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TITLE 13. CONSERVATION AND DEVELOPMENT - PARKS AND RESERVATIONS
CHAPTER 1K. HAZARDOUS WASTE

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

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13:1K-6. Short title [Industrial Site Recovery Act]

This act shall be known and may be cited as the “Industrial Site Recovery Act.”

History

L. 1983, c. 330, § 1; amended 1993, c. 139, § 1.

13:1K-7. Findings, 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 to 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 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.

History

L. 1983, c. 330, § 2; amended 1993, c. 139, § 2.

13:1K-8. Definitions

As used in this act:

“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 affected 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. § 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. § 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 in ownership;

(2) the sale or transfer 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;

(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 percent 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 percent, or if an 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 intestate 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 initiated 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 Water Pollution Control Act Amendments of 1972" (33 U.S.C. § 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. § 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 wastes 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 to

the “Solid Waste Management Act,” P.L.1970, c.39 (C.13:1E-1 et seq.), the “Major Hazardous Waste Facilities Siting Act,” sections 1 through 43 of P.L.1981, c.279 (C.13:1E-49 et seq.) or the “Solid Waste Disposal Act” (42 U.S.C. § 6901 et seq.), or any establishment engaged 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 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 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;

“Area of concern” means any location where hazardous substances or hazardous wastes are or were known or suspected to have been discharged, generated, manufactured, refined,

transported, stored, handled, treated, or disposed, or where hazardous substances or hazardous wastes have or may have migrated;

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

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

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

“Remedial action” means those actions taken at an industrial establishment or offsite 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;

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

“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.

History

L. 1983, c. 330, § 3; amended by L. 1993, c. 139, § 3; L. 1997, c. 278, § 7, eff. Jan. 6, 1998; 2009, c. 60, § 33, eff. Nov. 3, 2009; 2019, c. 263, § 1, eff. Aug. 23, 2019.

13:1K-9. Closing, transfer procedures

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. The owner or operator of the industrial establishment shall also provide all information required to be submitted to the department pursuant to this subsection, to the clerk of the municipality in which the industrial establishment is located, at the same time the information is submitted to the department.

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, remediation agreement approval, response action outcome, or remediation certification 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, or prior to the submission of a remediation certification or the filing of a response action outcome with the department, 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, proposed remedial action workplan, or a remedial action workplan certified by a licensed site remediation professional. The owner or operator shall also provide written notification to the clerk of the municipality in which the industrial site is located, that upon written request, the municipality may receive a copy of the proposed negative declaration, proposed remedial action workplan, or a remedial action workplan certified by a licensed site remediation professional. The owner or operator of the industrial establishment shall provide the requested documents to the clerk of the municipality within five days after receipt of the written request. 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, a remedial action workplan has been prepared and certified by a licensed site remediation professional and submitted to the department, or the conditions of subsection e. of this section for remediation agreements or remediation certifications 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 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. Upon the remediation of the industrial establishment pursuant to the requirements of section 30 of P.L.2009, c.60 (C.58:10B-1.3), a licensed site remediation professional may file a response action outcome with the department.

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 or upon submission to the department of a remediation certification. 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 owner or operator submitting a remediation certification shall provide the following documents to the department: (1) an estimate of the cost of the remediation prepared and certified by a licensed site remediation professional; (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), the requirement to comply with the provisions of P.L.2009, c.60 (C.58:10C-1 et al.), 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 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.

The owner or operator of the industrial establishment shall also provide written notification to the clerk of the municipality in which the industrial establishment is located, at the same time the information is submitted to the department, that upon written request, the owner or operator shall provide the information required to be submitted to the department pursuant to this subsection, to the municipality. The owner or operator shall provide the information to the municipality within five days after receipt of the written request.

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. Except as provided in section 27 of P.L.2009, c.60 (C.58:10C-27), 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, or prepared, certified and submitted to the department by a licensed site remediation professional, based upon the policies, requirements, 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, or without the submission of a remediation certification.

i. An owner or operator of an industrial establishment shall base the decision to select a remedial action upon the standards, requirements, 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 control 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. Except as provided in P.L.2009, c.60 (C.58:10C-1 et al.), 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. Except as provided in P.L.2009, c.60 (C.58:10C-1 et al.), 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. The owner or operator of the

industrial establishment may also perform the remediation pursuant to the provisions of P.L.2009, c.60 (C.58:10C-1 et al.)

History

L. 1983, c. 330, § 4; amended 1993, c. 139, § 4, eff. June 16, 1993; 1997, c. 278, § 8, eff. Jan. 6, 1998; 2007, c. 1, § 4, eff. Jan. 11, 2007; 2009, c. 60, § 34, eff. Nov. 3, 2009.

13:1K-9.1. Tax sale, foreclosure as decision to close operations

Upon the date set for the sale of a tax sale certificate, or the provision of legal notice by a municipality of its intent to foreclose the right of redemption from a previously issued certificate, for failure to pay taxes, assessments and other municipal charges, on property on which an industrial establishment is located, the owner or operator of that establishment shall be deemed to be planning to close operations pursuant to P.L.1983, c.330 (C.13:1K-9), and the sale of the tax sale certificate or the provision of the legal notice of the municipality's intent to foreclose shall have the same effect as a public release of a decision to close operations. A municipality shall notify the department of all actions undertaken by the municipality pursuant to this section.

History

L. 1991, c. 238, § 1.

13:1K-9.2. Owner, operator required to remediate industrial establishment

The acquiring of title to an industrial establishment by a municipality pursuant to a foreclosure action pertaining to a certificate of tax sale purchased and held by the municipality shall not relieve the previous owner or operator of the industrial establishment of his duty to remediate the industrial establishment as required pursuant to P.L.1983, c.330.

History

L. 1991, c. 238, § 2; amended 1993, c. 139, § 5.

13:1K-9.3. Remediation of industrial establishment by municipality, debt of immediate past owner or operator

If a municipality undertakes a remediation of an industrial establishment, the title to which the municipality acquired pursuant to a foreclosure action pertaining to a certificate of tax sale, all expenditures incurred in the remediation shall be a debt of the immediate past owner or operator of the industrial establishment. The debt shall constitute a lien on all property owned by the immediate past owner or operator when a notice of lien, incorporating a description of the property subject to the remediation and an identification of the amount of remediation and related costs expended by the municipality is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment or order docket the name and address of the immediate past owner or operator and the amount of the lien as set forth in the notice of lien.

Upon entry by the clerk, the lien shall attach to the revenues and all real and personal property of the immediate past owner or operator, whether or not he is insolvent. The notice of lien filed pursuant to this section which affects any property of an immediate past owner or operator shall have priority from the day of the filing of the notice of the lien, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this section.

History

L. 1991, c. 238, § 3; amended 1993, c. 139, § 6.

13:1K-9.4. Certain provisions not applicable to governmental unit, agent

The provisions of P.L.1983, c.330 (C.13:1K-6 et seq.) shall not apply to a governmental unit or agent thereof, pursuing foreclosure proceedings against the owner or operator of an industrial establishment to satisfy a delinquent tax liability of the owner or operator. However, when the governmental unit seeks to issue a tax sale certificate for the property on which is located an industrial establishment to satisfy a delinquent tax liability, or seeks to convey any parcel of such property acquired by it, the governmental unit shall notify prospective purchasers in writing that the property may be subject to the provisions of the "Environmental Cleanup Responsibility Act," P.L.1983, c.330 (C.13:1K-6 et seq.), the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), and the "Water Pollution Control Act," P.L.1977, c.44 (C.58:10A-1 et seq.). When a governmental unit seeks to issue a tax sale certificate for the property on which is located an industrial establishment to satisfy a delinquent tax liability, or seeks to convey any parcel of such property acquired by it, the governmental unit shall not consider prospective purchasers who are, or were in any way connected to the previous owner or operator of the site.

History

L. 1991, c. 238, § 4.

13:1K-9.5. Remediation by municipality, approval

If a municipality undertakes a remediation of an industrial establishment, the municipality shall undertake that remediation and shall obtain all approvals required by the Department of Environmental Protection and Energy.

History

L. 1991, c. 238, § 5; amended 1993, c. 139, § 7.

13:1K-9.6. Review, approval of remediation

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 (C.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 (C.13:1D-106).

History

L. 1993, c. 139, § 8.

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.

History

L. 1993, c. 139, § 9.

13:1K-10. Rules, regulations; department access

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.

History

L. 1983, c. 330, § 5; amended 1993, c. 139, § 10.

13:1K-11. Transfer of industrial establishment; deferral of remedial action workplan

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.

History

L. 1983, c. 330, § 6; amended 1993, c. 139, § 11.

13:1K-11.1. Obligations of trust, estate to remove discharge

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.).

History

L. 1993, c. 112, § 7; amended 1993, c. 139, § 46.

13:1K-11.2. Application for expedited review.

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. 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 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.

History

L. 1993, c. 139, § 13.

13:1K-11.3. Application for limited site review

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 (C.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 (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. § 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 (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, 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 to pursuant to paragraph (3) of subsection a. of this section, has been remediated consistent with the applicable remediation regulations 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 (C.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 regulations.

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.

History

L. 1993, c. 139, § 14; amended 1997, c. 278, § 43.

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

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 (C.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 (C.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.

History

L. 1993, c. 139, § 15.

13:1K-11.5. Application for closing, transfer when remediation is already in progress

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 (C.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 (C.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. 6901 et seq. or the “Comprehensive Environmental Response, Compensation, and Liability Act of 1980,” 42 U.S.C. 9601 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 (C.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.

History

L. 1993, c. 139, § 16.

13:1K-11.6. Application for closing, transfer when discharges are from regulated underground storage tank

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 (C.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 (C.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.

History

L. 1993, c. 139, § 17.

13:1K-11.7. Application for closing, transfer when discharges are of minimal environmental concern.

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 (C.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 (C.13:1K-9.6 et al.), and section 33 of P.L.1993, c.139 (C.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 (C.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 therefor. 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.

History

L. 1993, c. 139, § 18.

13:1K-11.8. Application for certificate of limited conveyance

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 (C.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 (C.58:10B-3) and shall deposit any unexpended amounts, as provided in subsection f. of this section, into that fund.

History

L. 1993, c. 139, § 19.

13:1K-11.9. Responsibilities of owner as landlord, operator as tenant

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 department shall develop a form for a petition made pursuant to this section, and shall establish a list of documents required to be submitted with the petition which shall include, but not be limited to: (1) a copy of the notice required pursuant to subsection a. of section 4 of P.L.1983, c.330 (C.13:1K-9); (2) the names and addresses of the landlord and the tenant; (3) a copy of the signed lease between the landlord and the tenant; (4) a certification by the petitioner that includes the relevant facts concerning noncompliance with the act; and (5) any other documents the department deems relevant. The department shall make a determination that the provisions of the lease are unclear within 30 days of receipt of a complete petition. 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.

History

L. 1993, c. 139, § 20; amended 1997, c. 278, § 46.

13:1K-11.10. Notification of transfer, 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.

History

L. 1993, c. 139, § 21.

13:1K-11.11. Audit of negative declarations and remedial action workplans

a. Within one year of the effective date of P.L.1993, c.139, the Department of Environmental Protection and Energy shall conduct an audit of the negative declarations and remedial action workplans that have been submitted to the department pursuant to P.L.1983, c.330 (C.13:1K-6 et al.). On the basis of this audit, and any other information it may have available to it, the department shall adopt regulations identifying, within the Standard Industrial Classification major group numbers listed in the definition of "industrial establishment," all industries designated by Standard Industrial Classification number subgroups, or classes of operations within those subgroups, that should not pose a risk to public health and safety or to the environment. The audit shall, to the extent practicable, distinguish between hazardous substances or hazardous wastes at an industrial establishment caused by a particular type of industry and hazardous substances or hazardous wastes that exist as a result of activities at an industrial establishment unrelated to the activities of that industry.

b. An industrial establishment for which a remedial action workplan was previously implemented and a no further action letter was received pursuant to P.L.1983, c.330, a negative declaration was previously approved by the department pursuant to P.L.1983, c.330, or for which the department has previously approved a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330, and that is designated by a Standard Industrial Classification subgroup or class of operations that does not pose a risk to public health and safety or to the environment as identified in subsection a. of this section, shall not be considered an industrial establishment for the purposes of P.L.1983, c.330.

History

L. 1993, c. 139, § 22.

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.

History

L. 1983, c. 330, 7.

13:1K-13. Grounds for voiding sale

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. A transferee may bring an action in Superior Court to void the sale or transfer of an industrial establishment or any real property or to recover damages from the transferor, pursuant to this section.

History

L. 1983, c. 330, § 8; amended 1993, c. 139, § 12; 1997, c. 278, § 47; 2007, c. 1, § 5, eff. Jan. 11, 2007.

13:1K-13.1. Violations; actions, penalties

a. Whenever the Commissioner of Environmental Protection finds that a person has violated any provision of this act, or any rule or regulation adopted pursuant thereto, or knowingly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), the commissioner may:

(1) issue an order requiring the person found to be in violation to comply in accordance with subsection b. of this section;

- (2) bring a civil action in accordance with subsection c. of this section;
- (3) levy a civil administrative penalty in accordance with subsection d. of this section; or
- (4) bring an action for a civil penalty in accordance with subsection e. of this section.

Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified.

Any officer or management official of an industrial establishment who knowingly directs or authorizes the violation of any provisions of P.L.1983, c.330 (C.13:1K-6 et al.) shall be personally liable for the penalties established in this section.

b. Whenever the commissioner finds that a person has violated this act, or any rule or regulation adopted pursuant thereto, the commissioner may issue an order specifying the provision or provisions of this act, or the rule or regulation adopted pursuant thereto, of which the person is in violation, citing the action that constituted the violation, ordering abatement of the violation, and giving notice to the person of the person's right to a hearing on the matters contained in the order. The ordered person shall have 20 calendar days from receipt of the order within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order. If no hearing is requested, the order shall become final after the expiration of the 20-day period. A request for hearing shall not automatically stay the effect of the order.

c. The commissioner may institute an action or proceeding in the Superior Court for injunctive and other relief to enforce the provisions of this act and to prohibit and prevent a violation of this act, or of any rule or regulation adopted pursuant thereto, and the court may proceed in the action in a summary manner. In any such proceeding the court may grant temporary or interlocutory relief.

Such relief may include, singly or in combination:

- (1) a temporary or permanent injunction;
- (2) assessment of the violator for the reasonable costs of any inspection that led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection.

d. The commissioner may assess a civil administrative penalty of not more than \$25,000 for a first offense, and not more than \$50,000 for the second and every subsequent offense. Each day that a violation continues shall constitute an additional, separate, and distinct offense.

No assessment may be levied pursuant to this section until after the violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, regulation, or order violated, a concise statement of the facts alleged to constitute a violation, a statement of the amount of the civil administrative penalties to be imposed, and a

statement of the person's right to a hearing. The ordered person shall have 20 calendar days from receipt of the notice within which to deliver to the commissioner a written request for a hearing.

After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in this act, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. The commissioner may compromise any civil administrative penalty assessed under this section in an amount the commissioner determines appropriate.

e. A person who violates this act, or any rule or regulation adopted pursuant thereto, shall be liable for a penalty of not more than \$25,000 per day, to be collected in a civil action commenced by the commissioner.

A person who violates an administrative order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay an administrative assessment in full pursuant to subsection d. of this section is subject upon order of a court to a civil penalty not to exceed \$50,000 per day of each violation.

Any penalty imposed pursuant to this subsection may be collected, with costs, in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with this act.

History

L. 2007, c. 1, § 3, eff. Jan. 11, 2007.

13:1K-14. Residential property contaminated with radon gas or radon progeny; inspection and testing; removal; certification; costs

a. The Department of Environmental Protection shall, upon a determination after inspection and testing that the premises of any residential property are not significantly contaminated with radon gas or radon progeny and require no remedial action, provide the owner of the property with written certification that, as of the date of the testing, any radon gas or radon progeny contamination present was within acceptable limits as established by the United States Environmental Protection Agency and the department.

b. The department shall, upon completion of any project undertaken to remove radium from any residential property and to remedy excessive levels of radon gas or radon progeny therefrom, provide the owner of the property with written certification that, as of the date of the completion of the project, any radon gas or radon progeny contamination present was within acceptable limits as established by the United States Environmental Protection Agency and the department.

c. The costs incurred by the department in providing the certifications required by this section shall be covered by sums which may be appropriated or otherwise made available to the department to remedy radon gas or radon progeny contamination.

History

L. 1983, c. 575, 1.