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Bijlage

GEDEELTELIJKE WETSTEKSTEN VAN DE TRANSFER TRIGGERED ENVIRONMENTAL ACTS TOEPASSELIJK IN NEW JERSEY, CONNECTICUT, IOWA, CALIFORNIA, MICHIGAN, OREGON, PENNSYLVANIA EN WEST-VIRGINIA

In deze bijlage zijn, in de volgorde zoals besproken in hoofdstuk 4, de teksten van enkele transfer triggered environmental acts in de bepaalde staten binnen de Verenigde Staten opgenomen. Ten behoeve van de overzichtelijkheid zijn niet altijd de volledige wetsteksten van de verscheidene wetten opgenomen. Weggelaten passages zijn aangegeven als volgt: (...).

1.1 Transfer triggering environmental acts met daarin een onderzoeks- en saneringsplicht:

- A. New Jersey
- B. Connecticut
- C. Iowa

1.2 Transfer triggering environmental acts met daarin alleen een mededelingsplicht van de verkoper/rechtsvoorganger ten opzichte van de koper/rechtsopvolger:

- A. California
- B. Indiana
- C. Michigan
- D. Oregon
- E. Pennsylvania
- F. West-Virginia

Wetteksten

1.1 Transfer triggering environmental acts met daarin een onderzoeks- en saneringsplicht:

A. NEW JERSEY INDUSTRIAL SITE RECOVERY ACT (ISRA)

(New Jersey Statutes Annotated 13:1K-6 – 13:1K-14, Thomson/West, 2003/2006).

(...)

13:1 K-7 Legislative findings and declarations

The legislature finds that discharges of toxic chemicals dating back to early industrialization have left a legacy of contaminated industrial property in this State, that in 1983, due to the growing public awareness and concern of the risks of the public health and the environment and the potential costs to the State to clean up abandoned contaminated sites, the “Environmental Cleanup and Responsibility Act” was enacted. The Legislature also finds that the act’s imposition of a cleanup plan approval before the transfer or upon the closing of an industrial establishment and the requirement to establish a funding source for the cleanup are in the general public interest by ensuring the discovery of the contamination, by ensuring the discovery of contamination, by assuring that funding for cleanup is set aside at the time it is available from a transfer or closing, and by assuring that contaminated property is not abandoned to the State for cleanup. The Legislature further finds that at the time of the act’s passage, the extent of the State’s industrial contamination and the cost and complexity of remediations were not well understood; that in the intervening years, there has been a significant advance in the body of knowledge concerning how to remediate contaminated sites effectively and how to manage the remediation efficiently; that the regulated and financial communities are now more familiar with the liabilities involving contaminated property and with the necessity to discover and remediate that contamination; and that it is in the interest of the environment and the State’s economic health to promote certainty in the regulatory process by incorporating that knowledge to create a more efficient regulatory structure and to allow greater privatization of that process where it is possible to do so without incurring unnecessary risks to the public health or the environment.

The legislature therefore declares that it is the policy of this State to protect the public health, safety, and the environment, to promote efficient and timely cleanups, and to eliminate any unnecessary financial burden of remediating contaminated sites; that these policies can be achieved by streamlining the regulatory process, by establishing summary administrative procedures for industrial establishments that have previously undergone an environmental review, and by reducing oversight of those industrial establishments where less extensive regulatory review will ensure the same degree of protection to public health, safety, and the

environment; and that the new procedures established pursuant to this act shall be designed to guard against redundancy from the regulatory process and to minimize governmental involvement in certain business transactions.

13:1K-8 Definitions

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

“Closing operations” means:

- (1) the cessation of operations resulting in at least a 90 percent reduction in the total value of the product output from the entire industrial establishment, as measured on a constant, annual date-specific basis, within any five year period, or, for industrial establishments for which the product output is undefined, a 90 percent reduction in the number of employees or a 90 percent reduction in the area of operations of an industrial establishment within any five year period; provided, however, the department may approve a waiver of the provisions of this paragraph for any owner or operator who, upon application and review, evidences a good faith effort to maintain and expand product output, the number of employees, or area of operations of the effected industrial establishment;
- (2) any temporary cessation of operations of an industrial establishment for a period of not less than two years;
- (3) any judicial proceeding or final agency action through which an industrial establishment becomes nonoperational for health or safety reasons;
- (4) the initiation of bankruptcy proceedings pursuant to Chapter 7 of the federal Bankruptcy Code, 11 U.S.C. s.701 et seq. or the filing of a plan of reorganization that provides for a liquidation pursuant to Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. s.1101 et seq.;
- (5) any change in operations of an industrial establishment that changes the industrial establishment’s Standard Industrial Classification number to one that is not subject to this act; or
- (6) the termination of a lease unless there is no disruption in operations of the industrial establishment, or the assignment of a lease;

“Transferring ownership or operations” means:

- (1) any transaction or proceeding through which an industrial establishment undergoes a change of ownership;
- (2) the sale or transfer of more than 50% of the assets of an industrial establishment within any five year period, as measured on a constant, annual date-specific basis;
- (3) the execution of a lease for a period of 99 years or longer for an industrial establishment; or
- (4) the dissolution of an entity that is an owner or operator or an indirect owner of an industrial establishment, except for any dissolution of an indirect

owner of an industrial establishment whose assets would have been unavailable for the remediation of the industrial establishment if the dissolution had not occurred;

“Change in ownership” means:

- (1) the sale or transfer of the business of an industrial establishment or any of its real property;
- (2) the sale or transfer of stock in a corporation resulting in a merger or consolidation involving the direct owner or operator or indirect owner of the industrial establishment;
- (3) the sale or transfer of stock in a corporation, or the transfer of a partnership interest, resulting in a change in the person holding the controlling interest in the direct owner or operator or indirect owner of an industrial establishment;
- (4) the sale or transfer of title to an industrial establishment or the real property of an industrial establishment by exercising an option to purchase; or
- (5) the sale or transfer of a partnership interest in a partnership that owns or operates an industrial establishment, that would reduce, by 10% or more, the assets available for remediation of the industrial establishment;

“Change in ownership” shall not include:

- (1) a corporate reorganization not substantially affecting the ownership of the industrial establishment;
- (2) a transaction or series of transactions involving the transfer of stock, assets or both, among corporations under common ownership, if the transaction or transactions will not result in the diminution of the net worth of the corporation that directly owns or operates the industrial establishment by more than 10%, or if any equal or greater amount in assets is available for the remediation of the industrial establishment before and after the transaction or transactions.
- (3) a transaction or series of transactions involving the transfer of stock, assets or both, resulting in the merger or de facto merger or consolidation of the indirect owner with another entity, or in a change in the person holding the controlling interest of the indirect owner of an industrial establishment, when the indirect owner’s assets would have been unavailable for cleanup if the transaction or transactions had not occurred;
- (4) a transfer where the transferor is the sibling, spouse, child, parent, grandparent, child of a sibling, or sibling of a parent of the transferee;
- (5) a transfer to confirm or correct any deficiencies in the recorded title of an industrial establishment;
- (6) a transfer to release a contingent or reversionary interest except for any transfer of a lessor’s reversionary interest in leased real property;
- (7) a transfer of an industrial establishment by devise or interstate succession;
- (8) the granting or termination of an easement or a license to any portion of an industrial establishment;
- (9) the sale or transfer of real property pursuant to a condemnation proceeding pursuant to the “Eminent Domain Act of 1971, P.L. 1971, c. 361 (C.20:3-1 et seq.);

- (10) execution, delivery and filing or recording of any mortgage, security interest, collateral assignment or other lien on real or personal property; or
- (11) any transfer of personal property pursuant to a valid security agreement, collateral assignment or other lien, including, but not limited to, seizure or replevin of such personal property which transfer is for the purpose of implementing the secured party's rights in the personal property which is the collateral.

"Department" means the Department of Environmental Protection;

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

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

"Industrial establishment" means any place of business engaged in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or hazardous waste on-site, above or below ground, having a Standard Industrial Classification number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard Industrial Classifications Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States. Those facilities or parts of facilities subject to operational closure and post-closure maintenance requirements pursuant the "Solid Waste Management Act", P.L.1070, c. 39 (C.13:1E-1 et Seq.), the "Major Hazardous Waste Facilities Siting Act", P.L. 1981, c. 279 (C.13:1E-49 et.seq.) or the "Solid Waste Disposal Act" (42 U.S.C. par. 6901 et seq.), or any establishment in the production or distribution of agricultural commodities, shall not be considered industrial establishments for the purposes of this act. The department may, pursuant to the "Administrative Procedure Act", P.L.1968, c. 410 (C.52:14B-1 et seq.), exempt certain sub-groups or classes of operations within those sub-groups within the Standard Industrial Classification major group numbers listed in this subsection upon a finding that the operation of the industrial establishment does not pose a risk to public health and safety;

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

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

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

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

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

(...)

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

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

“Preliminary assessment” means the first phase in the process of identifying areas of concern and determining whether hazardous substances or hazardous wastes are or were present at an industrial establishment or have migrated or are migrating from the industrial establishment, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or latent discharge of any hazardous substance or haz-

ardous waste is required. The evaluation of historic information shall be conducted from 1932 to the present, except that the department may require the search for and evaluation of additional information relating to ownership and use of the site prior to 1932 if such information is available through diligent inquiry of public records;

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

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

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

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

13:1K-9 Owner or operator of industrial establishment planning to close or sell or transfer operations; duties; remedial action workplan

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

the parties to the transfer, if applicable; state the proposed date for closing operations or transferring ownership or operations; list the name, address, and telephone number of an authorized agent for the owner or operator; and certify that the information submitted is accurate. The notice shall be transmitted to the department in the manner and form required by the department. The department may, by regulation, require the submission of any additional information in order to improve the efficient implementation of P.L.1983, c.330.

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

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

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

c. The owner or operator of an industrial establishment shall, subsequent to closing operations, or of its public release of its decision to close operations, or prior to transferring ownership or operations except as otherwise provided in subsection *e.* of this section, as applicable, submit to the department for approval a proposed negative declaration or proposed remedial action workplan. Except as otherwise provided in section 6 of P.L.1983, c.330 (C.13:1K-11), and sections 13, 16, 17 and 18 of P.L.1993, c.139 (C.13:1K-11.2, C.13:1K-11.5, C.13:1K-11.6 and C.13:1K-11.7), the owner or operator of an industrial establishment shall not transfer ownership or operations until a negative declaration or a remedial action workplan has been approved by the department or the conditions of subsection *e.* of this section for remediation agreements have been met and until, in cases where a remedial action workplan is required to be approved or a remediation agreement has been approved, a remediation funding source, as required pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3), has been established.

d. **(1)** Upon the submission of the results of either the preliminary assessment, site investigation, remedial investigation, or remedial action, where applicable, which

demonstrate that there are no discharged hazardous substances or hazardous wastes at the industrial establishment, or that have migrated from or are migrating from the industrial establishment, in violation of the applicable remediation regulations, the owner or operator may submit to the department for approval a proposed negative declaration as provided in subsection c. of this section.

(2) After the submission and review of the information submitted pursuant to a preliminary assessment, site investigation, remedial investigation, or remedial action, as necessary, the department shall, within 45 days of submission of a complete and accurate negative declaration, approve the negative declaration, or inform the owner or operator of the industrial establishment that a remedial action workplan or additional remediation shall be required. The department shall approve a negative declaration by the issuance of a no further action letter.

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

The department may require in the remediation agreement that all plans for and results of the preliminary assessment, site investigation, remedial investigation, and the implementation of the remedial action workplan, prepared or initiated subsequent to the transfer of ownership or operations, be submitted to the department, for review purposes only, at the completion of each phase of the remediation. The department shall adopt regulations establishing the manner in which the documents required pursuant to paragraphs (1) through (5), inclusive, of this subsection shall be submitted. The department shall approve the application for the remediation agreement upon the complete and accurate submission of the documents required to be submitted pursuant to this subsection. The regulations shall include

a sample form of the certifications. Approval of a remediation agreement shall not affect an owner's or operator's right to avail itself of the provisions of section 6 of P.L.1983, c.330 (C.13:1K-11), of section 13, 14, 15, 16, 17, or 18 of P.L.1993, c.139 (C.13:1K-11.2, C.13:1K-11.3, C.13:1K-11.4, C.13:1K-11.5, C.13:1K-11.6 or C.13:1K-11.7), or of the other provisions of this section.

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

g. The soil, groundwater, and surface water remediation standard and the remedial action to be implemented on an industrial establishment shall be selected by the owner or operator, and reviewed and approved by the department, based upon the policies and criteria enumerated in section 35 of P.L.1993, c.139 (C.58:10B-12).

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

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

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

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

j. An owner or operator proposing to implement a soil remedial action other than one which is set forth in subsection h. of this section must receive department approval prior to implementation of the remedial action.

k. An owner or operator of an industrial establishment shall not implement a remedial action involving the remediation of groundwater or surface water without the prior review and approval by the department of a remedial action workplan.

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

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

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

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

The department may order additional remediation activities at the industrial establishment, or offsite where necessary, or may require the submission of additional information, where (a) the department determines that the remediation activities undertaken were not in compliance with the applicable rules or regulations of the department; (b) all documents required to be submitted to the department were not submitted or, if submitted, were inaccurate, or deficient; or (c) discharged hazardous substances or hazardous wastes remain at the industrial establishment, or have migrated or are migrating offsite, at levels or concentrations or in a manner that is in violation of the applicable health risk or environmental standards. Upon a finding by the department that the remediation conducted at the industrial establishment was in compliance with all applicable regulations, that no hazardous substances or hazardous wastes remain at the industrial establishment in a manner that is in violation of the applicable health risk or environmental standards, and that all hazardous substances or hazardous wastes that migrated from the industrial establishment have been remediated in conformance with the applicable

health risk or environmental standards, the department shall approve the remediation for that industrial establishment by the issuance of a no further action letter. (...)

13:1K-9.6 Review of remediation plan

Upon the submission of the complete and accurate results of a phase of the remediation pursuant to section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9) or of any other document required to be submitted that requires the department's review and approval in order to comply with P.L.1983, c.330, the department shall review and approve, approve with conditions, or disapprove the submission or other documents in accordance with the review schedules established pursuant to section 2 of P.L.1991, c.423 (N.J.S.A. 13:1D-106).

13:1K-9.7 Transfer, close of operations without compliance; conditions

The owner or operator of an industrial establishment may, upon submission of a written notice to the department, transfer ownership or operations or close operations without complying with the provisions of section 4 of P.L.1983, c.330 (C.13:1K-9) if the total quantity of hazardous substances and hazardous wastes generated, manufactured, refined, transported, treated, stored, handled, or disposed of at the industrial establishment at any one time during the owner's or operator's period of ownership or operations:

- (a) does not exceed 500 pounds or 55 gallons;
- (b) if a hazardous substance or hazardous waste is mixed with nonhazardous substances, the total quantity in the mixture does not exceed 500 pounds or 55 gallons; or
- (c) if, in the aggregate, hydraulic or lubricating oil, does not exceed 220 gallons.

13:1K-10 Rules and regulations; approval of negative declaration or request for remedial plan; inspection

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: (1) criteria and minimum standards necessary for the submission, evaluation and approval of plans or results of preliminary assessments, site investigations, remedial investigations, and remedial action workplans and for the implementation thereof. The documents for the preliminary assessment, site investigation, remedial investigation, and remedial action workplan required to be submitted for a remediation shall not be identical to the criteria and standards used for similar documents submitted pursuant to federal law, except as may be required by federal law. In establishing criteria and minimum standards for these terms, the department shall strive to avoid duplicate or unnecessarily costly or time consuming conditions or standards; (2) a fee schedule, as necessary, reflecting the actual costs associated with the review of plans for or results of negative declarations, preliminary assessments, site investigations, remedial investigations, and remedial actions, and review of the implementation thereof and for any other review or approval required by the department; (3) standards and procedures for remediation agreements authorized pursuant to subsection e. of section 4 of P.L.1983, c.330

(C.13:1K-9); and (4) any other provisions or procedures necessary to implement this act..

b. The owner or operator shall allow the department reasonable access to the industrial establishment and to offsite areas under the owner's or operator's control to inspect the premises, review records, and to take soil, groundwater, or other samples or measurements as deemed necessary by the department to verify the results of any submission made to the department and to verify the owner's or operator's compliance with the requirements of this act..

13:1K-11 Transfer of ownership or operations; application for deferral of remedial action workplan; certifications required

a. The owner or operator of an industrial establishment planning to transfer ownership or operations may apply to the department for a deferral of the preparation, approval, and implementation of a remedial action workplan for the industrial establishment. The applicant shall submit to the department;

(1) a certification signed by the purchaser, transferee, mortgagee or other party to the transfer, approved by the department, that the industrial establishment would be subject to substantially the same use by the purchaser, transferee, mortgagee or other party to the transfer;

(2) a certification, approved by the department, that the owner or operator has satisfactorily completed a preliminary assessment, site investigation, and remedial investigation of the industrial establishment;

(3) a cost estimate for the remedial action necessary at the industrial establishment, approved by the department based upon the information collected in the preliminary assessment, site investigation, and remedial investigation and developed in accordance with department regulations; and

(4) a certification, approved by the department, that the purchaser, transferee, mortgagee or other party to the transfer has the financial ability to pay for the implementation of the necessary remedial action..

The preparation, approval, and implementation of a remedial action workplan for the industrial establishment may be deferred for that transfer until the use changes or until the purchaser, transferee, mortgagee or other party to the transfer closes operations..

b. Upon submission of a complete and accurate application, the department shall approve the deferral. Upon approval of the deferral, the preparation, approval, and implementation of a remedial action workplan at the industrial establishment shall be deferred..

c. The authority to defer the preparation, approval, and implementation of a remedial action workplan set forth in this section shall not be construed to limit, restrict, or prohibit the department from directing site remediation under any other statute, rule, or regulation, but shall be solely applicable to the obligations of the owner or operator of an industrial establishment, pursuant to the provisions of this act, nor shall any other provisions of this act be construed to limit, restrict, or prohibit the department from directing site remediation under any other statute, rule, or regulation.

For the purposes of this section, substantially the same use means that the industrial establishment shall retain the same three digit Industry Group Number, as designated in the Standard Industrial Classifications Manual prepared by the federal Office of Management and Budget in the Executive Office of the President of the United States. In a manner and form, and in accordance with the specific criteria prescribed by the department, an applicant may petition for a finding by the department that the affected industrial establishment be deemed subject to substantially the same use based upon its retention of the same two digit Major Group Number, as designated in the Standard Industrial Classifications Manual.

13:1K-11.1 Excluded transactions

In the event of the closing, termination or transfer of an industrial establishment, which industrial establishment is all or part of a trust, receivership estate, guardianship estate or estate of a deceased person, only the assets of the trust or estate, or assets of any discharger other than the fiduciary of such trust or estate shall be subject to the obligation to remove the discharge as set forth in P.L.1983, c.330 (C.13:1K-6 et al.).

13:1K-11.2 Application for expedited review of proposed remediation plan; contents

a. The owner or operator of an industrial establishment planning to close operations or transfer ownership or operations of an industrial establishment may, in lieu of complying with the provisions of subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9), apply to the department for an expedited review. An application for an expedited review pursuant to this section shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330 (C.13:1K-9);

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department or the United States Environmental Protection Agency, pursuant to the "Resource Conservation and Recovery Act," 42 U.S.C. s.6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. s.9601 et seq., or any other law, has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment that are consistent with current regulations established by the department in order to identify areas of concern that are new or have continued in use since the issuance of a no further action letter, negative declaration approval, or remediation approval as described in paragraph (2) of this subsection, and, based on those remediation activities, that there has been no discharge of a hazardous substance or hazardous waste at the industrial establishment subsequent to the approval of the negative declaration, the issuance of the no further action letter, or the equivalent remediation; or, if any discharge has occurred,

a certification listing any discharge, describing the action taken to remediate the discharge, a certification that the remediation was performed in accordance with procedures established by the department, a certification that the remediation was approved by the department and a copy of the document evidencing the departmental approval;

(4) a certification that for any underground storage tank covered by the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), an approved method of secondary containment or a monitoring system as required by P.L.1986, c.102, has been installed;

(5) a copy of the most recent negative declaration, or no further action letter, or other approval, as applicable, approved by the department for the entire industrial establishment; and

(6) a proposed negative declaration..

b. Upon the submission of a complete and accurate application and after an inspection, if necessary, the department shall approve or disapprove the negative declaration. The department shall approve the negative declaration upon a finding that the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the proposed negative declaration by the department pursuant to this section, the owner or operator shall comply with the provisions of section 4 of P.L.1983, c.330.

13:1K-11.3 Application for limited site review; contents

a. The owner or operator of an industrial establishment planning to close operations or transfer ownership or operations of the industrial establishment may, in lieu of complying with the provisions of subsection (b) of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9), apply to the department for a limited site review. An application for a limited site review pursuant to this section shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9);

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department or the United States Environmental Protection Agency, pursuant to the "Resource Conservation and Recovery Act," 42 U.S.C. 6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. 9601 et seq., or any other law, has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment that are consistent with current regulations established by the department in order to identify areas of concern and, based on those remediation activities, that subsequent to the issuance of the negative declaration, no further action letter or remediation approval described in paragraph (2) of this subsection, a discharge has occurred at the industrial establishment that was not remediated in accordance with the procedures established by the department or that any remediation performed has not been approved by the department and that

no other discharge of a hazardous substance or hazardous waste has occurred at the industrial establishment;

(4) a certification that for any underground storage tank covered by the provisions of P.L.1986, c.102 (N.J.S.A. 58:10A-21 et seq.), an approved method of secondary containment or a monitoring system as required by P.L.1986, c.102, has been installed;

(5) a copy of the most recent negative declaration, no further action letter, or other approval, as applicable, approved by the department for the industrial establishment; and

(6) a proposed negative declaration, if applicable.

b. Upon the submission of a complete application, and after an inspection if necessary, the department may:

(1) approve the negative declaration upon a finding that any discharge of a hazardous substance or hazardous waste, as certified pursuant to paragraph (3) of subsection a. of this section, has been remediated consistent with the applicable remediation standards as established by the department; or

(2) require that the owner or operator perform a remediation as set forth in subsection (b) of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9) only for those areas of concern identified by the information provided pursuant to paragraph (3) of subsection a. of this section upon a finding that further investigation or remediation is necessary to bring the industrial establishment into compliance with the applicable remediation standards.

c. The owner or operator of an industrial establishment subject to the provisions of this section shall not close operations or transfer ownership or operations until a remedial action workplan, or a negative declaration, as applicable, has been approved by the department or upon approval of a remediation agreement as provided in subsection (e) of section 4 of P.L.1983, c.330.

13:1K-11.4 Application for area of concern waiver; contents

a. The owner or operator of an industrial establishment who is required to perform a remediation at an industrial establishment pursuant to subsection (b) of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9) may apply to the department for an area of concern waiver. Approval of the area of concern waiver shall relieve the owner or operator of the requirement to perform a remediation pursuant to subsection (b) of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9) for any area of concern at that industrial establishment for which a remediation has previously been conducted and approved by the department. An application pursuant to this subsection shall include:

(1) a certification that the department or the United States Environmental Protection Agency, pursuant to the "Resource Conservation and Recovery Act," 42 U.S.C. 6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. 9601 et seq., or any other law, has previously approved a remediation at an area of concern and has issued a no further action letter or an equivalent approval of a remediation for that area of concern;

(2) a copy of the most recent no further action letter or equivalent approval for that area of concern, approved by the department; and

(3) a certification that the owner or operator has performed remediation activities at that area of concern that are consistent with current regulations established by the department, and based on those remediation activities, that subsequent to the issuance of the no further action letter or equivalent approval described in paragraph (1) of this subsection, there has been no discharge of a hazardous substance or hazardous waste at that area of concern.

b. Upon submission of a complete and accurate application and after an inspection, if necessary, the department shall approve the application for an area of concern waiver upon a finding that the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the application by the department pursuant to this section, the owner or operator shall perform a remediation of the subject area of concern as may be required pursuant to subsection (b) of section 4 of P.L.1983, c.330.

13:1K-11.5 Application for closing operations or transfer of ownership during process of remediation; contents

a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement as provided in subsection (e) of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9), if the industrial establishment is already in the process of a remediation pursuant to subsection (b) of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9) or a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330, including a cleanup being performed under the "Resource Conservation and Recovery Act," 42 U.S.C. SS6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. SS9601 et seq.. The application shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330;

(2) a certification that there has been no discharge of any hazardous substance or hazardous waste at the industrial establishment during the applicant's period of operation or ownership or that the remediation of any discharge of a hazardous substance or hazardous waste that occurred during the applicant's period of ownership or operation was approved by the department;

(3) a certification by the owner or operator that a remediation funding source for the cost of the remediation or the implementation of the remedial action workplan at the industrial establishment has been established as required pursuant to section 25 of P.L.1993, c.139 (N.J.S.A. 58:10B-3); and

(4) a certification, as applicable, that any transferee of the industrial establishment has been notified that the industrial establishment is the subject of a remediation.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, that

the applicant may close operations or transfer ownership or operations of the industrial establishment.

13:1K-11.6 Application for closure or transfer of ownership when discharge from regulated underground storage tank; contents

a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement as provided in subsection (e) of section 4 of P. L. 1983, c.330 if the only areas of concern or the only discharges at the industrial establishment are from an underground storage tank or tanks regulated pursuant to P.L.1986, c.102 (N.J.S.A. 58:10A-21 et seq.). The application shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330;

(2) the submission of a preliminary assessment that shows that the only area of concern at an industrial establishment is an underground storage tank or tanks as defined pursuant to section 2 of P.L.1986, c.102 (N.J.S.A. 58:10A-22), or the submission of a site investigation that shows that the only discharged hazardous substances or hazardous wastes at the industrial establishment, or that has migrated offsite, above the applicable remediation standards are from a leak or discharge from that underground storage tank or tanks; and

(3) a certification that the owner or operator of the industrial establishment is in compliance with the provisions of P.L.1986, c.102 for all underground storage tanks at the industrial establishment that are covered by that act. The owner or operator of an industrial establishment, at which a discharge of a hazardous substance or hazardous waste from an underground storage tank has occurred, shall be deemed in compliance with the provisions of P.L.1986, c.102, as it relates to that discharge for the purposes of this paragraph, if the owner or operator has been issued an order by or has entered into an agreement with the department to remediate that discharge and the owner or operator is in compliance with that order or agreement.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, the applicant to close operations or transfer ownership or operations of the industrial establishment.

13:1K-11.7 Application for closure or transfer of ownership when hazardous discharge of minimal environmental concern; contents

a. The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or without the approval of a remediation agreement as provided in subsection (e) of section 4 of P.L.1983, c.330 if the discharge of hazardous substances or hazardous wastes at the industrial establishment is of minimal environmental concern.

Upon the completion of a preliminary assessment, site investigation, and remedial investigation for the industrial establishment, conducted pursuant to subsection (b) of section 4 of P.L.1983, c.330, any owner or operator may submit to the department an application for a determination that the discharge at an industrial establishment is of minimal environmental concern, which application shall include:

- (1) a certification, supported by the submission of data from the preliminary assessment, site investigation, and remedial investigation, that there are no more than two areas of concern at the industrial establishment that are contaminated at levels above the applicable remediation standards, and that remedial action at those areas of concern can be completed pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;
- (2) a certification that a remedial action workplan shall be prepared pursuant to standards and criteria established by the department and that the remediation will meet either the nonresidential use or residential use soil remediation standards and the applicable surface water and groundwater remediation standards;
- (3) a certification that the remedial action workplan will be prepared and implemented pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;
- (4) evidence that the remediation funding source required pursuant to section 25 of P.L.1993, c.139 (N.J.S.A. 58:10B-3) has been established;
- (5) the payment of all fees or surcharges related to the remediation imposed pursuant to P.L.1983, c.330, P.L.1993, c.139 (N.J.S.A. 13:1K-9.6 et al.), and section 33 of P.L.1993, c.139 (N.J.S.A. 58:10B-11), and any rules or regulations adopted pursuant thereto; and
- (6) documentation establishing that the discharged hazardous substances or hazardous wastes at the industrial establishment do not pose a threat to human health because of the proximity of an area of concern to a drinking water source or because of the location, complexity, or the nature of the discharge.

b. Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall approve the application for a determination that the discharge at an industrial establishment is of minimal environmental concern. Prior to making a finding upon the application pursuant to this section, the department may inspect the industrial establishment, as necessary, to verify the information in the application. The decision of the department shall be made within 30 days of the submission of a complete application. In determining the amount of time necessary to complete the remedial action, the department shall not include that time in which it takes the department to issue a permit for a discharge to surface water pursuant to P.L.1977, c.74 (N.J.S.A. 58:10A-1 et seq.).

c. The owner or operator shall, upon the completion of the remedial action at the subject areas of concern, certify to the department that the remedial action workplan has been implemented in accordance with the standards and criteria established by the department and in compliance with the certifications made pursuant

to this section. The certification shall include a copy of the remedial action workplan and the results of all sampling analysis and any tests performed as part of the remedial action. Within 45 days of receipt of the certification, the department shall issue a no further action letter to the owner or operator. The department may perform an inspection of the industrial establishment or any area offsite that is under the owner's or operator's control, as relevant, prior to issuing the no further action letter.

The department may refuse to issue the no further action letter pursuant to this section only upon a finding that hazardous substances or hazardous wastes remain at the relevant areas of concern at levels or concentrations in excess of the applicable remediation standards.

d. Upon the failure of an owner or operator to complete the implementation of a remedial action workplan within the six month period as provided in subsection *a.* of this section, the owner or operator shall so notify the department in writing and provide the reasons therefore. The owner or operator shall have no more than 120 additional days to complete the implementation of the remedial action. If the implementation of the remedial action is not completed within this additional time, the department may rescind its determination that the industrial establishment is of minimal environmental concern and may require that a new remedial action workplan be submitted and implemented by the owner or operator in a manner and under the terms and conditions provided in its general regulations for remedial action workplan submissions and implementation.

13:1K-11.8 Application for certificate of limited conveyance; transfer of additional portions of real property; establishment of remediation trust fund

a. The owner of an industrial establishment may transfer a portion of the real property on which an industrial establishment is situated without conducting a remediation of the entire industrial establishment pursuant to the provisions of P.L.1983, c.330, if, upon application by the owner, the department issues a certificate of limited conveyance pursuant to subsections (b) through (e) of this section, or if the owner transfers the portion of real property in accordance with the provisions of subsection (f) of this section.

b. An application for a certificate of limited conveyance shall be in the form of a certification by the owner which shall include a description of the real property to be transferred, an appraisal of the real property to be transferred, the sale price or market value of the real property to be transferred, an appraisal of the entire industrial establishment, and an appraisal of the remaining property if the certificate of limited conveyance were issued, as well as any other information the department deems necessary to make the findings required in subsection (c) of this section.

c. The department shall issue a certificate of limited conveyance for a portion of the real property on which an industrial establishment is situated after the submission of a complete and accurate application and upon a finding that the sales price or market value of the real property to be conveyed, together with any additional diminution in value to the remaining property as a result of the conveyance is not more than one third of the total appraised value of the industrial establishment prior to the transfer, and that the remaining real property is an industrial

establishment subject to the provisions of P.L.1983, c.330. The appraisals shall be made no more than one year prior to the submission of application for a certificate of limited conveyance. Conveyances made pursuant to this section shall not exceed one third of the value of the industrial establishment during the period of ownership of the applicant.

d. Upon issuance of the certificate of limited conveyance, the owner or operator shall, prior to the conveyance, comply with the provisions of section 4 of P.L.1983, c.330 for that portion of the real property certified for conveyance. The remediation that may be required on the real property subject to the certificate of limited conveyance shall include any hazardous substances or hazardous wastes that are migrating from the remaining portion of the industrial establishment onto the real property being conveyed. The remaining portion of the industrial establishment, upon the subsequent closing of operations or transferring of ownership or operations, shall be subject to the provisions of P.L.1983, c.330 and P.L.1993, c.139 (N.J.S.A. 13:1K-9.6 et al.).

e. A certificate of limited conveyance shall be valid for three years from the date of issuance.

f. An owner, either as part of or subsequent to a conveyance made in accordance with subsections (b) through (e) of this section, may transfer additional portions of the real property of the industrial establishment in excess of the conveyance limitation set forth in subsection (c) of this section; provided, however, that the additional portions proposed for transfer do not constitute a closing of operations or transferring of ownership or operations, subject to section 4 of P.L.1983, c.330. The amount paid for the additional portion of real property, or any part thereof, which exceeds the permissible conveyance limitation under subsection (c) of this section shall be used exclusively for the purposes of remediating that parcel of real property in accordance with the provisions of subsection (d) of this section; provided, however, if any portion of that amount shall remain unexpended for the remediation of the parcel, that unexpended amount shall be deposited in a remediation trust fund as provided in subsection g. of this section.

g. To provide for the subsequent remediation of that portion of the real property of an industrial establishment which was not transferred pursuant to subsection (f) of this section, the owner shall establish a remediation trust fund in accordance with subsection (c) of section 25 of P.L.1993, c.139 (N.J.S.A. 58:10B-3) and shall deposit any unexpended amounts, as provided in subsection (f) of this section, into that fund.

13:1K-11.9 Remediation information to be shared by landlord and tenant; petition to compel compliance with remediation responsibilities

a. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, the landlord shall be responsible for providing any information that is requested by the tenant that is not otherwise available through a diligent inquiry by the tenant, and the tenant shall be responsible for providing any information that is requested by the landlord that is not otherwise available through a diligent inquiry by the landlord.

b. Where the owner of an industrial establishment is a landlord and the operator of

the industrial establishment is a tenant, the person that remediates the industrial establishment shall provide copies to the other person of all submissions to the department concerning the remediation.

c. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, and there has been a failure to comply with the provisions of P.L.1983, c.330, the landlord or the tenant may petition the department, in writing, to first compel that party who is responsible pursuant to the provisions of the lease, to comply with the requirements of P.L.1983, c.330. The petition shall include a copy of the signed lease between the landlord and the tenant. Upon a determination by the department that the provisions of the lease are unclear as it relates to the responsibility of either party to comply with the provisions of P. L. 1983, c. 330, or upon the failure by the person responsible pursuant to the provisions of the lease to comply, the department may compel compliance by all persons subject to the requirements of P.L.1983, c.330 for the industrial establishment.

13:1K-11.10 Avoidance of penalty

a. Any person who, prior to the effective date of P.L.1993, c.139, violated the provisions of P.L.1983, c.330 by closing operations or transferring ownership or operations of an industrial establishment without receiving departmental approval of a cleanup plan or a negative declaration pursuant to the provisions of P.L.1983, c.330, or without entering into an administrative consent order that allows the closure of operations or transfer of ownership or operations, shall not be subject to a penalty for that violation if the person notifies the department of the closure of operations or of the transfer of ownership or operations of the industrial establishment, and, within one year of the effective date of P.L.1993, c.139, enters into an administrative consent order or a memorandum of agreement with the department to complete a remediation of the industrial establishment pursuant to the provisions of P.L.1983, c.330 and any rules or regulations adopted pursuant thereto.

b. Notwithstanding the provisions of subsection (a) of this section, any person who enters into a memorandum of agreement or an administrative consent order with the department pursuant to this section and fails to remediate the industrial establishment in accordance with the memorandum of agreement or administrative consent order shall be subject to penalties for violations that occurred before the effective date of P.L.1993, c.139 as well as any penalties for subsequent violations.

c. 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 industrial establishment in conformance with the administrative consent order or memorandum of agreement entered into pursuant to subsection (a) of this section.

(...)

13:1K-12 Obligations imposed by act not affected by bankruptcy proceedings and constitute continuing regulatory obligations imposed by state

No obligations imposed by this act shall constitute a lien or claim which may be limited or discharged in a bankruptcy proceeding. All obligations imposed by this act shall constitute continuing regulatory obligations imposed by the State.

13:1K-13 Failure to comply with act; voiding sale or transfer; liability of transferor; violations; penalties

a. Failure of the transferor to perform a remediation and obtain department approval thereof as required pursuant to the provisions of this act is grounds for voiding the sale or transfer of an industrial establishment or any real property utilized in connection therewith by the transferee, entitles the transferee to recover damages from the transferor, and renders the owner or operator of the industrial establishment strictly liable, without regard to fault, for all remediation costs and for all direct and indirect damages resulting from the failure to implement the remedial action workplan. A transferee may not act to void the sale or transfer of an industrial establishment or any real property except upon providing notice to the transferor of the failure to perform and affording the transferor a reasonable amount of time to comply with the provisions of this act.

b. Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of this act is liable for a penalty of not more than \$25,000.00 for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense. Penalties shall be collected in a civil action by a summary proceeding under “the penalty enforcement law” (N.J.S.2A:58-1 et seq.). Any officer or management official of an industrial establishment who knowingly directs or authorizes the violation of any provisions of this act shall be personally liable for the penalties established in this subsection.

(...)

CHAPTER 26B INDUSTRIAL SITE RECOVERY ACT RULES**SUBCHAPTER 1. GENERAL INFORMATION****7:26B-1.1 Scope and authority**

This chapter constitutes the rules governing the implementation of the Industrial Site Recovery Act, P.L. 1993 c.139 (N.J.S.A. 13:1K-6 et seq.).

(...)

7:26B-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Act” or “ISRA” means the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.

(...)

“Applicable remediation standard” means a remediation standard defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Area of concern” means any area defined as such pursuant to the Technical Requirements for Site Remediation.

“Authorization letter” means a written statement issued by the Department that authorizes an owner or operator of an industrial establishment to transfer ownership or operations or in the case of a cessation of operations, authorizes the cessation of operations as it relates to the owner and operators obligation to remediate the industrial establishment.

“Authorized agent” means the person authorized to receive correspondence or communications, on behalf of the person responsible for conducting the remediation of the industrial establishment, for matters covered by this chapter.

“Change in ownership” means, unless otherwise provided at N.J.A.C. 7:26B-2.2:

1. The sale or transfer of the business of an industrial establishment;
2. The sale or transfer of any of the real property on which the industrial establishment operates, including any of the block(s) and lot(s) upon which the operations of the industrial establishment are conducted and any contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land;
3. The sale or transfer of title to an industrial establishment or the real property of an industrial establishment by exercising an option to purchase;
4. The sale or transfer of a general partnership interest in a general partnership or in a limited partnership or the sale or transfer of a limited partnership interest in a limited partnership where the limited partner is liable for the obligation of the limited partnership pursuant to the limited partnership agreement or by law, which results in any one of the following:
 - i. The change in the general partner, or the limited partner where the limited partner is liable for the obligations of the partnership, holding the controlling interest in the direct owner or operator of the industrial establishment;
 - ii. The reduction, by 10 percent or more of the assets available for remediation of the industrial establishment; or
 - iii. The change in the general partner or the limited partner where the limited partner is liable for the obligations of the partnership, holding the controlling interest in the indirect owner of the industrial establishment where the indirect owner’s assets would be available for remediation pursuant to the criteria listed at N.J.A.C. 7:26B-2.2(b). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(b), this definition does not require that a person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(b);
5. The sale or transfer of the sole general partner’s entire interest in a limited partnership where the limited partnership is one of the following:
 - i. The limited partnership is the direct owner or operator of the industrial establishment; or
 - ii. The limited partnership has the controlling interest in the indirect owner of the industrial establishment where the indirect owner’s assets would be available for remediation pursuant to the criteria listed at N.J.A.C. 7:26B-2.2(b).

Notwithstanding the reference to N.J.A.C. 7:26B-2.2(b), this definition does not require that a person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(b);

6. The reorganization of a general or limited partnership into a corporation, limited liability company, limited liability partnership or other similar business entity;
7. The sale or transfer of stock in a corporation or interest in a limited liability company, resulting in a merger or consolidation involving the direct owner or operator or indirect owner of the industrial establishment;
8. The sale or transfer of stock in a corporation or interest in a limited liability company, resulting in a change in the person holding the controlling interest in the direct owner or operator or indirect owner of the industrial establishment; and
9. The sale or transfer of interests in a limited liability company that owns or operates an industrial establishment, is the direct owner or operator or indirect owner of an industrial establishment, where the indirect owner's assets would be available for remediation pursuant to the criteria listed at N.J.A.C. 7:26B-2.2(b), that would reduce, by 10 percent or more, the assets available for remediation of the industrial establishment.

"Closing operations" means, unless otherwise provided at N.J.A.C. 7:26B-2.4:

1. The cessation of operations which, as measured on a constant, annual date specific basis, within any five-year period:
 - i. Results in at least a 90 percent reduction in the total value of the product output from the entire industrial establishment; or
 - ii. For industrial establishments which product output is undefined:
 - (1) Results in at least a 90 percent reduction in the number of employees; or
 - (2) Results in at least a 90 percent reduction in the area of operations of an industrial establishment;
2. Any temporary cessation of operations of an industrial establishment for a period greater than two years;
3. An industrial establishment becomes nonoperational for health or safety reasons as a result of a judicial proceeding or final agency action;
4. The initiation of bankruptcy proceedings pursuant to Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. §§ 701 et seq. or the filing of a plan of reorganization that provides for a liquidation pursuant to Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 1101 et seq.;
5. Any change of operations of an industrial establishment that changes the industrial establishment's North American Industry Classification System number to one that is not subject to ISRA;
6. The termination of a lease or sublease, unless there is no disruption in operations of the industrial establishment; and
7. The assignment of a lease or sublease, unless there is no change in the operator of the industrial establishment and there is no disruption in operations of the industrial establishment.

"Commissioner" means the Commissioner of the Department of Environmental Protection or his or her authorized representative.

"Controlling interest" means the interest held by a person or person(s) who possess(es) the power to direct or cause the direction of the management and policies

of a corporation, partnership or other business entity based on the criteria in N.J.A.C. 7:26B-2.2(d).

Notwithstanding the reference to N.J.A.C. 7:26B-2.2(d), this definition does not require that a person submit an application for an applicability determination in order for a person or transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(d).

“Corporate reorganization not substantially affecting ownership” means the restructuring or reincorporation by the management or owners of an entity, which does not diminish the availability of assets for any remediation, diminish the Department’s ability to reach those assets, or otherwise hinder the owner’s or operator’s ability to remediate the industrial establishment based on the criteria in N.J.A.C. 7:26B-2.2(c). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(c), this definition does not require that a person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(c).

“Department” means the New Jersey Department of Environmental Protection.

“Direct owner or operator” means any person that directly owns or operates an industrial establishment. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be a direct owner or operator of the industrial establishment unless or until it loses its exemption under N.J.S.A. 58:10-23.11g4 or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process.

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

“Engineering controls” means any physical mechanism defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“GIN” means General Information Notice described at N.J.A.C. 7:26B-3.3(a).

“Hazardous substance” means any substance defined as such pursuant to the Discharges of Petroleum and Other Hazardous Substances Regulations, N.J.A.C. 7:1E.

“Hazardous waste” means any waste defined as such pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E et seq., that is further defined as a hazardous waste pursuant to the Solid Waste Regulations, N.J.A.C. 7:26-1.6.

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

“Industrial establishment” means any place of business or real property at which such business is conducted, having the North American Industry Classification System (NAICS) codes listed in Appendix C dated and published in 2002 by the Executive Office of the President of the United States, Office of Management and Budget, ISBN 0-934213-87-9 NTIS PB2002-502024, subject to the specified exceptions and limitations and engaged in operations on or after December 31, 1983, which involve the generation, manufacture, refining, transportation, treat-

ment, storage, handling, or disposal of hazardous substances and wastes on-site, above or below ground unless otherwise provided at N.J.A.C. 7:26B-2.1. Except as provided below for lease properties, the industrial establishment includes all of the block(s) and lot(s) upon which the business is conducted and those contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land, or that are used in conjunction with such business. For lease properties, the industrial establishment includes the leasehold and any external tank, surface impoundments, septic systems, or any other structures, vessels, contrivances, or units that provide, or are utilized for, hazardous substances and wastes to or from the leasehold.

“Innovative remedial action technology” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Institutional controls” means a mechanism defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Limited restricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Negative declaration” means a written declaration, submitted by the owner or operator of an industrial establishment, or other person assuming responsibility for the remediation under ISRA and this chapter, to the Department certifying that there has been no discharge of hazardous substances or hazardous wastes on the industrial establishment, or that any such discharge on the industrial establishment or discharge that has migrated from the industrial establishment has been remediated in accordance with procedures approved by the Department and in accordance with N.J.A.C. 7:26E.

“No further action letter” means a written determination by the Department that, based upon an evaluation of the historical use of the industrial establishment, or of an area of concern or areas of concern, as applicable, and any other investigation or action the Department deems necessary, there are no discharged hazardous substances or hazardous wastes present at the industrial establishment or area(s) of concern, or any other property to which discharged hazardous substances or hazardous wastes originating at the industrial establishment have migrated, or that any discharged hazardous substances or hazardous wastes present at the industrial establishment or that have migrated from the industrial establishment have been remediated in accordance with applicable remediation regulations. The Department may issue a “no further action letter” if hazardous substances or hazardous wastes remain on the industrial establishment or any other property with appropriate engineering and institutional controls.

“Operator” means any person, including users, tenants, or occupants, having and exercising direct actual control of the operations of an industrial establishment. A holder of a mortgage or other security interest in the industrial establishment is not an operator of the industrial establishment unless or until it loses its exemption under N.J.S.A. 58:10-23.11g4 or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process.

“Owner” means any person who owns the real property of an industrial establishment or who owns the industrial establishment. A holder of a mortgage or other security interest in the industrial establishment is not an owner of the industrial

establishment unless or until it loses its exemption under N.J.S.A. 58:10-23.11g4 or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process.

“Person” means any individual or entity, including without limitation, a public or private corporation, company, estate, association, society, firm, partnership, joint stock company, foreign individual or entity, interstate agency or authority, the United States and any of its political subdivisions, the State of New Jersey, or any of the political subdivisions of within the State of New Jersey, or any of the other meanings which apply to the common understanding of the term.

“Preliminary assessment” means the first phase of remediation defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Remedial action” means those actions defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Remedial action workplan” means a plan defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Remedial investigation” means those actions to investigate a discharge defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Remediation” or “remediate” means all necessary actions defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Remediation agreement” means a document the Department issues for the transfer of an industrial establishment prior to the completion of the remediation.

“Restricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Restricted use standard” means a remediation standard as defined in N.J.A.C. 7:26E-1.8.

(...)

“Site investigation” means the collection and evaluation of data defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Transferring ownership or operations” means:

1. Any transaction or proceeding through which an industrial establishment undergoes a change in ownership;
2. The sale or transfer of more than 50 percent of the assets of an industrial establishment, excluding real property within any five-year period as measured on a constant, annual date-specific basis. The term does not include the sale or transfer of equipment or machinery in order to replace, modify, or retool existing equipment or machinery;
3. The execution of a lease for a period of 99 years or longer for an industrial establishment;
4. The dissolution of an entity that is an owner or operator or indirect owner of an industrial establishment, except for any dissolution of an indirect owner of an industrial establishment whose assets would have been unavailable for the remediation of the industrial establishment if the dissolution had not occurred; or
5. Any transfer of an industrial establishment to a trust, except where grantor and beneficiary are identical or are members of the same family. As used in this paragraph, “family” means any of the relations included at N.J.A.C. 7:26B-2.1(a)4.

“Unrestricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Unrestricted use standard” means a remediation standard as defined in N.J.A.C. 7:26E.

(...)

7:26B-1.6 Certifications and signatories

(a) Any person submitting an application, workplan, report or other submission to the Department pursuant to ISRA and this chapter shall include the certification provided at (c) below, as applicable. The person submitting the certification provided at (c) below shall sign the certification in accordance with (e) below.

(b) Any person submitting a remediation agreement application or remediation agreement amendment application to the Department pursuant to ISRA and N.J.A.C. 7:26B-4 shall include the certifications provided at (d)1, 2 and 3 below in addition to the certification required pursuant to (a) above, prior to the Department’s issuance of the remediation agreement or a remediation agreement amendment. The person submitting the certifications provided at (d)1, 2 and 3 below shall sign the certifications in accordance with (e) below.

(c) The following certification is for any application, workplan, report or other request to the Department pursuant to ISRA and this chapter:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, To the best of my knowledge the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of N.J.S.A. 13:1K-6 t seq., I am personally liable for the penalties set forth at N.J.S.A. 13:1K-13.”

(d) The following certifications are for any remediation agreement application or remediation agreement amendment application submitted to the Department pursuant to ISRA and N.J.A.C. 7:26B-4:

1. The owner or operator of the industrial establishment shall execute the following certification:

“I hereby certify that I am fully aware of the requirements of the Industrial Site Recovery Act, N.J.S.A. 13:1K-1 et seq., as it pertains to the remediation of the 9 industrial establishment subject to this remediation agreement. Specifically, I am fully aware of the responsibilities of the owner or operator of the industrial establishment to remediate the site in accordance with ISRA and this chapter. I acknowledge that a remediation agreement has been requested to allow the transaction referenced in the remediation agreement application to proceed prior to completion of all ISRA compliance requirements and that the person entering into the remediation agreement is agreeing to comply with all ISRA requirements. I further acknowledge that the execution of a remediation agreement shall not

release [Person] from any responsibilities [Person] have pursuant to ISRA and this chapter.”

2. The owner or operator of the industrial establishment shall execute the following certification:

“I hereby certify that I acknowledge that the transaction and industrial establishment that are the subject of this remediation agreement is a transfer of ownership or operations of an industrial establishment as defined by ISRA and N.J.A.C. 7:26B. I further acknowledge that [Person] is subject to penalties for violations of ISRA and this N.J.A.C. 7:26B. I am fully aware of [Person’s] responsibilities to allow the Department access to the subject industrial establishment and of the requirements to prepare and submit any documents relevant to the remediation of the subject industrial establishment as required by the Department.”

3. The purchaser, transferee, or lessee of the industrial establishment shall execute the following certification:

“I hereby certify that [Person] is the transferee and/or new lessee of the industrial establishment subject to this remediation agreement. I have read this application and am aware of the requirements and conditions of ISRA and the remediation agreement.

[Person] expressly agrees to allow the Department, seller, previous owner, previous operator, any other person subject to the remediation agreement, and any of their respective agents or assignees the right to enter the industrial establishment after the ISRA-subject transaction has taken place and/or the lease has been executed for completion of the remediation of the industrial establishment. Additionally, I acknowledge and understand that if a restricted use or limited restricted use remedial action is warranted at the subject industrial establishment, institutional controls and engineering controls as defined in N.J.S.A. 13:1K-6 et seq., N.J.S.A. 58:10B-1 et seq., N.J.A.C. 7:26C, N.J.A.C. 7:26E and N.J.A.C. 7:26B may be necessary.”

(e) The certifications required by (a) and (b) above shall be executed as follows:

1. For a corporation or limited liability company, by a principal executive officer of at least the level of vice president;

2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;

3. For a municipality, state, Federal or other public agency, by either a principal executive officer or ranking elected official; or

4. By a duly authorized representative of the corporation, partnership, sole proprietorship, municipality, state or Federal or other public agency, as applicable. A person is deemed to be a duly authorized representative if the person is authorized in writing by an individual described in (e)1, 2 or 3 above and the authorization meets the following criteria:

i. The authorization specifies either an individual or a position having responsibility for the overall operation of the industrial establishment or activity, such as the position of plant manager, or a superintendent or person of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position);

ii. The written authorization is submitted to the Department; and

iii. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the industrial establishment or activity, a new authorization satisfying the requirements of this section shall be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(f) All signatures required by this section shall be notarized.

7:26B-1.7 Department review

(a) The Department shall review and approve or disapprove all submissions by an owner or operator based on the following criteria:

1. Whether the remediation workplan and report was prepared, implemented or completed in compliance with N.J.A.C. 7:26C, 7:26E and this chapter;
2. Whether all the information and documents required to be submitted to the Department have been submitted; and
3. Whether the information submitted is sufficient, complete or accurate.

(b) The Department shall inform the owner or operator, in writing, of the results of the Department's review of the submission, including any deficiencies in the submittal or required additional remediation. The owner or operator shall then complete all required additional remediation and address any deficiencies prior to the Department's issuance of a no further action letter or authorization letter.

7:26B-1.8 No further action letter and authorization letter

(a) The Department shall issue a no further action letter upon the Department's approval of the remediation of an industrial establishment or area of concern pursuant to ISRA and this chapter. The scope of the no further action letter shall be consistent with the scope of the remediation that the Department has approved.

(b) The Department's issuance of a no further action letter pursuant to ISRA and this chapter may include an authorization for the owner or operator to close operations or transfer ownership or operations of the industrial establishment as designated in the General Information Notice pursuant to N.J.A.C. 7:26B-3.2.

(c) The Department may authorize an owner or operator to transfer ownership or operations of an industrial establishment, or in the case of a cessation of operations authorize the cessation as it relates to ISRA compliance, through the issuance of an authorization letter without, or prior to the issuance of, a no further action letter in the following circumstances:

1. The Department's issuance of a remediation agreement or remediation agreement amendment pursuant to N.J.A.C. 7:26B-4;
2. The Department's approval of a regulated underground storage tank waiver application pursuant to N.J.A.C. 7:26B-5.3(e);
3. The Department's approval of a remediation in progress waiver application pursuant to N.J.A.C. 7:26B-5.4(d);
4. The Department's approval of a minimal environmental concern review application pursuant to N.J.A.C. 7:26B-5.6(e); and
5. The Department's approval of a remedial action workplan deferral pursuant to N.J.A.C. 7:26B-5.8.

(d) The issuance of an authorization letter pursuant to (c) above may not relieve the owner or operator or any person responsible for conducting the remediation of the industrial establishment, of the obligations to remediate the industrial establishment pursuant to ISRA, this chapter and any other applicable law.

(...)

7:26B-1.10 Liability for ISRA compliance

(a) Except as provided in (e) below and notwithstanding (f), (g) and (h) below, both the owner and operator are strictly liable without regard to fault, for compliance with ISRA and this chapter.

(b) At the Department's discretion, any other person, including, without limitation, a purchaser, transferee, or mortgagee, may sign a remediation agreement; however, such persons shall become responsible for the remediation of the industrial establishment for compliance with ISRA.

(c) An owner or operator shall not transfer ownership or operations of an industrial establishment until:

1. The Department has issued a no further action letter for the industrial establishment pursuant to N.J.A.C. 7:26B-1.8(a);
2. The Department has approved a remedial action workplan for the industrial establishment pursuant to N.J.A.C. 7:26B-1.7(b);
3. The owner or operator has executed a remediation agreement or remediation agreement amendment issued by the Department pursuant to N.J.A.C. 7:26B-4.1(b); or
4. The Department has issued an authorization letter to the owner or operator pursuant to N.J.A.C. 7:26B-1.8(c).

(d) An owner or operator that is closing operations shall be required to amend the General Information Notice submitted in accordance with N.J.A.C. 7:26B- 3.2(a) for any subsequent transfer of ownership or operations of the industrial establishment that occurs prior to (c)1 or 2 above.

(e) Any person, other than the owner or operator of the industrial establishment, that has obtained title to the industrial establishment by deed of foreclosure, by other deed or transfer, or by court order or other process, shall not be deemed an owner or operator of that industrial establishment where the operator had closed operations prior to the transfer of title and where no new industrial establishment has operated under the person's ownership. Nothing contained herein shall be construed as a waiver or release of liability by the Department of an owner or operator subject to the requirements of this chapter for the industrial establishment.

(f) Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, and there has been a failure to comply with the provisions of this chapter, the landlord or the tenant may petition the Department to seek ISRA compliance from that party who is responsible pursuant to the provisions of the lease, to comply with the requirements of this chapter. The petitioning party shall submit the following to the Department at the address provided at N.J.A.C. 7:26C-1.5:

1. A written request to the Department to seek ISRA compliance first from that party that has agreed to be responsible pursuant to the provisions of a lease. The

written request shall be in the form of a Landlord/Tenant Petition as specified in Appendix B incorporated herein by reference. The petitioning party shall send a copy of the petition to the other party(s) to the lease, by certified mail, return receipt requested, at the time of the mailing of the petition to the Department; and 2. A copy of the signed lease between the landlord and tenant.

(g) Based on the information submitted pursuant to (f)1 and 2 above, the Department may determine that the lease clearly defines the responsibilities of either person to comply with the provisions of this chapter. The Department shall seek ISRA compliance from the person deemed responsible pursuant to the lease. The Department's determination shall not be construed as a waiver or release of liability by the Department of any person who may be subject to the requirements of this chapter for the industrial establishment.

(h) The Department may compel compliance by both parties if the Department determines that the lease does not clearly define the responsibilities of the owner or operator of the industrial establishment, or upon the failure by the person responsible pursuant to the lease to comply with the provisions of this chapter.

7:26B-1.11 Civil Penalties

(a) Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of the Act or this chapter shall be liable for a civil penalty of not more than \$25,000 for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense.

(b) The Department may assess a civil administrative penalty, pursuant to the Oversight Rules, N.J.A.C. 7:26C-10, against any person who violates the requirements of this chapter to remediate contamination.

(c) Any officer or management official of an industrial establishment who knowingly directs or authorizes the violation of any provision of ISRA or this chapter shall be personally liable for any penalties provided by ISRA or this chapter.

(d) In its discretion, the Department may compromise and settle any claim for a penalty pursuant to ISRA or this chapter.

SUBCHAPTER 2. APPLICABILITY

7:26B-2.1 Operations and transactions not subject to ISRA

(a) The following transactions shall not be considered closing operations or transferring of operations or ownership:

1. Corporate reorganization not substantially affecting the ownership or control of the industrial establishment in accordance with N.J.A.C. 7:26B-2.2(c);

2. A transaction or series of transactions involving the transfer of stock and/or assets among corporations under common ownership if the transaction or transactions will not result in:

i. The diminution of the net worth of the corporation that directly owns or operates the industrial establishment by more than 10 percent; or

ii. A greater or equal amount of assets are available for the remediation of the industrial establishment before and after the transaction or transactions;

3. A transaction or series of transactions involving the transfer of stock and/or assets resulting in the merger or de facto merger or consolidation of the indirect owner with another person, when the indirect owner's assets would have been unavailable for remediation in accordance with N.J.A.C. 7:26B-2.2(b) if the transaction or transactions had not occurred;
4. A transaction or series of transactions involving the transfer of stock and/or assets resulting in a change in the person holding the controlling interest of an indirect owner of an industrial establishment, when the indirect owner's assets would have been unavailable for remediation in accordance with N.J.A.C. 7:26B-2.2(b) if the transaction or transactions had not occurred;
5. A transfer where the transferor is the sibling, spouse, child, parent, grandparent, spouse of child, child of a sibling, or sibling of a parent, of the transferee;
6. A transfer to confirm or correct any deficiencies in the recorded title of an industrial establishment;
7. A transfer to release a contingent or reversionary interest except for any transfer of a lessor's reversionary interest in leased real property;
8. A transfer of an industrial establishment by devise or intestate succession;
9. The granting or termination of an easement or a license to any portion of an industrial establishment;
10. The sale or transfer of real property or closing operations of an industrial establishment pursuant to a condemnation proceeding initiated pursuant to the "Eminent Domain Act of 1971," N.J.S.A. 20:3-1 et seq.;
11. The execution, delivery and filing or recording of any mortgage, security interest, collateral assignment or other lien on real or personal property or refinancing of any debt not including a sale and lease back, by the owner or operator of an industrial establishment;
12. Any transfer of personal property pursuant to a valid security agreement, collateral assignment or other lien, including, but not limited to, seizure or replevin of such personal property which transfer is for the purpose of implementing the secured party's rights in the personal property which is the collateral;
13. A sale or transfer of assets of an industrial establishment that is in the ordinary course of business;
14. The termination of a lease of an industrial establishment where the lease is renewed by the same tenant without a disruption in operations;
15. The execution of a lease for a period of less than 99 years;
16. The sale of a single or multi-family dwelling used primarily for residential purposes;
17. The transfer to a beneficiary pursuant to the terms of a trust;
18. The change, substitution or replacement of a trustee, administrator, executor, guardian, conservator or fiduciary, where the trust, estate or other similar mechanism is an owner or operator of an industrial establishment;
19. Obtaining construction loans by the owner or operator of an industrial establishment;
20. A change in NAICS number as a result of a change in the NAICS manual without a change in the operations of the industrial establishment;

21. The sale or transfer of stock or assets, or both, in a corporation, if the sale or transfer is part of a reorganization of the corporation into a limited liability company, which shall not result in the diminution of the net worth of the corporation and limited liability company, respectively, that directly owns or operates the industrial establishment, before and after the transaction or transactions and does not result in a change in the person or person holding the controlling interest of the entity; and

22. A transaction or series of transactions involving the transfer of stock or assets of a corporation, or the sale or transfer of interests in a limited liability company, that is a direct owner or operator or indirect owner of an industrial establishment, resulting in a merger or consolidation, where the direct owner or operator or indirect owner of an industrial establishment is the surviving or resulting person.

(b) The following operations are not industrial establishments:

1. Those portions of a solid waste or hazardous waste facility subject to operational closure or post-closure maintenance requirements pursuant to the following:

i. The Solid Waste Management Act, N.S.J.A. 13:1E-1 et seq.;

ii. The Major Hazardous Waste Facilities Siting Act, N.S.J.A. 13:1E-49 et seq.;

iii. The Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq.;

2. Any office, located on a separate tax lot and block from the industrial establishment it serves, in which personnel are engaged primarily in general administrative, personnel, supervisory, accounting, purchasing, engineering and systems planning, advertising, legal, financial, sales or other related management functions provided however this “office” exemption shall not apply where separate lots and blocks are or have been established after December 31, 1983, at the site of an existing industrial establishment; and

3. Undeveloped or vacant land provided that:

i. No industrial establishment has operated on such vacant land since December 31, 1983; and

ii. The contiguous land is not an industrial establishment under the same control or ownership as the vacant land in question;

7:26B-2.2 Applicability determinations

(a) In order to obtain a determination from the Department concerning the applicability of this chapter to a specific place of business or transaction, a person shall:

1. Submit a completed application, certified in accordance with N.J.A.C. 7:26-1.6-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5. In summary, the information required in the application includes: the name of the business conducted on site, the NAICS number of the business, the location of the business, or description of the proposed transaction, a description of operations conducted on site, the name of the person owning the real property, and information regarding the presence of hazardous substances used in the operations on site;
2. Grant written permission for the Department to enter and inspect the site and operations for which the applicability determination is requested;
3. Submit the applicable fee in accordance with N.J.A.C. 7:26B-8.1 required for applicability determinations; and

4. Demonstrate to the Department that ISRA or this chapter is not applicable by providing, in writing, the relevant basis for the applicant's position. As part of such demonstration, all applicable requirements of (b), (c) and (d) below shall be satisfied.

(b) For applicability determinations requested for a transfer of ownership or operations involving an evaluation of whether the indirect owner's assets would have been available for remediation, the Department shall evaluate, without limitation, the applicant's responses to (b)1 through 6 below, to determine whether the indirect owner has exercised control over the industrial establishment or the direct owner or operator thereof. An affirmative finding that the indirect owner has exercised control over the industrial establishment or the direct owner or operator thereof, would result in a determination that the indirect owner's assets would have been available for remediation. If the applicant determines that any of the criteria outlined below is not applicable to this evaluation, then the applicant shall affirmatively state the basis for this determination. The applicant shall:

1. Identify each direct owner and each indirect owner of the industrial establishment;
2. Identify whether the indirect owner has exerted fiscal control over the direct owner or industrial establishment including, but not limited to, imposing any restriction upon the financing, borrowing, budgeting, dividends and cash management of the direct owner or industrial establishment;
3. List all persons that are officers and directors for both the direct owner and the indirect owner of the industrial establishment to establish whether the officers, directors and employees of the indirect owner constitute a majority of the directors of the direct owner or the industrial establishment or such smaller number of directors as is sufficient to effectively direct the management and policies of the direct owner or the industrial establishment;
4. Identify whether the officers, directors and employees of the indirect owner are involved in the day-to-day operations of the direct owner or the industrial establishment and whether the day-to-day operations of the direct owner or the industrial establishment are relevant to the generation, manufacture, handling, storage or disposal of hazardous substances or hazardous wastes;
5. Identify whether the indirect owner has the ability to control the activities, policies or decisions of the direct owner or the industrial establishment and whether these activities, policies or decisions are relevant to the generation, handling, storage or disposal of hazardous substances or hazardous wastes; and
6. The applicant shall provide any additional information which may be relevant to this determination.

(c) For applicability determinations requested for a transfer of ownership or operations involving an evaluation of whether the subject transaction is a corporate reorganization not substantially affecting the ownership of the industrial establishment, the Department shall evaluate, without limitation, the applicant's responses to (c)1 through 6 below, to determine whether the subject transaction does not entail significant changes in the financial ability of a person to comply with this chapter. A finding that the subject transaction does not entail significant changes in the financial ability of a person to comply with this chapter would

result in a determination that the subject transaction is a corporate reorganization not substantially affecting the ownership of the industrial establishment. If the applicant determines that any of the criteria outlined below is not applicable to this evaluation, then the applicant shall affirmatively state the basis for this determination. The applicant shall:

1. Identify each direct owner of the industrial establishment, indirect owner of the industrial establishment and the organizational structure of the person, prior to, and after the proposed transaction;

2. Identify whether the transaction involves the transfer of stock and/or assets, solely among persons under common ownership or control and/or shareholders or owners of such persons. A transaction between related corporations that prepare financial statements or tax returns on a consolidated basis will be presumed to be among corporations under common ownership or control;

3. Identify:

i. Whether the transaction will result in an aggregate diminution of more than 10 percent in the net worth of the industrial establishment or of the person directly owning or operating the industrial establishment. The applicant must include all transactions occurring within the five-year period preceding the date of the proposed transaction in the calculation of “aggregate diminution”; or

ii. Whether there is an equal or greater amount in assets that is available for the remediation of the industrial establishment before and after the transaction(s);

4. Identify whether the transferee has a registered agent in New Jersey who is authorized to accept service on behalf of the transferee. If so, the applicant shall provide the name and address of the registered agent;

5. Identify whether the assets of an indirect owner transferring any direct or indirect interest in the stock or assets of the industrial establishment would have been available for the remediation of the industrial establishment based upon the criteria set forth in (b) above; and

6. Provide any additional information which may be relevant to this determination. (d) For applicability determinations requested for a transfer of ownership or operations

involving an evaluation of whether the subject transaction is a transfer of a controlling interest in the industrial establishment, the Department shall evaluate, without limitation, the applicant’s responses to (d)1, 2 and 3 below, to determine whether the subject transaction results in a change in the person holding the controlling interest in the direct owner or operator or indirect owner of an industrial establishment. A finding that the subject transaction does result in a change in the person holding the controlling interest in the direct owner or operator or indirect owner of an industrial establishment would result in a determination that the transaction is a change in ownership as defined by N.J.A.C. 7:26B-1.4. If the applicant determines that any of the criteria outlined below is not applicable to this evaluation, then the applicant shall affirmatively state the basis for this determination. The applicant shall:

1. Identify whether the transferor is transferring more than 50 percent of the voting or ownership interest in the direct owner or operator or indirect owner of an

industrial establishment. There is a rebuttable presumption that any person who has more

than 50 percent of the voting or ownership interest holds a controlling interest in that direct owner or operator or indirect owner; or

2. Identify whether the transferor is transferring 50 percent or less of a voting or ownership interest in the direct owner or operator or indirect owner of an industrial establishment and:

i. Identify whether the transferor possess(es), directly or indirectly, the power to direct or cause the direction of the management and policies of the entity; and

ii. Identify whether a voting trust, shareholder's agreement, proxy or similar agreement exists which would enable the transferor to elect a majority of the board of directors or a smaller number of directors sufficient to effectively direct or cause the direction of the management and policies of the entity; and

3. Provide any additional information which may be relevant to this determination.

(e) The applicant for an applicability determination that is required under this section to provide information concerning the net worth of any person shall include the following information listed in (e)1 and 2 below in its applicability determination application:

1. A statement of income and expenses or similar statement of each direct owner or operator or indirect owner of the industrial establishment, as applicable; and

2. An audited balance sheet or similar statement of assets and liabilities of each direct owner or operator or indirect owner of the industrial establishment, as applicable, as used by that person for the preceding fiscal year that ended closest in time to the date of the applicability determination application.

(f) The Department shall, within 45 calendar days after receipt of a complete application for an applicability determination, advise the applicant in writing, of its decision. Any person who requests an applicability determination pursuant to this chapter and does not receive a written response from the Department within the deadlines imposed by this subchapter shall not be entitled to assume that the transaction or operations were found not subject to ISRA.

7:26B-2.3 De minimis quantity exemption

(a) An owner or operator who is granted a de minimis quantity exemption from the

Department shall be exempt from the provisions of this chapter, except as provided at N.J.A.C. 7:26B-8.1, based on de minimis quantities of hazardous substances or hazardous waste generated, manufactured, refined, transported, treated, stored, handled or disposed of at an industrial establishment.

(b) The owner or operator can obtain a de minimis quantity exemption if the following

criteria are satisfied:

1. The total quantity of hazardous substances or hazardous wastes generated, manufactured, refined, transported, treated, stored, handled or disposed of at the subject industrial establishment at any one time during the owner's or operator's period of ownership or operation, does not exceed 500 pounds or 55 gallons;

2. If the hazardous substances or hazardous wastes are mixed with nonhazardous substances, then the total quantity of hazardous substances or hazardous wastes in the mixture at any one time during the owner's or operator's period of ownership or operation, does not exceed 500 pounds or 55 gallons; and

3. The total quantity of hydraulic or lubricating oil, in the aggregate, does not exceed 220 gallons at any one time during the owner's or operator's period of ownership or operation.

(c) The total quantity of hazardous substances or hazardous wastes at an industrial establishment may be a combination of both (b)1 and 2 above; however, in the aggregate, the total quantity shall not exceed 500 pounds or 55 gallons.

(d) The total quantity of hazardous substances at an industrial establishment having the NAICS number of 424210, 446110, 446120, or 446191 as qualified by the limitations noted in Appendix C shall not include any mixture containing hazardous substances if the mixture is in final product form for wholesale or retail distribution.

(e) The owner or operator of the subject industrial establishment that satisfies the criteria established in (b) above shall submit:

1. A completed de minimis quantity exemption application (see N.J.A.C. 7:26B-2.2(a)1 for application contents summary), certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5; and

2. Submit the applicable fee in accordance with N.J.A.C. 7:26B-8.

(f) The Department shall review the application in accordance with N.J.A.C. 7:26B-1.7.

The owner or operator may close operations or transfer ownership or operation of an industrial establishment upon receipt of the Department's written approval of the de minimis quantity exemption application.

7:26B-2.4 Revisions to North American Industry Classification System Codes for purposes of definition of "industrial establishment"

In the event that the Executive Office of the President, Office of Management and Budget, publishes new or revised North American Industry Classification System (NAICS) codes modifying the 2002 list of NAICS codes on which the definition of "industrial establishment" at N.J.A.C. 7:26B-1.4 is based, the Department shall modify the NAICS codes in the definition and Appendix C, as necessary, to ensure that, as required by N.J.S.A. 13:1D-139, the generally equivalent universe of facilities subject to ISRA continues to be regulated under this chapter. Specifically, the Department shall provide limitations and/or exceptions to the NAICS codes set forth in Appendix C as required to maintain the currently regulated universe as of August 15, 2004. The Department shall publish in the New Jersey Register an administrative notice of the new or revised NAICS code(s) and the corresponding administrative change(s) to Appendix C.

SUBCHAPTER 3. GENERAL INFORMATION NOTICE**7:26B-3.1 Prenotice filing conference**

The Department shall, upon request of any owner or operator of an industrial establishment with an impending closing of operations or transfer of ownership or operations of an industrial establishment, meet with the owner or operator to discuss compliance with the provisions of ISRA and this chapter.

7:26B-3.2 Notification requirements

(a) An owner or operator planning to close operations or transfer ownership or operations of an industrial establishment shall submit a completed General Information Notice to the

Department pursuant to N.J.A.C. 7:26B-3.3, within five calendar days after to the occurrence of any of the transactional events provided below:

1. The close of operations of an industrial establishment or the owner's or operator's public release of its decision to close operations, whichever occurs first;
2. The execution of an agreement by the owner or operator to transfer ownership or operations of the industrial establishment;
3. The signing of an agreement of sale, or the execution of a lease for a period of 99 years or longer, for the industrial establishment or the real property of the industrial establishment;
4. The effective time of corporate dissolution as specified at N.J.S.A. 14A:12-8, or upon the filing of a certificate of dissolution in the office of the Secretary of State, whichever occurs first;
5. The change in operations sufficient to change the primary NAICS number of an industrial establishment from a primary NAICS number that is subject to ISRA or this chapter to one that is not subject to ISRA or this chapter;
6. The exercise of an option to purchase an industrial establishment or the real property of an industrial establishment;
7. The acceptance of payment for the majority of stock in a corporation involving the direct owner or operator or indirect owner of the industrial establishment pursuant to a tender offer;
8. The sale, transfer or execution of an agreement to sell or transfer, whichever occurs first, stock in a corporation or interest in a limited liability company, resulting in a merger or consolidation involving the direct owner or operator or indirect owner of the industrial establishment;
9. The sale, transfer or execution of an agreement to sell or transfer, whichever occurs first, of more than 50 percent of the assets of an industrial establishment within any five-year period as measured on a constant, annual date-specific basis;
10. The sale, transfer or execution of an agreement to sell or transfer, whichever occurs first, stock in a corporation, of a partnership interest or interest in a limited liability company, resulting in a change in the person holding the controlling interest in the direct owner or operator or indirect owner of the industrial establishment;
11. The sale, transfer or execution of an agreement to sell or transfer, whichever occurs first, a partnership interest in a partnership that owns or operates an indus-

trial establishment that would reduce, by ten percent or more, the assets available for remediation of the industrial establishment;

12. The transfer or execution of a trust to transfer an industrial establishment to a trust, whichever occurs first, except where grantor and beneficiary are identical or are members of the same family. Family includes the spouse, children, parents, siblings, grandparents, siblings of a parent, children of a sibling, or spouse of child of the grantor;

13. Receipt by the owner or operator of notice that the industrial establishment has become non-operational for health or safety reasons or by judicial proceeding or final agency action;

14. The appointment by a court of a receiver or liquidating trustee or execution of a deed of assignment for the benefit of creditors, in connection with dissolution (unless the event at (a)4 above has already occurred), liquidation or insolvency proceedings under statutory or common law as to the direct owner or operator or indirect owner of an industrial establishment; and

15. The following events in any bankruptcy proceeding:

i. The entry of an Order for Relief in bankruptcy pursuant to Chapter 7 of the United States Bankruptcy Code (11 U.S.C. §§ 701 et seq.);

ii. The filing of a plan of liquidation pursuant to Chapter 11 of the United States Bankruptcy Code (11 U.S.C. §§ 1101 et seq.); or

iii. Events covered by (a)1 through 15 above.

(b) The owner or operator shall remediate the industrial establishment in accordance with ISRA and this chapter, when the written notice in (a) above is required to be submitted.

7:26B-3.3 General information notice

(a) An owner or operator planning to close operations or transfer ownership or operations

of an industrial establishment shall submit a completed General Information Notice pursuant to N.J.A.C. 7:26B-3.2(a), certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, acreage and geographic boundaries;

2. The tax block and lot numbers of the site;

3. The name, address, and telephone number of the current property owner;

4. The name, address and telephone number of the current business operator and/or business owner of the industrial establishment;

5. Identification and description of the transaction triggering ISRA;

6. Applicable NAICS number(s) for the industrial establishment;

7. The date of public release of the closure decision and a copy of the appropriate public announcement, if any;

8. The date of execution of the agreement of transfer, sale or option to purchase and the name and address of the other parties to the transfer or sale, as applicable;

9. The proposed date for closing or transferring operations;

10. A schedule for submission to the Department of the preliminary assessment report, site investigation report, remedial investigation workplan, remedial investigation report, remedial action workplan, remedial action report, as applicable, and any other information required by this chapter, as follows:

- i. A statement by the owner or operator of the industrial establishment that the owner or operator will comply with the remediation schedules provided at N.J.A.C. 7:26B-6.1, 6.2 and 6.3; or
- ii. The submission of an alternative schedule for completion of remediation activities at the industrial establishment or at any area of concern, including a schedule for the submission of workplans and reports to the Department;

11. The name, address and telephone number of the authorized agent and the principal whom the authorized agent represents. The owner or operator shall notify the Department in writing, at the address provided at N.J.A.C. 7:26B-1.5, of any change of identity, address, or telephone number of the authorized agent. Where the Department is required by this chapter to notify or otherwise communicate with the person conducting the remediation of the site, written notice to or communication with the authorized agent by the Department shall be sufficient;

12. The applicable fees required pursuant to N.J.A.C. 7:26B-8.1;

13. Written authorization pursuant to N.J.A.C. 7:26B-1.9(a); and

14. Any additional information required by the Department from a specific owner or operator.

(b) Any person submitting a General Information Notice pursuant to (a) above may submit additional information, including any documentation, workplans and reports required pursuant to this chapter or N.J.A.C. 7:26E, along with the General Information Notice.

(c) The Department shall review the General Information Notice and shall respond in writing to the authorized agent as follows:

1. The Department has determined that the General Information Notice, including any specific applications submitted for the purpose of complying with ISRA, is administratively complete and;

i. The Department shall issue either a no further action letter or authorization letter in accordance with this subchapter; or

ii. The owner or operator of the industrial establishment is required to complete additional remediation, as specified prior to the Department's issuance of a no further action letter or authorization letter; or

2. The Department has determined that the General Information Notice is administratively incomplete and the person is required to correct any deficiencies or complete additional remediation activities, as specified.

7:26B-3.4 Revisions to the general information notice or withdrawal of required notice by an owner or operator

(a) An owner or operator may withdraw the notice required pursuant to N.J.A.C. 7:26B-

3.2(a) if the owner or operator determines it is no longer necessary to obtain a no further action letter or authorization letter from the Department. Such withdraw-

al, stating the reason for the withdrawal, shall be made in writing and certified in accordance with N.J.A.C. 7:26B-1.6.

(b) An owner or operator submitting a general information notice shall notify the Department, in writing, of any changes, amendments or other necessary modifications to the information contained in the general information notice, within 30 calendar days of the person's discovery that the information provided to the Department in the person's original General Information Notice is incorrect, inaccurate or incomplete.

SUBCHAPTER 4. REMEDIATION AGREEMENT

7:26B-4.1 Remediation agreement

(a) An owner or operator requesting that the Department enter into a remediation agreement to allow the transfer of ownership or operations of the industrial establishment to occur prior to the Department's approval of a negative declaration or remedial action workplan for the industrial establishment shall submit a remediation agreement application to the Department at the address provided at N.J.A.C. 7:26B-1.5 which includes the following:

1. A completed general information notice pursuant to N.J.A.C. 7:26B-3.3, if not previously submitted;
2. A detailed description of the transaction;
3. Identification of the person(s) responsible for compliance with the remediation agreement, ISRA and this chapter;
4. A detailed cost estimate for remediation of the industrial establishment in accordance with N.J.A.C. 7:26C-7;
5. Identification of the type of remediation funding source(s) to be submitted in an amount equal to the cost estimate in (a)4 above, pursuant to the remediation funding source requirements of N.J.A.C. 7:26C-7;
6. The certifications by the owner, operator, transferee and/or lessee, as applicable, in accordance with N.J.A.C. 7:26B-1.6;
7. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1; and
8. Any additional information requested by the Department from a specific owner or operator.

(b) The Department shall send two original remediation agreements to the authorized agent within 14 calendar days after the Department's receipt of the information required pursuant

to (a) above. The owner or operator of the industrial establishment or other authorized signatory shall sign both originals and return one executed original remediation agreement to the Department in accordance with the time schedule provided in the remediation agreement.

(c) The language for the remediation agreement shall conform to the language in the

standard remediation agreement pursuant to Appendix A, incorporated herein by reference, to the greatest extent practicable, as determined by the Department.

7:26B-4.2 Remediation agreement amendment

(a) An owner or operator of an industrial establishment may request an amendment to the remediation agreement to allow a transfer of ownership or operations, subsequent to the transaction described in the remediation agreement, to occur prior to the Department's approval of a negative declaration or remedial action workplan for the industrial establishment.

(b) An owner or operator requesting an amendment to the remediation agreement pursuant to (a) above shall submit a remediation agreement application in accordance with N.J.A.C. 7:26B-4.1, to the Department at the address provided at N.J.A.C. 7:26B-1.5.

(c) The Department shall send two original remediation agreement amendments to the authorized agent within 14 calendar days after the Department's receipt of the information required pursuant to (b) above. The owner or operator of the industrial establishment or other authorized signatory shall sign both originals and return one executed original remediation agreement amendment to the Department in accordance with the time schedule provided in the remediation agreement amendment.

SUBCHAPTER 5. EXPEDITED COMPLIANCE OPTIONS**7:26B-5.1 Expedited review**

(a) An owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for an expedited review in accordance with (c) below.

(b) The Department's approval of an expedited review application authorizes the owner or operator of an industrial establishment that was previously remediated to close operations or transfer ownership or operations of the industrial establishment without further remediation when there has been no discharge subsequent to the last remediation or a subsequent discharge occurred and the subsequent discharge has been remediated and approved by the Department.

(c) To apply for an expedited review, the owner or operator shall submit a completed expedited review application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;
2. A certification by the owner or operator that:
 - i. A remedial action workplan or equivalent plan, has previously been implemented and the Department has issued a no further action letter or equivalent approval for the industrial establishment;
 - ii. The Department has approved a negative declaration for the industrial establishment; or
 - iii. The Department or the United States Environmental Protection Agency has approved an equivalent remediation of the industrial establishment pursuant to ISRA, the Spill Compensation and Control Act, N.J.S.A. 58:10- 23.11a et seq.,

Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. or any other applicable State or Federal law;

3. A certification by the owner or operator that:

i. The owner or operator has completed a preliminary assessment report and site investigation report, as applicable, at the industrial establishment in accordance with N.J.A.C. 7:26E, to identify areas of concern that are new or have continued in use since the issuance of a no further action letter, negative declaration approval, or equivalent remediation approval; and

(1) Based on the preliminary assessment report and site investigation report referenced in (c)3i above, there has been no discharge of a hazardous substance or hazardous waste at the industrial establishment, subsequent to the issuance of the no further action letter or the equivalent approval; or

(2) Based on the preliminary assessment report and site investigation report referenced in (c)3i above, a discharge of a hazardous substance or hazardous waste at the industrial establishment has occurred subsequent to the issuance of the no further action letter, or the equivalent approval. The owner or operator shall identify the discharge(s), describe the action taken to remediate the discharge(s) and demonstrate that the remediation was approved by the Department;

4. A certification by the owner or operator of the industrial establishment, that for any underground storage tank system which is covered by the provisions of N.J.S.A 58:10A-21 et seq., and N.J.A.C. 7:14B, the owner or operator is in compliance with the provisions of N.J.S.A. 58:10A-21 et seq., and N.J.A.C. 7:14B;

5. A copy of the most recent no further action letter, or other equivalent approval, as applicable, for the entire industrial establishment and/or a copy of the document evidencing the Department's approval as referenced in (a)3i(2) above;

6. A completed negative declaration in accordance with N.J.A.C. 7:26B-6.6;

7. Any additional information required by the Department from a specific owner or operator; and

8. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the expedited review application in accordance with N.J.A.C. 7:26B-1.7, and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The owner or operator is not required to submit the preliminary assessment report and site investigation report unless the Department requests the submission of the reports in writing. The Department shall approve the expedited review application by the issuance of a no further action letter pursuant to N.J.A.C. 7:26B-1.8(a) or disapprove the expedited review application and require the owner or operator to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C.

7:26B-5.2 Area of concern review

(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for an area of concern review in accordance with (c) below, for any area(s) of concern at the industrial estab-

lishment for which a remediation has previously been conducted and approved by the Department.

(b) The Department's approval of an area of concern review application relieves the owner or operator from remediating each area of concern at the industrial establishment that was previously remediated and where there has not been any subsequent discharges at that area of concern.

(c) To apply for an area of concern review, the owner or operator shall submit a completed area of concern review application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;
2. A site map which identifies the area(s) of concern which is/are the subject of this area of concern review;
3. A certification by the owner or operator that the Department or the United States Environmental Protection Agency has approved an equivalent remediation at an area of concern pursuant to ISRA, the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., or any other applicable State or Federal law;
4. A copy of the no further action letter or equivalent approval for that area of concern;
5. A certification by the owner or operator that:
 - i. The owner or operator has completed a preliminary assessment report and site investigation report in accordance with N.J.A.C. 7:26E, as applicable, at each area of concern identified at (c)1 above; and
 - (1) Based on the preliminary assessment report and site investigation report referenced in (c)5i above, there has been no discharge of a hazardous substance or hazardous waste at each subject area of concern subsequent to the issuance of the no further action letter or equivalent approval; or
 - (2) Based on the preliminary assessment report and site investigation report referenced in (c)5i above, a discharge of a hazardous substance or hazardous waste occurred at each subject area of concern subsequent to the issuance of the no further action letter or equivalent approval; and
6. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the area of concern review application in accordance with N.J.A.C. 7:26B-1.7, and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The Department shall either approve the application by the issuance of a no further action letter for each area of concern identified at (c)1 above pursuant to N.J.A.C. 7:26B-1.8, or disapprove the application and require the owner or operator to remediate all areas of concern identified in (c)1 above, in accordance with ISRA and this chapter and N.J.A.C. 7:26E.

7:26B-5.3 Regulated underground storage tank waiver

(a) The owner or operator may, upon submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a regulated underground storage tank waiver in accordance with (c) below.

(b) The Department's approval of a regulated underground storage tank waiver application authorizes the owner or operator to close operations or transfer ownership or operations of an industrial establishment prior to obtaining approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement if the only areas of concern or the only discharges at the industrial establishment are from an underground storage tank or tanks regulated pursuant to N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B.

(c) To apply for a regulated underground storage tank waiver, the owner or operator shall submit a completed regulated underground storage tank waiver application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department, at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;
2. A preliminary assessment report that demonstrates that the only area of concern at the industrial establishment is an underground storage tank or tanks as defined pursuant to N.J.S.A. 58:10A-22 and N.J.A.C. 7:14B or a preliminary assessment and site investigation report which demonstrates that the only discharged hazardous substances or hazardous wastes at the industrial establishment or that has migrated offsite, above the applicable remediation standards, are from a discharge from that underground storage tank or tanks;
3. A certification by the owner or operator of the industrial establishment that the owner or operator is in compliance, pursuant to N.J.A.C. 7:26B-5.3(d), with the provisions of N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B for all underground storage tanks at the industrial establishment that are covered by that act; and
4. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The owner or operator shall be deemed in compliance with the provisions of N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B as it relates to the subject discharge of a hazardous substance or hazardous waste from an underground storage tank, if the owner or operator has been issued an order by, or has entered into an agreement with the Department to remediate that discharge and the owner or operator is in compliance with that order or agreement.

(e) The Department shall review the regulated underground storage tank waiver application in accordance with N.J.A.C. 7:26B-1.7, and shall either approve the application by the issuance of an authorization letter pursuant to N.J.A.C. 7:26B-1.8(c) or disapprove the application and require the owner or operator of the industrial establishment to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

7:26B-5.4 Remediation in progress waiver

(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a remediation in progress waiver in accordance with (c) below.

(b) The Department's approval of a remediation in progress waiver application authorizes the owner or operator to close operations or transfer ownership or operations of the industrial establishment prior to obtaining approval from the Department of a remedial action workplan, a negative declaration and without the approval of a remediation agreement.

(c) To apply for a remediation in progress waiver, the owner or operator shall submit a completed remediation in progress waiver application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;
2. Evidence that establishes that the industrial establishment is already in the process of a remediation pursuant to ISRA, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or other applicable state laws and regulations, or the industrial establishment is currently in the process of an equivalent remediation pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. or any other applicable Federal law;
3. A certification by the owner or operator which includes the following:
 - i. The owner or operator has completed a preliminary assessment report and site investigation report, as applicable, to identify areas of concern in accordance with N.J.A.C. 7:26E and based on the preliminary assessment report and site investigation report:
 - (1) There has been no discharge of any hazardous substance or hazardous waste during the owner's or operator's period of ownership or operation;
 - (2) A discharge of a hazardous substance or hazardous waste occurred during the owner's or operator's period of ownership or operation and the Department approved the remediation;
4. A certification by the owner or operator that any transferee of the industrial establishment has been notified that the industrial establishment is the subject of a remediation;
5. A certification by the owner or operator that:
 - i. A remediation funding source for the cost of the remediation at the industrial establishment has been established as required pursuant to N.J.A.C. 7:26C-7; or
 - ii. A financial assurance was established prior to June 16, 1993 and the amount of the financial assurance is consistent with the current cost estimate developed in accordance with N.J.A.C. 7:26E, for the remediation or the implementation of the remedial action workplan at the industrial establishment; and
6. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the application in accordance with N.J.A.C. 7:26B-1.7 and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The owner or operator is not required to submit the preliminary assessment report and site investigation report unless the Department requests the submission of the reports in writing. The Department shall either approve the remediation in progress waiver application by the issuance of an authorization letter pursuant to N.J.A.C. 7:26B-1.8(c) or disapprove the application and require the owner or operator to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

7:26B-5.5 Limited site review

(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a limited site review in accordance with (c) below.

(b) The Department's approval of a limited site review application authorizes the owner or operator to remediate only those area(s) of concern at an industrial establishment where a discharge, subsequent to a prior remediation, has occurred.

(c) To apply for a limited site review, the owner or operator shall submit a completed limited site review application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;

2. A certification by the owner or operator that:

i. A remedial action has been previously implemented and the Department has issued a no further action letter;

ii. The Department has approved a negative declaration; or

iii. The Department or the United States Environmental Protection Agency has previously approved an equivalent remediation of the industrial establishment pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. or any other applicable law;

3. A certification by the owner or operator of the industrial establishment that the owner or operator has completed a preliminary assessment report and site investigation report, as applicable, at the industrial establishment in accordance with N.J.A.C. 7:26E, and that no other discharge of a hazardous substance or hazardous waste, that was not identified in (c)3i or ii below, has occurred at the industrial establishment; and

i. Based on the preliminary assessment report and site investigation report, a discharge has occurred at the industrial establishment subsequent to the issuance of the no further action letter or equivalent approval, and was not remediated in accordance with the procedures established by the Department; or

ii. Based on the preliminary assessment report and site investigation report, a discharge has occurred at the industrial establishment subsequent to the issuance of

the no further action letter or equivalent approval and that any remediation performed by the owner or operator has not been approved by the Department; and

4. A certification by the owner or operator of the industrial establishment, that for any underground storage tank which is covered by the provisions of N.J.S.A. 58:10A-21 et seq., and N.J.A.C. 7:14B, the owner or operator is in compliance with the provisions of N.S.J.A. 58:10A-21 et seq., and N.J.A.C. 7:14B;

5. A copy of the most recent negative declaration, no further action letter, or other approval, as applicable, issued by the Department or federal agency for the industrial establishment;

6. A completed negative declaration in accordance with N.J.A.C. 7:26B-6.6, if applicable; and

7. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the limited site review application in accordance with N.J.A.C. 7:26B-1.7, and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The owner or operator is not required to submit the preliminary assessment report and site investigation report unless the Department requests the submission of the reports in writing.

(e) The Department shall either approve or disapprove a limited site review application by the following actions:

1. Approve the limit site review application by the issuance of a no further action letter pursuant to N.J.A.C. 7:26B-1.8(a);

2. Approve the limited site review application and require the owner or operator of the industrial establishment to remediate each area of concern identified in (c)3 above, in accordance with ISRA and this chapter; or

3. Disapprove the limited site review application and require the owner or operator of the industrial establishment to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

7:26B-5.6 Minimal environmental concern review

(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a determination that a discharge at an industrial establishment is a minimal environmental concern in accordance with (c) below.

(b) The Department's approval of a minimal environmental concern application authorizes the owner or operator to close operations or transfer ownership or operations at an industrial establishment prior to obtaining approval of a remedial action workplan or without the approval of a remediation agreement by the Department. This section shall not be construed to allow an owner or operator to implement a remedial action involving the remediation of groundwater or surface water prior to the Department's approval of a remedial action workplan for the site.

(c) To apply for a minimal environmental concern determination, the owner or operator shall submit a completed minimal environmental concern application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;
 2. A preliminary assessment report, site investigation report and remedial investigation report for the industrial establishment;
 3. A certification by the owner or operator that based on the remediation completed, there are no more than two areas of concern at the industrial establishment that are contaminated at levels above the applicable remediation standards and the remedial action at those areas of concern can be completed pursuant to N.J.A.C. 7:26E and the applicable remediation standards within six months after the owner's or operator's receipt of the approval of the application by the Department;
 4. Documentation establishing that the discharged hazardous substances or hazardous wastes at the industrial establishment do not pose an immediate threat to human health because of the proximity of an area of concern to a drinking water source or because of the location, complexity, or the nature of the discharge;
 5. A certification by the owner or operator that a remedial action workplan shall be prepared pursuant to standards and criteria established by the Department at N.J.A.C. 7:26E and the remediation shall meet either the restricted use or unrestricted use soil remediation standards and the applicable surface water and groundwater remediation standards;
 6. A certification, by the owner or operator that the remedial action workplan will be prepared, implemented and completed pursuant to standards and criteria established by the Department at N.J.A.C. 7:26E within six months after the owner's or operator's receipt of the approval of the application by the Department;
 7. Evidence that a remediation funding source has been established in accordance with N.J.A.C. 7:26C-7; and
 8. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.
- (d) The Department shall review the minimal environmental concern application in accordance with N.J.A.C. 7:26B-1.7 and may perform a site inspection of the industrial establishment, if necessary.
- (e) Within 30 calendar days after the receipt of a complete application the Department shall either approve the minimal environmental concern application by the issuance of an authorization letter or disapprove the application and require the owner or operator to remediate the industrial establishment pursuant to ISRA and this chapter.
- (f) Within six months after receipt of the Department's approval of the minimal environmental concern application, the owner or operator shall implement the remedial action at the industrial establishment and submit the remedial action report to the Department.
- (g) The owner or operator shall notify the Department, in writing, at the address provided at N.J.A.C. 7:26B-1.5 prior to the expiration of the schedule established in (f) above, that the owner or operator can not implement the remedial action at the industrial establishment and submit the remedial action report to the Department. The owner or operator shall have no more than 120 calendar days in addition to the schedule established in (f) above, to implement the requirements of the remedial action and submit the remedial action report required by (f) above.

(h) The Department shall review the remedial action report above in accordance with N.J.A.C. 7:26B-1.7 and may perform a site inspection of the industrial establishment or at any area offsite.

(i) The Department shall either approve or disapprove the remediation of the industrial establishment and notify the owner or operator of its determination within 45 calendar days after receipt of the remedial action report. The Department shall approve the remediation by the issuance of a no further action letter in accordance with N.J.A.C. 7:26B-1.8(a), or may disapprove the remediation and require the owner or operator remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

(j) The Department may rescind its determination that the industrial establishment is a minimal environmental concern and rescind any letters issued pursuant to (e) above upon the failure of an owner or operator of the industrial establishment to implement the requirements of a remedial action workplan within the additional time provided (g) above, and require that a new remedial action workplan be submitted and implemented by the owner or operator in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

7:26B-5.7 Limited conveyance

(a) The owner of an industrial establishment may, upon submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a certificate of limited conveyance in accordance with (c) below.

(b) The Department's approval of a certificate of limited conveyance authorizes the owner of an industrial establishment to transfer a portion of an industrial establishment upon the Department's issuance of a no further action letter or approval of a remedial action workplan or remediation agreement for the subject portion of the industrial establishment without the owner or operator conducting a remediation of the entire industrial establishment. The certificate of limited conveyance shall be valid for three years from the date of issuance.

(c) To apply for a certificate of limited conveyance, the owner or operator shall submit a completed limited conveyance application, certified in accordance with N.J.A.C. 7:26B-1.6; to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;
2. A site map of the industrial establishment that identifies the real property on which the industrial establishment is situated, and the portion of the real property subject to the proposed transfer and any areas conveyed pursuant to a prior certificate of limited conveyance;
3. A description of the real property to be transferred;
4. An appraisal of the entire industrial establishment, an appraisal of the real property to be transferred and an appraisal of the remaining real property if the certificate of limited conveyance were issued. The appraisals required by this section shall not be made more than one year prior to the submission of the application for a certificate of limited conveyance and shall be conducted by a designated

Member, Appraisal Institute (American Institute of Real Estate Appraisers), Senior Real Estate Analyst (Society of Real Estate Appraisers), or Senior Member (American Society of Appraisers);

5. The sale price or fair market value of the real property to be transferred;

6. Any additional information the Department requests from a specific owner or operator;

7. Copies of all prior certificate(s) of limited conveyance if any, issued for the subject industrial establishment;

8. A copy of the sales agreement specifying the agreed upon price for the real property presently proposed for conveyance or, in the case of an acquisition by a condemning authority where no agreement has been reached, an affidavit from the owner specifying the compensation, including any damages, sought by the owner and the current appraised value; and

9. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the information submitted pursuant to (c) above in accordance with N.J.A.C. 7:26B-1.7 and shall issue a certificate of limited conveyance for the real property on which an industrial establishment is situated after the Department deems the following criteria to be satisfied:

1. The sale price or fair market value of the real property to be conveyed, together with any additional diminution in value of the remaining property as a result of this transfer, is not more than one-third of the total appraised value of the real property of the industrial establishment prior to the transfer;

2. The remaining real property is an industrial establishment subject to the provisions of this chapter; and

3. Transfers or conveyances made pursuant to this section shall not exceed one-third of the value of the industrial establishment during the period of ownership of the applicant.

(e) Upon the Department's issuance of the certificate of limited conveyance, the owner or operator shall remediate the portion of the real property certified for transfer or conveyance prior to the transfer or conveyance. The remediation of the real property subject to the certificate of limited conveyance shall include any discharges from the remaining portion of the industrial establishment that have migrated or are migrating to the real property certified for conveyance.

(f) Upon the Department's disapproval of the limited conveyance application, the owner or operator shall remediate the industrial establishment in accordance with ISRA and this chapter.

(g) The owner or operator shall remediate the remaining portion of the industrial establishment, or otherwise comply with this chapter, upon the subsequent closing of operations or transferring of ownership or operations of the industrial establishment.

(h) An owner may, concurrent with or subsequent to a transfer or conveyance executed pursuant to this section, transfer additional portions of the industrial establishment in excess of the permissible conveyance limitation provided at (d)3 above, if the proposed transfer does not constitute a closing of operations or transfer of ownership or operations of an industrial establishment as defined at N.J.A.C. 7:26B-1.4.

(i) An owner who transfers additional portions pursuant to (h) above shall use the funds paid for those additional portions exclusively for remediating the additional portion(s) transferred pursuant to (h) above. The owner shall deposit any portion of the amount paid that remains unexpended in a remediation trust fund that shall be established pursuant to N.J.A.C. 7:26C-7 and N.S.J.A. 13:1K- 11.8(g).

(j) Nothing in this section shall be construed to allow an owner to transfer any of the real property of an industrial establishment without complying with ISRA and this chapter for those portions subject to the transfer.

7:26B-5.8 Remedial action workplan deferral

(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a remedial action workplan deferral in accordance with (c) below.

(b) The Department's approval of a remedial action workplan deferral application authorizes the owner or operator to transfer ownership or operations of the industrial establishment without the preparation, approval and implementation of a remedial action workplan for the industrial establishment.

(c) To apply for a remedial action workplan deferral, the owner or operator shall submit a completed remedial action workplan deferral application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following information:

1. A certification signed by the purchaser, transferee, mortgagee or other party to the transfer that the industrial establishment would be subject to substantially the same use by the purchaser, transferee, mortgagee or other party to the transfer as established by the following criteria:

i. Substantially the same use means that the industrial establishment shall retain the same three digit industry group number, as designated in the NAICS Manual; or

ii. An owner or operator may submit a written request to the Department at the address provided at N.J.A.C. 7:26B-1.5, for a determination that the industrial establishment be deemed subject to substantially the same use based upon its retention of the same three digit subsector number, as designated in the NAICS Manual. The owner or operator shall include the following information: the industrial establishment's current six digit NAICS number, a description of the current operations of the industrial establishment, the proposed six digit NAICS number for the industrial establishment after the proposed transfer and a description of the proposed operations at the industrial establishment after the proposed transfer;

2. The completed preliminary assessment report, site investigation report, and remedial investigation report for the industrial establishment;

3. A cost estimate for the remedial action necessary at the industrial establishment based upon the information collected in the preliminary assessment report, site investigation report, and remedial investigation report and developed in accordance with N.J.A.C. 7:26E;

4. A certification signed by the purchaser, transferee, mortgagee or other party to the transfer that the purchaser, transferee, mortgagee or other party to the transfer has reviewed preliminary assessment report, site investigation report, and remedi-

al investigation report and the cost estimate for the remedial action necessary at the industrial establishment and that the purchaser, transferee, mortgagee or other party to the transfer has the financial ability to pay for the implementation of the necessary remedial action; and

5. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the remedial action workplan deferral application in accordance with N.J.A.C. 7:26B-1.7. The Department shall either approve the remedial action workplan deferral by the issuance of an authorization letter pursuant to N.J.A.C. 7:26B-1.8(c) or disapprove the application and require the owner or operator to submit a remedial action workplan for the industrial establishment.

(e) Upon approval of the deferral application by the Department, the preparation, approval, and implementation of a remedial action workplan for the industrial establishment may be deferred for that transfer provided in the notice required by (a) above, until the use changes or until the purchaser, transferee, mortgagee or other party to the transfer closes operations.

(f) The Department's approval of the remedial action workplan deferral application shall not be construed as an approval by the Department of any workplans and or reports submitted in accordance with (c)3 above.

SUBCHAPTER 6. REMEDIATION PROCEDURES

7:26B-6.1 Preliminary assessment, site investigation and remedial investigation

(a) Unless otherwise established pursuant to N.J.A.C. 7:26B-6.5, the owner or operator shall complete the remediation required by ISRA and this chapter and submit the reports certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, within the time schedules listed in (b) through (e) below, N.J.A.C. 7:26B-6.2 and 6.3.

(b) The owner or operator shall complete the preliminary assessment report in accordance with N.J.A.C. 7:26E-3.2 and submit a negative declaration, if applicable, within 35 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

(c) The owner or operator shall complete a site investigation report, if applicable, in accordance with N.J.A.C. 7:26E-3.13 and submit a negative declaration, if applicable, within 120 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

(d) The owner or operator shall complete a remedial investigation workplan, if applicable, in accordance with N.J.A.C. 7:26E-4.2 within 180 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

(e) The owner or operator shall complete the remedial investigation report in accordance with N.J.A.C. 7:26E-4.8 and submit a negative declaration, if applicable, within 300 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) or within 120 calendar days after the receipt of the Department's written approval of the remedial investigation workplan, whichever occurs last.

7:26B-6.2 Soil remedial action and remedial action workplan

(a) The owner or operator required to conduct a soil remedial action at the industrial establishment or at any area of concern shall not implement a remedial action prior to the Department's approval of a remedial action workplan for the site unless the soil remedial action satisfies the criteria established in (b) below.

(b) The owner or operator may implement a soil remedial action at an industrial establishment without prior Department approval of a remedial action workplan if the following criteria are satisfied:

1. The soil remedial action is reasonably expected to be completed, in compliance with N.J.A.C. 7:26E, within the time schedules established by the Department. Such remedial action shall not exceed the five years from the commencement of the implementation of the remedial action; and

2. The owner or operator is implementing a soil remedial action which achieves the established minimum unrestricted or restricted use soil remediation standards without the use of engineering controls, as applicable.

(c) The owner or operator planning to implement a soil remedial action in accordance with (b) above shall notify the Department, in writing, at the address provided at N.J.A.C. 7:26B-1.5, within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) that includes the following information:

1. A certification that based on the remediation completed, there are no areas of concern at the industrial establishment or at any location where hazardous substances or hazardous wastes have migrated or are migrating from the industrial establishment involving the remediation of groundwater or surface water; and

2. A detailed schedule of implementation for the remedial action which includes a summary of the remediation performed to date, the status of the remediation of each area of concern, the proposed remedial actions to be conducted at each area of concern and the time schedules for the completion of proposed activities. This information may include both narrative and/or graphic descriptions and shall only be used for the purposes of establishing a time schedule pursuant to this subsection.

(d) The notification required by (c) above shall be certified in accordance with N.J.A.C. 7:26B-1.6.

(e) The notification required by (c) above shall satisfy the requirement of N.J.A.C. 7:26E-1.4 to notify the Department. The owner or operator shall notify any other person as required pursuant to N.J.A.C. 7:26E-1.4.

(f) The Department may require an owner or operator planning to implement a soil remedial action in accordance with (b) above to submit progress reports on a quarterly, semi-annual or annual basis. The owner or operator is not required to submit the progress reports unless the Department requests the submission of the reports in writing.

(g) The owner or operator required to conduct a soil remedial action that does not satisfy the criteria established in (b) above shall submit a remedial action workplan to the Department for review and approval within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) or within 120 calendar days after receipt of the Department's written approval of

the remedial investigation report submitted pursuant to N.J.A.C. 7:26B-6.1(d), whichever occurs last.

7:26B-6.3 Groundwater or surface water remedial action workplan

The owner or operator shall submit the remedial action workplan for any remedial action involving the remediation of groundwater or surface water for review and approval by the Department within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) or within 120 calendar days after receipt of the Department's written approval of the remedial investigation report submitted pursuant to N.J.A.C. 7:26B-6.1(d), whichever occurs last.

7:26B-6.4 Remediation funding source requirement

The owner or operator shall submit a remediation funding source in accordance with N.J.A.C. 7:26C-7 upon the Department's approval of a remedial action workplan for the industrial establishment.

7:26B-6.5 Compliance with remediation schedules

(a) The owner or operator required to remediate an industrial establishment or any area of concern shall comply with:

1. The schedules established at N.J.A.C. 7:26B-6.1, 6.2 and 6.3;
2. The alternative schedule of implementation submitted with the General Information Notice as provided at N.J.A.C. 7:26B-3.3(a)10; or
3. The schedule established in a remediation agreement in accordance with N.J.A.C. 7:26B-4.

(b) The owner or operator required to remediate an industrial establishment or any area of concern shall provide written notice to the Department at the address provided at N.J.A.C. 7:26B-1.5, at least 15 calendar days prior to the date of expected noncompliance upon the owner's or operator's finding that the remediation of the industrial establishment will not conform to the schedules established at (a) above. The notification shall include the following information:

1. A summary of remediation completed to date and the status of each area of concern;
2. The proposed remediation pursuant to N.J.A.C. 7:26E, to be conducted at each area of concern and the revised schedule of for the completion of proposed remediation; and
3. Any additional information which is relevant to the Department's evaluation of the proposed remediation schedule.

7:26B-6.6 Completion of remediation

Upon completion of the remediation, the owner or operator shall submit to the Department the workplans for and reports of the preliminary assessment, site investigation, remedial investigation and remedial action, as applicable, and any additional information

required by the Department that has not been previously submitted to the Department for review and approval.

7:26B-6.7 Submission and review of a negative declaration

(a) Unless otherwise provided by this chapter, the owner or operator, subsequent to closing operations, or the public release of its decision to close operations, or prior to transferring ownership or operations of the industrial establishment, shall submit a negative declaration, executed and certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5. The Department shall approve a negative declaration by the issuing a no further action letter.

(b) The owner or operator shall submit a negative declaration pursuant to (c) below upon the occurrence of any of the following events:

1. The submission of a preliminary assessment report, site investigation report, remedial investigation report or remedial action report, as applicable, which demonstrates the following:

i. There are no discharged hazardous substances or hazardous wastes at the industrial establishment; or

ii. Any discharged hazardous substances or hazardous wastes at the industrial establishment above the applicable remediation standards have been remediated in accordance with N.J.A.C. 7:26E, and any applicable remediation standards and the remediation has been approved by the Department; and any discharged hazardous substances or hazardous wastes that have migrated or are migrating from the industrial establishment above the applicable remediation standards have been remediated in compliance with N.J.A.C. 7:26E, and any applicable remediation standards and the remediation has been approved by the Department;

2. The receipt by the owner or operator of notification from the Department that based on the Department's review of the information submitted, the owner or operator shall submit a negative declaration; or

3. The owner or operator is required pursuant to N.J.A.C. 7:26B-5 to submit a negative declaration.

(c) The owner or operator required to submit a negative declaration pursuant to this chapter shall submit the negative declaration on forms available from the Department at the address provided at N.J.A.C. 7:26B-1.5.

The owner or operator shall include the following information in the negative declaration:

1. Identification of the subject industrial establishment including:

i. The name and location of the industrial establishment, including street address, city or town, municipality, county, zip code and telephone number;

ii. The tax block and lot numbers of the industrial establishment;

iii. The applicable NAICS number of the subject industrial establishment;

iv. The current real property owner, including name, address, and telephone number; and

v. The current business operator and/or business owner, if different from (c)1i above, of the industrial establishment including name, address and telephone number;

2. The preliminary assessment report, site investigation report, remedial investigation workplan, remedial investigation report, remedial action workplan, as applicable, and any other information required by the Department if not previously submitted, to review the proposed negative declaration; and

3. A certification by the owner or operator that there has been no discharge of hazardous substances or hazardous wastes on the industrial establishment, or that any such discharge on the industrial establishment or discharge that has migrated or is migrating from the industrial establishment has been remediated in accordance with procedures approved by the Department and in accordance with any applicable remediation standards

(d) The owner or operator shall certify the negative declaration in accordance with the provisions at N.J.A.C. 7:26B-1.6.

(e) The owner or operator shall pay all applicable fees required pursuant to N.J.A.C. 7:26B-8.

(f) The Department shall review a negative declaration within 45 calendar days after the completion of the Department's review of all the information submitted pursuant to this chapter and shall:

1. Approve the remediation for that industrial establishment by the issuance of a no further action letter pursuant to N.J.A.C. 7:26B-1.8(a); or

2. Inform the owner or operator that additional remediation at the industrial establishment or at an offsite location is required.

(...)

B. CONNECTICUT TRANSFER ACT (TA)

(Connecticut General Statutes Annotated, Title 22a, Chapter 445 (Hazardous Waste), Environmental Protection, Volume 11D, West Publishing CO./Thomson/West, 1995/2006)

Sec. 22a-134. Transfer of hazardous waste establishments: Definitions

For the purposes of this section and sections 22a-134a to 22a-134d, inclusive:

(1) "Transfer of establishment" means any transaction or proceeding through which an establishment undergoes a change in ownership, but does not mean (A) conveyance or extinguishment of an easement, (B) conveyance of an establishment through a foreclosure, as defined in subsection (b) of section 22a-452f or foreclosure of a municipal tax lien, (C) conveyance of a deed in lieu of foreclosure to a lender, as defined in and that qualifies for the secured lender exemption pursuant to subsection (b) of section 22a-452f, (D) conveyance of a security interest, as defined in subdivision (7) of subsection (b) of section 22a-452f, (E) termination of a lease and conveyance, assignment or execution of a lease for a period less than ninety-nine years including conveyance, assignment or execution of a lease with options or similar terms that will extend the period of the leasehold to ninety-nine years, or from the commencement of the leasehold, ninety-nine years, including conveyance, assignment or execution of a lease with options or similar terms that will extend the period of the leasehold to ninety-nine years, or from the

commencement of the leasehold, (F) any change in ownership approved by the Probate Court, (G) devolution of title to a surviving joint tenant, or to a trustee, executor or administrator under the terms of a testamentary trust or will, or by intestate succession, (H) corporate reorganization not substantially affecting the ownership of the establishment, (I) the issuance of stock or other securities of an entity which owns or operates an establishment, (J) the transfer of stock, securities or other ownership interests representing less than forty per cent of the ownership of the entity that owns or operates the establishment, (K) any conveyance of an interest in an establishment where the transferor is the sibling, spouse, child, parent, grandparent, child of a sibling or sibling of a parent of the transferee, (L) conveyance of an interest in an establishment to a trustee of an inter vivos trust created by the transferor solely for the benefit of one or more sibling, spouse, child, parent, grandchild, child of a sibling or sibling of a parent of the transferor, (M) any conveyance of a portion of a parcel upon which no establishment is or has been located and upon which there has not occurred a discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste, provided either the area of such portion is not greater than fifty per cent of the area of such parcel or written notice of such proposed conveyance and an environmental condition assessment form for such parcel is provided to the commissioner sixty days prior to such conveyance, (N) conveyance of a service station, as defined in subdivision (5) of this section, (O) any conveyance of an establishment which, prior to July 1, 1997, had been developed solely for residential use and such use has not changed, (P) any conveyance of an establishment to any entity created or operating under chapter 130 or 132, or to an urban rehabilitation agency, as defined in section 8-292, or to a municipality under section 32-224, or to the Connecticut Development Authority or any subsidiary of the authority, (Q) any conveyance of a parcel in connection with the acquisition of properties to effectuate the development of the overall project, as defined in section 32-651, (R) the conversion of a general or limited partnership to a limited liability company under section 34-199, (S) the transfer of general partnership property held in the names of all of its general partners to a general partnership which includes as general partners immediately after the transfer all of the same persons as were general partners immediately prior to the transfer, (T) the transfer of general partnership property held in the names of all of its general partners to a limited liability company which includes as members immediately after the transfer all of the same persons as were general partners immediately prior to the transfer, or (U) acquisition of an establishment by any governmental or quasi-governmental condemning authority;

(2) "Commissioner" means the Commissioner of Environmental Protection or the designated agent of the commissioner;

(3) "Establishment" means any real property at which or any business operation from which (A) on or after November 19, 1980, there was generated, except as the result of remediation of polluted soil, groundwater or sediment, more than one hundred kilograms of hazardous waste in any one month, (B) hazardous waste generated at a different location was recycled, reclaimed, reused, stored, handled, treated, transported or disposed of, (C) the process of dry cleaning was conducted

on or after May 1, 1967, (D) furniture stripping was conducted on or after May 1, 1967, or (E) a vehicle body repair facility was located on or after May 1, 1967;

(4) "Hazardous waste" means any waste which is (A) hazardous waste identified in accordance with Section 3001 of the federal Resource Conservation and Recovery Act of 1976, 42 USC 6901 et seq., (B) hazardous waste identified by regulations adopted by the Commissioner of Environmental Protection, or (C) polychlorinated biphenyls in concentrations greater than fifty parts per million except that sewage, sewage sludge and lead paint abatement wastes shall not be considered to be hazardous waste for the purposes of this section and sections 22a-134a to 22a-134d, inclusive;

(5) "Service station" means a retail operation involving the resale of motor vehicle fuel including, but not limited to, gasoline, diesel fuel and kerosene and which operation does not otherwise meet the definition of an establishment;

(6) "Certifying party" means, in the case of a Form III or Form IV, a person associated with the transfer of an establishment who signs a Form III or Form IV and who agrees to investigate the parcel in accordance with prevailing standards and guidelines and to remediate pollution caused by any release at the establishment in accordance with the remediation standards and, in the case of a Form I or Form II, a transferor of an establishment who signs the certification on a Form I or II;

(7) "Party associated with the transfer of an establishment" means (A) the present or past owner or operator of the establishment, (B) the owner of the real property on which the establishment is located, (C) the transferor, transferee, lender, guarantor or indemnitor, (D) the business entity which operates or operated the establishment, or (E) the state;

(8) "Remediation standards" means regulations adopted by the commissioner pursuant to section 22a-133k;

(9) "Parcel" means piece, parcel or tract of land which constitutes an establishment, as defined in subdivision (3) of this section, or on which is or was located any business operation which constitutes an establishment;

(10) "Form I" means a written certification by the transferor of an establishment on a form prescribed and provided by the commissioner that: (A) No discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste or a hazardous substance has occurred at the establishment which certification is based on an investigation of the parcel in accordance with prevailing standards and guidelines, or (B) no discharge spillage, uncontrolled loss, seepage or filtration of hazardous waste has occurred at the establishment based upon an investigation of the parcel in accordance with the prevailing standards and guidelines and the commissioner has determined, in writing, or a licensed environmental professional has verified that any discharge, spillage, uncontrolled loss, seepage or filtration of a hazardous substance has been remediated in accordance with the remediation standards;

(11) "Form II" means a written certification by the transferor of an establishment on a form prescribed and provided by the commissioner that the parcel has been investigated in accordance with prevailing standards and guidelines and that (A) any pollution caused by a discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste or a hazardous substance which has occurred from the establishment has been remediated in accordance with the remediation standards

and that the remediation has been approved in writing by the commissioner or has been verified pursuant to section 22a-133x or section 22a-134a in writing attached to such form by a licensed environmental professional to have been performed in accordance with the remediation standards, (B) the commissioner has determined in writing or a licensed environmental professional has verified pursuant to section 22a-133x or section 22a-134a in writing attached to the form that no remediation is necessary to achieve compliance with the remediation standards, or (C) a Form IV verification was previously submitted to the commissioner and, since the date of the submission of the Form IV, no discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste or a hazardous substance has occurred at the establishment, which certification is based on an investigation of the parcel in accordance with prevailing standards and guidelines;

(12) “Form III” means a written certification signed by a certifying party on a form prescribed and provided by the commissioner, which certification states that (A) a discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste or a hazardous substance has occurred at the establishment or the environmental conditions at the establishment are unknown, and (B) that the person signing the certification agrees to investigate the parcel in accordance with prevailing standards and guidelines and to remediate pollution caused by any release of a hazardous waste or hazardous substance from the establishment in accordance with the remediation standards;

(13) “Form IV” means a written certification signed by one or more certifying parties on a form prescribed and provided by the commissioner and which is accompanied by a written determination by the commissioner or by a verification by a licensed environmental professional pursuant to section 22a-134a or 22a-133x, which certification states and is accompanied by documentation demonstrating that the parcel has been investigated in accordance with prevailing standards and guidelines and that (A) there has been a discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste or a hazardous substance on the establishment, and (B) all actions to remediate any pollution caused by any release at the establishment have been taken in accordance with the remediation standards except postremediation monitoring, natural attenuation monitoring or the recording of an environmental land use restriction, and (C) the person or persons signing the certification agree, in accordance with the representations made in the form, to conduct postremediation monitoring or natural attenuation monitoring in accordance with the remediation standards and if further investigation and remediation are necessary to take further action to investigate the establishment in accordance with prevailing standards and guidelines and to remediate the establishment in accordance with the remediation standards;

(14) “Person” means person, as defined in section 22a-2;

(15) “Remediate” means to contain, remove or abate pollution, potential sources of pollution and substances in soil or sediment which pose an unacceptable risk to human health or the environment and includes, but is not limited to, the reduction of pollution by natural attenuation;

(16) “Licensed environmental professional” means an environmental professional licensed pursuant to section 22a-133v;

- (17) “Environmental condition assessment form” means a form prescribed and provided by the commissioner, prepared under the supervision of a licensed environmental professional, and executed by (A) the certifying party under sections 22a-134 to 22a-134e, inclusive, or (B) the owner of the property under section 22a-133x which form describes the environmental conditions at the parcel;
- (18) “Pollution” means pollution, as defined in section 22a-423;
- (19) “Verification” means the rendering of a written opinion by a licensed environmental professional that an investigation of the parcel has been performed in accordance with prevailing standards and guidelines and that the establishment has been remediated in accordance with the remediation standards;
- (20) “Vehicle” means any motorized device for conveying persons or objects except for an aircraft, boat, railroad car or engine, or farm tractor;
- (21) “Business operation” means any business that has, or any series of substantially similar businesses that have, operated continuously or with only brief interruption on the same parcel, either with a single owner or successive owners;
- (22) “Corporate reorganization not substantially affecting the ownership of an establishment” means implementation of a business plan to restructure a corporation through a merger, spin-off or other plan or reorganization under which the direct owner of the establishment does not change;
- (23) “Form IV verification” means the rendering of a written opinion by a licensed environmental professional, after a Form IV has been filed, that postremediation monitoring, natural attenuation or the recording of an environmental land use restriction has been completed in accordance with the Form IV;
- (24) “Hazardous substance” means hazardous substance, as defined in Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC 9601, or a petroleum product or by-product for which there are remediation standards adopted pursuant to section 22a-133k or for which such remediation standards have a process for calculating the numeric criteria of such substance;
- (25) “Sediment” means unconsolidated material occurring in a stream, pond, wetland estuary or other water body.

Sec. 22a-134a. Transfer of hazardous waste establishments: Filing procedures. Certification of cleanup

(a) No person shall transfer an establishment except in accordance with the provisions of sections 22a-134 to 22a-134e, inclusive. Notwithstanding any provision of sections 22a-134 to 22a-134e, inclusive, a person appointed by the Superior Court or any other court to sell, convey or partition real property or a person appointed as a trustee in bankruptcy shall not be deemed a party associated with the transfer of an establishment and shall not be required to comply with the provisions of sections 22a-134 to 22a-134e, inclusive.

(b) The commissioner may adopt regulations, in accordance with the provisions of chapter 54, to implement the provisions of this section.

(c) Prior to transferring an establishment, the transferor shall submit to the transferee a complete Form I or a Form II and, no later than ten days after the transfer, shall submit a copy of such Form I or Form II to the commissioner. The commis-

sioner shall notify the transferor no later than ninety days after the submission of such Form I or Form II if the commissioner deems the Form I or Form II incomplete. If the transferor is unable to submit a Form I or a Form II to the transferee, the transferor shall, prior to the transfer, submit a complete Form III or Form IV prepared and signed by a party associated with the transfer to the transferee and, no later than ten days after the transfer, shall submit a copy of such Form III or Form IV to the commissioner. If no other party associated with the transfer of an establishment prepares and signs the proper form as a certifying party, the transferor shall have the obligation for such preparation and signing.

(d) The certifying party to a Form I, Form II, Form III or Form IV shall (1) upon receipt of a written request from the commissioner, provide to the commissioner copies of all technical plans, reports and other supporting documentation relating to the investigation of the parcel or remediation of the establishment as specified in the commissioner's written request, and (2) simultaneously submit with the submission of a Form I, Form III or Form IV to the commissioner a complete environmental condition assessment form and shall certify to the commissioner, in writing, that the information contained in such form is correct and accurate to the best of the certifying party's knowledge and belief.

(e) No later than thirty days after receipt of a Form III or Form IV, the commissioner shall notify the certifying party whether the form is complete or incomplete. Within forty-five days of receipt of a complete Form III or IV, the commissioner shall notify the certifying party in writing whether review and approval of the remediation by the commissioner will be required, or whether a licensed environmental professional may verify that the investigation has been performed in accordance with prevailing standards and guidelines and that the remediation has been performed in accordance with the remediation standards. Any person who submitted a Form III to the commissioner prior to October 1, 1995, may submit an environmental condition assessment form to the commissioner. The commissioner shall, within forty-five days of receipt of such form, notify the certifying party whether approval of the remediation by the commissioner will be required or whether a licensed environmental professional may verify that the remediation has been performed in accordance with the remediation standards.

(f) In determining whether review and approval of the remediation by the commissioner will be required, or whether a licensed environmental professional may verify that the remediation has been performed in accordance with the remediation standards, the commissioner shall consider: (1) The potential risk to human health and the environment posed by any discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste or a hazardous substance at the establishment; (2) the degree of environmental investigation at the parcel; (3) the proximity of the establishment to significant natural resources; (4) the character of the land uses surrounding the establishment; (5) the complexity of the environmental condition of the establishment; and (6) any other factor the commissioner deems relevant.

(g) If the commissioner notifies the certifying party to a Form III or Form IV that a licensed environmental professional may verify the remediation, such certifying party shall, on or before thirty days of the receipt of such notice or such later date

as may be approved in writing by the commissioner, submit a schedule for investigating and remediating the establishment. Such schedule shall, unless a later date is specified in writing by the commissioner, provide that the investigation shall be completed within two years of the date of receipt of such notice and that remediation shall be initiated within three years of the date of receipt of such notice. The schedule shall also include a schedule for providing public notice of the remediation prior to the initiation of such remediation in accordance with subsection (i) of this section. The commissioner shall notify such certifying party if the commissioner determines that the commissioner's review and written approval is necessary. Such certifying party shall investigate the parcel and remediate the establishment in accordance with the proposed schedule. Such certifying party shall submit to the commissioner an independent verification by a licensed environmental professional that the establishment has been remediated in accordance with the remediation standards, and as applicable, a Form IV verification.

(h) If the commissioner notifies the certifying party to a Form III or Form IV that the commissioner's review and written approval of the investigation of the parcel and remediation of the establishment is required, such certifying party shall, on or before thirty days of the receipt of such notice or such later date as may be approved in writing by the commissioner, submit for the commissioner's review and written approval a proposed schedule for: (1) Investigating the parcel and remediating the establishment; (2) submitting to the commissioner scopes of work, technical plans, technical reports and progress reports related to such investigation and remediation; and (3) providing public notice of the remediation prior to the initiation of such remediation in accordance with subsection (i) of this section. Upon the commissioner's approval of such schedule, such certifying party shall, in accordance with the approved schedule, submit scopes of work, technical plans, technical reports and progress reports to the commissioner for the commissioner's review and written approval. Such certifying party shall perform all actions identified in the approved scopes of work, technical plans, technical reports and progress reports in accordance with the approved schedule. The commissioner may approve in writing any modification proposed in writing by such certifying party to such schedule or investigation and remediation. The commissioner may, at any time, notify such certifying party in writing that the commissioner's review and written approval is not required and that a licensed environmental professional may verify that the remediation has been performed in accordance with the remediation standards.

(i) The certifying party to a Form III or Form IV shall (1) publish notice of the remediation, in accordance with the schedule submitted pursuant to this section, in a newspaper having a substantial circulation in the area affected by the establishment, (2) notify the director of health of the municipality where the establishment is located of the remediation, and (3) either (A) erect and maintain for at least thirty days in a legible condition a sign not less than six feet by four feet on the establishment, which sign shall be clearly visible from the public highway, and shall include the words "ENVIRONMENTAL CLEAN-UP IN PROGRESS AT THIS SITE. FOR FURTHER INFORMATION CONTACT:" and include a telephone number for an office from which any interested person may obtain addi-

tional information about the remediation, or (B) mail notice of the remediation to each owner of record of property which abuts the parcel, at the address for such property on the last-completed grand list of the municipality where the establishment is located.

(j) The commissioner may issue an order to any person who fails to comply with any provision of sections 22a-134 to 22a-134e, inclusive, including, but not limited to, any person who fails to file a form, or files an incomplete or incorrect form or to any person who fails to carry out any activities to which that person agreed in a Form III or Form IV. If no form is filed or if an incomplete or incorrect form is filed for a transfer of an establishment, the commissioner may issue an order to the transferor, the transferee, or both, requiring a filing. The commissioner may also request that the Attorney General bring an action in the superior court for the judicial district of Hartford to enjoin any person who fails to comply with any provision of sections 22a-134 to 22a-134e, inclusive, including, but not limited to, any person who fails to file a form, improperly files a Form I, Form II, Form III or Form IV or the certifying party to a Form III or Form IV to take any actions necessary to prevent or abate any pollution at, or emanating from, the subject establishment. Any person to whom such an order is issued may appeal such order in accordance with the procedures set forth in sections 22a-436 and 22a-437.

(k) Notwithstanding the exemptions provided in subsection (a) of section 22a-134, nothing contained in sections 22a-134 to 22a-134e, inclusive, shall be construed as creating an innocent landowner defense for purposes of section 22a-452d.

(l) Notwithstanding any other provisions of this section, no person shall be required to comply with the provisions of sections 22a-134 to 22a-134e, inclusive, when transferring real property (1) (A) for which a Form I or Form II has been filed for the transfer of the parcel on or after October 1, 1995, or (B) for which parcel a Form III or Form IV has been filed and which has been remediated and such remediation has been approved in writing by the commissioner or has been verified in writing in accordance with this section by a licensed environmental professional that an investigation has been performed in accordance with prevailing standards and guidelines and that the remediation has been performed in accordance with the remediation standards, and (2) at which no activities described in subdivision (3) of section 22a-134 have been conducted since the date of such approval or verification or the date on which the Form I or Form II was filed.

(m) Failure of the commissioner to notify any party in accordance with the provisions of this section in no way limits the ability of the commissioner to enforce the provisions of sections 22a-134 to 22a-134e, inclusive.

Sec. 22a-134b. Damages

Failure of the transferor to comply with any of the provisions of sections 22a-134 to 22a-134e, inclusive, entitles the transferee to recover damages from the transferor, and renders the transferor of the establishment strictly liable, without regard to fault, for all remediation costs and for all direct and indirect damages.

Sec. 22a-134c. Authority of commissioner

The provisions of sections 22a-134 to 22a-134e, inclusive, shall not affect the authority of the commissioner under any other statute or regulation, including, but not limited to, the authority to issue any order to the transferor or transferee of an establishment.

Sec. 22a-134d. Penalty

Any person who violates any provision of sections 22a-134a to 22a-134e, inclusive, or regulations issued in accordance with the provisions of said sections shall be assessed a civil penalty or shall be fined in accordance with section 22a-438.

Sec. 22a-134e. Transfer fees. Regulations

(a) As used in this section, "cost of remediation" shall include total costs related to the complete investigation of pollution on-site and off-site, evaluation of remediation alternatives, design and implementation of approved remediation, operation and maintenance costs for the remediation and postremediation monitoring.

(b) The fee for filing a Form I, as defined in section 22a-134, shall be three hundred dollars. The fee for filing a Form II shall be one thousand fifty dollars except as provided for in subsections (e) and (p) of this section.

(c) The fee for filing a Form III, after July 1, 1990, and before July 1, 1993, shall be as follows: (1) Four thousand five hundred dollars if the cost of remediation is less than one hundred thousand dollars; (2) seven thousand dollars if the cost of remediation is equal to or greater than one hundred thousand dollars but less than five hundred thousand dollars; (3) ten thousand dollars if the cost of remediation is equal to or greater than five hundred thousand dollars but less than one million dollars; and (4) thirteen thousand dollars if the cost of remediation is equal to or greater than one million dollars.

(d) The fee for filing a Form III with the Commissioner of Environmental Protection prior to July 1, 1990, and which concern a site for which the commissioner had not given written approval of a final remediation plan before July 1, 1990, shall be as follows: For a Form III filed between October 1, 1985, and September 30, 1986, the fee shall be twenty per cent of the amount specified in subsection (c) of this section; for a Form III filed between October 1, 1986, and September 30, 1987, the fee shall be forty per cent of the amount specified in subsection (c) of this section; for a Form III filed between October 1, 1987, and September 30, 1988, the fee shall be sixty per cent of the amount specified in subsection (c) of this section; for a Form III filed between October 1, 1988, and September 30, 1989, the fee shall be eighty per cent of the amount specified in subsection (c) of this section and for a Form III filed between October 1, 1989, and July 1, 1990, the fee shall be ninety per cent of the amount specified in said subsection (c).

(e) If a Form II is filed after July 1, 1990, and before October 1, 1995, and within three years following completion of remedial measures as approved by the Commissioner of Environmental Protection, the fee for such transfer shall be the fee specified in subsection (c) of this section.

(f) The fees specified in subsections (b) and (e) of this section shall be due upon the filing of the notification required under section 22a-134a.

(g) The fee specified in subsection (c) of this section shall be due in accordance with the following schedule: (1) Four thousand five hundred dollars shall be paid upon filing of the Form III; (2) the balance, if any, shall be paid within thirty days of receipt from the commissioner of written approval of a remedial action plan or within thirty days of the issuance of an order, consent agreement or stipulated judgment, whichever is earlier; (3) any remaining balance shall be paid within thirty days after receipt of written notice from the commissioner that it is due; (4) any refund, if applicable, will be paid after receipt of a letter from the commissioner stating that no further action is required or after receipt of a letter of compliance.

(h) The fee specified in subsection (d) of this section shall be due in accordance with the following schedule: (1) Nine hundred dollars shall be paid within thirty days of receipt of a written notice of a fee due from the Commissioner of Environmental Protection; (2) the balance, if any, shall be paid within thirty days of receipt from the commissioner of written approval of a remedial action plan or within thirty days of the issuance of an order, consent agreement or stipulated judgment, whichever is earlier; (3) any remaining balance shall be paid within thirty days after receipt of written notice from the commissioner that it is due; (4) any refund, if applicable, will be paid after receipt of a letter from the commissioner stating that no further action is required or after receipt of a letter of compliance.

(i) The commissioner may adopt regulations, in accordance with the provisions of chapter 54, to prescribe the amount of the fees required pursuant to this section. Upon the adoption of such regulations, the fees required by this section shall be as prescribed in such regulations.

(j) The fees specified in this section shall be paid by the certifying party.

(k) The fee for filing a Form III, on and after July 1, 1993, and before October 1, 1995, shall be as follows: (1) Twenty-three thousand dollars if the cost of remediation is equal to or greater than one million dollars; (2) twenty thousand dollars if the cost of remediation is equal to or greater than five hundred thousand dollars but less than one million dollars; (3) fourteen thousand dollars if the cost of remediation is equal to or greater than one hundred thousand dollars but less than five hundred thousand dollars; (4) four thousand five hundred dollars if the cost of remediation is equal to or greater than fifty thousand dollars but less than one hundred thousand dollars; (5) three thousand dollars if the cost of remediation is equal to or greater than twenty-five thousand dollars but less than fifty thousand dollars; and (6) two thousand dollars if the cost of remediation is less than twenty-five thousand dollars.

(l) The fee specified in subsection (k) of this section shall be due in accordance with the following schedule: (1) Two thousand dollars shall be paid upon the filing of the notification required under section 22a-134a if the cost of remediation is less than one hundred thousand dollars; (2) six thousand dollars shall be paid upon filing of the notification required under section 22a-134a if the cost of remediation is equal to or greater than one hundred thousand dollars; (3) the balance,

if any, shall be paid within thirty days of receipt from the commissioner of written approval of a remedial action plan or within thirty days of the issuance of an order, consent agreement or stipulated judgment, whichever is earlier; (4) any remaining balance shall be paid within thirty days after receipt of written notice from the commissioner that it is due; (5) any refund, if applicable, will be paid after receipt of a letter from the commissioner stating that no further action is required or after receipt of a letter of compliance. After the deposit of any appropriated funds, funds from the sale of bonds of the state or any contribution pursuant to section 12-63f, 22a-16a, 22a-133t or 22a-133u or section 3 of public act 96-250 to the Special Contaminated Property Remediation and Insurance Fund established under section 22a-133t, any amount received by the commissioner pursuant to this section shall be deposited into said fund.

(m) On and after October 1, 1995, the fee for filing a Form III or Form IV shall be due in accordance with the following schedule: An initial fee of three thousand dollars shall be submitted to the commissioner with the filing of a Form III or Form IV. If a licensed environmental professional verifies the remediation of the establishment and the commissioner has not notified the certifying party that the commissioner's written approval of the remediation is required, no additional fee shall be due. If the commissioner notifies the certifying party that the commissioner's written approval of the remediation is required, the balance of the total fee shall be due prior to the commissioner's issuance of the commissioner's final approval of the remediation.

(n) On and after October 1, 1995, the total fee for filing a Form III shall be as follows: (1) Thirty-four thousand five hundred dollars if the total cost of remediation is equal to or greater than one million dollars; (2) thirty thousand dollars if the total cost of remediation is equal to or greater than five hundred thousand dollars but less than one million dollars; (3) twenty-one thousand dollars if the total cost of remediation is equal to or greater than one hundred thousand dollars but less than five hundred thousand dollars; (4) six thousand seven hundred fifty dollars if the total cost of remediation is equal to or greater than fifty thousand dollars but less than one hundred thousand dollars; (5) four thousand five hundred dollars if the total cost of remediation is equal to or greater than twenty-five thousand dollars but less than fifty thousand dollars; and (6) three thousand dollars if the total cost of remediation is less than twenty-five thousand dollars.

(o) On and after October 1, 1995, except as provided in subsection (p) of this section, the total fee for filing a Form IV shall be as follows: (1) Seventeen thousand two hundred fifty dollars if the total cost of remediation is equal to or greater than one million dollars; (2) fifteen thousand dollars if the total cost of remediation is equal to or greater than five hundred thousand dollars but less than one million dollars; (3) ten thousand five hundred dollars if the total cost of remediation is greater than or equal to one hundred thousand dollars but less than five hundred thousand dollars; (4) three thousand three hundred seventy-five dollars if the total cost of remediation is equal to or greater than fifty thousand dollars but less than one hundred thousand dollars; and (5) three thousand dollars if the total cost of remediation is less than fifty thousand dollars.

(p) Notwithstanding any other provision of this section, the fee for filing a Form II or Form IV for an establishment for which the commissioner has issued a written approval of a remediation under subsection (c) of section 22a-133x within three years of the date of the filing of the form shall be the total fee for a Form III specified in subsection (n) of this section and shall be due upon the filing of the Form II or Form IV.

(q) The requirements of this section shall not apply to a transfer of property to a municipality under the provisions of section 12-157.

Regeling met betrekking tot de Licensed Environmental Professionals (LEPs) in de staat Connecticut

Sec. 22a-133v. Licensed environmental professionals. Qualifications. Licensing board. Standard of care. Procedures for licensure. Fee. Examination

(a) As used in this section: (1) "Environmental professional" means a person who is qualified by reason of his knowledge, as specified in subsection (e) of this section, to engage in activities associated with the investigation and remediation of pollution and sources of pollution including the rendering or offering to render to clients professional services in connection with the investigation and remediation of pollution and sources of pollution; (2) "pollution" means pollution, as defined in section 22a-423; and (3) "commissioner" means the Commissioner of Environmental Protection or his designated agent.

(b) There shall be within the Department of Environmental Protection a State Board of Examiners of Environmental Professionals. The board shall consist of eleven members. One member, who shall be the chairman of the board, shall be the Commissioner of Environmental Protection, or his designee. The Governor shall appoint the other ten members of the board who shall consist of the following: Six members shall be licensed environmental professionals or, prior to the publication by the board of the first roster of licensed environmental professionals, persons on the list maintained by the commissioner pursuant to subsection (h) of this section, including at least two having hydrogeology expertise and two who are licensed professional engineers; two members who are active members of an organization that promotes the protection of the environment; one member who is an active member of an organization that promotes business; and one member who is an employee of a lending institution. The members of the board shall administer the provisions of this section as to licensure and issuance, reissuance, suspension or revocation of licenses concerning environmental professionals. The Governor may remove any member of the board for misconduct, incompetence or neglect of duty. The members of the board shall receive no compensation for their services but shall be reimbursed for necessary expenses incurred in the performance of their duties. The board shall keep a true and complete record of all its proceedings.

(c) A licensed environmental professional shall perform his duties in accordance with the standard of care applicable to professionals engaged in such duties. The commissioner, with advice and assistance from the board, may adopt regulations, in accordance with the provisions of chapter 54, concerning professional ethics and conduct appropriate to establish and maintain a high standard of integrity and dignity in the practice of an environmental professional and may make rules for the conduct of the board's affairs and for the examination of applicants for licenses.

(d) The commissioner shall receive and account for all moneys derived under the provisions of this section and shall deposit such moneys in the Environmental Quality Fund established pursuant to section 22a-27g. The board shall keep a register of all applications for licenses with the actions of the board thereon. A roster showing the names of all licensees shall be prepared each year. A copy of such roster shall be placed on file with the Secretary of the State.

(e) The board shall authorize the commissioner to issue a license under subsection (d) of section 22a-133m, sections 22a-184 to 22a-184e, inclusive, this section and section 22a-133w to any person who demonstrates to the satisfaction of the board that such person: (1) (A) Has for a minimum of eight years engaged in the investigation and remediation of releases of hazardous waste or petroleum products into soil or groundwater, including a minimum of four years in responsible charge of investigation and remediation of the release of hazardous waste or petroleum products into soil or groundwater, and holds a bachelor's or advanced degree from an accredited college or university in a related science or related engineering field or is a professional engineer licensed in accordance with chapter 391, or (B) has for a minimum of fourteen years engaged in the investigation and remediation of releases of hazardous waste or petroleum products into soil or groundwater, including a minimum of seven years in responsible charge of investigation and remediation of hazardous waste or petroleum products into soil or groundwater; (2) has successfully passed a written examination, or a written and oral examination, prescribed by the board and approved by the commissioner, which shall test the applicant's knowledge of the physical and environmental sciences applicable to an investigation of a polluted site and remediation conducted in accordance with regulations adopted by the commissioner under section 22a-133k and any other applicable guidelines or regulations as may be adopted by the commissioner; and (3) has paid an examination fee of one hundred eighty-eight dollars to the commissioner.

(f) The board shall authorize the commissioner to issue a license to any applicant who, in the opinion of the board, has satisfactorily met the requirements of this section. The issuance of a license by the commissioner shall be evidence that the person named therein is entitled to all the rights and privileges of a licensed environmental professional while such license remains unrevoked or unexpired. A licensed environmental professional shall pay to the commissioner an annual fee of three hundred thirty-eight dollars, due and payable on July first of every year beginning with July first of the calendar year immediately following the year of license issuance. The commissioner, with the advice and assistance of the board,

may adopt regulations in accordance with the provisions of chapter 54, pertaining to the design and use of seals by licensees under this section.

(g) The board may conduct investigations concerning the conduct of any licensed environmental professional. The commissioner may conduct audits of any actions authorized by law to be performed by a licensed environmental professional. The board shall authorize the commissioner to revoke or suspend the license of any environmental professional or to deny an application for such licensure if the board, after providing such professional with notice and an opportunity to be heard concerning such revocation, suspension or denial, finds that such professional has submitted false or misleading information to the board or has engaged in professional misconduct including, without limitation, knowingly or recklessly making a false verification of a remediation under section 22a-134a, or violating any provision of this section or regulations adopted hereunder.

(h) The board shall hold the first examination pursuant to this section no later than eighteen months after the date the commissioner adopts regulations pursuant to section 22a-133k, and shall publish the first roster of licensed environmental professionals no later than six months after the date of such examination. Until such time as the board publishes the first roster of licensed environmental professionals, any person who (1) has for a minimum of eight years engaged in the investigation and remediation of releases of hazardous waste or petroleum products into soil or groundwater, including a minimum of four years in responsible charge of investigation and remediation of the release of hazardous waste or petroleum products into soil or groundwater, (2) holds a bachelor's or advanced degree from an accredited college or university in a related science or related engineering field or is a professional engineer licensed in accordance with chapter 391, and (3) pays a registration fee of two hundred twenty-five dollars may apply to the commissioner to be placed on a list of environmental professionals. Any person on such list may perform any duties authorized by law to be performed by a licensed environmental professional until such time as the first roster of licensed environmental professionals is published by the board.

(i) Nothing in this section shall be construed to authorize a licensed environmental professional to engage in any profession or occupation requiring a license under any other provisions of the general statutes without such license.

**C. IOWA
ENVIRONMENTAL QUALITY ACT**

(Iowa Code Annotated, Volume 24A, Thomson West, 2004/2006)

445B.430. Use and transfer of sites – penalty – financial disclosure

1. A person shall not substantially change the manner in which a hazardous waste or hazardous substance disposal site on the registry pursuant to section 455B.426 is used without the approval of the director.

2. A person shall not sell, convey, or transfer title to a hazardous waste or hazardous substance disposal site which is on the registry pursuant to section 455B.426 without the written approval of the director. The director shall respond to a request for a change of ownership within thirty days of its receipt.

3. Decisions of the director concerning the use or transfer of a hazardous waste or hazardous substance disposal site may be appealed in the manner provided in section 455B.429.

4. If the director has reason to believe this section has been violated, or is in imminent danger of being violated, the director may institute a civil action in district court for injunctive relief to prevent the violation and for the assessment of a civil penalty not to exceed one thousand dollars per day for each day of violation. Moneys collected under this subsection shall be deposited in the remedial fund.

5. Immediately upon the listing of real property in the registry of hazardous waste or hazardous substance disposal sites, a person liable for cleanup costs shall submit to the director a report consisting of documentation of the responsible person's liabilities and assets, including if filed, a copy of the annual report submitted to the secretary of state pursuant to chapter 490. A subsequent report pursuant to this section shall be submitted annually on April 15 for the period the site remains on the registry.

1.2 Transfer triggering environmental acts met daarin alleen een mededelingsplicht voor de verkoper/rechtsvoorganger ten opzichte van de koper/rechtsopvolger:

**D. CALIFORNIA
HAZARDOUS SUBSTANCE ACCOUNT ACT (HSCA)**

(Annotated California Codes, Health and Safety Code, Thomson/West, 2006)

**ARTICLE 3, Hazardous Substance Account
(...)**

Section 25359.7. Written notice of release of hazardous substances by owners to buyers, lessees or renters of real property; written notice by lessees or renters; damages; default; civil penalties

(a) Any owner of nonresidential real property who knows, or has reasonable cause to believe, that any release of hazardous substance has come to be located on or beneath that real property shall, prior to the sale, lease or rental of the real property by that owner, give written notice of that condition to the buyer, lessee or renter of the real property. Failure of the owner to provide written notice when required by this subdivision to the buyer, lessee, or renter shall subject the owner to actual damages and any other remedies provided by law. In addition, where the owner has actual knowledge of the presence of any release of a material amount of a hazardous substance and knowingly and willfully fails to provide written notice to the buyer, lessee, or renter, as required by this subdivision, the owner is liable for a civil penalty not to exceed five thousand dollars (\$ 5,000) for each separate violation.

(b) Any lessee or renter of real property who knows or has reasonable cause to believe that any release of a hazardous substance has come or will come to be located on or beneath that real property shall, with a reasonable period of time, either prior to the release or following the discovery by the lessee or renter of the presence or believed presence of the hazardous substance release, give written notice of that condition to the owner of the real property or to the lessor under the lessee's or renter's lease or rental agreement.

(1) A lessee or renter who fails to provide written notice when required by this subdivision to the owner or lessor is subject to actual damages and any other remedy provided by law.

(2) If the lessee or renter has knowledge of the presence of a release of a material amount of a hazardous substance, or of a hazardous substance release that is required to be reported to a state or local agency pursuant to law, on or under the real property leased or rented by the lessee or renter and knowingly and willfully fails to provide written notice when required by this subdivision to the owner or lessor, both the following shall apply:

(A) The failure is deemed to constitute a default, upon the owner's or lessor's written notice to the lessee or renter, under the lessee's or renter's lease or rental agreement, except that this subparagraph does not apply to lessees and renters of property used exclusively for residential purposes.

(B) The lessee or renter is liable for a civil penalty not to exceed five thousand dollars (\$5,000) for each separate violation.

(3) A lessee or renter may cure a default under the lessee's or renter's lease or rental agreement which resulted from a violation of this subdivision, by promptly commencing and completing the removal of, or taking other appropriate remedial action with respect to, the hazardous substance release. The removal or remediation action shall be conducted in accordance with all applicable laws and regulations and in a manner which is reasonable acceptable to, and which is approved in writing by, the owner or lessor. This paragraph does not relieve the lessee or renter of any liability for actual damages or for any civil penalty for a violation of this subdivision.

(Deering's Health and Safety Code Ann., LexisNexis, 2005)

ARTICLE 4 Disclosures

Section 26140. Disclosure by seller or transferor of commercial or industrial property of presence of mold; Application of disclosure requirement

(a) Subject to subdivisions (b), (c), and (d), a seller or transferor of commercial or industrial real property shall provide written disclosure to prospective buyers as soon as practicable before the transfer of title when the seller or transferor knows of the presence of mold, both visible and invisible or hidden, that affects the unit or building and the mold either exceeds permissible exposure limits to molds established by subdivisions (a), (b), and (c) of Section 26103 or poses a health threat, according to the department's guidelines as developed pursuant to Section 26105.

(b) A seller or transferor of commercial or industrial real property shall be exempt from providing written disclosure pursuant this subdivision if the presence of mold was remediated according to the mold remediation guidelines developed by the department pursuant to Section 26130.

(c) A commercial or industrial real property seller shall not be required to conduct air or surface tests of units or buildings to determine whether the presence of molds exceeds the permissible exposure limits to molds established by subdivisions (a) and (b) of Section 26103.

(...)

Section 26149. Affect of article on other statutory duties, rights, remedies or defenses

(a) Nothing in this article shall relieve a seller, transferor, lessor, agent, landlord, or tenant from any responsibility for compliance with other obligations, laws, ordinances, codes, or regulations, including but not limited to the duties outlined

in Sections 1941 and 1941.1 of the Civil Code and any other duties provided for under common law.

(b) Nothing in this article shall alter or modify any right, remedy, or defense otherwise available under law.

Section 26150. Affect of article on existing disclosure obligations of parties or transferors to real estate contract or their agents; Inspection and disclosure duties of real estate broker or salesperson

(a) Nothing in this article shall effect the existing obligations of the parties or transferor to a real estate contract, or either agents, to disclose any facts materially affecting the value and desirability of the property, including, but not limited to, the physical conditions of the property and previously received reports of physical inspections noted on the disclosure form set forth in Section 1102.6 or 1102.6a of the Civil Code.

(b) Nothing in this article shall be construed to change the existing inspection and disclosure duties of a real estate broker or salesperson including, but not limited to, those duties imposed by Section 2079 of the Civil Code.

Section 26151. No limit or abridgement of statutory obligations for disclosure

The specifications of items for disclosure in this article does not limit or abridge any obligation for disclosure created by any other provision of law, or which may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

Section 26152. Enforcement of items subject to disclosure requirements

All items subject to disclosure requirements pursuant to this article shall be subject to enforcement pursuant to Article 5 (commencing with Section 26154).

Section 26153. Liability for error, inaccuracy, or omission of information

Neither the transferor nor any listing or selling agent shall be held liable for any error, inaccuracy, or omission of any information delivered pursuant to this article if the error, inaccuracy, or omission was not within the personal knowledge of the transferor, or the listing or selling agent, or was based on information timely provided by public agencies, or by other persons providing relevant information by delivery of a report or opinion prepared by an expert dealing with matters within the relevant scope of the professional's license or expertise, and ordinary care was exercised in obtaining and transmitting it.

ARTICLE 5 Enforcement

Section 26154. Enforcement of standards

Public health officers, code enforcement officers, environmental health officers, city attorneys, and any other appropriate government entities may respond to complaints about mold and may enforce standards adopted by the department, pursuant to subdivisions (a), (b), and (c) of Section 26103 and subdivisions (a), (b),

and (c) of Section 26105, and enforce the disclosure requirements of Sections 26147 and 26148 that are developed by the department in consultation with the task force. The disclosure enforcement guidelines established by the department pursuant to this section shall include development of a form for disclosure and the penalties, if any, that may be imposed for failure to disclose. No penalty shall be assessed against an owner for failure to disclose under Section 26147 where the owner provides disclosure to the tenants in a form that substantially conforms to the disclosure form developed by the department (...).

**E. INDIANA
RESPONSIBLE PROPERTY TRANSFER ACT (RPTA)**

(West's Annotated Indiana Code, West Group, 1998/2006)
(...)

13-25-3-2 Disclosure document; delivery; waiver

Sec. 2. (a) Except as provided in subsections (b) and (c), a transferor of property shall deliver a disclosure document to each of the other parties to a transfer of property at least thirty (30) days before the transfer. The disclosure document must be in the form prescribed by the department under section 7.5 of this chapter and must include the information elicited by that form. However, the signature of the transferee is not required on the disclosure document delivered to a party involved in the transfer of property as a lender.

(b) If all of the other parties to a transfer of property waive the thirty (30) day deadline set forth in subsection (a) in written waivers that indicate that the parties are aware of the purpose and intent of the disclosure document, the transferor is not required to deliver the disclosure document to the other parties thirty (30) days before the transfer of the property. However, the transferor shall deliver a disclosure document that meets the requirements set forth in subsection (a) to each of the other parties to the transfer of property on or before the date on which the transfer of property is to become final.

(c) If a party involved in a transfer of property as a lender is not identified to the transferor at least thirty (30) days before the transfer, the thirty (30) day deadline set forth in subsection (a) does not apply to the delivery of a disclosure document by the transferor to that lender. However, if a lender is identified to a transferor less than thirty (30) days before the transfer, the transferor shall deliver a disclosure document to the lender immediately after the lender is identified to the transferor.

13-25-3-3 Disclosure document; environmental defects revealed; obligation

Sec. 3. If the disclosure document delivered by the transferor to another party to the transfer of property under section 2 of this chapter reveals one (1) or more environmental defects in the property that were previously unknown to the other party, the other party is relieved of an obligation to:

(1) accept the transfer of the property; or

(2) finance the transfer of the property.

13-25-3-4 Failure to deliver disclosure document

Sec. 4. (a) If a transferor:

fails to deliver a disclosure document meeting the requirements set forth in section 2 of this chapter to one (1) or more other parties to the transfer of property before the deadline set forth in section 2(a) of this chapter; and does not obtain a waiver under section 2(b) of this chapter;

a party that did not receive a disclosure document may demand a disclosure document from the transferor.

(b) A party who demands a disclosure document under this section may void an obligation to accept the transfer of the property or to finance the transfer of the property if:

(1) the party does not receive a disclosure document not later than ten (10) days after demanding a disclosure document; or

(2) the party receives a disclosure document not later than ten (10) days after demanding the disclosure document but the disclosure document reveals one (1) or more environmental defects in the property that were previously unknown to the party.

13-25-3-5 Demand of disclosure document

Sec. 5. (a) If a transferor:

obtains a waiver under section 2(b) of this chapter; but fails to deliver a disclosure document meeting the requirements set forth in section 2 of this chapter to one (1) or more of the other parties to the transfer of property before the date on which the transfer is scheduled to become final; a party that did not receive a disclosure document may demand a disclosure document from the transferor.

(b) Subject to section 6 of this chapter, a party who demands a disclosure document under this section may void an obligation to accept the transfer of the property or to finance the transfer of the property if:

the party does not receive a disclosure document not later than ten (10) days after demanding a disclosure document; or

the party receives a disclosure document not later than ten (10) days after demanding the disclosure document but the disclosure document reveals one (1) or more environmental defects in the property that were previously unknown to the party.

13-25-3-6 Voiding of obligations; limitation

Sec. 6. A party to a transfer of property may not void an obligation to:

accept the transfer of the property; or

finance the transfer of property under sections 3 through 5 of this chapter; after the transfer of property has taken place.

13-25-3-7.5 Form of disclosure document

Sec. 7.5. The department shall prescribe the form of a disclosure document to be completed and delivered by a transferor of property under this chapter. The form must elicit at least the following information:

Property identification, including address, legal description, and property characteristics.

The nature of the transfer, including identities of the transferor and transferee.

Environmental information, including:

regulatory information during the transferor's ownership; and
site information under other ownership or operation.

Certification by the transferor that the information submitted on the disclosure document is true and accurate to the best of the transferor's knowledge and belief.

Certification by the transferee that the disclosure document was delivered with all elements completed.

13-25-3-8 Recording and filing of disclosure document

Sec. 8. (a) Not more than thirty (30) days after the effective date of a transfer of property that requires the preparation of a disclosure document under this chapter:

the transferor or transferee shall record the disclosure document in the office of the county recorder of the county in which the property is located; and

the transferor shall file a copy of the disclosure document with the department,

(b) The transferor and transferee are jointly responsible for recording a disclosure document in the county recorder's office under this section. However, the recording of a disclosure document by one (1) person referred to in this subsection discharges the responsibility of the other person.

(c) A disclosure document recorded in the county recorder's office or filed with the department:

is a public record under IC 5-14-3; and

must be available for inspection and copying during normal business hours.

13-25-3-9 Environmental defect elimination; recording

Sec. 9. (a) If a disclosure document recorded under section 8(a)(1) of this chapter reports the existence of an environmental defect on a property, a person who has a financial interest in the property may record, in the same county recorder's office in which the disclosure document is recorded, a document that reports that the environmental defect has been eliminated from the property.

(b) A professional engineer registered under IC 25-31-1 who does not have a financial interest in the property must certify a document filed under this section.

13-25-3-10 Failure to deliver disclosure document; penalty

Sec. 10. A transferor who fails to deliver a disclosure document to a party in violation of section 2 of this chapter commits a Class B infraction.

13-25-3-11 Knowingly making false statement in disclosure document; penalty

Sec. 11. A transferor who knowingly makes a false statement in a disclosure document delivered under this chapter commits a Class A infraction. Each day that the transferor knows of the falsity of the statement made in the disclosure document but fails to correct that statement through the filing, recording, and delivery of a corrected disclosure statement constitutes a separate infraction.

13-25-3-12 Failure of record disclosure document; penalty

Sec. 12. (a) Except as provided in subsection (b), a person who: is responsible for filing a disclosure document in the office of the county recorder under section 8(a)(1) and 8(b) of this chapter; and fails to record the disclosure document; commits a Class A infraction.

(b) The failure of a transferee to record a disclosure document within the period allowed under section 8(a) of this chapter is not an infraction under this section if the disclosure document: was not delivered to the transferee within the time allowed under section 2 of this chapter; or contains one (1) or more false statements about substantive matters.

13-25-3-13 Exceptions to disclosure document requirements

Sec. 13. (a) The duties imposed by this chapter are subject to the exceptions set forth in this section.

(b) A buyer of property who finances the purchase of the property through a mortgage loan is not required under section 2,4, or 5 of this chapter to deliver a disclosure document to the mortgagee that provides the mortgage loan.

(c) A person who lends money and takes a mortgage on property to secure the loan is not required under section 8 of this chapter to: record a disclosure document concerning the property in the office of the county recorder of the county in which the property is located; or file a copy of the disclosure document with the department.

13-25-3-14 Order requiring compliance with chapter

Sec. 14. In an action based on an alleged commission of an infraction defined in sections 10 through 12 of this chapter, the prosecuting attorney may obtain an order requiring the defendant to comply with this chapter.

13-25-3-15 Civil action; damages; costs; attorney's fees

Sec. 15. A party to a transfer of property may bring a civil action against another party to the transfer of property to recover consequential damages based upon a violation of this chapter. In an action brought under this section, a party may recover reasonable costs and attorney's fees.

**F. MICHIGAN
NATURAL RESOURCES AND ENVIRONMENTAL POLLUTION CONTROL (NREPC)**

(Michigan compiled laws, Annotated, West Group, 1999/2006)

324.20116 Transfer of property interests in facilities, required notice of release; completion of response activities

(1) A person who has knowledge or information or is on notice through a recorded instrument that a parcel of his or her real property is a facility shall not transfer an interest in that real property unless he or she provides written notice to the purchaser or other person to which the property is transferred that the real property is a facility and discloses the general nature and extent of the release.

(2) The owner of real property for which a notice required in subsection (1) has been recorded may, upon completion of all response activities for the facility as approved by the department, record with the register of deeds for the appropriate county a certification that all response activity required in an approved remedial action plan has been completed.

(3) A person shall not transfer an interest in real property unless the person fully discloses any land or resource use restrictions that apply to that real property as a part of remedial action that has been or is being implemented in compliance with section 20120a.

P.A. 1994, No. 451, Par. 20116, Eff. March 30, 1995. Amended by P.A. 1995, No. 71, Par. 1, Imd. Eff. June 5, 1995.

N.B. Section 20120a handelt over "cleanup criteria and categories; approval of remedial action plan; development of criteria".

**G. OREGON
PUBLIC HEALTH AND SAFETY, HAZARDOUSE WASTE AND HAZARDOUS MATERIALS I, OREGON ENVIRONMENTAL CLEANUP LAW**

(Oregon Revised Statutes, Volume 11, Official Edition of the State of Oregon, 2005)

Par. 465.200

(...)

(13) "Facility" means any building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site

or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel.

(...)

(16) “Hazardous substance” means:

(a) Hazardous waste as defined in ORS 466.005.

(b) Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, and P.L. 99-499.

(c) Oil.

(d) Any substance designated by the commission under ORS 465.400.

(...)

(18) “Natural resources” includes but is not limited to land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies and any other resource owned, managed, held in trust or otherwise controlled by the State of Oregon or a political subdivision of the State.

(...)

(20) “Owner or operator” means any person who owned, leased, operated, controlled or exercised significant control over the operation of a facility. “Owner or operator” does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect a security interest in the facility.”

Par. 465.255 Strict liability for remedial action costs for injury or destruction of natural resources; limited exclusions.

(1) The following persons shall be strictly liable for those remedial action costs incurred by the state or any other person that are attributable to or associated with a facility and for damages for injury to or destruction of any natural resources caused by a release:

(...)

(c) Any owner or operator who obtained actual knowledge of the release at the facility during the time the person was the owner or operator of the facility and then subsequently transferred ownership or operation of the facility to another person without disclosing such knowledge.

Par. 465.260 Removal or remediation action; reimbursement of costs; liability; damages.(...)

(8) If any person who is liable under ORS 265.255 fails without sufficient cause to conduct a removal or remediation action as required by an order of the director, the person shall be liable to the department for the state’s remedial action costs and for punitive damages not to exceed three times the amount of the state’s remedial action costs.

Par. 465.900 Civil penalties for violation of removal or remedial actions

(1) In addition to any other penalty provided by law, any person who violates a provision of ORS 465.200 to 465.545, or any rule or order entered or adopted under ORS 465.200 to 465.545, shall incur a civil penalty not to exceed \$ 10,000 a day for each day that such violation occurs or that failure to comply continues.

(...)

**H. PENNSYLVANIA
HAZARDOUS SITES CLEANUP, HAZARDOUS WASTE, CHAPTER 29A
SOLID WASTE MANAGEMENT**

(Purdon's Pennsylvania Statutes Annotated, Thomson West, 2003/2006)

Par. 6018.405. Conveyance of disposal site property

After the effective date of this act, the grantor in every deed for the conveyance of property on which hazardous waste is presently being disposed, or has even been disposed by the grantor or to the grantor's actual knowledge shall include in the property description section of such deed an acknowledgement of such hazardous waste disposal; such acknowledgement to include to the extent such information is available, but nor be limited to, the surface area and exact location of the disposed waste and a description of the types of hazardous wastes contained therein. Such amended property description shall be made a part of the deed for all future conveyances or transfers of the subject property. Provided, however, that the warranty in such deed shall not be applicable to the surface area size and exact location of the disposed wastes contained therein.

1980, July 7, P.L. 380, No. 97, Par. 405, effective in 60 days.

(...)

Par. 6018.605. Civil penalties

In addition to proceeding under any other remedy available at law or in equity for a violation of any provision of this act, any rule or regulation of the department or order of the department or any term or condition of any permit issued by the department, the department may assess a civil penalty upon a person for such violation. Such a penalty may be assessed whether or not the violation was willful or negligent. In determining the amount of the penalty, the department shall consider the willfulness of the violation, damage to air, water, land or other natural resources of the Commonwealth or their uses, cost of restoration and abatement, savings resulting to the person in consequence of such violation, and other relevant factors (...). The maximum civil penalty which may be assessed pursuant to this section is \$ 25.000 per offense. Each violation for each separate day and each violation of any provision of this act, any rule or regulation under this act, any order of the department, or any term or condition of a permit shall constitute a separate and distinct offense under this section (...).

1980, July 7, P.L. 380, No. 97, Par. 605, effective in 60 days.

Par. 6018.606. Criminal penalties

(...)

(c) Any person or municipality that knowingly:

(...)

(2) makes any false statement or representation in any application label, manifest, record, report, permit or other document relating to hazardous waste generation, storage, transportation, treatment or disposal, which is filed, submitted, maintained or used for purposes of compliance with this act or any municipality which knowingly stores, treats or disposes of any hazardous waste without having obtained a permit for such storage, treatment or disposal; shall be guilty of a misdemeanor of the third degree and, upon conviction, shall be sentenced to pay a fine of not less than \$ 1.000 but not more than \$ 25.000 per day for each violation.

**I. WEST-VIRGINIA
HAZARDOUS WASTE MANAGEMENT ACT**

(Michie's West Virginia Code Annotated, Volume 8A, LexisNexis, 2002/2006)

Par. 22-18-21. Disclosures required in deeds and leases

(a) The grantor in any deed or other instrument of conveyance or any lessor in any lease or other instrument whereby any real property is let for a period of time shall disclose in such deed, lease or other instrument the fact that such property or the subsurface of such property (whether or not the grantor or lessor is at the time of such conveyance or lease the owner of such subsurface) was used for the storage, treatment or disposal of hazardous waste. The provisions of this subsection only apply to those grantors or lessors who owned or had an interest in the real property when the same or the subsurface thereof was used for the purpose of storage, treatment or disposal of hazardous waste or who have actual knowledge that such real property or the subsurface thereof was used for such purpose or purposes at any time prior thereto.

(b) Any grantee of real estate or of any substrata underlying said real estate or any lessee for a term who intends to use the real estate conveyed or let or any substrata underlying the same for the purpose of storing, treating or disposing of hazardous waste shall disclose in writing at the time of such conveyance or lease or within thirty days prior thereto such fact to the grantor or lessor of such real estate or substrata. Such disclosure shall describe the proposed location upon said property of the site to be used for the storage, treatment or disposal of hazardous waste, the identity of such waste, the proposed method of storage, treatment or disposal to be used with respect to such waste and any and all other information required by rules of the director. (1994, c. 61.)