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ADOPTION SECTION

ENVIRONMENTAL PROTECTION

SITE REMEDIATION PROGRAM

Notice of Administrative Corrections

Specially Adopted Rules to Implement the Site Remediation Reform Act, P.L. 2009, c. 60

Processing of Damage Claims Pursuant to the Sanitary Landfill Facility Closure and

Contingency Fund Act

N.J.A.C. 7:11-1.5, 2.6 and 3.3

Processing of Damage Claims Pursuant to the Spill Compensation and Control Act

N.J.A.C. 7:1J-1.4, 2.7 and 6.3

Stormwater Management

N.J.A.C. 7:8-5.4

New Jersey Pollutant Discharge Elimination System

N.J.A.C. 7:14A-7.4 and 7.5

Industrial Site Recovery Act Rules

N.J.A.C. 7:26B-3.2

Administrative Requirements for the Remediation of Contaminated Sites

N.J.A.C. 7:26C-1.2, 1.4, 1.6, 2.3, 2.4 and 7.10

Technical Requirements for Site Remediation

N.J.A.C. 7:26E-1.8, 1.14, 2.1, 3.4, 3.6, 3.7, 3.9, 4.1, 4.2, 4.4, 4.5, 4.6, 4.8, 6.1, 6.2, 6.4, 7.1, 7.2,

8.5, 8.6 and 7:26E Appendix E

Highlands Water Protection and Planning Act Rules

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N.J.A.C. 7:38-6.6

Take notice that the Department of Environmental Protection (Department) discovered errors in the following rules: Processing of Damage Claims Pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act rules, N.J.A.C. 7:1I; Processing of Damage Claims Pursuant to the Spill Compensation and Control Act rules, N.J.A.C. 7:1J; Stormwater Rules, N.J.A.C. 7:8-5.4; New Jersey Pollutant Discharge Elimination System, N.J.A.C. 7:14A; Industrial Site Recovery Act Rules, N.J.A.C. 7:26B; Administrative Requirements for the Remediation of Contaminated Site, N.J.A.C. 7:26C; Technical Requirements for Site Remediation, N.J.A.C. 7:26E; and Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38.

On December 7, 2009, the Department adopted the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C, and related amendments to other Department rules to implement the Site Remediation Reform Act (SRRA), N.J.S.A. 58:10C-1 et seq., and related amendments to the Industrial Site Recovery Act (ISRA), N.J.S.A. 13:1K-6 et seq., the Spill Compensation Control Act (the Spill Act), N.J.S.A. 58:23-11 et seq., and the Brownfield and Contaminated Site Remediation Act (the Brownfield Act), N.J.S.A. 58:10B-1 et seq. (see 41 N.J.R. 4467(a)). A number of corrections to the specially adopted rules are needed to correct inaccurate rule citations and web site addresses, and to correct typographical errors. Additionally, because the Department, as a part of the special adoption, deleted the general requirements to analyze for the priority pollutant list of contaminants from the Technical Requirements for Site Remediation (Technical Rules), N.J.A.C. 7:26E, several residual

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references to the priority pollutant list of contaminants must also be deleted. Accordingly, the Department is making administrative corrections to the Technical Rules to delete references to the priority pollutant list of contaminants from the Technical Rules; these amendments are obvious, easily recognizable, and apparent to the promulgating agency and the regulated public.

A summary of the corrections follows:

N.J.A.C. 7:1I Processing of Damage Claims Pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act rules

N.J.A.C. 7:1J Processing of Damage Claims Pursuant to the Spill Compensation and Control Act rules

1. The Department is correcting the cross reference to the new covenant not to sue provision promulgated in the Brownfields Act from N.J.S.A. 58:10C-31 to 58:10B-13.2 in the following rule provisions: N.J.A.C. 7:1I-1.5 (definition of “covenant not to sue”), 2.6(d) and (e), and 3.3(a)11 and(b)1iv, and 7:1J-1.4 (definition of “covenant not to sue”), 2.7(c)1 and 2, 6.3(a)9 and (b)18ii.

N.J.A.C. 7:8-5.4 Stormwater Management

2. At N.J.A.C. 7:8-5.4(a)2iii(1) lists types of stormwater that qualify as high pollutant loading areas, from which stormwater shall not be recharged. In the prior version of this sub-paragraph, the phrase “Department approved” preceded the phrase “remedial action workplan or landfill closure plan...”. This meant that a recharge that is consistent with a Department approved landfill closure plan would be allowed under the rule as it stood prior to the special

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adoption. Conversely, stormwater may not be discharged from a high pollutant loading area that is also a landfill where the Department had not approved a landfill closure plan. On special adoption, the Department deleted the phrase “Department approved” because it did not want to imply that Departmental approval would be required for remedial action workplans pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules. However, as indicated in the Federal Standards Analysis in the notice of special adoption (see 41 N.J.R. 4468), Department approval still applies to “landfill closure plans,” because it is illogical to allow recharge of stormwater under a plan that has not been approved by the Department. Accordingly, the Department is inserting the phrase “Department approved” in the phrase “Department approved landfill closure plan...”.

N.J.A.C. 7:14A New Jersey Pollutant Discharge Elimination System

3. At N.J.A.C. 7:14A-7.4(a)5ii, the Department is reinserting the phrase “Department approved” in the phrase “Department approved remedial action workplan or landfill closure plan...” The phrase “Department approved” still applies to “landfill closure plan,” and this phrase was erroneously deleted as a part of the specially adopted rule. See paragraph 2 above.

4. The Department is correcting the citation to the discharge to ground water proposals section of the Technical Rules; the correct citation is N.J.A.C. 7:26E-7.2, not N.J.A.C. 7:26E-6.1 and 6.3(c). N.J.A.C. 7:26E-6.3(c) was recodified as N.J.A.C. 7:26E-7.2 as part of the specially adopted rules. Prior to the specially adopted rules, N.J.A.C. 7:26E-6.3(c) only applied to the discharge described at N.J.A.C. 7:14A-7.5(b)3vii. As part of the specially adopted rules,

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N.J.A.C. 7:26E-7.2 applies to all of the discharges listed in N.J.A.C. 7:14A-7.5(b)3. However, N.J.A.C. 7:14A-7.5(b)3 specifically excludes those discharges listed at N.J.A.C. 7:14A-7.5(b)3i through vi from the requirements of N.J.A.C. 7:26E-7.2. In order to make these two rules consistent, the Department is deleting from N.J.A.C. 7:14A-7.5(b)3vii the words “other than” and adding the word “including” to correctly reflect that the requirements of N.J.A.C. 7:26E-7.2 regarding discharge to ground water proposals (that is, discharges related to the remediation of a contaminated site) apply to all of the types of discharges to ground water listed at N.J.A.C. 7:14A-7.5(b)3i through vi. Finally, since N.J.A.C. 7:26E-7.2 requires the person responsible for conducting the remediation to submit a proposal prior to commencing a discharge to ground water, the Department is deleting the words “that is being conducted” and adding “when the person responsible for conducting the remediation submits a proposal” so that N.J.A.C. 7:26E-7.2 is accurately characterized.

N.J.A.C. 7:26B Industrial Site Recovery Act Rules

5. The Department is deleting the extraneous word “to” from N.J.A.C. 7:26B-3.2(a), General Information Notice.

N.J.A.C. 7:26C Administrative Requirements for the Remediation of Contaminated Sites

6. The Department is correcting the web site addresses for its Site Remediation Program guidance documents and forms by replacing a period with a forward slash (/) in the web addresses at N.J.A.C. 7:26C-1.2(a), 1.6(a), 2.3(b)1 and 2.4(a)2.

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7. The Department is correcting a citation at N.J.A.C. 7:26C-1.4(a)1. P.L. 2009, c. 60 amended the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., to provide that any person conducting due diligence be exempted from the requirements of the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C. The correct citation for this exemption is N.J.S.A. 58:10B-1.3d(2), not N.J.S.A. 58:10C-30d(2).

8. The Department is correcting the spelling of the word “reference” at N.J.A.C. 7:26C-7.10(b)5.

N.J.A.C. 7:26E Technical Requirements for Site Remediation

9. The Department is correcting several citations to the provision of the Technical Rules that contains the methodologies that a person is required to use to determine the presence of free and residual product. The correct citation is N.J.A.C. 7:26E-2.1(a)14, not N.J.A.C. 7:26E-2.1(a)11. The citation in the definitions of “free product” and “residual product” at N.J.A.C. 7:26E-1.8 is being corrected. The same correction is being made at N.J.A.C. 7:26E-3.6(a)2i, 4.1(b)3i, 4.4(h)3i, 4.8(c)4i and (d)2vii, and 6.1(d).

10. The Department is correcting the definition of “ground water use area” at N.J.A.C. 7:26E-1.8 to include the correct citation to the section of the rules that contains the requirements for well searches. The correct citation is N.J.A.C. 7:26E-1.17, not N.J.A.C. 7:26E-1.18.

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11. The Department is correcting several citations to the Hazardous Waste rules. At N.J.A.C. 7:26E-1.8 (definition of “hazardous waste”) and 3.4(c), the correct citation is N.J.A.C. 7:26G, not N.J.A.C. 7:26-8. At N.J.A.C. 7:26E-6.2(c)2, the reference to N.J.A.C. 7:26-8.5 is corrected as N.J.A.C. 7:26-5. N.J.A.C. 7:26-7 through 14 were repealed in 1996 and replaced by N.J.A.C. 7:26G. See 28 N.J.R. 1693(a) and 4606(a).

12. At N.J.A.C. 7:26E-1.14(b)4, the Department is correcting the address for the New Jersey Department of Health and Senior Services (NJDHSS) to which indoor air sample analyses must be sent, because they recently moved their offices.

13. The Department is correcting several citations to the section of the Technical Rules that pertains to the variance requirements. The correct citation is N.J.A.C. 7:26E-1.7, not N.J.A.C. 7:26E-1.6 or 1.6(c). This correction is being made at N.J.A.C. 7:26E-2.1(a)5ii, 3.7(c)2, 4.4(d), 4.5(d)2ii and 7:26E Appendix E (Model Deed Notice).

14. The Department is making a grammatical correction at N.J.A.C. 7:26E-2.1(a), changing the word “be” to the word “are.”

15. Prior to the adoption of the amendments to the Technical Rules that were made as part of the specially adopted rules, then codified N.J.A.C. 7:26E-2.1(c)2 required that samples be analyzed using either Target Compound List plus 30/Target Analyte List (TCL +30/TAL) or Priority Pollutant plus 40 (PP + 40) scans, and also that analyses be performed for both petroleum

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hydrocarbons and pH when contaminants in an area are unknown or not well documented, although a limited contaminant list was allowed to be used subject to the Department's review. As a part of the specially adopted rules, the Department reorganized N.J.A.C. 7:26E-2.1(c), and deleted the requirement to analyze samples using the priority pollutant list of analytes. New N.J.A.C. 7:26E-2.1(c)1ii now requires the person responsible for conducting the remediation to use the Target Compound List and the Target Analyte List (TCL/TAL) exclusively when contaminants are not known or not well documented at a site. The TCL/TAL is the list of analytes that EPA uses for its Superfund program. The rationale behind this amendment was that Department believes that the use of the TCL/TAL is appropriate for the Site Remediation Program and will provide consistency between the Federal remediation sites and the State and privately funded remediations. In order to be consistent with the deletion of the priority pollutant list, the Department should have made several corresponding amendments within the Technical Rules in the specially adopted rules, but did not. In order to reflect the deletion of the priority pollutant list throughout the Technical Rules, the Department is making the following corrections:

The definition of "priority pollutant plus 40," abbreviated as "PP + 40," is being deleted because the PP + 40 analysis is no longer required; rather the required analyses are for TCL/TAL. The definitions of "acid extractable organic compounds" and "base neutral organic compound" are being deleted in their entirety because "acid extractable organic compounds" and "base neutral organic compounds" are lists of contaminants associated with the priority pollutant

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list. In addition, the Department is deleting the reference to the phrase “priority pollutant” from the definitions of “semivolatile organic compounds” and “volatile organics.”

The Department is correcting an error in N.J.A.C. 7:26E-2.1(d) Table 2-1 that is related to elimination of priority pollutants from the Technical Rules discussed above. New N.J.A.C. 7:26E-2.1(d) sets forth the requirements the person responsible for conducting the remediation must follow for analyzing samples associated with petroleum hydrocarbon discharges. Pursuant to N.J.A.C. 7:26E-2.1(d), for all petroleum storage and discharge areas, the person responsible for conducting the remediation is required to analyze all samples pursuant to the requirements in Table 2-1. Table 2-1 lists the specific analytical requirements for each of the different types of petroleum products. In replacing the existing Table 2-1 with the new Table 2-1, the Department neglected to change the analytical requirements for “waste oil and unknown petroleum hydrocarbons” in “water” from base neutral plus tentatively identified compounds (TICs), which are associated with the priority pollutant analyte list. Under the specially adopted rules, the person responsible for conducting the remediation is now required to analyze for semivolatile organic compounds plus tentatively identified compounds that are associated with the TCL.

Similarly, the Department is also correcting an error in Footnote 1 of new Table 2-1. The Footnote is being corrected to state that certain volatile organic compounds that are part of the TCL are excluded when analyses are performed for discharges related to petroleum hydrocarbons. Specifically, 1,2-Dibromo-3-chloropropane, 1,2-Dibromoethane (Ethylene dibromide), and 1,4-Dioxane are excluded for the TCL volatile organic compounds fraction. The

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reason these three analytes cannot be included is that they are not associated with petroleum hydrocarbon products and therefore it is illogical to include them in a table that applies only to petroleum hydrocarbon discharges.

The Department is also correcting an error in Footnote 2 of new Table 2-1. Semivolatile compounds are a group of contaminants comprised of base/neutral compounds and acid extractable compounds. Acid extractable compounds are comprised of phenol and substituted phenols. Prior to the specially adopted rules, the person responsible for conducting the remediation was required to analyze certain petroleum hydrocarbon discharges for base/neutral compounds, but not for acid extractable compounds. Under the specially adopted rules, pursuant to Footnote 2 of new Table 2-1, the person responsible for conducting the remediation is required to analyze petroleum hydrocarbon discharges for all semivolatile compounds, including both base/neutral compounds and acid extractable compounds for petroleum hydrocarbon discharges. However, the person responsible for conducting the remediation is actually only required to analyze for the base/neutral portion of the semivolatile compounds that are found in the TCL. Therefore, the Department is adding the phrase “excluding phenol and substituted phenols” after the word “compounds” in Footnote 2.

The Department is deleting from Footnote 4 of Table 2-1 the requirement to perform a library search of TICs when analyzing for polynuclear aromatic hydrocarbons (PAHs). Prior to the specially adopted rules, the person responsible for conducting the remediation was not required to analyze for TICs as part of the PAH analysis for discharges associated with

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petroleum hydrocarbon mixtures. However, as part of the specially adopted rules, Footnote 4 of Table 2-1 inaccurately requires the person responsible for conducting the remediation to include a library search for TICs as part of the PAH analysis. Accordingly, the Department is deleting the phrase “with a library search of TICs” from the end of Footnote 4.

At N.J.A.C. 7:26E-4.2(b)6iv, the Department is replacing the references to “priority pollutant metals” and “full priority scan” with “target analyte list” and “target compound list” as the examples given for the information that should be included in a sampling summary table because the use of the priority pollutant list was deleted at N.J.A.C. 7:26E-2.1 as part of the specially adopted rule. This will make this section of the Technical Rules consistent with other sections.

At N.J.A.C. 7:26E-4.6(b)3iii(1) the Department is deleting the references to “priority pollutant” and “EPA priority pollutant” list, and replacing with “target analyte list” and “Target Compound List,” respectively, as required analyses for rubble, ash, cinders, and dredge spoils, because the use of the priority pollutant list was deleted at N.J.A.C. 7:26E-2.1 as part of the specially adopted rules. This change will make these sections of the Technical Rules consistent with other sections of the rule.

Lastly, at N.J.A.C. 7:26E-4.6(b)3iii(2), the Department is deleting the reference to “Priority Pollutant plus forty analysis” as a choice for the sampling requirements for other types of fill material because the use of the priority pollutant list was deleted at N.J.A.C. 7:26E-2.1 as part of

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the specially adopted rule. This correction will make these sections of the Technical Rules consistent with other sections of the rules.

16. The Department is correcting citations to the rules that contain the requirements concerning determination of ground water flow direction at N.J.A.C. 7:26E-3.7(g)1 and (g)2ii, and 4.4(h)3ii. The correct citation is N.J.A.C. 7:26E-3.7(e)3, not N.J.A.C. 7:26E-3.7(e)3iv.

17. The Department is correcting the citation at N.J.A.C. 7:26E-3.7(g)5 which requires the person responsible for conducting the remediation to notify the Department when they determine that all or part of ground water contamination detected onsite ground is caused by background ground water contamination. The correct citation is to paragraph (g)4 in the section, not to paragraph (c)4.

18. At N.J.A.C. 7:26E-3.9(a)2iv, the Department is replacing the word “and” with the word “or,” as otherwise the requirement does not make logical sense. As worded with the word “and,” the person responsible for conducting the remediation is required to sample soils using the requirements described in this section, and by using the variance process described at N.J.A.C. 7:26E-1.7. By changing to the word “or,” the person conducting the remediation knows that they can either follow the requirements for sampling soil beneath or around pavement at above ground tanks as described at N.J.A.C. 7:26E-3.9(a)2, or they may vary from these requirements by using the variance provisions at N.J.A.C. 7:26E-1.7. Additionally, use of the word “or”

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makes this requirement consistent with other requirements in the Technical Rules that allow for the variance process.

19. At N.J.A.C. 7:26E-4.2(b)10 and 6.2(a)11, the Department is correcting references to the health and safety plan. The correct citation is N.J.A.C. 7:26E-1.10, not N.J.A.C. 7:26E-1.9.

20. The Department is correcting a citation at N.J.A.C. 7:26E-4.4(e)1 and (f)1 regarding what structures are regulated as underground injection control units pursuant to the New Jersey Pollutant Discharge Elimination System rules (N.J.A.C. 7:14A). The correct citation is N.J.A.C. 7:14A-8, not N.J.A.C. 7:14A-5.

21. At N.J.A.C. 7:26E-4.4(g)5, the Department is correcting the title of the referenced ASTM document. The correct title is D2113, not 2113.

22. The Department is correcting a citation at N.J.A.C. 7:26E-4.4(h)3v to the rules that concern the requirement to perform an updated well search. The correct citation for this provision is N.J.A.C. 7:26E-1.17, not N.J.A.C. 7:26E-3.7(e)3i.

23. The Department is correcting a citation at N.J.A.C. 7:26E-6.1(f) to the rules that concern the requirement to conduct remediation of historic fill material. The correct citation for this provision is N.J.A.C. 7:26E-6.2(d), not N.J.A.C. 7:26E-6.2(c).

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24. The Department is correcting a citation at N.J.A.C. 7:26E-6.4(a)6 to the provision that concerns the requirement to sample ground water when the Department establishes a ground water classification exception area as part of the remedial action. The correct citation for this provision is N.J.A.C. 7:26E-8.6(b)7i, not N.J.A.C. 7:26E-8.6(a)7i.

25. The Department is correcting the information and citation at N.J.A.C. 7:26E-7.1(a)8 regarding one of the types of permits the person responsible for conducting the remediation is required to identify as part of implementing the remedial action. The correct permit type is a Flood Hazard Area Control Act Permit, not Stream Encroachment Permit. The correct citation to the rules that concern this permit is N.J.A.C. 7:13, not N.J.A.C. 7:8-3.15. N.J.A.C. 7:8-3.15 did not exist. Instead, the citation should always have been to N.J.A.C. 7:13. This is further supported by the fact that the definition of “stream encroachment permit” has been found in N.J.A.C. 7:13 since at least 1984 (see 16 N.J.R. 1201(a)). Regarding the correct name for the type of permit, the Department proposed to delete the definition of “stream encroachment permit” at 38 N.J.R. 3950(a). At that time, the Department stated “In addition, permits issued under these rules are commonly referred to as ‘stream encroachment permits,’ which implies the existence of both a stream and an encroachment into a stream, neither of which are necessarily aspects of an activity regulated under this chapter. In order to better reflect the overall purpose and statutory authority of the Flood Hazard Area Control Act, permits issued under the chapter are therefore referred to as flood hazard area permits in this proposal.” This was formally adopted in November 2007 at 39 N.J.R. 4573(a).

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26. The Department is correcting a citation at N.J.A.C. 7:26E-7.2(a) to the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A. The correct citation is N.J.A.C. 7:14A-7.5(b), not N.J.A.C. 7:14A-7.5(d). The correct citation is to N.J.A.C. 7:14A-7.5(b) as this subsection of the New Jersey Pollutant Discharge Elimination System rules pertains to discharges to ground water specific to site remediation projects.

27. The Department is correcting a citation at N.J.A.C. 7:26E-7.2(c)2iii to the provision in which the Pinelands Commission mailing address is codified. The correct citation for this provision is N.J.A.C. 7:26E-1.4(s), not N.J.A.C. 7:26E-1.4(r).

28. The Department is correcting a citation at N.J.A.C. 7:26E-8.5(c)3iv to the rules in which the Department's address to which the biennial certification must be sent are codified. The correct citation for this provision is N.J.A.C. 7:26E-8.4(e), not N.J.A.C. 7:26E-8.4(e)7.

29. The Department is correcting a citation at N.J.A.C. 7:26E-8.6(b)4iii to the section's paragraph in which the reporting requirement after monitoring wells have been decommissioned is set forth. The correct citation for this provision is to section paragraph (c)6, not paragraph (b)7.

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30. The Department is correcting several citations at N.J.A.C. 7:26E-8.6(c) regarding information that must be included in the biennial certification report. The correct citations are as follows:

At N.J.A.C. 7:26E-8.6(c)4, regarding the requirements to submit results of the comparison of applicable laws and regulations in table format, the correct citation is to paragraph (b)1, not (a)1.

At N.J.A.C. 7:26E-8.6(c)7, regarding the requirements to submit information regarding each land use disturbance identified, the correct citation is to paragraph (b)5, not (a)5.

At N.J.A.C. 7:26E-8.6(c)7ii, regarding the requirement to submit the results of all ground water sampling required, the correct citation is to paragraph (b)5, not (a)5.

At N.J.A.C. 7:26E-8.6(c)9, regarding the requirement to evaluate the contaminant concentrations in the ground water to determine whether concentrations remain that are above the applicable ground water quality standards, the correct citation is to paragraph (b)7, not (a)7.

N.J.A.C. 7:38 Highlands Water Protection and Planning Act Rules

31. The Department is correcting the word “profession” to “professional” at N.J.A.C. 7:38-6.6(b)3. The correct term is “licensed site remediation professional,” not “licensed site remediation profession.”

This notice of administrative corrections is published pursuant to N.J.A.C. 1:30-2.7.

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Full text of the corrected rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

CHAPTER 11

PROCESSING OF DAMAGE CLAIMS PURSUANT TO THE SANITARY LANDFILL

FACILITY CLOSURE AND CONTINGENCY FUND ACT

SUBCHAPTER 1. GENERAL PROVISIONS

7:11-1.5 Definitions

The following words and terms, when used in this chapter, shall have the following meanings.

Where words and terms are used which are not defined herein, the definitions of those words and terms will be the same as the definitions found at N.J.A.C. 7:26-1.4.

...

“Covenant not to sue” means a covenant pursuant to N.J.S.A. 58:10B-13.1 or [58:10C-31] **13.2**.

...

SUBCHAPTER 2. CLAIMS GENERALLY

7:11-2.6 Claims by responsible parties or by owners or operators of a sanitary landfill facility

(a)-(c) (No change.)

(d) No person who benefits from a covenant not to sue pursuant to N.J.S.A. 58:10B-13.1 or [58:10C-31] **13.2** for a remediation that involves the use of engineering controls at a sanitary landfill facility, or who acquired the sanitary landfill facility after the issuance of a final

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remediation document for a remediation at the sanitary landfill facility that involves the use of engineering controls and seeks payment for damages relating to the real property and remediation covered by the covenant not to sue, shall receive compensation from the Fund for damages proximately resulting from the very sanitary landfill facility for which they are an owner, operator, or otherwise responsible party.

(e) No person who benefits from a covenant not to sue pursuant to N.J.S.A. 58:10B-13.1 or [58:10C-31] **13.2** for a remediation that involves only the use of institutional controls at a sanitary landfill facility, or who acquired the sanitary landfill facility after the issuance of a final remediation document for a remediation at the sanitary landfill facility that involves only the use of institutional controls shall receive compensation from the Fund for damages proximately resulting from removing the institutional control at the very sanitary landfill facility for which they are an owner, operator or otherwise responsible party.

(f) (No change.)

SUBCHAPTER 3. CLAIMS PROCEDURE

7:1I-3.3 Contents of claim

(a) Claims shall be typewritten or written legibly in ink, and shall contain the following information:

1.-10. (No change.)

11. A statement that the claimant cannot benefit from a covenant not to sue pursuant to N.J.S.A. 58:10B-13.1 or [58:10C-31] **13.2** for the sanitary landfill facility at issue and why;

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12.-14. (No change.)

(b) The claimant shall submit to the Department the following types of information requested by the Department:

1. The location of the sanitary landfill facility which the claimant believes to be the proximate cause of the damages incurred, including the name of the site, the street address, the municipality, and the county, including without limitation the following:

i.-iii. (No change.)

iv. Whether the covenant not to sue pursuant to N.J.S.A. 58:10B-13.1 or [58:10C-31]

13.2 applies to the sanitary landfill facility or a portion of the sanitary landfill facility;

v.-vii. (No change.)

2.-16. (No change.)

(c)-(e) (No change.)

CHAPTER 1J

PROCESSING OF DAMAGE CLAIMS PURSUANT TO THE SPILL COMPENSATION AND CONTROL ACT

SUBCHAPTER 1. GENERAL PROVISIONS

7:1J-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

...

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“Covenant not to sue” means a covenant pursuant to N.J.S.A. 58:10B-13.1 or [58:10C-31] **13.2**.

SUBCHAPTER 2. CLAIMS GENERALLY

7:1J-2.7 Claims by responsible parties or by owners or occupants of property from which discharge has emanated

(a)-(b) (No change.)

(c) Notwithstanding (a)2 above, a claimant who is relieved from liability pursuant to N.J.S.A. 58:10-23.11g(d) is not eligible for compensation from the Fund if the claimant:

1. Benefits from a covenant not to sue pursuant to N.J.S.A. 58:10B-13.1 or [58:10C-31] **13.2** for a remediation that involves engineering controls at the property, or acquired the subject property after the issuance of the final remediation document for a remediation at the subject property that involves the use of engineering controls and seeks payment for damages relating to the real property and remediation covered by the covenant not to sue; or

2. Benefits from a covenant not to sue pursuant to N.J.S.A. 58:10B-13.1 or [58:10C-31] **13.2** for a remediation that involves only the use of institutional controls at the subject property, or acquired the subject property after the issuance of a final remediation document for a remediation at the subject property that involves only the use of institutional controls, if the damages claimed proximately result from removing the institutional controls from the subject property.

SUBCHAPTER 6. CLAIMS PROCEDURES

7:1J-6.3 Contents of claim

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(a) Claims shall be typewritten or written legibly in ink, and shall contain the following information:

1.-8. (No change.)

9. A statement that the claimant cannot benefit from a covenant not to sue pursuant to N.J.S.A. 58:10B-13.1 or [58:10C-31] **13.2** for the subject property and why;

10.-11. (No change.)

(b) The claimant shall submit to the Department any of the following types of information requested by the Department:

1.-17. (No change.)

18. Any other information which the Department deems necessary to process the claim, including, but not limited to, the following:

i. (No change.)

ii. Whether a covenant not to sue exists pursuant to N.J.S.A. 58:10B-13.1 or [58:10C-31] **13.2** concerning the subject property or a portion of the property; and

iii. (No change.)

(c)-(e) (No change.)

CHAPTER 8

STORMWATER MANAGEMENT

SUBCHAPTER 5. DESIGN AND PERFORMANCE STANDARDS FOR STORMWATER MANAGEMENT MEASURES

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7:8-5.4 Erosion control, groundwater recharge and runoff quantity standards

(a) This section contains minimum design and performance standards to control erosion, encourage and control infiltration and groundwater recharge, and control stormwater runoff quantity impacts of major development.

1. (No change.)

2. The minimum design and performance standards for groundwater recharge are as follows:

i.-ii. (No change.)

iii. The following types of stormwater shall not be recharged:

(1) Stormwater from areas of high pollutant loading. High pollutant loading areas are areas in industrial and commercial developments where solvents and/or petroleum products are loaded/unloaded, stored, or applied; areas where pesticides are loaded/unloaded or stored; areas where hazardous materials are expected to be present in greater than “reportable quantities” as defined by the United States Environmental Protection Agency (EPA) at 40 CFR 302.4; areas where recharge would be inconsistent with a remedial action work plan approved pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C, or a **Department approved** landfill closure plan; and areas with high risks for spills of toxic materials, such as gas stations and vehicle maintenance facilities; and

(2) (No change.)

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- iv. (No change.)
- 3. (No change.)
- (b) (No change.)

CHAPTER 14A

NEW JERSEY POLLUTANT DISCHARGE ELIMINATION SYSTEM

SUBCHAPTER 7. REQUIREMENTS FOR DISCHARGES TO GROUNDWATER (DGW)

7:14A-7.4 Exemptions

(a) Persons responsible for the following discharges are exempt from the requirement to obtain a discharge to groundwater permit:

- 1.-4. (No change.)
- 5. The following stormwater discharges, if such discharges are not through underground injection regulated under N.J.A.C. 7:14A-8, and do not require a permit under N.J.A.C. 7:14A-24.2(a)9:
 - i. (No change.)
 - ii. Stormwater discharges from residential areas (including residential streets, parking lots, easements, and open space), or from commercial areas (other than areas of high pollutant loading), unless N.J.A.C. 7:14A-25.2(a) or (b) requires the operating entity to apply for a NJPDES permit for the discharge. For purposes of this subparagraph and N.J.A.C. 7:14A-8.5(b)9 and 24.2(c)3, high pollutant loading areas are commercial areas where solvents and/or petroleum products are loaded/unloaded, stored, or applied;

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commercial areas where pesticides are loaded and/or unloaded or stored; commercial areas where hazardous materials are expected to be present in greater than “reportable quantities” as defined by the USEPA at 40 C.F.R. 302.4; commercial areas where recharge would be inconsistent with a remedial action work plan approved pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C, or a **Department approved** landfill closure plan; and commercial areas where the risk for spills of toxic material is high, such as gas stations and vehicle maintenance facilities; and

iii. (No change.)

7:14A-7.5 Authorization of discharges to ground water by permit-by- rule

(a) (No change.)

(b) Any person responsible for the discharges to ground water listed in (b)3i through vii

below is deemed to have a permit-by-rule if the discharge occurs when:

1.-2. (No change.)

3. The following ground water discharges are authorized by permit-by-rule under this subsection:

i.-vi. (No change.)

vii. Discharges to ground water, [other than] **including** those listed in (b)3i through vi above, that occur during the course of a site remediation [that is being conducted] **when the person responsible for conducting the remediation submits a proposal in**

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accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E,

including the requirements of N.J.A.C. 7:26E-[6.1 and 6.3(c)]**7.2**.

(c) (No change.)

CHAPTER 26B

INDUSTRIAL SITE RECOVERY ACT RULES

SUBCHAPTER 3. GENERAL INFORMATION NOTICE

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.-15. (No change.)

(b) (No change.)

CHAPTER 26C

ADMINISTRATIVE REQUIREMENTS FOR THE REMEDiation OF CONTAMINATED SITES

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SUBCHAPTER 1. GENERAL INFORMATION

7:26C-1.2 General requirements

(a) The person responsible for conducting the remediation shall conduct the remediation in accordance with all applicable statutes, rules, and guidance, including, but not limited to, the Remediation Standards rules, N.J.A.C. 7:26D, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, this chapter and the Department's guidance at [www.nj.gov\[.\]/dep/srp/srra/guidance](http://www.nj.gov[.]/dep/srp/srra/guidance).

(b)(No change.)

7:26C-1.4 Exemptions

(a) The requirements of this chapter do not apply to any person who is:

1. Conducting due diligence in accordance with N.J.S.A. [58:10C-30d(2)] **58:10B-1.3d(2)**;

2.-5. (No change.)

(b) (No change.)

7:26C-1.6 Forms and submissions

(a) Unless otherwise instructed by the Department, any person may obtain any form or application required by this chapter, the Underground Storage Tanks rules, N.J.A.C. 7:14B, and the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, by downloading it from the Department's website at [www.nj.gov\[.\]/dep/srp/srra/forms](http://www.nj.gov[.]/dep/srp/srra/forms) or by contacting the Department at the address

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below. Unless otherwise instructed by the Department, the person shall submit all forms, applications and documents required by this chapter to the address indicated on the form. If no address is indicated, then submit the form to the following address:

New Jersey Department of Environmental Protection

Bureau of Case Assignment and Initial Notice

401 East State Street, 5th floor

PO Box 434

Trenton, New Jersey 08625-0434

Telephone: (609) 292-2943

(b)-(c) (No change.)

SUBCHAPTER 2. OBLIGATIONS OF THE PERSON RESPONSIBLE FOR CONDUCTING THE REMEDIATION OF A CONTAMINATED SITE

7:26C-2.3 Requirements for a person who initiated remediation prior to November 4, 2009

(a) (No change.)

(b) Any person who initiated remediation prior to November 4, 2009 may elect to perform the remediation pursuant to N.J.A.C. 7:26C-2.4:

1. By submitting a request to the Department, on a Request to Proceed Without Department Pre-Approvals form available from the Department on its website at [www.nj.gov\[.\]/dep/srp/srra/forms](http://www.nj.gov[.]/dep/srp/srra/forms), and the Department determines that all outstanding fees and costs not contested have been paid and approves that request;

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2.-3. (No change.)

7:26C-2.4 Requirements for a person who initiated remediation on or after November 4, 2009

(a) Any person who initiates remediation on or after November 4, 2009 shall:

1. (No change.)

2. Notify the Department, on a Licensed Site Remediation Professional Notification of Retention or Dismissal form available from the Department on its website at www.nj.gov/dep/srp/srra/forms, of the name and license information of the licensed site remediation professional hired to conduct or oversee the remediation and the scope of the remediation. The person shall submit this notification within 45 days after the date:

i.-iii. (No change.)

3.-9. (No change.)

SUBCHAPTER 7. REMEDIAL ACTION PERMITS

7:26C-7.10 Termination of a remedial action permit

(a) (No change.)

(b) A permittee may request that the Department terminate a remedial action permit by submitting, on the Remedial Action Permit Form appropriate for the specific remedial action permit, available from the Department on its website at www.nj.gov/dep/srp/srra/forms, the following:

1.-4. (No change.)

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5. If the permit is for a deed notice, a draft copy of a termination of deed notice in accordance with Appendix B to this chapter, incorporated herein by [reference] **reference**; and

6. (No change.)

(c) (No change.)

CHAPTER 26E

TECHNICAL REQUIREMENTS FOR SITE REMEDIATION

SUBCHAPTER 1. GENERAL INFORMATION

7:26E-1.8 Definitions

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

[“Acid extractable organic compounds” means semivolatile compounds amenable to analysis by extraction of the sample with a pH acidic organic solvent. For the purposes of this chapter, analysis of acid extractable organic compounds means the analysis of a sample for either:

1. Those priority pollutants listed as acid compounds in Appendix B, Table II of N.J.A.C.

7:14A; or

2. Those target compound list compounds which are phenol and phenolic compounds under the listing of semivolatile compounds in the version of the EPA Contract Laboratory Program Statement of Work for Organic Analysis, Multi-Media, Multi-Concentration in effect as of the date on which the laboratory is performing the analysis.]

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...

[“Base neutral organic compound” means semivolatile compounds amenable to analysis by extraction of the sample with a pH neutral and a pH basic organic solvent. For the purposes of this chapter, analysis of base neutral organic compounds means the analysis of a sample for either:

1. Those priority pollutants listed as base neutral compounds in Appendix B, Table II of N.J.A.C. 7:14A; or
2. Those target compound list compounds identified as semivolatiles except phenol and phenolic compounds in the version of the EPA Contract Laboratory Program Statement of Work for Organic Analysis, Multi-Media, Multi-Concentration in effect as of the date on which the laboratory is performing the analysis.]

...

“Free product” means a separate phase material, present in concentrations greater than a contaminant's residual saturation point. This definition applies to solids, liquids, and semi-solids. The presence of free product shall be determined pursuant to the methodologies described in N.J.A.C. 7:26E-2.1(a)[11]**14**.

...

“Ground water use area” means any area, as determined by a well search conducted pursuant to N.J.A.C. 7:26E-[1.18]**1.17** and an evaluation of the current and potential ground water uses of an area using a 25-year planning horizon pursuant to N.J.A.C. 7:26E-8.3(b)4ii, where any

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domestic, irrigation, industrial, public supply well, or well with a water allocation permit exists, is proposed, or where there is reasonable expectation a well will be installed within the 25-year planning horizon.

...

“Hazardous waste” means any solid waste as defined in the Solid Waste Regulations, N.J.A.C. 7:26-1.4, that is further defined as a hazardous waste pursuant to the Hazardous Waste Regulations, N.J.A.C. [7:26-8] **7:26G**.

...

[“Priority pollutant plus 40” or “PP + 40” means the priority pollutant list of 126 compounds and elements developed by the EPA pursuant to Section 307(a)(1) of the Clean Water Act and 40 non-targeted organic compounds detected by gas chromatography/mass spectroscopy (GC/MS) analysis. For the purposes of this chapter, a PP + 40 scan means the analysis of a sample for all priority pollutants except asbestos and 2,3,7,8-tetrachloro-dibenzo-p-dioxin, and up to 15 non-targeted volatile organic compounds and up to 25 non-targeted semivolatile organic compounds as analyzed using GC/MS analytical methods. Non-targeted compound criteria shall be used pursuant to the version of the EPA “Contract Laboratory Program Statement of Work for Organic Analysis, Multi-media, Multi-concentration” in effect as of the date which the laboratory is performing the analysis.]

...

“Residual product” means a separate phase material present in concentrations below a contaminant's residual saturation point, retained in soil or geologic matrix pore spaces or

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fractures by capillary forces. This definition applies to solids, liquids, and semi-solids. The presence of residual product shall be determined pursuant to the methodologies described in N.J.A.C. 7:26E-2.1(a) [11]14.

...

“Semivolatile organic compounds” means compounds amenable to analysis by extraction of the sample with an organic solvent. For the purposes of this chapter, analysis of semivolatile organic compounds means the analysis of a sample for [either:

1. Those priority pollutants listed as base neutral and acid compounds in Appendix B, Table II of N.J.A.C. 7:14A; or

2. Those] **those** target compound list compounds identified as semivolatiles in the version of the EPA Contract Laboratory Program Statement of Work for Organic Analysis, Multi-Media, Multi-Concentration in effect as of the date on which the laboratory is performing the analysis.

...

“Volatile organics” means organic compounds amenable to analysis by the purge and trap technique. For the purposes of this chapter, analysis of volatile organics means the analysis of a sample for [either those priority pollutants listed as amenable for analysis using EPA method 624 or] those target compounds identified as volatiles in the version of the EPA “Contract Laboratory Program Statement of Work for Organics Analysis, Multi-Media, Multi-Concentration” in effect as of the date on which the laboratory is performing the analysis.

...

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7:26E-1.14 Immediate environmental concern requirements

(a) (No change.)

(b) The person responsible for conducting the remediation that identifies an IEC condition

shall:

1.-3. (No change.)

4. Within five days after identifying the IEC condition submit the analytical results from all indoor air sampling to the New Jersey Department of Health and Senior Services at the following address:

NJDHSS

[Consumer, Environmental & Occupational Health Service

PO Box 360

Trenton, NJ 08648]

Indoor Environments Program Director

135 E. State Street

PO Box 369

4th Floor

Trenton, NJ 08625-0369; and

5. (No change.)

(c)-(d) (No change.)

SUBCHAPTER 2. QUALITY ASSURANCE FOR SAMPLING AND LABORATORY ANALYSIS

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7:26E-2.1 Quality assurance requirements

(a) The person responsible for conducting the remediation shall ensure that the following quality assurance procedures [be] **are** followed for all sampling and laboratory analysis activities.

1.-4. (No change.)

5. If an analytical method as described in (a)3 above does not exist for a specific contaminant or parameter within a specific matrix, or if an analytical method as described in (a)3 above for a given contaminant or parameter is demonstrated to be inappropriate for the matrix analyzed, then the person responsible for conducting the remediation shall:

i. (No change.)

ii. Document the rationale for selecting the method pursuant to N.J.A.C. 7:26E-[1.6(c)]**1.7**; and

iii. (No change.)

6.-18. (No change.)

(b)-(d) (No change.)

TABLE 2-1
ANALYTICAL REQUIREMENTS FOR
PETROLEUM STORAGE AND DISCHARGE AREAS

Petroleum Product

Soil/Sediment

Water

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...

Waste Oil, Unknown	PHC ³ . Analyze 25 percent of	VO+TICs ¹ ,
Petroleum	samples for VO+TICs ¹ ,	[B/N+TICs ²] SVO+TICs² ,
Hydrocarbons	SVO+TICs ² , PCBs, EPA TAL	TAL Metals ⁵
	Metals ⁵ when PHC are detected. ⁷	

...

Footnotes

1. EPA Target Compound List volatile organic compounds **excluding 1,2-Dibromo-3-chloropropane, 1,2-Dibromoethane (Ethylene dibromide), and 1,4-Dioxane** with a library search of TICs.

2. EPA Target Compound List semivolatile organic compounds **excluding phenol and substituted phenols** with a library search of TICs.

3. (No change.)

4. EPA Target Compound List Polynuclear Aromatic Hydrocarbons [with a library search of TICs].

5.-7. (No change.)

(e) (No change.)

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SUBCHAPTER 3. PRELIMINARY ASSESSMENT AND SITE INVESTIGATION

7:26E-3.4 Site investigation - general sampling requirements

(a)-(b) (No change.)

(c) Composite sampling shall not be conducted, except as necessary for waste classification pursuant to N.J.A.C. [7:26-8] **7:26G-5**.

7:26E-3.6 Site investigation - soil

(a) The site investigation shall satisfy the following requirements for all soil investigations:

1. (No change.)

2. Soil samples shall be collected for chemical analysis and to provide a profile of subsurface conditions. The profile shall meet the following:

i. Logs shall be prepared for all soil samples to document subsurface conditions including, without limitation, soil types and description of non-soil materials, field instrument measurements, depth to ground water, if ground water is encountered and document, if present, soil mottling, presence of odor, vapors, soil discoloration, and free and/or residual product, as determined pursuant to N.J.A.C. 7:26E-2.1(a)[11]**14**;

ii. – iv. (No change.)

3. – 7. (No change.)

(b) – (c) (No change.)

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7:26E-3.7 Site investigation - ground water

(a)-(b) (No change.)

(c) The site investigation of ground water shall be conducted for the purposes of a site investigation pursuant to N.J.A.C. 7:26E-3.3(a) according to the following:

1. (No change.)

2. Ground water samples may be taken pursuant to any generally acceptable sampling method pursuant to N.J.A.C. 7:26E-[1.6(c)]**1.7**. Sampling methods generally acceptable to the Department include, but are not limited to, those specified in the NJDEP Field Sampling Procedures Manual or the NJDEP Alternative Ground Water Sampling Techniques Guide in effect as of the date on which the sampling is performed; and

3. (No change.)

(d)-(f) (No change.)

(g) To support a claim that all or part of ground water contamination detected in onsite ground water samples is caused by background ground water contamination, a background ground water investigation shall be conducted as follows:

1. Ground water flow direction shall be determined pursuant to N.J.A.C. 7:26E-3.7(e)3[iv];

2. A minimum of one background monitoring well shall be installed in each water bearing zone that is believed to contain background ground water contamination. A sufficient number of additional monitoring wells shall be installed to evaluate all offsite sources potentially affecting onsite ground water quality. All monitoring wells shall be

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installed in accordance with N.J.S.A. 58:4A-4.1 et seq. and N.J.A.C. 7:9D. Each background monitoring well shall be located:

- i. (No change.)
- ii. At the upgradient property boundary of the site, as determined by N.J.A.C. 7:26E-3.7(e)3[iv];
- iii.-iv. (No change.)
- 3.-4. (No change).
5. The person responsible for conducting the remediation shall notify the Department pursuant to N.J.A.C. 7:26E-1.4(c) if that person determines, pursuant to [(c)4](g)4 above, that ground water contamination exists upgradient of the site. The person responsible for conducting the remediation shall notify their assigned case manager, or if they are not assigned a case manager, the Department hotline at (1-877 WARNDEP or 1-877-927-6337).

7:26E-3.9 Site investigation - area specific requirements

(a) The site investigation shall also satisfy the following sampling requirements for bulk storage tanks and appurtenances, including, without limitation, all in-use and out of service storage tanks with a storage capacity greater than 55 gallons, and associated piping and fill points.

1. (No change.)
2. For above ground tanks over paved surfaces:
 - i.-iii. (No change.)

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iv. Instead of sampling soil beneath pavement, samples around the pad may be taken pursuant to (b)1 below [and] **or** N.J.A.C. 7:26E-1.7.

3.-6 (No change.)

(b)-(f) (No change.)

SUBCHAPTER 4. REMEDIAL INVESTIGATIONS

7:26E-4.1 Remedial investigation requirements

(a) (No change.)

(b) The person responsible for conducting the remediation shall delineate contamination in all media pursuant to the Department's Compliance Guidance. When the future use of an area under investigation is known to be restricted and the property owner has agreed to place a deed notice on the property appropriately restricting its use, the person responsible for conducting the remediation may delineate the horizontal and vertical limit of the soil contamination to the applicable restricted use standard or the applicable ground water impact soil cleanup criteria, whichever is lower. The person responsible for conducting the remediation at the site shall determine if soil contamination has migrated off the property, at any depth, above the applicable unrestricted use standard. Delineation samples shall be biased to identify any migration paths of the contaminant. Samples shall be biased based on professional judgment, area history, discolored soil, stressed vegetation, drainage patterns, field instrument measurements, odor and other field indicators. Delineation shall be accomplished by either:

1.-2. (No change.)

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3. If a vertical soil contaminant gradient has not been established to the water table:

i. For contaminants having water solubility greater than 100 milligrams per liter at 20 degrees Celsius to 25 degrees Celsius, saturated zone soil shall be delineated for residual product pursuant to N.J.A.C. 7:26E-2.1(a)[11]14, and for direct contact soil cleanup criteria; and

ii. (No change.)

(c) (No change.)

7:26E-4.2 Remedial investigation workplan

(a) (No change.)

(b) The remedial investigation workplan shall include:

1.-5. (No change.)

6. An area of concern sampling summary table of proposed sampling and analysis shall be presented in the remedial investigation workplan text or on the sample location map specified in (b)7 below, according to the following headings (a suggested format is included in Table 4-1):

i.-iii. (No change.)

iv. Analytical parameters for each sample (for example, [priority pollutant metals, full priority pollutant scan] **target analyte list metals, full target analyte list/target compound list scans**); and

v. (No change.)

7.-9. (No change.)

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10. Health and safety plan pursuant to N.J.A.C. 7:26E-[1.9]**1.10**; and
11. (No change.)

TABLE 4-1

(No change.)

7:26E-4.4 Remedial investigation of ground water

(a)-(c) (No change.)

(d) Ground water samples shall be taken pursuant to acceptable professional methods, such as those described in the NJDEP Field Sampling Procedures Manual in effect as of the date the samples were taken. The person responsible for conducting the investigation may implement an alternate sampling method not described in the Manual, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-[1.6(c)]**1.7**.

(e) All initial ground water sampling points shall be located in:

1. The excavation of each source of a contaminant, if possible, including without limitation, tanks and tank distribution systems, and Underground Injection Control (UIC) units such as seepage pits, septic systems, dry wells or other injection wells regulated under N.J.A.C. 7:14A-[5]**8**; or

2. (No change.)

(f) The minimum number of ground water samples collected shall be as follows:

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1. At least one ground water sample for each area of concern which is classified as an Underground Injection Control (UIC) unit including, without limitation, seepage pits, septic systems, dry wells or other injection wells regulated under N.J.A.C. 7:14A-[5]8;

2.-4. (No change.)

(g) All ground water monitoring wells and piezometers shall:

1.-4. (No change.)

5. Have a sufficient number of rock cores collected during the drilling of bedrock monitoring wells, piezometers and other borings, if appropriate, to obtain a general understanding of the fracture patterns beneath the site. The corings shall be conducted using the ASTM D2113 Diamond Drilling Method, as amended and supplemented, incorporated herein by reference. Other methods may be used if documentation acceptable to the Department is provided indicating that the methods were appropriate. The core logs shall include:

i.-viii. (No change.)

6.-11. (No change.)

(h) The results of initial ground water analyses shall be evaluated as follows:

1.-2 (No change.)

3. If ground water contamination above the applicable remediation standards has been confirmed, the person responsible for conducting the remediation shall perform the requirements in (h)3i through ix below. If the person responsible for conducting the remediation claims that ground water contamination is from an offsite source, then a

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background ground water investigation shall be performed pursuant to N.J.A.C. 7:26E-3.7(g).

i. Delineate the vertical and horizontal extent of ground water contamination and the sources of ground water contamination, including, but not limited to, the extent of free and/or residual product as determined pursuant to N.J.A.C. 7:26E-2.1(a)[11]**14**;

ii. Confirm the direction of ground water flow in each affected aquifer or water bearing zone, using all monitoring wells located within each specific aquifer or water bearing zone pursuant to N.J.A.C. 7:26E-3.7(e)3[iv]; and

iii.-iv. (No change.)

v. Perform an updated well search pursuant to N.J.A.C. 7:26E-[3.7(e)3i]**1.17**, based on the results of:

(1)-(2) (No change.)

vi.-ix. (No change.)

(i) (No change.)

7:26E-4.5 Remedial investigation of surface water, wetlands and sediment

(a)-(c) (No change.)

(d) The surface water investigation shall include:

1. (No change.)

2. A receiving water body analysis on any surface water body to which contaminated ground water is discharging, including a water quality analysis program with

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sampling stations upstream and downstream of the contaminated site, any existing point source discharges at that site, and any proposed discharge locations as follows:

- i. (No change.)
- ii. All methods shall be consistent with generally accepted professional methods, such as those described in the NJDEP “Field Procedures Manual For Water Data Acquisition,” or the EPA handbook “Instream Sampling for Waste Load Allocation Applications;” any deviations from these two documents shall be documented pursuant to N.J.A.C. 7:26E-[1.6]1.7.

7:26E-4.6 Remedial investigation of landfills and historic fill material

- (a) (No change.)
- (b) The person responsible for conducting the remediation shall determine the extent of the on-site location of the historic fill material and characterize the fill material, including a determination of the presence of any contaminated non-historic fill material and any free and/or residual product pursuant to N.J.A.C. 7:26E-2.1(a)14, as follows:

- 1.-2. (No change.)
3. The historic fill material may be characterized by using the optional historic fill database maximum and average contaminant levels for historic fill material as set forth in Table 4-2 below or by collecting and analyzing contaminant characterization samples from each type of historic fill present (for example, ash and demolition debris are considered to be different types of fill material) to determine the site specific contaminant levels, as follows:

- i.-ii. (No change.)

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iii. At least one sample for laboratory analysis shall be collected from each boring and analyzed as follows:

(1) Analysis of rubble, ash, cinders, and dredge spoils shall be conducted for total petroleum hydrocarbons and [priority pollutant] **target analyte list** metals in all samples, polynuclear aromatic hydrocarbons (per [EPA Priority Pollutant] **the Target Compound List**) and PCB analysis required on 25 percent of the samples, biased to samples having the highest total petroleum hydrocarbon levels, and field screening for volatile organic compounds shall be conducted during the installation of all exploratory borings and test pits with volatile organic laboratory analysis performed on all samples with elevated field instrument measurements (greater than five times background);

(2) Any other fill material shall be analyzed for total petroleum hydrocarbon in all samples, and [Priority Pollutant plus forty analysis or] EPA Target Compound List/Target Analyte List analysis shall be conducted for 25 percent of all samples;

(3)-(4) (No change.)

4.-5. (No change.)

TABLE 4-2

(No change.)

7:26E-4.8 Remedial investigation report

(a)-(b) (No change.)

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(c) The remedial investigation report shall include the following data and information:

1.-3. (No change.)

4. Stratigraphic logs, which include soil/rock physical descriptions and field instrument readings detected during drilling for each soil boring, test pit and monitoring well, if applicable:

i. For fill material and historic fill material the logs shall include a description of fill type, any layering of the fill material, texture and size of materials, an assessment of fill homogeneity, field indicators of contamination including, without limitation, odors, staining or other discoloration, and field measurements of organic vapors using a calibrated PID/FID or other suitable instrument. The presence of any process waste including metal processing waste such as slag, tailings or free and/or residual product determined pursuant to N.J.A.C. 7:26E-2.1(a)[11]14 shall be noted;

5.-15. (No change.)

(d) The remedial investigation report shall include the following legible maps and diagrams:

1. (No change.)

2. Sample location map(s), including:

i.-vi. (No change.)

vii. Maps depicting the horizontal and vertical extent of any free and/or residual product zones in ground water or soil, as determined pursuant to N.J.A.C. 7:26E-2.1(a)[11]14, for each round of sampling;

viii.-ix. (No change.)

3.-5. (No change.)

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(e)-(g) (No change.)

SUBCHAPTER 6. REMEDIAL ACTION

7:26E-6.1 Remedial action requirements

(a)-(c) (No change.)

(d) Free and/or residual product determined to be present pursuant to N.J.A.C. 7:26E-2.1(a)[11]**14** shall be treated or removed when practicable, or contained when treatment or removal are not practicable. Likewise, natural ground water remediation for dissolved phase contamination may be implemented if it is determined by the Department that active ground water remediation for the dissolved phase is impracticable or not cost-effective. Decisions regarding the practicability of a remedial decision shall be made by the Department on a case by case basis. Natural remediation of free and/or residual product will not be allowed.

(e) (No change.)

(f) The person responsible for conducting the remediation of historic fill material shall do so pursuant to N.J.A.C. 7:26E-6.2[(c)]**(d)**. Remedies for any other fill material, not meeting the definition of historic fill material, shall be selected pursuant to N.J.A.C. 7:26E-5.1.

7:26E-6.2 Remedial action workplan

(a) The person responsible for conducting the remediation shall prepare and submit a remedial action workplan in a format that corresponds directly to the outline of this section with

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a Remedial Action Workplan form, available from the Department with a Remedial Action Workplan form. The workplan shall include:

1.-10. (No change.)

11. A health and safety plan pursuant to N.J.A.C. 7:26E-[1.9]**1.10**;

12.-19. (No change.)

(b) (No change.)

(c) The person responsible for conducting the remediation who proposes to reuse contaminated soil as part of a remedial action shall include in the remedial action workplan a reuse soil plan pursuant to the Department's Guidance Document for the Remediation of Contaminated Soils and that includes all of the following:

1. (No change.)

2. A determination in accordance with N.J.A.C. [7:26-8.5] **7:26G-5** as to the waste classification of the soil, including any supporting data requested by the Department; and

3. (No change.)

(d) (No change.)

7:26E-6.4 Additional remedial action requirements

(a) The person responsible for conducting the remediation shall document the effectiveness of the remedial action as follows:

1.-5. (No change.)

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6. If the Department established a ground water classification exception area as part of the remedial action, sampling shall be conducted pursuant to N.J.A.C. 7:26E-

8.6[(a)7i](b)7i.

(b)-(f) (No change.)

SUBCHAPTER 7. PERMIT IDENTIFICATION, PERMIT APPLICATION SCHEDULE AND DISCHARGE TO GROUND WATER PROPOSALS

7:26E-7.1 Permit identification

(a) Any person conducting a remedial action shall identify all relevant Federal, State and local permits or permit modifications or certifications needed to implement the selected remedial action including, but not limited to:

1.-7. (No change.)

8. [Stream Encroachment Permit (Construction within a Flood Plain) (N.J.S.A. 58:16A-50 et seq.; N.J.A.C. 7:8-3.15)] **Flood Hazard Area Control Act Permits (N.J.S.A. 58:16A-50 et seq.; N.J.A.C. 7:13);**

9.-31. (No change.)

(b)-(c) (No change.)

7:26E-7.2 Requirements for discharge to ground water proposals

(a) For each discharge to ground water (DGW) that is subject to the New Jersey Pollutant Discharge Elimination System rules at N.J.A.C. 7:14A-7.5[(d)](b), the person responsible for

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conducting the remediation shall comply with this section and the Department's Guidance NJPDES Discharges to Ground Water Technical Manual for the Site Remediation Program.

(b) (No change.)

(c) Except as provided in (f) below, the person responsible for conducting the remediation shall:

1. (No change.)

2. After obtaining the Department's approval of the draft public notice and prior to publishing the public notice, the person responsible for conducting the remediation shall provide a copy of:

i.-ii. (No change.)

iii. The approved public notice and DGW proposal to the Pinelands Commission, if the contaminated site is located within its jurisdiction as defined pursuant to N.J.S.A.

13:18A, at the address specified at N.J.A.C. 7:26E-1.4[(r)](s);

3.-4. (No change.)

(d)-(f) (No change.)

SUBCHAPTER 8. ENGINEERING AND INSTITUTIONAL CONTROLS

7:26E-8.5 Monitoring, maintenance, and biennial certification - requirements for deed notices and declarations of environmental restrictions

(a)-(b) (No change.)

(c) The persons responsible for monitoring the protectiveness of a remedial action shall:

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1.-2. (No change.)

3. Submit the certification and the report required by (c)2 above, according to the schedule in N.J.A.C. 7:26E-8.4(c), to:

i.-iii. (No change.)

iv. The Department, at the appropriate address as indicated in N.J.A.C. 7:26E-8.4(e)[7], along with the name and address of each person that was sent a copy of the certification pursuant to (c)3i through iii above.

(d) (No change.)

7:26E-8.6 Monitoring, maintenance, and biennial certification - specific requirements for ground water classification exception areas

(a) (No change.)

(b) The persons responsible for monitoring the protectiveness of a remedial action that includes a ground water classification exception area shall:

1.-3. (No change.)

4. Inspect all ground water monitoring wells associated with the ground water classification exception area and maintain a log for each monitoring well as follows:

i.-ii. (No change.)

iii. For monitoring wells used to establish the ground water classification exception area that have been decommissioned pursuant to N.J.A.C. 7:9D, a copy of the well

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closure report shall be included with the first report, pursuant to [(b)7] (c)6 below, submitted after each well is decommissioned;

5.-7. (No change.)

(c) The persons responsible for evaluating the protectiveness of a remedial action that includes a ground water classification exception area shall prepare a Biennial Certification Report using the form, available from the Department, that includes the following:

1.-3. (No change.)

4. The results, in table format, of the comparison of applicable laws and regulations pursuant to [(a)1] (b)1 above;

5.-6. (No change.)

7. For each land use disturbance identified pursuant to [(a)5] (b)5 above:

i. (No change.)

ii. The results of all ground water sampling required pursuant to [(a)5,] (b)5 above;

and

iii. (No change.)

8. (No change.)

9. When ground water sampling is required pursuant to [(a)7](b)7 above, present and evaluate the contaminant concentrations in the ground water to determine whether the concentrations have either:

i.-ii. (No change.)

10.-14. (No change.)

(d) (No change.)

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APPENDIX E

MODEL DEED NOTICE

The model document in this appendix contains blanks and matter in brackets []. These blanks shall be replaced with the appropriate information prior to submission to the Department for approval. The model document in this appendix is not subject to the variance provisions of N.J.A.C. 7:26E-[1.6]1.7.

...

CHAPTER 38

HIGHLANDS WATER PROTECTION AND PLANNING ACT RULES

SUBCHAPTER 6. HIGHLANDS PRESERVATION AREA APPROVAL

7:38-6.6 Waiver for redevelopment in certain previously developed areas in the Highlands preservation area: Department-designated Highlands Brownfields

(a) (No change.)

(b) For the purposes of this section, a site that meets the criteria in one of the following three Tracks is eligible for designation by the Department as a Highlands brownfield, provided that the contamination onsite is not the result of a current or previous agricultural use:

1.-2. (No change.)

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3. Track Three: A former or current commercial or industrial site with suspected or confirmed contamination onsite for which neither the Department nor a licensed site remediation [profession] **professional** has issued a final remediation document.

(c)-(1) (No change.)