the authority to

act as a trustee and whose trust operations are regulated and examined by a federal or State agency, or governed by court rule, (2) an environmental insurance policy, issued by an entity licensed by the Department of Banking and Insurance to transact business in the State of New Jersey, to fund the remediation, (3) a line of credit from a financial institution regulated pursuant to State or federal law and satisfactory to the department authorizing the person responsible for performing the remediation to borrow money, (4) a self-guarantee, (5) a letter of credit from a financial institution regulated pursuant to State or federal law that guarantees the performance of the remediation by the person to the satisfaction of the department, or (6) a surety bond from an entity that is listed as an acceptable surety on federal bonds in United States Treasury Department Circular 570, or by any combination thereof. Where it can be demonstrated that a person cannot establish and maintain a remediation funding source for the full cost of the remediation by a method specified in this subsection, that person may establish the remediation funding source for all or a portion of the remediation, by securing financial assistance from the Hazardous Discharge Site Remediation Fund as provided in section 29 of P.L.1993, c.139 (C.58:10B-7).

c. A remediation trust fund shall be established pursuant to the provisions of this subsection. An originally signed duplicate of the trust agreement shall be delivered to the department (1) by certified mail, overnight delivery, or personal service within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9) is approved, (2) within 14 days of submission to the department of a remedial action workplan certified by a licensed site remediation professional as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon submission of a remediation certification to the department as provided in subsection e. of section 4 of P.L.1983, c.330, or (4) as specified in an administrative consent order, civil order, or order of the department, as applicable. The remediation trust fund agreement shall conform to a model trust fund agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or New Jersey agency.

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

department shall, in writing, authorize a disbursement of moneys from the remediation trust fund in the amount of the documented costs.

The department shall return the original remediation trust fund agreement to the trustee for termination after the department receives an alternative remediation funding source as specified in this section or the department notifies the person required to establish and maintain the remediation funding source 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 (1) 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, (2) within 14 days of submission to the department of a remedial action workplan certified by a licensed site remediation professional as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon submission of a remediation certification to the department as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or (4) as specified in an administrative consent order, civil order, or order of the department, as applicable. The environmental insurance policy shall be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State.

An environmental insurance policy cannot be revoked or terminated without the prior written approval of the department, except upon failure by the insured to pay the premium. The issuer of the environmental insurance policy may revoke or terminate the policy for failure to pay the premium only after notifying the person who established the remediation funding source and the department, by certified mail, of the decision to revoke or terminate the policy.

The insurance company that provides the environmental insurance policy shall reduce the policy only as the department directs in writing. The insurance company that provides the environmental insurance policy shall release to the department or to a person authorized to perform the remediation pursuant to subsection g. of this section only moneys authorized by the department, in writing, to be released. The department shall authorize, in writing, the termination of the environmental insurance policy after the department receives an alternative remediation funding source as specified in this section or the department notifies the person required to establish and maintain the funding source that the person is no longer required to maintain a remediation funding source for the remediation of the contaminated site.

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 (1) 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, (2) within 14 days of submission to the department of a remedial action workplan certified by a licensed site

remediation professional as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon submission of a remediation certification to the department as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or (4) as specified in an administrative consent order, civil order, or order of the department, as applicable. The line of credit agreement shall conform to a model agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department. The line of credit shall be issued by an institution that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State, or by a federally regulated bank.

The line of credit shall not be allowed to expire, unless the institution provides the appropriate notification to the department and the borrower, as defined in a model agreement established by the department. The person who establishes the remediation funding source in the form of a line of credit may use the remediation funding source to pay for the actual cost of the remediation. The institution providing the line of credit shall disburse to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those moneys as the department or the licensed site remediation professional authorizes, in writing, to be disbursed. The institution providing the line of credit shall release to the person who established the remediation funding source, or to the department or transferee of the property as appropriate, only those moneys as the department authorizes, in writing, to be released.

The department shall return the original line of credit agreement to the institution providing the line of credit for termination after the department receives an alternative remediation funding source as specified in this section, or after the department notifies the person required to establish and maintain the remediation funding source 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 would not exceed one-third of the tangible net worth of the person required to establish the remediation funding source, and that the person has a cash flow sufficient to assure the availability of sufficient moneys for the remediation during the time necessary for the remediation. Documentation shall be delivered to the department (1) 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, (2) within 14 days of submission to the department of a remedial action workplan certified by a licensed site remediation professional as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon submission of a remediation certification pursuant to the department as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or (4) as specified in an administrative consent order, civil order, or order of the department, as applicable. Satisfactory documentation of a person's capacity to self-guarantee a remediation funding source shall consist of audited financial statements, in which the auditor expresses an unqualified opinion, that includes a statement of income and expenses or similar statement of that person and the balance sheet or similar statement of assets and liabilities as used by that person for the fiscal year of the person making the application that ended closest in time to the date of the self-guarantee application. In the case of a special purpose entity established

specifically for the purpose of acquiring and redeveloping a contaminated site, and for which a statement of income and expenses is not available, the documentation shall include a statement of assets and liabilities certified by a certified public accountant. The self-guarantee application shall be certified as true to the best of the applicant's information, knowledge, and belief, by the chief financial, or similar officer or employee, or general partner, or principal of the person making the self-guarantee application. A person shall be deemed by the department to possess the required cash flow pursuant to this section if that person's gross receipts exceed its gross payments in that fiscal year in an amount at least equal to the estimated costs of completing the remedial action workplan schedule to be performed in the 12-month period following the date on which the application for self-guarantee is made and the individual or entity possesses a net cash flow provided by operating activities in an amount at least equal to the estimated costs of completing the remediation in the 12-month period following the date the application is made. In the event that a self-guarantee is required for a period of more than one year, applications for a self-guarantee shall be renewed annually pursuant to this subsection for each successive year. The department may establish requirements and reporting obligations to ensure that the person proposing to self-guarantee a remediation funding source meets the criteria for self-guaranteeing prior to the initiation of remedial action and until completion of the remediation.

g.(1) If the person required to establish the remediation funding source fails to perform the remediation as required, or fails to meet the conditions established pursuant to paragraph (3) of subsection a. of section 27 of P.L.2009, c.60 (C.58:10C-27) or section 1 of P.L.2013, c.283 (C.58:10C-27.1), or the mandatory remediation timeframes or expedited site specific timeframes established pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28) for the performance of the remedial action, the department shall make a written determination of this fact. A copy of the determination by the department shall be delivered to the person required to establish the remediation funding source and, in the case of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), to any transferee of the property. Following this written determination, the department may perform the remediation in place of the person required to establish the remediation funding source. In order to finance the cost of the remediation the department may make disbursements from the remediation funding source, or, if sufficient moneys are not available from those funds, from the remediation guarantee fund created pursuant to section 45 of P.L.1993, c.139 (C.58:10B-20).

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

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

h. A letter of credit shall be established pursuant to the provisions of this subsection. A letter of credit shall allow a person to guarantee the availability of funds up to a limit established in a written agreement in order to guarantee the payment of the cost of the remediation for which the letter of credit was established. An originally signed duplicate of the letter of credit agreement shall be delivered to the department (1) by certified mail, overnight delivery, or personal service within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9) is approved, (2) within 14 days of submission to the department of a remedial action workplan certified by a licensed site remediation professional as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon submission of a remediation certification to the department as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or (4) as specified in an administrative consent order, civil order, or order of the department, as applicable. The letter of credit agreement shall conform to a model agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department. The letter of credit shall be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State, or by a federally regulated bank.

The letter of credit shall not be allowed to expire unless the financial institution provides the appropriate notification to the department and the application, as defined by a model agreement established by the department. The financial institution that provides the letter of credit shall release to the department or to a person authorized to perform the remediation pursuant to subsection g. of this section, only moneys authorized by the department, 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 department receives an alternative remediation funding source as authorized in this section, or after the department notifies the person required to establish and maintain the remediation funding source that that person is no longer required to maintain a remediation funding source for the remediation of the contaminated site.

i. A surety bond shall be established pursuant to the provisions of this subsection. A surety bond shall allow a person to guarantee the availability of funds up to a limit established in a written agreement in order to guarantee the payment of the cost of the remediation for which the surety bond was established. An originally signed duplicate of the surety bond agreement shall be delivered to the department (1) by certified mail, overnight delivery, or personal service within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9)

is approved, (2) within 14 days of submission to the department of a licensed site remediation professional certified remedial action workplan as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon submission of a remediation certification to the department as provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or (4) as specified in an administrative consent order, civil order, or order of the department, as applicable. The surety bond agreement shall conform to a model agreement established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department. The surety company issuing the bond must be a company that is listed as an acceptable surety on federal bonds in United States Treasury Department Circular 570.

The surety bond shall not be cancelled unless the surety company provides the appropriate notice of cancellation to the department and the principal, as defined in a model agreement established by the department. The surety company that provides the surety bond shall release to the department, or to a person authorized to perform the remediation pursuant to subsection g. of this section, only monies authorized by the department, in writing, to be released. The department shall return the original surety bond to the surety company for termination after the department receives 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.

History

L. 1993, c. 139, § 25; amended 1997, c. 278, § 11, eff. Jan. 6, 1998; 2003, c. 224, § 2, eff. Jan. 9, 2004; 2009, c. 60, § 43, eff. Nov. 3, 2009; 2019, c. 263, § 8, eff. Aug. 23, 2019.

58:10B-3.1. Authority to perform remediation of condemned property by local government unit, certain conditions

a. If a local government unit condemns contaminated property pursuant to the “Eminent Domain Act of 1971,” P.L.1971, c.361 (C.20:3-1 et seq.), and the property is undergoing a remediation, the local government unit may petition the Department of Environmental Protection, in writing, for authority to perform the remediation of the condemned property. The department, upon a determination that the local government unit has demonstrated sufficient resources to perform the remediation, may replace the person performing the remediation of the condemned property with the local government unit that has condemned the property, provided that, at the time the condemnation action is filed, more than four years have elapsed since the person performing the remediation first entered into an oversight document for the site with the Department of Environmental Protection and the person has not begun implementation of a remedial action workplan for each area of concern on the property. The department shall not replace the person performing the remediation of the condemned property unless the local government unit enters into an appropriate oversight document with the department to perform the remediation.

b. Upon the replacement of the person performing a remediation of contaminated property with a local government unit pursuant to subsection a. of this section, the department may release

the person performing the remediation from the requirement to establish a remediation funding source as otherwise required pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3).

History

L. 2005, c. 355, § 1, eff. Jan. 12, 2006.

58:10B-3.2. Annual charge for prompt remediation of certain industrial properties;
inapplicability

a. Except as provided in subsection b. of this section, whenever an industrial property that is subject to any federal or State court order, or administrative action or order, for environmental remediation becomes vacant or underutilized, the municipality in which the property is located may assess an annual charge to ensure the prompt remediation of the property. The charge shall not exceed the difference between the amount of property taxes paid on the property in the last year of full industrial operation and the amount of property taxes paid on the property for the current year. Unpaid charges shall constitute a lien on the property and shall be collected in the same manner as property taxes. The municipality shall deposit any funds collected pursuant to this section with the Commissioner of Environmental Protection, who shall credit the amounts deposited against the property owner's environmental remediation liability pursuant to law.

b. The provisions of this section shall not apply to any property for which a remediation trust fund has been established pursuant to the provisions of section 25 of P.L.1993, c.139 (C.58:10B-3).

History

L. 2012, c. 19, § 3, eff. July 9, 2012.

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

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

b. The remediation fund shall be credited with:

(1) moneys as are appropriated by the Legislature;

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

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

History

L. 1993, c. 139, § 26; amended 1997, c. 278, § 12, eff. Jan. 6, 1998; 2005, c. 223, § 2, eff. Sept. 15, 2005; 2007, c. 135, § 1, eff. Nov. 4, 2007; 2009, c. 60, § 44, eff. Nov. 3, 2009.

58:10B-4.1. Repealed by L. 2005, c. 358, § 2, effective January 12, 2006

58:10B-5. Financial assistance from remediation fund

a.(1) Except as provided in section 4 of P.L.2007, c.135 (C.52:27D-130.7), financial assistance from the remediation fund may only be rendered to persons who cannot establish a remediation funding source for the full amount of a remediation. Financial assistance pursuant to this act may be rendered only for that amount of the cost of a remediation for which the person cannot establish a remediation funding source. The limitations on receiving financial assistance established in this paragraph (1) shall not limit the ability of municipalities, counties, redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), persons who are not required to establish a remediation funding source for that part of the remediation involving an unrestricted use remedial action, persons performing a remediation in an environmental opportunity zone, or persons who voluntarily perform a remediation, from receiving financial assistance from the fund.

(2) Financial assistance rendered to persons who voluntarily perform a remediation or perform a remediation in an environmental opportunity zone may only be made for that amount of the cost of the remediation that the person cannot otherwise fund by any of the authorized methods to establish a remediation funding source.

(3) Financial assistance rendered to persons who do not have to provide a remediation funding source for the part of the remediation that involves an unrestricted use remedial action may only be made for that amount of the cost of the remediation that the person cannot otherwise fund by any of the authorized methods to establish a remediation funding source.

b. Financial assistance may be rendered from the remediation fund to (1) owners or operators of industrial establishments who are required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), upon closing operations or prior to the transfer of ownership or operations of an industrial establishment, (2) persons who are liable for the cleanup and removal costs of a hazardous substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), and (3) persons who voluntarily perform a remediation of a discharge of a hazardous substance or hazardous waste.

c. Financial assistance and grants may be made from the remediation fund to a municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), for real property: (1) on which it holds a tax sale certificate; (2) that it has acquired through foreclosure or other similar means; or (3) that it has acquired, or in the case of a county governed by a board of chosen freeholders, has passed a resolution or, in the case of a municipality or a county operating under the "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-1 et seq.), has passed an ordinance or other appropriate document to acquire, by voluntary conveyance for the purpose of redevelopment, for renewable energy generation or for recreation and conservation purposes. Financial assistance and grants may only be awarded for real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste.

d. (Deleted by amendment, P.L.2017, c.353)

e. Grants may be made from the remediation fund to qualifying persons who propose to perform a remedial action that would result in an unrestricted use remedial action.

f. Grants may be made from the remediation fund to municipalities, counties, and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), for the preliminary assessment, site investigation, remedial investigation, and remedial action for real property where there is a discharge or suspected discharge of a hazardous substance or hazardous waste within a brownfield development area. Grants may only be made for a remedial action pursuant to this subsection when there is a confirmed discharge of a hazardous substance or hazardous waste. Grants made pursuant to this subsection for a remedial action may not exceed 75 percent of the total costs of the remedial action. An ownership interest in the contaminated property shall not be required in order for a municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) to receive a grant for a preliminary assessment, site investigation, and remedial investigation for real property where there is a discharge or suspected discharge of a hazardous substance or hazardous waste in a brownfield development area. Notwithstanding the limitation on the total amount of financial assistance and grants that may be awarded in any one year pursuant to subsection b. of section 28 of P.L.1993, c.139 (C.58:10B-6), the authority may award an additional amount of financial assistance and grants in any one year, of up to \$1,000,000, to any one municipality, county, or redevelopment entity for the remediation of property in a brownfield development area.

History

L. 1993, c. 139, § 27; amended 1996, c. 62, § 64, eff. Sept. 10, 1996; 1997, c. 278, § 13, eff. Jan. 6, 1998; 1999, c. 214, § 1, eff. Sept. 20, 1999; 2005, c. 223, § 3, eff. Sept. 15, 2005; 2007, c. 135, § 2, eff. Nov. 4, 2007; 2009, c. 302, § 1, eff. Jan. 17, 2010; 2017, c. 353, § 1, eff. Jan. 16, 2018.

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58:10B-6. Financial assistance and grants from the fund; allocations; purposes

a. Except for moneys deposited in the remediation fund for specific purposes, and as provided in section 4 of P.L.2007, c.135 (C.52:27D-130.7), financial assistance and grants from the remediation fund shall be rendered for the following purposes. A written report shall be sent to the Senate Environment and Energy Committee, and the Assembly Environment and Solid Waste Committee, or their successors at the end of each calendar quarter detailing the allocation and expenditures related to the financial assistance and grants from the fund.

(1) Moneys shall be allocated for financial assistance to persons, for remediation of real property located in a qualifying municipality as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

(2) Moneys shall be allocated to:

(a) municipalities, counties, or redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), for:

(i) projects in brownfield development areas pursuant to subsection f. of section 27 of P.L.1993, c.139 (C.58:10B-5),

(ii) matching grants up to a cumulative total amount from the fund of \$2,500,000 per year of up to 75 percent of the costs of the remedial action for projects involving the redevelopment of contaminated property for recreation and conservation purposes, provided that the use of the property for recreation and conservation purposes is included in the comprehensive plan for the development or redevelopment of contaminated property, up to 75 percent of the costs of the remedial action for projects involving the redevelopment of contaminated property for renewable energy generation, or up to 50 percent of the costs of the remedial action for projects involving the redevelopment of contaminated property for affordable housing pursuant to P.L.1985, c.222 (C.52:27D-301 et al.),

(iii) grants for preliminary assessment, site investigation or remedial investigation of a contaminated site,

(iv) financial assistance or grants for the implementation of a remedial action, or

(v) financial assistance for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area; or

(b) persons for financial assistance for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area.

Except as provided in subsection f. of section 27 of P.L.1993, c.139 (C.58:10B-5), financial assistance and 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) may be made for real property: (1) on which they hold a tax sale certificate; (2) that they have acquired through foreclosure or other similar means; or (3) that they have acquired, or, in the case of a county governed by a board of chosen freeholders, have passed a resolution or, in the case of a municipality or a county operating under the "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-1 et seq.), have passed an ordinance or other appropriate document to acquire, by voluntary conveyance for the purpose of redevelopment, or for recreation and conservation purposes. Financial assistance and grants may only be awarded for real property on which there has been or on which there is suspected of being a discharge of a hazardous substance or a hazardous waste. Grants and financial assistance provided pursuant to this paragraph shall be used for performing preliminary assessments, site investigations, remedial investigations, and remedial actions on real property in order to determine the existence or extent of any hazardous substance or hazardous waste contamination, and to remediate the site in compliance with the applicable health risk and environmental standards on those properties. No financial assistance or grants for a remedial action shall be awarded until the municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), actually owns the real property, provided that a matching grant for 75 percent of the costs of a remedial action for a project involving the redevelopment of contaminated property for recreation and conservation purposes, or a matching grant for 50 percent of the costs of a remedial action for a project involving the redevelopment of contaminated property for affordable housing pursuant to P.L.1985, c.222 (C.52:27D-301 et al.) may be made to a municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) even if it does not own the real property and a grant may be made to a municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) for a remediation in a brownfield development area pursuant to subsection f. of section 27 of P.L.1993, c.139 (C.58:10B-5) even if the entity does not own the real property. No grant shall be awarded for a remedial action for a project involving the redevelopment of contaminated property for recreation or conservation purposes unless the use of the property is preserved for recreation and conservation purposes by conveyance of a development easement, conservation

restriction or easement, or other restriction or easement permanently restricting development, which shall be recorded and indexed with the deed in the registry of deeds for the county. No grant shall be awarded pursuant to this paragraph to 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) unless that entity has adopted by ordinance or resolution a comprehensive plan specifically for the development or redevelopment of contaminated or potentially contaminated real property in that municipality or the entity can demonstrate its commitment to the authority that the subject real property will be developed or redeveloped within a three-year period from the completion of the remediation. Until adoption of the criteria required pursuant to paragraph (8) of subsection a. of section 30 of P.L.1993, c.139 (C.58:10B-8), the authority shall use the criteria provided in this paragraph in determining the award of grants from the remediation fund;

(3) Moneys shall be allocated for financial assistance to persons who voluntarily perform a remediation of a hazardous substance or hazardous waste discharge;

(4) (Deleted by amendment, P.L.2017, c.353)

(5) Moneys shall be allocated for (a) financial assistance to persons who own and plan to remediate an environmental opportunity zone for which an exemption from real property taxes has been granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154), or (b) matching grants for up to 25 percent of the project costs to qualifying persons, municipalities, counties, and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), who propose to perform a remedial action for the implementation of an unrestricted use remedial action except that no grant awarded pursuant to this paragraph may exceed \$250,000; and

(6) At least 30 percent of the moneys in the remediation fund shall be allocated for grants to a municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) for the preliminary assessment, site investigation, remedial investigation, or remedial action of a site, not located in a brownfield development area, that has been contaminated by a discharge or a suspected discharge of a hazardous substance or hazardous waste as authorized in this subsection. The remainder of the moneys in the remediation fund shall be allocated for any of the purposes authorized in this section. For the purposes of paragraph (5) of this subsection, "qualifying persons" means any person who has a net worth of not more than \$2,000,000 and "project costs" means that portion of the total costs of a remediation that is specifically to implement an unrestricted use remedial action.

b. Loans issued from the remediation fund shall be for a term not to exceed ten years, except that upon the transfer of ownership of any real property for which the loan was made, the unpaid balance of the loan shall become immediately payable in full. The unpaid balance of a loan for the remediation of real property that is transferred by devise or succession shall not become immediately payable in full, and loan repayments shall be made by the person who acquires the property. Loans to municipalities, counties, and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), shall bear an interest rate equal to 2 points below the Federal Discount Rate at the time of approval or at the

time of loan closing, whichever is lower, except that the rate shall be no lower than 3 percent. All other loans shall bear an interest rate equal to the Federal Discount Rate at the time of approval or at the time of the loan closing, whichever is lower, except that the rate on such loans shall be no lower than five percent. Financial assistance and grants may be issued for up to 100 percent of the estimated applicable remediation cost, except that the cumulative maximum amount of financial assistance which may be issued to a person, in any calendar year, for one or more properties, shall be \$500,000. Financial assistance and grants to any one municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) may not exceed \$2,000,000 in any calendar year except as provided in subsection f. of section 27 of P.L.1993, c.139 (C.58:10B-5). Grants to a municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) may be for up to 100 percent of the total costs of the preliminary assessment, site investigation, or remedial investigation subject to the provisions of section 5 of P.L.2017, c.353 (C.58:10B-6.2). Grants to 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) may not exceed 75 percent of the total costs of the remedial action at any one site. Repayments of principal and interest on the loans issued from the remediation fund shall be paid to the authority and shall be deposited into the remediation fund.

c. No person, other than a qualified person planning to use an unrestricted use remedial action for the cost of the remedial action, a person performing a remediation in an environmental opportunity zone, or a person voluntarily performing a remediation, shall be eligible for financial assistance from the remediation fund to the extent that person is capable of establishing a remediation funding source for the remediation as required pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3).

d. The authority may use a sum that represents up to 2 percent of the moneys issued as financial assistance or grants from the remediation fund each year for administrative expenses incurred in connection with the operation of the fund and the issuance of financial assistance and grants.

e. Prior to March 1 of each year, the authority shall submit to the Senate Environment and Energy Committee and the Assembly Environment and Solid Waste Committee, or their successors, a report detailing the amount of money that was available for financial assistance and grants from the remediation fund for the previous calendar year, the amount of money estimated to be available for financial assistance and grants for the current calendar year, the amount of financial assistance and grants issued for the previous calendar year and the category for which each financial assistance and grant was rendered, the amount of remediation costs expended for each site for the previous calendar year for which financial assistance or a grant has been approved and the balance remaining on each financial assistance or grant, and any suggestions for legislative action the authority deems advisable to further the legislative intent to facilitate remediation and promote the redevelopment and use of existing industrial sites.

History

L. 1993, c. 139, § 28; amended 1995, c. 413, § 10; 1996, c. 62, § 65, eff. Sept. 10, 1996; 1997, c. 278, § 14, eff. Jan. 6, 1998; 1999, c. 214, § 2, eff. Sept. 20, 1999; 2001, c. 70, § 1, eff.

Apr. 20, 2001; 2005, c. 223, § 4, eff. Sept. 15, 2005; 2006, c. 89, § 1, eff. Aug. 21, 2006; 2007, c. 25, § 1, eff. Jan. 26, 2007, retroactive to Sept. 1, 2006; 2007, c. 135, § 3, eff. Nov. 4, 2007; 2009, c. 302, § 2, eff. Jan. 17, 2010; 2009, c. 303, § 1, eff. Jan. 17, 2010; 2017, c. 353, § 2, eff. Jan. 16, 2018.

58:10B-6.1. Grants, Hazardous Discharge Site Remediation Fund; certain brownfield sites

a. Notwithstanding the provisions of sections 27 and 28 of P.L. 1993, c. 139 (C. 58:10B-5 and 58:10B-6), or any other law, or any rule or regulation adopted pursuant thereto to the contrary, the New Jersey Economic Development Authority may provide grants or removeable grants from the Hazardous Discharge Site Remediation Fund established pursuant to section 26 of P.L. 1993, c. 139 (C. 58:10B-4) to a municipality that has received a commitment prior to the effective date of this act from the New Jersey Redevelopment Authority, established pursuant to P.L. 1996, c. 62 (C. 55:19-20 et al.), for funding the implementation of a remedial action and any other activities within the approved scope of work associated with the redevelopment of a brownfield site.

b. Grants may be provided pursuant to the provisions of this act to the following municipalities for the following projects:

<u>Municipality</u>	<u>Amount</u>
Bayonne	\$344,657
Camden	500,000
Camden-Nipper	1,500,000
Camden-Trailways	750,000
East Orange	100,000
Glassboro	94,000
Long Branch	350,000
Newark K-Mart	673,000
Newark Bergen Street	50,000
New Brunswick-Heldrich Center	1,000,000
Perth Amboy	845,000
Plainfield	750,000
Pleasantville	1,000,000
Rahway-80 East Milton	750,000
Rahway-Main & Monroe	25,000
Trenton	84,000
	\$8,816,157

c. Any repayments to the New Jersey Redevelopment Authority for grants or other financial assistance made for brownfields remediation or redevelopment pursuant to the provisions of this

act shall be paid to the New Jersey Economic Development Authority and shall be deposited into the fund.

d. As used in this act, “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.

History

L. 2003, c. 121, § 1, eff. July 1, 2003.

58:10B-6.2. Time limit for expending of grant awarded

a. An award of financial assistance or a grant awarded pursuant to P.L.1993, c.139 (C.58:10B-1 et seq.) for a:

(1) preliminary assessment or site investigation of a contaminated site shall be expended within two years after the date of the award;

(2) remedial investigation of a contaminated site shall be expended within five years after the date of the award.

b. Failure to expend an award of financial assistance or a grant from the remediation fund within the time limits established in subsection a. of this section shall result in cancellation of the award.

c. No award of financial assistance or a grant shall be approved until the applicant demonstrates to the satisfaction of the authority that it has expended or will expend the full amount of any previous financial assistance or grant awarded under P.L.1993, c.139 (C.58:10B-1 et seq.) to that applicant for the same property.

History

L. 2017, c. 353, § 5, eff. Jan. 16, 2018.

58:10B-7. Awarding of financial assistance, grants, priorities

a. A qualified applicant for financial assistance or a grant from the remediation fund shall be awarded financial assistance or a grant by the authority upon the availability of sufficient moneys in the remediation fund for the purpose of the financial assistance or grant. The authority shall award financial assistance and grants in the following order of priority:

(1) Sites on which there has been a discharge and the discharge poses an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area shall be given first priority;

(2) (Deleted by amendment, P.L.2017, c.353)

(3) Sites that are owned by a municipality in a brownfield development area shall be given second priority; and

(4) Sites in areas designated as Planning Area 1 (Metropolitan) and Planning Area 2 (Suburban) pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), shall be given third priority.

The priority ranking of applicants within any priority category enumerated in this section for awarding financial assistance and grants from the remediation fund shall be based upon the date of receipt by the authority of an application from the applicant and on readiness to proceed with remediation as determined by the department and the authority. If an application is determined to be incomplete by the authority, an applicant shall have 30 days from receipt of written notice of incompleteness to file any additional information as may be required by the authority for a completed application. If an applicant fails to file the additional information within those 30 days, the filing date for that application for financial assistance or a grant for a site that is not within a priority category enumerated in this section, shall be the date that the additional information is received by the authority. An application shall be deemed complete when all the information required by the authority has been received in the required form.

b. Within 90 days, for a private entity, or 180 days for a municipality, county, or a redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), of notice of approval of a financial assistance or grant application, an applicant shall submit to the authority an executed contract for the remediation activities for which the financial assistance or grant application was made. The contract shall be consistent with the terms and conditions for which the financial assistance or grant was rendered. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for the alteration of an applicant's priority ranking for the awarding of financial assistance or a grant.

History

L. 1993, c. 139, § 29; amended 1996, c. 62, § 66; 2005, c. 223, § 5, eff. Sept. 15, 2005; 2017, c. 353, § 3, eff. Jan. 16, 2018.

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

a. The authority shall, by rule or regulation:

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

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

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

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

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

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

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

(8) adopt criteria, which must be met by a municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) that applies for a grant pursuant to paragraph (2) of subsection a. of section 28 of P.L.1993, c.139 (C.58:10B-6), that the subject real property will be developed or redeveloped within a three-year period from the completion of the remediation; and

(9) 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.

History

L. 1993, c. 139, § 30; amended 1997, c. 278, § 15, eff. Jan. 6, 1998; 2005, c. 223, § 6, eff. Sept. 15, 2005; 2009, c. 60, § 45, eff. Nov. 3, 2009; 2017, c. 353, § 4, eff. Jan. 16, 2018.

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

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

b. The New Jersey Economic Development Authority shall not award a grant or financial assistance from the Hazardous Discharge Site Remediation Fund if the applicant relinquishes, impairs, or waives, or has relinquished, impaired, or waived, any right to recover the costs of the

remediation against an insurance carrier, discharger, or person in any way responsible for a hazardous substance pursuant to subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g).

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

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

History

L. 2009, c. 60, § 32, eff. May 7, 2009.

58:10B-9. Violators of environmental law may not receive financial assistance, grant

No financial assistance or grant from the remediation fund shall be rendered to a person who is currently in violation of an administrative or judicial order, judgment, or consent agreement regarding violation or threatened violation of an environmental law regarding the subject property, unless the violation, fee, penalty or assessment is currently being contested by the person in a manner prescribed by law or unless the violation resulted from a lack of sufficient money to perform required remediation activities.

History

L. 1993, c. 139, § 31.

58:10B-10. Legal responsibility of applicant for compliance

a. The lack of sufficient moneys in the remediation fund to satisfy all financial assistance or grant applications shall not affect in any way an applicant's legal responsibility to comply with the requirements of P.L.1983, c.330 (C.13:1K-6 et al.), P.L.1976, c.141 (C.58:10-23.11 et seq.), or any other applicable provision of law.

b. Nothing in sections 23 through 43 of P.L.1993, c.139 (C.58:10B-1 et seq.) shall be construed to:

(1) impose any obligation on the State for any financial assistance or grant commitments rendered by the authority, and the authority's obligations shall be limited to the amount of otherwise unobligated moneys available in the fund therefor; or

(2) impose any obligation on the authority for the quality of any work performed pursuant to a remediation undertaken with financial assistance or a grant rendered pursuant to section 28 of P.L.1993, c.139 (C.58:10B-6).

History

L. 1993, c. 139, § 32.

58:10B-11. Remediation funding source surcharge

a. There is imposed upon every person who is required to establish a remediation funding source pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3) a remediation funding source surcharge. The remediation funding source surcharge shall be in an amount equal to 1% of the required amount of the remediation funding source required by the department to be maintained. No surcharge, however, may be imposed upon (1) that amount of the remediation funding source that is met by a self-guarantee as provided in subsection f. of section 25 of P.L.1993, c.139 (C.58:10B-3), (2) that amount of the remediation funding source that is met by financial assistance or a grant from the remediation fund, (3) any person who voluntarily performs a remediation pursuant to an administrative consent order, (4) any person who entered voluntarily into a memorandum of understanding with the department to remediate real property, as long as that person meets the mandatory remediation timeframes and expedited site specific timeframes established by the department pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28), (5) any person performing a remediation in an environmental opportunity zone, or (6) that portion of the cost of the remediation that is specifically for the use of an innovative technology or to implement a limited restricted use remedial action or an unrestricted use remedial action. The surcharge shall be based on the cost of remediation work remaining to be completed and shall be paid on an annual basis as long as the remediation continues and until the Department of Environmental Protection issues a no further action letter or the licensed site remediation professional issues a response action outcome for the property subject to the remediation. The remediation funding source surcharge shall be due and payable within 14 days of the time of the department's approval of a remedial action workplan or signing an administrative consent order or as otherwise provided by law. The department shall collect the surcharge and shall remit all moneys collected to the Remediation Guarantee Fund established pursuant to section 45 of P.L.1993, c.139 (C.58:10B-20).

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

History

L. 1993, c. 139, § 33; amended 1997, c. 278, § 16, eff. Jan. 6, 1998; 2009, c. 60, § 46, eff. Nov. 3, 2009.

58:10B-12. Adoption of remedial standards

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 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,” sections 1 through 25 of P.L.1989, c.34 (C.13:1E-48.1 et seq.), the “Major Hazardous Waste Facilities Siting Act,” P.L.1981, c.279 (C.13:1E-49 et seq.), the “Sanitary Landfill Facility Closure and Contingency Fund Act,” P.L.1981, c.306 (C.13:1E-100 et seq.), the “Regional Low-Level Radioactive Waste Disposal Facility Siting Act,” P.L.1987, c.333 (C.13:1E-177 et seq.), or any other law or regulation by which the State may compel a person to perform remediation activities on contaminated property. However,

nothing in this subsection shall be construed to limit the authority of the department to establish discharge limits for pollutants or to prescribe penalties for violations of those limits pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), or to require the complete removal of nonhazardous solid waste pursuant to law.

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

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

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

remediation standards would not be protective, or would be unnecessarily overprotective, of public health or safety or of the environment, as appropriate.

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

(1) Unrestricted use remedial actions, limited restricted use remedial actions and restricted use remedial actions shall be allowed except that unrestricted use remedial actions and limited restricted use remedial actions shall be preferred over restricted use remedial actions. For any remediation initiated one year after the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), the department shall require the use of an unrestricted use remedial action, or a presumptive remedy or an alternative remedy as provided in paragraph (10) of this subsection, at a site or area of concern where new construction is proposed for residential purposes, for use as a child care center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.), or as a public school or private school as defined in N.J.S.18A:1-1, as a charter school established pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.), or where there will be a change in the use of the site to residential, child care, or public school, private school, or charter school purposes or another purpose that involves use by a sensitive population. For any remediation initiated on or after the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), the department may require the use of an unrestricted use remedial action or a presumptive remedy as provided in guidelines adopted pursuant to paragraph (10) of this subsection for a site or area of concern that is to be used for residential, child care, or public school, private school, or charter school purposes or another purpose that involves use by a sensitive population. Except as provided in this subsection, and section 27 of P.L.2009, c.60 (C.58:10C-27), the department, however, may not disapprove the use of a restricted use remedial action or a limited restricted use remedial action so long as the selected remedial action meets the health risk standard established in subsection d. of this section, and where, as applicable, is protective of the environment. Except as provided in this subsection and section 27 of P.L.2009, c.60 (C.58:10C-27), the choice of the remedial action to be implemented shall be made by the person responsible for conducting the remediation in accordance with regulations adopted by the department and that choice of the remedial action shall be approved by the department if all the criteria for remedial action selection enumerated in this section, as applicable, are met. Except as provided in section 27 of P.L.2009, c.60 (C.58:10C-27), the department may not require a person to compare or investigate any alternative remedial action as part of its review of the selected remedial action. The department may disapprove the selection of a remedial action for a site on which the proposed remedial action will render the property unusable for future redevelopment or for recreational use;

(2) Contamination may, upon the department's approval, be left onsite at levels or concentrations that exceed the minimum soil remediation standards for residential use if the implementation of institutional or engineering controls at that site will result in the protection of public health, safety and the environment at the health risk standard established in

subsection d. of this section, if the requirements established in subsections a., b., c. and d. of section 36 of P.L.1993, c.139 (C.58:10B-13), and paragraphs (1) and (10) of this subsection, are met. The department may also require the treatment or removal of contaminated material that would pose an acute health or safety hazard in the event of failure of an engineering control;

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

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

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

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

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

(8) The use of a remedial action for soil contamination that is determined by the department to be effective in its guidance document created pursuant to section 38 of P.L.1993, c.139 (C.58:10B-14), is presumed to be an appropriate remedial action if it is to be

implemented on a site in the manner described by the department in the guidance document and applicable regulations and if all of the conditions for remedy selection provided for in this section are met. The burden to prove compliance with the criteria in the guidance document is with the person responsible for conducting the remediation;

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

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

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

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

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

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

h.(1) The department shall adopt regulations which establish a procedure for a person to demonstrate that a particular parcel of land contains large quantities of historical fill material. Upon a determination by the department that large quantities of historic fill material exist on that

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

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

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

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

j. Upon the approval by the department or by a licensed site remediation professional of a remedial action workplan, or similar plan that describes the extent of contamination at a site and the remedial action to be implemented to address that contamination, the department may not subsequently require a change to that workplan or similar plan in order to compel a different remediation standard due to the fact that the established remediation standards have changed;

however, the department may compel a different remediation standard if the difference between the new remediation standard and the remediation standard approved in the workplan or other plan differs by an order of magnitude. The limitation to the department's authority to change a workplan or similar plan pursuant to this subsection shall only apply if the workplan or similar plan is being implemented in a reasonable timeframe, as may be indicated in the approved remedial action workplan or similar plan.

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

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

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

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

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

History

L. 1993, c. 139, § 35; amended 1997, c. 278, § 17, eff. Jan. 6, 1998; 2004, c. 120, § 81, eff. Aug. 10, 2004; 2009, c. 60, § 47, eff. Nov. 3, 2009; 2010, c. 87, § 3, eff. Nov. 3, 2010.

58:10B-12.1. Green and sustainable practices encouraged

The department shall encourage the use of green and sustainable practices during the remediation of a contaminated site. The use of green and sustainable practices shall not alter the requirement that the remediation be protective of the public health and safety and of the environment.

History

L. 2019, c. 263, § 9, eff. Aug. 23, 2019.

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

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

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

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

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

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

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

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

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

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

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

e. Notwithstanding the provisions of any other law, or any rule, regulation, or order adopted pursuant thereto to the contrary, whenever contamination at a property is remediated in compliance with all applicable soil, groundwater or surface water remediation standards that were in effect or approved by the department at the completion of the remediation, no person,

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

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

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

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

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

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

History

L. 1993, c. 139, § 36; amended 1997, c. 278, § 18, eff. Jan. 6, 1998; 2009, c. 60, § 48, eff. Nov. 3, 2009.

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

a. Whenever on or after October 16, 2009 the Department of Environmental Protection issues a no further action letter pursuant to a remediation, the person responsible for conducting the remediation shall be deemed by operation of law to have received a covenant not to sue with respect to the real property upon which the remediation has been conducted. The covenant not to sue shall be 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 covenant not to sue shall be deemed to be revoked by operation of law.

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

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

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

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

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

(3) for a remediation that involves the use of engineering controls but not for any remediation that involves the use of institutional controls only, a provision barring the person or persons whom the covenant not to sue benefits, from making a claim against the New Jersey Spill Compensation Fund and the Sanitary Landfill Facility Contingency Fund for any costs or damages relating to the real property and remediation covered by the covenant not to sue. The covenant not to sue shall not bar a claim by any person against the New Jersey Spill Compensation Fund and the Sanitary Landfill Contingency Fund for any remediation that involves only the use of institutional controls if, after a valid 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, or by operation of law, 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 shall be deemed to apply to any person who obtains a no further action letter as provided in subsection a. of this section. The covenant not to sue shall not provide relief from any liability, either under statutory or common law, to any person who is liable for cleanup and removal costs pursuant to subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not have a defense to liability pursuant to subsection d. of that section.

f.

(1) Except as provided in paragraphs (2) and (3) of this subsection, the department shall not issue covenants not to sue after the issuance of licenses to site remediation professionals pursuant to the provisions of section 12 of P.L.2009, c.60 (C.58:10C-12).

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

(3) The department may issue a covenant not to sue as part of a settlement of litigation.

History

L. 1997, c. 278, § 6, eff. Jan. 6, 1998; amended 2001, c. 154, § 4, eff. July 13, 2001; 2005, c. 4, § 3, eff. Jan. 19, 2005; 2009, c. 60, § 49, eff. Nov. 3, 2009; 2009, c. 300, § 1, eff. Jan. 17, 2010, retroactive to Oct. 16, 2009.

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

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

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

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

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

a 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

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

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

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

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

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

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

History

L. 2009, c. 60, § 31, eff. May 7, 2009.

58:10B-14. Development of guidance document

Within 12 months of the effective date of this act, the department shall develop a guidance document for the remediation of contaminated soils. The guidance document shall include a description of remedial actions the department determines are effective in remediating soil contamination to the residential or nonresidential use soil remediation standards and that should be considered by a person performing a soil remediation. The department shall revise the guidance document periodically as it determines necessary. Adoption of the guidance document,

or the revisions thereto, shall be published in the New Jersey Register but the adoption of the guidance document, or the revisions thereto, shall not otherwise be subject to the notice, comment, publication, or other requirements of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.).

History

L. 1993, c. 139, § 38.

58:10B-15. Responsibility for prior discharges, exemptions; penalties

a. Any person who, before the effective date of P.L.1993, c.139 (C.13:1K-9.6 et al.), has discharged a hazardous substance in violation of P.L.1976, c.141, and:

(1) has not been issued a directive to remove or arrange for the removal of the discharge pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f);

(2) has not been assessed a civil penalty, a civil administrative penalty, or is not the subject of an action pursuant to the provisions of section 22 of P.L.1976, c.141 (C.58:10-23.11u);

(3) has not entered into an administrative consent order to clean up and remove the discharge; and

(4) has not been ordered by a court to clean up and remove the discharge, shall not be subject to a monetary penalty for the failure to report the discharge or for any civil violation of P.L.1976, c.141 (C.58:10-23.11 et seq.) or P.L.1977, c.74 (C.58:10A-1 et seq.) that resulted in the discharge if the person notifies the department of the discharge and enters into an administrative consent order with the department to remediate the discharge in accordance with the provisions of P.L.1976, c.141 (C.58:10-23.11 et seq.), or any rules or regulations adopted pursuant thereto, within one year of the effective date of P.L.1993, c.139 (C.13:1K-9.6 et al.). Any person who notifies the department of the discharge pursuant to this section shall be liable for all cleanup and removal costs as provided in section 8 of P.L.1976, c.141 (C.58:10-23.11g).

b. Notwithstanding the provisions of subsection a. of this subsection, any person who enters into an administrative consent order pursuant to this section and fails to remediate the discharge in accordance with the administrative consent order, shall be subject to all penalties for violations that occurred before the effective date of P.L.1993, c.139 (C.13:1K-9.6 et al.) as well as any penalties for subsequent violations.

c. The provisions of this section shall not apply to violations of a permit issued pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.).

d. Any documents or information provided to the department pursuant to this section may not be used in a criminal investigation or criminal prosecution against the person providing the

information or documents for those violations that occurred before the effective date of P.L.1993, c.139 as long as the person remediates the discharge in conformance with the administrative consent order entered into pursuant to subsection a. of this section.

History

L. 1993, c. 139, § 39; amended 2019, c. 263, § 10, eff. Aug. 23, 2019.

58:10B-16. Access to property to conduct remediation

a.(1) Any person who undertakes the remediation of suspected or actual contamination and who requires access to conduct such remediation on real or personal property that is not owned by that person, may enter upon the property to conduct the necessary remediation if there is an agreement, in writing, between the person conducting the remediation and the owner of the property authorizing the entry onto the property. If, after good faith efforts, the person undertaking the remediation and the property owner fail to reach an agreement concerning access to the property, the person undertaking the remediation shall seek an order from the Superior Court directing the property owner to grant reasonable access to the property and the court may proceed in the action in a summary manner.

(2) Such relief may include, singly or in combination:

(a) A temporary or permanent injunction;

(b) Assessment of the person undertaking the remediation for costs associated with any disruption in operations on the property;

(c) Assessment of the person undertaking the remediation for any costs to return the property to its condition before the commencement of the remediation;

(d) A requirement that the person undertaking the remediation indemnify the owner of the property for any damages, penalties or liabilities resulting from the remediation;

(e) A requirement that the person undertaking the remediation indemnify the owner of the property for any liability resulting from the entry of persons onto the property to perform the remediation.

b. The court shall promptly issue any access order sought pursuant to this section upon a showing that (1) a reasonable possibility exists that contamination from another site has migrated onto the owner's property, or (2) access to the property is reasonable and necessary to remediate contamination. The presence of an applicable department oversight document or a remediation obligation pursuant to law involving the property for which access is sought shall constitute prima facie evidence sufficient to support the issuance of an order.

Unless the court otherwise orders for notice and for good cause shown, an action for an access order shall not be joined with non-germane issues against the owner of the property for

which access is sought or other person who may be liable for the contamination. Non-germane issues shall include, but not be limited to, issues concerning contribution, treble damages, or other damages involving either the contamination or the remediation.

The court may impose reasonable conditions as part of the access order, including without limitation, that the person undertaking the remediation take all reasonable measures to minimize the disruption to the property and the activities conducted there and return the property to its condition prior to the commencement of remediation.

c. The department may not impose or seek to impose any civil or civil administrative penalties upon any person for failure to perform a remediation on property not owned by that person within the time schedule required by regulation on property not owned by that person if (1) the failure to perform the remediation was the result of an inability of that person to enter upon real or personal property owned by another person, and (2) the person took all appropriate action pursuant to this section to obtain access to the property.

d. Nothing herein shall be construed as limiting the rights of the owner of the property against which the access order is issued to initiate a civil action to seek any damages available under law.

e. Nothing herein shall be construed as limiting the rights of the person conducting the remediation from initiating any subsequent civil action against the owner of the property upon which access was ordered.

History

L. 1993, c. 139, § 40.

58:10B-17. Review of department decision concerning remediation

a. Any person conducting a remediation of a contaminated site may dispute a decision by the department concerning the remediation in accordance with the guidelines developed pursuant to subsection b. of this section. The disputed decision shall be reviewed, and a determination shall be made, by the next level of the department's management, and the review may continue, upon the request of the person seeking review, until the commissioner or his designee has issued a decision on the dispute. Each successive level of management review and the resulting determination on the dispute, shall occur within seven days of the department's receipt of the request for review.

b. Within 60 days of the effective date of P.L.1993, c.139, the department shall develop guidelines that establish a procedure through which a person conducting a remediation of a contaminated site may dispute a department decision concerning the remediation. Those guidelines shall include provisions for an expedited review procedure under which the commissioner, or his designee, shall issue a decision on the dispute within 21 calendar days of the date on which the request for that review was received.

History

L. 1993, c. 139, § 41.

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

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

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

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

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

c. As used in this section:

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

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

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

History

L. 2001, c. 154, § 5, eff. July 13, 2001; amended 2005, c. 4, § 2, eff. Jan. 19, 2005; 2005, c. 245, § 1, eff. Dec. 21, 2005; 2009, c. 60, § 50, eff. May 7, 2009; 2012, c. 45, § 136, eff. July 1, 2013.

58:10B-18. Preparation, distribution of informational materials

The Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Department of Environmental Protection and Energy, shall prepare, and the department shall distribute, for the cost of reproduction and postage, to any interested person, informational materials that set forth criteria that may be used to evaluate the qualifications of environmental consultants, environmental consulting firms, engineers, geologists or any other consultant, whose expertise or training may be required by a person to comply with the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), P.L.1983, c.330 (C.13:1K-6 et al.), P.L.1976, c.141 (C.58:10-23.11 et seq.), and P.L.1993, c.139 (C.13:1K-9.6 et al.) relating to the remediation of contaminated real property. The materials may describe the expertise or training necessary to address specific types of environmental cleanups, sites or contamination, the significance and availability of various types of professional liability insurance, issued by an entity licensed by the Department of Insurance to transact business in the State of New Jersey, the average cost of services and tests commonly performed by consultants, the significance of available accreditations or certifications, the ethics code applicable to any consultant, the references that may be requested and any other relevant factor that may be used to evaluate the qualifications and expertise of persons performing remediation services.

History

L. 1993, c. 139, § 42.

58:10B-19. Implementation of interim response action

The owner or operator of an industrial establishment who has submitted a notice to the department pursuant to subsection a. of section 4 of P.L.1983, c.330 (C.13:1K-9), or any person who has discharged a hazardous substance or is liable for the remediation of that discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), or any person who has been directed to or has entered into an agreement with the department to remediate a discharge, may implement an interim response action prior to departmental approval of that action. The interim response action

may be implemented when the expeditious temporary or partial remediation of a discharged hazardous substance or hazardous waste is necessary to contain or stabilize a discharge prior to implementation of an approved remedial action workplan in order to prevent, minimize, or mitigate damage to public health or safety or to the environment which may otherwise result from a discharge. The interim response action shall be implemented in compliance with the procedures and standards established by the department. The department may require submission of a notice of intent to implement an interim response action, what those actions will be, and may require, subsequent to completion of the interim response action, a report detailing the actions taken and a certification that the interim response action was implemented in accordance with all applicable laws and regulations. The department shall review these submissions to verify whether the interim response action was implemented in accordance with applicable laws and regulations. The department shall not require that additional remediation be undertaken at an area of concern subject to the interim response action except in instances when further remediation is necessary to bring that area of concern into compliance with the applicable remediation regulations.

The department may, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing a fee schedule, as necessary, reflecting the actual costs associated with the review of the interim response action and any implementation thereof.

History

L. 1993, c. 139, § 43; amended 1997, c. 278, § 44.

58:10B-20. Remediation Guarantee Fund

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

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

c.

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

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

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

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

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

History

L. 1993, c. 139, § 45; amended 2009, c. 60, § 51, eff. Nov. 3, 2009.

58:10B-21. Investigation, determination of extent of contamination of aquifers

a. The Department of Environmental Protection shall investigate and determine the extent of contamination of every aquifer in this State. The department shall prioritize its investigations of aquifers giving the highest priority to those aquifers underlying urban or industrial areas that are known or suspected of having large areas of contamination. This information shall be updated periodically as necessary. The information derived from the investigation shall be made available to the public by entering it into the Department of Environmental Protection's existing geographic information system, by making this information available on the system, and by making copies of any maps and data available to the public. The functions required pursuant to this section shall be considered a site remediation obligation of the State. The department may charge a reasonable fee for the reproduction of the maps and data which fee shall reflect the cost of their reproduction.

b. Upon completion of an investigation of an aquifer by the department and upon the department's determination of the extent of contamination of an aquifer, a person performing a remediation may rely upon that information for that person's submission of information to the department in the performance of a remediation.

c. The entire cost of the investigation required pursuant to this section shall be borne by the department from appropriations made to it by the Legislature specifically for this purpose. The department may not fund any part of this investigation by the imposition of a fee or charge on any person performing a remediation or upon any person who is in need of a permit or approval from the department.

d. Nothing in this section shall be construed to require or obligate the department to reclassify the groundwater of any aquifer.

e. Any information concerning the contamination of an aquifer that is submitted to the department in digital form by a person performing a remediation, shall be entered into the geographical information system maintained by the department and shall be made available to the public within 90 days of the receipt of the information by the department.

History

L. 1997, c. 278, § 3; amended 2003, c. 224, § 3, eff. Jan. 9, 2004.

58:10B-22. Investigation, mapping of historic fill areas

a. Within 270 days of the effective date of P.L. 2003, c. 224, the Department of Environmental Protection shall investigate and map those areas of the State at which large areas of historic fill exist. The department shall prioritize its investigations of historic fill areas giving highest priority to those areas of the State that are known or suspected to contain historic fill. This information shall be updated periodically as necessary. The information derived from the investigation shall be made available to the public by entering it into the Department of Environmental Protection's existing geographic information system, by making this information available on the system, and by making copies of any maps and data available to the public. The functions required pursuant to this section shall be considered a site remediation obligation of the State. The department may charge a reasonable fee for the reproduction of the maps and data which fee shall reflect the cost of their reproduction.

b. Upon completion of an investigation of an area of historic fill by the department and upon the department's determination of the location of historic fill in an area, a person performing a remediation may rely upon that information for that person's performance of a remediation and selection of a remedial action pursuant to subsection h. of section 35 of P.L. 1993, c. 139 (C. 58:10B-12).

c. The entire cost of investigation required pursuant to this section shall be borne by the department from appropriations made to it by the Legislature specifically for this purpose. The department may not fund any part of this investigation by the imposition of a fee or charge on any person performing a remediation or upon any person who is in need of a permit or approval from the department.

History

L. 1997, c. 278, § 4; amended 2003, c. 224, § 4, eff. Jan. 9, 2004.

58:10B-23. “Brownfield’s Redevelopment Task Force”; duties

a. There is created the “Brownfields Redevelopment Task Force.” The task force shall consist of seven representatives from State agencies and six public members. The State agency representatives shall be from each of the following State agencies: the Office of State Planning in the Department of Community Affairs, the New Jersey Redevelopment Authority in the Department of Community Affairs, the New Jersey Commerce and Economic Growth Commission, the Department of Agriculture, the Economic Development Authority in, but not of, the Department of the Treasury, the Department of Transportation, and the Site Remediation Program in the Department of Environmental Protection. The six public members shall be appointed by the Governor with the advice and consent of the Senate. The public members shall include to the extent practicable: a representative of commercial or residential development interests, a representative of the financial community, a representative of a public interest environmental organization, a representative of a neighborhood or community redevelopment organization, a representative of a labor or trade organization, and a representative of a regional planning entity.

The Office of State Planning shall provide staff to implement the functions and duties of the task force. The public members of the task force shall serve without compensation but may be reimbursed for actual expenses in the performance of their duties. The Governor shall select the chairperson of the task force.

b. The task force shall prepare and update an inventory of brownfield sites in the State. In preparing the inventory, priority shall be given to those areas of the State that receive assistance from the Urban Coordinating Council. To the extent practicable, the inventory shall include an assessment of the contaminants known or suspected to have been discharged or that are currently stored on the site, the extent of any remediation performed on the site, the site’s proximity to transportation networks, and the availability of infrastructure to support the redevelopment of the site. The information gathered for the inventory shall, to the extent practicable, be made available to the public by entering it into the Department of Environmental Protection’s existing geographic information system, by making this information available on the system and by making copies of any maps and data available to the public. The department may charge a reasonable fee for the reproduction of maps and data which fee shall reflect the cost of their reproduction.

c. In addition to its functions pursuant to subsection b. of this section, the task force shall:

(1) coordinate State policy on brownfields redevelopment, including incentives, regulatory programs, provision of infrastructure, and redevelopment planning assistance to local governments;

(2) use the inventory to prioritize sites based on their immediate economic development potential;

(3) prepare a plan of action to return these sites to productive economic use on an expedited basis;

(4) actively market sites on the inventory to prospective developers;

(5) use the inventory to provide a targeted environmental assessment of the sites, or of areas containing several brownfield sites, by the Department of Environmental Protection;

(6) consult with the Pinelands Commission concerning the remediation and redevelopment of brownfield sites located in the pinelands area as designated pursuant to section 10 of P.L. 1979, c. 111 (C. 13:18A-11);

(7) evaluate the performance of current public incentives in encouraging the remediation and redevelopment of brownfields; and

(8) make recommendations to the Governor and the Legislature on means to better promote the redevelopment of brownfields, including the provision of necessary public infrastructure and methods to attract private investment in redevelopment.

d. As used in this section, “brownfield” 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.

History

L. 1997, c. 278, § 5; amended 1998, c. 44, § 35, eff. Aug. 29, 1998; 2003, c. 63, § 1, eff. May 1, 2003.

58:10B-23.1. Findings, declarations relative to redevelopment of brownfield sites

The Legislature finds and declares that the redevelopment of brownfield sites provides an alternative to the development of undeveloped land; that the redevelopment of brownfield sites would reinvigorate the surrounding areas, provide additional tax revenues to municipal government, and create jobs; and that it is vital that State, county and local governments concerned with the economic growth in the State have available an accurate and comprehensive list of known brownfield sites so that growth can be directed away from sensitive areas and into already developed areas or currently underutilized areas. The Legislature further finds and declares that landowners should be encouraged to list their property on the State’s inventory of brownfield sites in order to enhance opportunities for reusing brownfield sites to the benefit of all redevelopment stakeholders and to promote a cleaner environment, a more robust economy, and a better quality of life.

History

L. 2005, c. 365, § 1, eff. Jan. 12, 2006.

58:10B-23.2. Preparation of inventory of brownfield sites; definitions

a. In accordance with section 5 of P.L.1997, c.278 (C.58:10B-23), the Brownfields Redevelopment Task Force shall continue to prepare an inventory of brownfield sites in the State, and shall expedite its efforts to compile a State inventory of brownfield sites for listing on the New Jersey Brownfields Site Mart. Within 12 months after the effective date of this act, and annually thereafter, the Brownfields Redevelopment Task Force shall submit a progress report to the Senate Environment Committee and the Assembly Environment and Solid Waste Committee, summarizing the efforts employed during the past 12 months toward compilation of an inventory of known brownfield sites in the State.

b. The inventory of brownfield sites shall include a list of known brownfield sites in the State, and at least the following information for each site:

(1) the street address, lot and block number, municipality and county;

(2) the size of the site;

(3) the last known municipal zoning classification for the site;

(4) the name and address of the owner of record of the site;

(5) an assessment of the contaminants known or suspected by the Department of Environmental Protection to have been discharged at the site;

(6) the extent and status of any remediation known by the Department of Environmental Protection to have been performed on the site; and

(7) the planning area designation and any center designation as shown on the State Plan Policy Map prepared by the State Planning Commission pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.).

c. As used in this section, "brownfield site" means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or is suspected to have been, a discharge of a contaminant and "New Jersey Brownfields Site Mart" means an interactive database accessible on the Internet that provides information to developers, property owners, and State and local planners and officials, about brownfield sites in order to facilitate the sale and redevelopment of those properties.

History

L. 2005, c. 365, § 2, eff. Jan. 12, 2006.

58:10B-24. Duties of Department of Environmental Protection

The Department of Environmental Protection shall:

(1) Prepare materials for dissemination to the public that explain the environmental and health risks associated with site remediations in general and which are designed to assist local governments and the public in assessing the risks associated with particular site remediation projects;

(2) Serve as an informational resource for county improvement authorities who are involved in remediating and redeveloping contaminated redevelopment areas and for municipalities and residents of this State who may be impacted by the remediation or redevelopment of contaminated real property regardless of who is undertaking the remediation or redevelopment;

(3) Work with residents and municipalities to form neighborhood informational groups whose purpose is to research, understand and disseminate information in neighborhoods concerning the public health and environmental risks associated with site remediations and redevelopment, as well as the economic benefits to be gained; and

(4) Make recommendations to the Legislature and the Governor in order to improve the public understanding, perception and risk associated with site remediations in the State.

History

L. 1997, c. 278, § 25.

58:10B-24.1. Written notification of contaminated site remediation

a. Prior to the initiation of the remedial investigation phase of the remediation of a contaminated site, any person who is responsible for conducting a remediation of the contaminated site, including the Department of Environmental Protection when it conducts a remediation of a contaminated site using public monies, shall provide written notification describing the activities that are to take place at the contaminated site to the clerk of the municipality and to the county health department and the local health agency wherein the site is located. The written notice shall include notice of the location of the contaminated site, including address and the lot and block number of the contaminated site. The written notice shall also inform the municipality, county health department, and local health agency that they may receive a copy of the remedial action workplan, any other workplan, report, or validated data required by the department, and any updates thereto, and a copy of the site health and safety plan, from the responsible party, upon request. For any remediation of a contaminated site that will take longer than two years to complete, the person responsible for conducting the remediation shall provide the notification required by this section every two years until remediation is complete.

b. Notice required pursuant to this section shall not be required when the remediation of a contaminated site is caused by a leaking residential underground storage tank used to store heating oil for on-site consumption in a one to four family residential building or an emergency response action.

History

L. 2006, c. 65, § 1, eff. Aug. 2, 2006; amended 2007, c. 276, § 1, eff. Jan. 13, 2008; 2019, c. 263, § 11, eff. Aug. 23, 2019.

58:10B-24.2. Copies of documents, reports, data to municipality, county

Upon request of a municipality, any person who is responsible for conducting a remediation of a contaminated site shall submit a copy of a remedial action workplan, any other workplan, report, or validated data required by the department pursuant to law, rule, or regulation, and any updates or status reports pursuant to the “Industrial Site Recovery Act,” P.L.1983, c.330 (C.13:1K-6 et al.), the “Brownfield and Contaminated Site Remediation Act,” P.L.1997, c.278 (C.58:10B-1.1 et al.), or the “Spill Compensation and Control Act,” P.L.1976, c.141 (C.58:10-23.11 et seq.), and a copy of the site health and safety plan, to the clerk of the municipality wherein the contaminated site is located at the same time as those documents are submitted to the department. Upon request of a county health department or a local health agency, the person who is responsible for conducting a remediation of a contaminated site shall also submit a copy of the remedial action workplan, any other workplan, report, or validated data required by the department pursuant to law, rule, or regulation, any updates or status reports, and a copy of the site health and safety plan, to the county health department or local health agency, respectively, wherein the contaminated site is located at the same time as those documents are submitted to the department.

History

L. 2006, c. 65, § 2, eff. Aug. 2, 2006; amended 2007, c. 276, § 2, eff. Jan. 13, 2008; 2019, c. 263, § 12, eff. Aug. 23, 2019.

58:10B-24.3. Notification to public of remediation of contaminated site, response to inquiries; requirements

a. Any person who is responsible for conducting a remediation of a contaminated site shall be responsible for notifying the public of the remediation of the contaminated site pursuant to rules and regulations adopted by the Department of Environmental Protection pursuant to subsection b. of this section.

b. Within six months after the date of enactment of this act, the Department of Environmental Protection shall adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations setting forth the notice requirements pursuant to subsection a. of this section. The rules and regulations to be adopted by the department pursuant to this section shall require any person who is responsible for conducting a remediation of a contaminated site to provide written notification to any local property owners and tenants who reside within 200 feet of the contaminated site. The notification shall summarize site conditions and provide information about actions being taken to remediate the site. The department may require written notification or the posting of a sign visible to the public which shall be located on the boundaries of the contaminated site, or both.

c. A person responsible for conducting a remediation shall respond to any written or email inquiries from the public regarding the status of the remediation that the person receives, or that the department receives and forwards to the person responsible for conducting the remediation, by providing either: (1) information or documents that are responsive to the public inquiry; or (2) a written summary status report for the remediation, which shall be made in a form and manner as prescribed by the department pursuant to rules and regulations. A person responsible for conducting a remediation may designate a licensed site remediation professional to respond to public inquiries pursuant to this subsection.

History

L. 2006, c. 65, § 3, eff. Aug. 2, 2006; amended 2019, c. 263, § 13, eff. Aug. 23, 2019.

58:10B-24.4. Definitions relative to remediation of contaminated sites

For the purposes of P.L.2006, c.65 (C.58:10B-24.1 et seq.):

“Local health agency” means a “local health agency” as defined in section 3 of P.L.1966, c.36 (C.26:2F-3).

“Oversight document” means any document the Department of Environmental Protection or a court issues to define the role of a person participating in the remediation of a contaminated site or is of concern, and may include, without limitation, an administrative order, administrative consent order, court order, memorandum of understanding, memorandum of agreement, or remediation agreement.

“Person who is responsible for conducting a remediation” means any person who executes or is otherwise subject to an oversight document.

“Site health and safety plan” means a plan designed to protect the health and safety of persons working on a contaminated site and required pursuant to the rules and regulations establishing the technical requirements for site remediation adopted pursuant to P.L.1993, c.139 (C.58:10B-1 et seq.).

History

L. 2006, c. 65, § 4, eff. Aug. 2, 2006; amended 2007, c. 276, § 3, eff. Jan. 13, 2008.

58:10B-24.5. Notification of master list of known hazardous discharge sites; DEP website

Within 30 days after the date of enactment of this act, the Department of Environmental Protection shall notify the governing body of each municipality in the State and each county health department and local health agency of the existence of the New Jersey master list of known hazardous discharge sites prepared pursuant to P.L.1982, c.202 (C.58:10-23.15 et seq.). The department shall notify the governing body of each municipality in the State and each

county health department and local health agency that this list is also made available to the public on the Internet website maintained by the Department of Environmental Protection.

History

L. 2006, c. 65, § 5, eff. Aug. 2, 2006; amended 2007, c. 276, § 4, eff. Jan. 13, 2008.

58:10B-24.6. Definitions relative to procedures concerning soil contamination on school property

As used in this act:

“Charter school” means a school established pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.).

“Contamination” 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).

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

“School” means any public or private school as defined in N.J.S.18A:1-1.

“School property” means any area inside and outside of the school buildings controlled, managed, leased, or owned by the school or school district.

“Staff member” means an employee of a school or school district, including administrators, teachers, and other persons regularly employed by a school or school district.

History

L. 2009, c. 175, § 1, eff. July 10, 2010.

58:10B-24.7. Provision of notice to parent, guardian, staff

a. Within 10 business days after the discovery of soil contamination on school property that has been found by the Department of Environmental Protection or a licensed site remediation professional to exceed the direct contact soil remediation standards for residential use adopted by the department pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12), the local school board, the board of trustees of a charter school, or the principal or chief administrator of a private school, as appropriate, shall provide to each parent or guardian of a student enrolled at the school, and staff member of the school, notice of the soil contamination that includes: (1) a

description of the soil contamination and the conditions under which a student or staff member may be exposed to the contamination; (2) a description and timetable of the steps that have been taken and will be taken to ensure that there is no contact by any student or staff member with the soil contamination; and (3) a description and timetable of the steps that have been taken and will be taken to remediate the soil contamination.

b. The local school board, the board of trustees of a charter school, or the principal or chief administrator of a private school, as appropriate, may provide the notice required by subsection a. of this section by: (1) written notice sent home with the student and provided to the staff member; (2) telephone call; (3) direct contact; or (4) electronic mail.

c. The local school board, the board of trustees of a charter school, or the principal or chief administrator of a private school, as appropriate, shall post a copy of the notice required pursuant to subsection a. of this section in a conspicuous location near the site of the soil contamination to notify any other users of the school grounds of the existence of the contamination.

History

L. 2009, c. 175, § 2, eff. July 10, 2010.

58:10B-25. Designation of State environmental agency under federal law

Pursuant to section 941 of the federal "Taxpayer Relief Act of 1997," Pub. L. 105-34, the Governor shall designate the Department of Environmental Protection as the appropriate State environmental agency to issue statements that an area is within a targeted area and that there has been a release, or threat of release, or disposal of any hazardous substance at or on that area. For the purposes of this section "targeted area" and "hazardous substance" shall have the meanings given to them in the federal act.

History

L. 1997, c. 278, § 48.

58:10B-25.1. Guidelines for designation of brownfield development areas

The Department of Environmental Protection shall establish guidelines to establish a procedure for the designation of brownfield development areas. In establishing criteria for the establishment of a brownfield development area, the department shall require:

(1) that a brownfield development area includes at least two brownfield sites within a contiguous area;

(2) that the boundaries are consistent with the boundaries of a distinct neighborhood;

(3) broad community support for the establishment of a brownfield development area;
and

(4) that the establishment of a brownfield development area will result in a benefit to the public health and safety, and the environment.

A brownfield development area shall be designated by the department, in writing, upon application by a person proposing to remediate a site or sites within the area, or upon the department's initiative.

The guidelines, and any subsequent revisions thereto, and a list of the brownfield development areas, and any subsequent revisions thereto, shall be published in the New Jersey Register. The adoption of the guidelines or of the revisions thereto, shall not be subject to the requirements of the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.).

History

L. 2005, c. 223, § 7, eff. Sept. 15, 2005.

58:10B-25.2. Grant expenditures for remedial action constitutes debt of property owner to fund; lien

Any expenditure of grant moneys for a remedial action in a brownfield development area by a municipality, county, or redevelopment entity on property in which the municipality, county, or redevelopment entity does not have an ownership interest, shall constitute a debt of the property owner to the fund. The debt shall constitute a lien on the real property at which the remedial action is performed. The lien shall be in the amount of the grant awarded for the remedial action on that property. The lien shall attach when a notice of lien, incorporating the name of the property owner, a description of the property subject to the remedial action and an identification of the amount of the grant awarded from the fund, is duly filed with the county recording officer in the county in which the property is located. The lien filed pursuant to this section which affects the property subject to the remedial action shall create a lien with priority over all other claims or liens which are or have been filed against the property, except if the property comprises six dwelling units or less and is used exclusively for residential purposes, this notice of lien shall not affect any valid lien, right or interest in the property filed in accordance with established procedure prior to the filing of this notice of lien. A lien that is filed on real property pursuant to this section shall be removed upon transfer of ownership of the property to the municipality, county, or redevelopment entity that expended grant moneys for a remedial action on that property.

History

L. 2005, c. 223, § 8, eff. Sept. 15, 2005.

58:10B-25.3. Pilot program for awarding grants to nonprofit organizations; conditions

a. The Department of Environmental Protection, in consultation with the New Jersey Economic Development Authority, shall develop a pilot program to award grants from the

Hazardous Discharge Site Remediation Fund established pursuant to section 26 of P.L. 1993, c. 139 (C. 58:10B-4) to nonprofit organizations described in section 501(c)(3) of the federal Internal Revenue Code, 26 U.S.C. § 501(c)(3), that are exempt from taxation pursuant to section 501(a) of the federal Internal Revenue Code, 26 U.S.C. § 501(a), for the preliminary assessment, site investigation, and remedial investigation of real property that has been contaminated or is suspected of being contaminated by the discharge of a hazardous substance. All of the limitations and conditions for the award of financial assistance and grants applicable to municipalities pursuant to the provisions of the “Brownfield and Contaminated Site Remediation Act,” P.L. 1997, c. 278 (C. 58:10B-1.1 et al.) shall apply to the award of grants to a nonprofit organization pursuant to this section. The total amount awarded pursuant to this pilot program shall not exceed \$5,000,000.

b. Prior to March 1 of each year, the Department of Environmental Protection shall prepare and transmit to the members of the Senate Environment Committee and the Assembly Environment and Solid Waste Committee, or their successors, an annual report that provides a description of the projects for which grants have been awarded, the grant recipients for each project, the owner of the property being remediated, the amount of each grant, and the location of the property being remediated.

History

L. 2005, c. 223, § 9, eff. Sept. 15, 2005.

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

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

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

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

“Director” means the Director of the Division of Taxation in the Department of the Treasury.

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

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

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

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

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

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

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

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

History

L. 1997, c. 278, § 34, eff. Jan. 6, 1998; amended 2003, c. 224, § 5, eff. Jan. 9, 2004; 2009, c. 60, § 52, eff. Nov. 3, 2009.

58:10B-27. Terms and conditions of agreements

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, 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.

History

L. 1997, c. 278, § 35; amended 2002, c. 87, § 1, eff. Oct. 22, 2002; 2003, c. 224, § 6, eff. Jan. 9, 2004.

58:10B-27.1. State may enter into certain redevelopment agreements at certain landfill sites

a. The provisions of any other law, or any rule or regulation adopted pursuant thereto to the contrary notwithstanding, the State may enter into a redevelopment agreement pursuant to section 35 of P.L. 1997, c. 278 (C. 58:10B-27) for the redevelopment project at the site of the following landfills: (1) the Avon Sanitary Landfill; (2) the Kingsland Park Sanitary Landfill; (3) the Lyndhurst Sanitary Landfill; and (4) the Rutherford Sanitary Landfill, in which the State may agree to reimburse the developer for the closure and remediation costs associated with the proper closure and remediation of the area of land whereon the Avon Sanitary Landfill, the Kingsland Park Sanitary Landfill, the Lyndhurst Sanitary Landfill, and the Rutherford Sanitary Landfill are located.

b. As used in this section, "closure and remediation costs" means all reasonable costs associated with the closure and remediation of the Avon Sanitary Landfill, the Kingsland Park

Sanitary Landfill, the Lyndhurst Sanitary Landfill, and the Rutherford Sanitary Landfill, except that “closure and remediation costs” shall not include any costs incurred in financing the remediation and closure of a particular landfill; and “closure” means all activities associated with the design, purchase, construction or maintenance of all measures required by the Department of Environmental Protection, pursuant to law, in order to prevent, minimize or monitor pollution or health hazards resulting from the Avon Sanitary Landfill, the Kingsland Park Sanitary Landfill, the Lyndhurst Sanitary Landfill, and the Rutherford Sanitary Landfill subsequent to the termination of operations at these landfills, or at any portion thereof, including, but not necessarily limited to, the placement of final earthen or vegetative cover, the installation of methane gas vents or monitors and leachate monitoring wells or collection systems, and long-term operations and maintenance, at the site of these landfills.

History

L. 2001, c. 398, § 5, eff. Jan. 8, 2002.

58:10B-27.2. Entry of State into redevelopment agreement, certain circumstances

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 percent of remediation costs incurred subsequent to entering into the redevelopment agreement, provided that the Executive Director of the New Jersey Economic Development Authority, 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 an 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 oversight document.

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

History

L. 2005, c. 360, § 1, eff. Jan. 12, 2006; amended 2019, c. 263, § 14, eff. Aug. 23, 2019.

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

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

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

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

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

(2) the developer had (i) entered into an oversight document, with the Commissioner of Environmental Protection, after the developer entered into the redevelopment agreement, for the remediation of contamination located on the site of the redevelopment project pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29) and the developer is in compliance with the

oversight document, or (ii) complied with the requirements set forth in subsection b. of section 30 of P.L.2009, c.60 (C.58:10B-1.3); and

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

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

History

L. 1997, c. 278, § 36, eff. Jan. 6, 1998; amended 2002, c. 87, § 2, eff. Oct. 22, 2002; 2003, c. 224, § 7, eff. Jan. 9, 2004; 2009, c. 60, § 53, eff. Nov. 3, 2009; 2019, c. 263, § 15, eff. Aug. 23, 2019.

58:10B-29. Qualifications for certification of reimbursement for remediation costs; oversight document

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

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

c. After the developer has entered into an oversight document with the Commissioner of Environmental Protection, or after the developer has notified the Department of Environmental Protection of the name and license information of the licensed site remediation professional who has been retained to perform the remediation as required pursuant to subsection b. of section 30 of P.L.2009, c.60 (C.58:10B-1.3), the commissioner shall submit a copy thereof to the developer, the clerk of the municipality in which the subject property is located, the Division of Business Assistance, Marketing and International Trade in the New Jersey Economic Development Authority, and the director.

History

L. 1997, c. 278, § 37, eff. Jan. 6, 1998; amended 2003, c. 224, § 8, eff. Jan. 9, 2004; 2009, c. 60, § 54, eff. Nov. 3, 2009; 2019, c. 263, § 16, eff. Aug. 23, 2019.

58:10B-30. Brownfield Site Reimbursement Fund

a. There is created in the Department of the Treasury a special fund to be known as the Brownfield Site Reimbursement Fund. Moneys in the fund shall be dedicated to the purpose of reimbursing a developer who enters into a redevelopment agreement pursuant to section 35 of P.L. 1997, c. 278 (C. 58:10B-27) and is certified for reimbursement pursuant to section 36 of P.L. 1997, c. 278 (C. 58:10B-28). A special account within the fund shall be created for each developer upon approval of a certification pursuant to section 36 of P.L. 1997, c. 278 (C. 58:10B-28). The Legislature shall annually appropriate the entire balance of the fund for the purposes of reimbursement of remediation costs as provided in section 39 of P.L. 1997, c. 278 (C. 58:10B-31).

b. The fund shall be credited with an amount from the General Fund, determined sufficient by the Chief Executive Officer and Secretary of the Commerce and Economic Growth Commission, to provide the negotiated reimbursement to the developer. Moneys credited to the fund shall be an amount that equals the percent of the remediation costs expected to be reimbursed pursuant to the redevelopment agreement. In estimating the amount of new State taxes that is anticipated to be derived from a redevelopment project pursuant to section 35 of P.L. 1997, c. 278 (C. 58:10B-27), the Chief Executive Officer and Secretary of the Commerce and Economic Growth Commission and the State Treasurer shall consider taxes from the following: the Corporation Business Tax Act (1945), P.L. 1945, c. 162 (C. 54:10A-1 et seq.), "The Savings Institution Tax Act," P.L. 1973, c. 31 (C. 54:10D-1 et seq.), the tax imposed on marine insurance companies pursuant to R.S. 54:16-1 et seq., the tax imposed on fire insurance companies pursuant to R.S. 54:17-4 et al., the tax imposed on insurers generally, pursuant to P.L. 1945, c. 132 (C. 54:18A-1 et seq.), the public utility franchise tax, public utilities gross receipts tax and public utility excise tax imposed pursuant to P.L. 1940, c.4, and P.L. 1940, c. 5 (C. 54:30A-16 et seq. and C. 54:30A-49 et seq.), the tax derived from net profits from business, a distributive share of partnership income, or a prorata share of S corporation income under the "New Jersey Gross Income Tax Act," N.J.S. 54A:1-1 et seq., the tax derived from a business at the site of a redevelopment project that is required to collect the tax pursuant to the "Sales and Use Tax Act," P.L. 1966, c. 30 (C. 54:32B-1 et seq.), the tax imposed pursuant to P.L. 1966, c.30 (C. 54:32B-1 et seq.) from the purchase of materials used for the remediation, the construction of new structures, or the construction of new residences at the site of a redevelopment project, or the portion of the fee imposed pursuant to section 3 of P.L. 1968, c. 49 (C. 46:15-7) derived from the sale of real property at the site of the redevelopment project and paid to the State Treasurer for use by the State, that is not credited to the "Shore Protection Fund" or the "Neighborhood Preservation Nonlapsing Revolving Fund" pursuant to section 4 of P.L. 1968, c. 49 (C. 46:15-8). For the purpose of computing the sales and use tax on the purchase of materials used for the remediation, the construction of new structures, or the construction of new residences at the site of a redevelopment project, it shall be presumed by the Director of the Division of Taxation, in lieu of an exact accounting from the developer, suppliers, contractors, subcontractors and other parties connected with the project, that the tax equals one percent of the developer's contract price for remediation and improvements or such other percentage, not to exceed three percent, that may be agreed to by the director upon the presentation of clear and convincing evidence that

the tax on materials is greater than one percent of the contract price for the remediation and improvements.

History

L. 1997, c. 278, § 38; amended 2002, c. 87, § 3, eff. Oct. 22, 2002; 2003, c. 224, § 9, eff. Jan. 9, 2004.

58:10B-31. Reimbursement of remediation costs

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

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

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

History

L. 1997, c. 278, § 39, eff. Jan. 6, 1998; amended 2001, c. 398, § 4, eff. Jan. 8, 2002; 2005, c. 360, § 2, eff. Jan. 12, 2006; 2009, c. 60, § 55, eff. Nov. 3, 2009; 2019, c. 263, § 17, eff. Aug. 23, 2019.